

**Transcription of the Oral History Interview with  
John Ferren  
October 30, 2008**

(1:00)

**OGILVY:**     Alright. Well, John Ferren, thank you very much for sitting for this oral history interview. We're in Washington, D.C. with Judge John Ferren of the D.C. Court of Appeals and we are doing an oral history interview, focusing principally on the years of CLEPR, the Council on Legal Education for Professional Responsibility. It is October 30<sup>th</sup> 2008. John I want to start first, just a little bit of background. I know that you've probably done a lot of these interviews and I was just reading though one that the BAR did with you in 2000, so we know that you grew up and were born in Kansas City, Missouri and moved to Kansas City, Kansas but went to school in Evanston, Illinois. And after graduating high school you went to Harvard College.

(2:00)

**FERREN:**     Right.

**OGILVY:**     What year was that?

**FERREN:**     I graduated in 1959.

**OGILVY:** Okay. What kind of, well, what did you do in College?

**FERREN:** Well, I majored in American History and spent most of my extra time on the debating team, great fun.

**OGILVY:** Yeah, do you remember who your debate partners were?

**FERREN:** Yes. David Bynum was one, Greg Harvey, I think these are the two most common ones. Jim Kinkaid.

**OGILVY:** Had you done that in High School?

**FERREN:** I hadn't.

**OGILVY:** Really?

**FERREN:** But it all comes back to me now because I have a 50<sup>th</sup> reunion coming up next year so, I've been thinking a lot about College recently.

**OGILVY:** Wow.

**FERREN:** Yeah.

**OGILVY:** And then did you go right on into the Law School after that?

**FERREN:** Yes I did, I just followed many of my friends right across the street to Harvard Law School. I'm not sure that was a good idea. I advised my son Andy to take a couple years off between college and law school, which he did, and I would advise anyone to do that.

(3:00)

**OGILVY:** Yeah. At what point did you know that you would go into Law School?

**FERREN:** Probably my senior year in college; I had given a lot of thought about going into the ministry, and then I realized that was not likely to help anyone, and as a consequence I thought that the law offered many opportunities. I had no specific ideas about what I wanted to do.

**OGILVY:** How did you enjoy law school?

**FERREN:** Not very well. I think that, if I'd taken a couple of years to decide I really wanted to go there, it might have been a little different, but there were outstanding faculty, wonderful schoolmates, a very large place -- 550 students in each class at Harvard. Plus, it was hard.

**OGILVY:** (LAUGHS)

(4:00)

**FERREN:** But fortunately it was at a time when, unlike a few years after that, there weren't the distractions of war and the other things which put students in a real bind: their

conscience and whether they should be helping society at the time or going to school. So you could at least focus on work, and that's what I did.

**OGILVY:** Did you have any other activities while...

**FERREN:** Yes, I did moot court, and several colleagues and I won the legal drafting competition, so that was part of it.

**OGILVY:** Now the Harvard Legal Aid Bureau was going on at that time, did you ever look into that?

**FERREN:** No. At that time it was strictly an honor society, and you got in by grades, and I was not admitted on that basis, so I had no clinical work. They did have the Harvard Voluntary Defenders, which one could compete for; I did not do that either. But that was a great organization at that time and really the only clinical program that students could aspire to because they were interested in, and committed to, the kind of work that was being done there.

(5:00)

**OGILVY:** Okay, after you graduated what did you do?

**FERREN:** I went to work with a large law firm in Chicago and immediately got involved with corporate and banking work. But this was a time when the civil rights movement was really beginning to take off in the South. And a number of my friends, classmates, and others, went South to work as a civil right organizer or whatever legal help they could give, and I gave some thought to doing that. I was very torn between the kind of legal work I was doing and the demands of the day on conscience. So I had lunch with a high school friend, Coleman Brown, who was an inner-city Presbyterian minister in Chicago, and he said, "Well, John, there's plenty of work to be done right here in Chicago," and as a consequence of that conversation, a friend at our law firm (Bill Theiss) and I organized a group of volunteer lawyers under the auspices of the Church Federation of Greater

(6:00) Chicago, an ecumenical umbrella group. We decided that we would recruit lawyers -- this was in 1964 -- to volunteer their time to give legal advice to low-income individuals. We concluded that the only place that persons of our background could be useful -- and be accepted -- would be in inner-city churches; and as a consequence, with the help of Coleman Brown and the Church Federation, we located churches -- eventually all over Chicago -- for legal advice clinics and began to recruit more and more lawyers. Within two years we had two-hundred lawyers. I could jump ahead to say that this organization eventually

incorporated as Chicago Volunteer Legal Services, and it has, I think, well over 1,000 volunteers today, staffed and funded. I look back on that with a great deal of excitement about what we started.

(7:00)

**OGILVY:** Yeah, was there anything similar to that going on in Chicago?

**FERREN:** No, there was not in Chicago, and I don't think anywhere else. This was a year before the OEO Legal Services Program started at the national level. I was not aware of any, but it seemed obvious that we ought to be doing that. I'll say this, the partners in our firms, who ran the firms were not at all happy with us, and for a very interesting reason that surprised me. It turned out that the Chicago Legal Aid Bureau, which was a red-feather Community Chest agency, had one office, high up in some building that no client could easily find. And senior partners of the large Chicago law firms were on the Legal Aid board. I mean they *were* the Legal Aid Bureau, and the firms basically funded it in addition to other Community Chest donations, and one of the deals that the partners had with Legal Aid was that "we will give you money, but don't ask us for our time." As a consequence of the lawyers we were organizing to volunteer, the Legal Aid Bureau was very, *very* concerned that they would start losing law firm support financially. And so, some of the senior partners of the firms called me up to say, "We've got to talk," and they said, "Why don't you and some of your people

(8:00)

come down to..." I don't know what club it was, Union League or University Club, and we said, "No, we'll meet you at the YWCA," which is where we did all our business. And we basically said, "We're going to be doing this." Interestingly, one of the leaders of the group that was confronting us, whom I got acquainted with much more in later years, became a member of the CLEPR Board.

(9:00)

**OGILVY:** (Laughs) Is that right?

**FERREN:** Yes, and of course we became good friends and he was a good person, but it was an interesting difficulty that arose. As a consequence of that, we got a little publicity, and I ended up in a debate with the head of the Legal Aid Bureau at a luncheon group, at the City Club of Chicago, where I basically, as a young person with not the right manners I suppose, criticized the Legal aid Bureau for not accomplishing its mission. And that led to other things, but that's how I got started with legal services.

**OGILVY:** What kind of law were you practicing in Chicago?



**FERREN:** Well, it was largely the Uniform Commercial Code. Illinois adopted the Code the year we graduated, so the firm expected all of us new lawyers to know something about the Code. I did banking, corporate work, and I certainly enjoyed the work and learned *a lot*. There was no question about that. But I could not do that without also doing the legal advice work in the volunteer clinics.

(10:00)

**OGILVY:** The firm was Kirkland and Ellis?

**FERREN:** Yes, Kirkland, right.

**OGILVY:** And how long did you stay?

**FERREN:** I was there four years. The debate that I mentioned at the City Club resulted in an article in the Harvard Law School Bulletin. One of the faculty members, in fact my tax professor, Frank Sander, had heard about this, and asked if he could have the speech published in the alumni bulletin, I think this was in '64 or early '65. And then of course in '65 the federal OEO Legal Services Program was started.

Funds were made available for legal services offices all around the country, following a neighborhood model that Jean and Edgar Cahn had advocated in their wonderful Yale Law School Article, I think, in '64; and Harvard Law School, for all sorts of reasons, decided that it wanted to expand the opportunities for students to do legal services work. I'm not sure what all the reasons were, but they

(11:00) included pressure from students. Also, there were committed faculty members, and we were caught up in the War on Poverty. Harvard Law School had never taken federal money, but Dean Griswold and several members of the faculty decided they wanted to pursue a demonstration grant to set up a neighborhood law office to involve students, not on the basis of grades but on the basis of interest and commitment. Then they had to find somebody to design and run this program. And somebody saw the article I had written, and it happened that the faculty members involved -- Frank Sander for one, Livingston Hall, David Cavers, Frank Michaelman, and Dean Griswold -- knew me from school and said, "Well, let's see if John's interested." This was all very flattering, because while this was going on, Dean Phil Neal at the University of Chicago was also

(12:00) interested in starting a program, and so he gathered Phil Kurland, Professor Wally Blum, and Professor Bernard Meltzer and invited me to come down to Hyde Park to talk about perhaps directing a program there. I had gotten to know them, because I'd sat on moot court cases at the University of Chicago. I then got a call from Clint Bamberger, who was the first head of the OEO Legal Services Program. He said, "John, I have two applications with your name on them" for a demonstration grant for a law school program. I didn't even know that Chicago

had used my name; I did not know that they were interested in me beyond just that discussion. I guess having a large desire to do what I could to change the atmosphere at Harvard, I didn't take very long to say I'd be delighted when Erwin Griswold called me about midnight in April of 1966. My family and I moved to Cambridge by June, and Harvard wanted a program for the Fall of '66. They gave me three work-study students – Ted Hochstadt, David Barry, and Bill Slattery -- and then, in a summer of hard work, we rented a place on Broadway at Windsor near Central Square in Cambridge. We went around looking at other neighborhood programs; designed our program; and got ours off the ground in the fall of '66.

(13:00)

**OGILVY:** Did I understand you to say they submitted the application before they actually appointed you to be the Director?

**FERREN:** Well, yes. The Harvard program had done that, and I can't remember now when they asked me if I would do that if they got the money. They had talked to me; they had me down there to speak to the students in January of '66; it was one of these look-over things; and I was so naïve I didn't know what it was about. And so, I guess until Clint Bamberger called me, I didn't know. Once he promised the money to Harvard, the Dean called me. And there was humorous incident. I've mentioned that Harvard Law School had never taken Federal money before, and

(14:00)

so when the grant came, I walked it over to the Comptroller's office and said I wanted to arrange for the payroll. The fellow said, "We can't accept this money; there isn't enough overhead built into the budget." I called OEO and they said, "No, we have a fixed amount." Then Dean Griswold, who was a great supporter of this new program -- he really was -- got up and walked over to the Holyoke Center where the Comptroller was and said, "We're going to take this money." So of course OEO and Harvard just juggled the dollars around, putting more overhead in for Harvard, giving us fewer dollars for the program, and it worked out. The Dean was very supportive of it, and so off we went in the Fall of '66 with Harvard's Community Legal Assistance Office -- we called it CLAO.

(15:00)

**OGILVY:** What did the program look like in the Fall of '66?

**FERREN:** In the Summer we were planning CLAO, I was a member only of the Illinois Bar, and we were going to take students into court with supervision with a budget for one additional attorney. And so, I called up Dean Robert Drinan at the Boston College Law School, whom I had not met, but whom I knew of and thought the world of, and asked for an appointment. I told him what I was going to do, and of course he was very supportive, and I asked, "Do you have a graduate who knows the local court system, who may have had legal services experience and would

possibly be a good partner with me to start this program?” Of course, I had in mind somebody who was very much of the community who could do things, knowing the local judges, that this guy from Chicago, not a member of the Bar, might not accomplish as quickly. He recommended a contemporary of mine, Paul (16:00) Garrity, who was then in the Charlestown branch of the Boston Legal Aid Society. Paul and I just hit it off perfectly, and so we were the two responsible attorneys the first year, with 75 students -- a horrendous ratio of supervision. But over the next few years the budget increased to the point of six staff attorneys and a list of volunteers that exponentially grew over a four- year period, but it started out, as I say, with two of us plus 75 students. And, I had to take the Bar, I was about 3 or 4 months under the reciprocity line that would have permitted me to waive in. Professor Frank Sander gave me all the books and outlines that former students had used to study Massachusetts law, and fortunately I passed. But I did not like taking another Bar Exam.

(17:00)

**OGILVY:** What kind of cases were you doing?

**FERREN:** One of the things that we wanted to do in this office was involve students in as wide a variety of legal work as we could, civil and criminal. The Harvard legal Aid Bureau, because it was located at the law school, didn't have an outreach

effort. It was mostly a domestic relations practice, and we wanted to do the full gamut. These were days, of course, when the Supreme Court hadn't yet rejected standard ethical restraints on lawyer solicitation and advertising. But we decided to solicit and advertise by talking to ministers, to priests, to settlement house workers, and others. And we put posters in stores. As a consequence of that, and meeting with community groups as well, we got landlord-tenant, housing authority cases, welfare cases, consumer as well as family and criminal cases. We also worked with neighborhood groups, eventually representing a group to design the local ordinance for the Cambridge Model Cities Program under HUD's

(18:00) federal legislation. We started to bring large cases against the housing authority. That was tricky because Harvard had certain relations to keep, and we were disrupting some of those, so I could go into all of that, but at least it was a very lively time. I'd add that one summer after our first year a bunch of us were playing softball in a local Cambridge league, and some of the players on the other teams were our clients. So we had quite a rapport in the community at all levels.

**OGILVY:** Your office was, you said, right on the ...

**FERREN:** No, no, CLAO was down on Broadway at Windsor, it was just off of Central Square, it was in the lowest economic area, called "Area 4" in Cambridge.

**Third Party:** Did you ask him where the office was again? You know, I don't know, Sandy, if that was important to you, you might want to start with that.

(19:00)

**FERREN:** The office was located, I remember the address, 235 Broadway, corner of Window St. just off of Central Square in Cambridge. That reminds me that another thing that made our situation tricky was that OEO, politically, had to fund a local legal services program – Cambridge Legal Services (CLS) -- under the auspices of Cambridge lawyers sponsored by the OEO Community Action Program (CAP). And, paradoxically, CLS didn't get nearly the community acceptance that we did. While all of Harvard was a "bad guy" in the overall minds of the community with its real estate practices and so forth, I think that we convinced the community that we were for real. And so there was a little tension with the local CLS program as a result. I can just add one thing (and forgive me if I run on too much here), but within about three or four days of opening our office it was robbed of every typewriter, Xerox machine, anything we had. At first, we had no security in that office. The culprits were soon arrested, and we got

(20:00) called down to court by a local judge not knowing the location of the robbery. He appointed us to represent these guys, but of course we said, "No, we can't do that."

**OGILVY:** (LAUGHS) So you did both criminal cases and civil cases?

**FERREN:** Yes, we had criminal and civil cases.

**OGILVY:** Dean Griswold stepped down in '67...

**FERREN:** Yes, he became Solicitor General.

**OGILVY:** And Howard Sacks after that?

**FERREN:** No. Jim Casner was acting Dean for a year, I think from '67 to '68, and then Derek Bok came in, and I think Derek was Dean until 1970 followed by Albert ("Al) Sacks.

**OGILVY:** Okay, and how was your relationship with this?



**FERREN:** They were all very, *very* supportive without any question, and the faculty grew in its acceptance, even excitement, about it. We got a lot of faculty members to work in the office during the vacation periods. I'd be jumping ahead here, but  
(21:00) some cases that we developed in the office were turned into case materials for criminal law, landlord and tenant and other real property cases, and certainly in professional responsibility. Courses in human relations problems grew as a result of this, so we began over time to integrate some of the work in the clinic into the classroom. Some of the students wrote their third year papers on issues that came out of the office, so we had quite a bit of scholarship come out of it. My fourth year there I put together a course called Provision of Legal Services where all of the material came from the office, disguised of course. I remember we had one  
(22:00) class, though, where students ganged up on me and had somebody wander in saying, 'I'm Joe Sludge, I'm a client of this office, and it has really screwed me over.' And, you know I just...

**OGILVY:** (LAUGHS)

**FERREN:** I didn't recognize this guy, and of course he was not a client. But there came some humor in that, too.

**OGILVY:** What was your title, over the...

**FERREN:** When I started out, Harvard was not going to accord my position much status. It was going to be very slow in doing that, so, I was “The Director of the Neighborhood Law Office Program.” It was a *staff* not a faculty position. The next year, probably by clerical error, the name of the program was changed to the “Harvard Law School Legal Services Program,” and I was named a teaching fellow for a couple of years. And then I was appointed Lecturer on Law, so for three years I had faculty status, but it was not a tenure track position, and Harvard (23:00) was not thinking of clinical professorships or anything along that line. This was too early, particularly for Harvard Law School, but on the other hand, OEO was very much interested in having Harvard in there because, you know, that would add some prestige to the effort.

**OGILVY:** Were the students getting academic credit?

**FERREN:** No, they were not getting credit at all for CLAO. But those were days of massive commitment to anti-poverty efforts and civil rights, so the students put in hours and hours. They were wonderful. We had a steering committee of students to

help us plan what projects we might want to do, and you know if we're going to have members of the community giving feedback, we want the students to be part of it as well.

**OGILVY:** Can you give me some names of the other faculty other supervisors that you worked with...

(24:00)

**FERREN:** The chair of the faculty committee was Frank Michaelman, who was a couple years my senior. I think the moving forces had initially been Frank Michaelman and Frank Sander, my tax professor and eventually a very well-known professor of family law and human relations law. Also there was David Cavers, one of the senior professors, who had always been interested in clinical work, way *way* back, from his days at Duke Law School. Livingston Hall, a criminal law professor, had been my professor in agency, and he had been faculty sponsor of the Harvard Voluntary Defenders and, more recently, sponsor of the Harvard District Attorney Project; he was developing clinical work for aiding the prosecution. Let's see, those were the principal faculty members but many *many* others became interested. Andy Kaufman, for example, Professor Andrew Kaufman, regularly had me come to his class with professional responsibility issues that came out of the clinic.

(25:00)

**OGILVY:** Interesting. Well now was this totally funded by OEO?

**FERREN:** Not totally, because of course we had a required “local share” (I think ten percent), but we worked it out so that our local share justified our criminal representation, because the federal money was limited to civil practice.

**OGILVY:** And how long did you do that?

**FERREN:** I directed CLAO for four years. It was a very difficult decision whether to leave, but the program was going very well and I received a letter from the law firm of Hogan & Hartson here in Washington saying they wanted to start a Community Services Department to put the resources of the firm to work in the community pro bono. That was at a time in 1970, when we had the bombing of Cambodia, I mean it was a horrendous thing -- '69 this started I should say. And the firm  
(26:00) wanted to set up a department staffed by a partner and two associates as a central clearing house. The department lawyers would not only undertake client representation themselves but also act as a centrifugal force, spreading pro bono cases around the firm. The letter asked if I'd be interested in heading the

department. I just dropped the letter in the wastebasket, called the gentleman who had sent it to me, thanked him very much, and told him I was not interested. My wife fished it out and said, “Well, why aren’t you interested in this?” I reconsidered and went down to the firm to interview. I had been to the firm a few years earlier as part of a team to evaluate the District of Columbia Legal Aid Agency, now it’s the Public Defender Service, which is a wholly separate story. I had gone over to Hogan & Hartson to interview a former Deputy Director of the Agency, and I remembered that the first fellow I had seen had a yellow sport jacket on. And Seymour Mintz, the man who had sent me the letter and whom I soon met, had patches, elbow patches on his sport jacket. Now, I’d come from a firm in Chicago where I don’t believe sport jackets, let alone yellow ones or patched elbows, would have been tolerated. And I thought, well, maybe not all large law firms are the same. I’d been telling law students, “Don’t go work for law firms, find alternative careers.” I mean, this was the sixties, right? But Mr. Mintz, Bob Kapp, Barrett Prettyman, Ed McDermott, Sally Determan, and others in the firm really made me a believer in their commitment to try this idea. Obviously, these partners were talking to their kids. I suppose the same thing that moved me to want to start the program under the Church Federation, and then was attracted to start a program at Harvard Law School, was the same motivation that led me to Hogan. And I probably said to myself something like, “Well, I’d like to help subvert this law firm.” I think that’s probably one way of putting it. And so, going back and forth, I decided, “Let’s try it.” I did that. And it was to the great advantage of Harvard Law School that two years after I left, they asked Gary

Bellow to come, and of course, as everyone knows, he was the genius of clinical legal education; he really sent the Harvard clinical program into marvelous. *marvelous* directions.

**OGILVY:** Did you ever learn how they picked your name out of the hat to send the letter to?

**FERREN:** No. (LAUGHS) I'm sure I was not the only one. But I was the fortunate one to do it. And of course, just like one had to sell the Harvard Law faculty to get their support of the new program, getting a law firm wholly behind a new Community Services Department was another major effort, which I think was very successful. We had great support all along.

**OGILVY:** How many attorneys at the time?

**FERREN:** I think I was about the 89<sup>th</sup> attorney. I don't know why I remember it so precisely, I shouldn't say 'about' –I know I was. When I left four years, no seven years, later I think there were 130 lawyers at the firm. You know that, globally, it has over 1,000 now. I mean it's a wholly different kind of law practice in that sense. But it was among the top two or three in number in D.C. at the time.

**OGILVY:** Now, was there a model for this type of activity?

**FERREN:** No. Piper & Marbury in Baltimore. under the leadership of Frank Gray and the  
(30:00) strong support of William Marbury, had set up a neighborhood legal services office. Clint Bamberger had come from that firm before he went over to OEO, and so Mr. Marbury and his firm were very supportive of this kind of effort, and they set up their neighborhood office near Johns Hopkins Hospital and put in a couple of associates, full-time, to work there. I was part of a team that the National Legal Aid and Defender Association (NLADA) had set up to evaluate and write about that. Hogan & Hartson saw that and decided to do something different -- to locate its pro bono effort in house because it would give the firm more flexibility, not only to serve the local community but also to take cases elsewhere, as we did on occasion. There was a committee that recommended this approach, and I was invited to design (and sell) the details much as I had done at Harvard. So, I came to Washington do that and found an outstanding associate within the firm, Harold Himmelman, to be the lead associate. We also had other  
(31:00) associates rotate in and out of the department over a four to six month period. Over time, we had many lawyers involved on a full-time basis for substantial periods. And we were to handle not only individual matters but also major cases. Because we had this commitment, people from all over the county were coming to

us to take cases. I'll mention one. The Nixon administration tried to dismantle the U.S. Office of Economic Opportunity (OEO) by administrative order. When Howard Phillips, Director of OEO, tried to do that, the Community Action Agencies, through their national association, came to me and asked if we would try to enjoin that effort. We agreed and also arranged for Arnold & Porter to represent the Legal Services Programs. Those programs and the Community Action Agencies had some separate issues and legislation that we felt required two counsel, plus I believed it would be great to work with Harry Huge and that

(32:00) firm. We came before Judge William Jones, who was a conservative, stern, but fair and brilliant district judge. I can remember the first time we went into court for a status hearing. He inquired skeptically, "You're asking me to enjoin Nixon?" Well, over time Judge Jones became a believer in our cause, as evidence came out about what was going on. The union at OEO was putting material at my office door that not even their own counsel defending Phillips knew about. And the upshot was that Judge Jones did issue an injunction prohibiting the dismantling of OEO. The government did not appeal. If I may I'll just add one more case; it was out of town. In Hamtramck, Michigan, a city wholly contained within the boundaries of Detroit, the local government had received funds from HUD to undertake an urban renewal program that effectively removed virtually every African American from the city. The University of Detroit Law School Clinic had

(33:00) started a lawsuit in the early 1970s to enjoin that effort. They were successful in obtaining declaratory relief, but the clinic's chief counsel left the program so we were invited to take charge of planning and proposing the remedy. The upshot



was that, with substantial opposition from the city, we worked through with Judge Damon Keith (eventually a Judge on the U.S. Court of Appeals for the 6<sup>th</sup> Circuit) a plan for a mandatory injunction to replace everybody's home. With the help of a city planner and an architect, we covered every vacant site, and most of our plan survived 6<sup>th</sup> Circuit review. (We're talking 1971, '72, '73.) At that point the Chrysler plant, the biggest employer in Hamtramck, closed. The city itself went bankrupt; there was no money for the required housing. But this summer, I (34:00) received a letter from Judge Keith, who had retained the case as a district judge even while he was on the 6<sup>th</sup> Circuit, saying that the money had finally come through. This was accomplished, I think, with the help of Governor Jennifer Granholm (who had clerked for Judge Keith) and others, plus the efforts of the attorneys who had been doing the work in this case ever since we were involved. They got money from the state and perhaps from the federal government. A substantial number of houses are now being built for the children and grandchildren of our clients.

**OGILVY:** That's an amazing story.

**FERREN:** Those were big cases, but we also would get cases from our local courts. I remember taking a stack of juvenile cases and putting them on the desks of various partners and associates who were unfamiliar with our courts. One of my

senior partners on our executive committee was so upset by a ruling that the judge almost held him in contempt. Fortunately, an associate was with him and helped cool the situation. I wish I could have bottled my partner's outrages and inoculated everyone in the firm with it, because we needed to get lawyers aware of, and committed to reforming, what was going on in some of the local courtrooms at that time.

**OGILVY:** Well, let's follow your career briefly then up till today and then we'll go back and pick up the CLEPR stuff.

**FERREN:** After seven years of having the best job in town as Director of the Community Services Department at Hogan & Hartson, I left. During the last three years I was there, I was also the firm's first Administrative Partner, so we brought in David Tatel to help lead the Community Services effort, and David, as you know, is now a judge on the U.S. Court of Appeals for the D.C. Circuit – a remarkable, truly outstanding lawyer and judge and, of course, a wonderful fellow and friend. We had a great partnership working together. And then I was privileged in 1977 to be named to the D.C. Court of Appeals. Under our Home Rule Act we now have a "Missouri plan," which means that the state of Missouri originated the idea of a local commission of lawyers and laypersons to nominate to the governor in that case, to the White House in our case, three candidates for a judgeship, and the

President in our case must pick one of those three. I was privileged to be selected by the Carter Administration for the Court of Appeals in 1977. I served as an active judge for twenty years, and then Marion Barry, who was in his last couple of years in either his third or fourth term as mayor, asked if I would become the District's Corporation Counsel. That was at a time, you may remember, when Congress had put the District under supervision of a Control Board. It was interesting to figure out who exactly the client was in these circumstances. I served somewhat short of two years, and then, on the last day of a deadline under a D.C. statute, I was privileged to return to the Court of Appeals as a Senior Judge in 1999, where I've been sitting part time ever since. I've been very fortunate to

(37:00) have had this array of wonderful legal jobs.

**OGILVY:** Well, how many cases a year do you see, do you sit on now?

**FERREN:** About a forty percent caseload when I'm there. My wife and I spend a little more than half the year now in Delaware, and roughly the other half here. We have twelve senior judges now and a court of nine active (a Chief and eight Associate) judges. We seniors all do about a forty percent load when we're here. We're here at different times, so it works well, adding substantially to the court's ability to get the work done.

**OGILVY:** What do you do when you're in Delaware?

**FERREN:** I spent quite a few years writing a book, a biography of Justice Wiley Rutledge, who was the eighth and last appointee to the Supreme Court by Franklin Roosevelt. I started that part-time in 1995 while still an active judge but did nothing on it when I was Corporation Counsel. When I came back to the court part time, I was privileged to get a fellowship at the Woodrow Wilson  
(38:00) International Center for Scholars here in Washington and spent a year there. After that, I continued to work on the book, and the University of North Carolina Press published it in 2004. Among the very nice experiences when working on the book was my becoming acquainted with wonderful ex-law clerks of Justice Rutledge, including Justice John Paul Stevens and, up in Philadelphia, Circuit Judge Louis Pollack, former law school dean at Yale and Pennsylvania. And there was also Willard ("Bill") Wirtz, the first professor Wiley Rutledge hired when dean at the University of Iowa College of Law, and later Lyndon Johnson's Secretary of Labor. I spent a lot of time on that book. The last couple of years I've spent time writing book chapters and articles about Rutledge -- and fishing.

**OGILVY:** Fishing? (LAUGHS)

**FERREN:** And a lot of time with grandchildren.

(39:00)

**OGILVY:** Yeah, yeah. That's wonderful. Let's go back and talk about CLEPR.

**FERREN:** Sure.

**OGILVY:** When did you first have any exposure to CLEPR?

**FERREN:** Well, my first exposure to CLEPR was my exposure to Bill Pincus, and although I knew about the National Council on Legal Clinics, the name of the organization that preceded CLEPR. We didn't have any CLEPR funding for our neighborhood law office program at Harvard, but I would run into Bill Pincus at various legal services meetings. Bill came to me -- I can't remember exactly when, but no later than sometime early in 1969 I think. And he said, "Two things I want you to do for me, if you will." And I said, "Sure," and he said, "Well, one: we're going to hold a big conference in Chicago at the University of Chicago" (I think it was in

the fall of '69 if I'm not mistaken), "and I'd like you to write a paper for that conference on your views of Clinical Education." I had given a paper a year earlier at the opening of the Law School out at Arizona State University called the Teaching Mission of the Legal Aid Clinic. ASU was going to put a clinic out there, and the dean, Willard Pedrick, had asked me if I would come out there to run their clinical program at the new law school. I was very, *very* tempted; he had us come out in December, and we went out again in February. Willard was a real character, and he took us up in the hills to cook in the nice warm climate at a time it was freezing in Cambridge. But every morning I would get the Phoenix newspaper pushed under our door at the motel, and I remember saying to myself, "I can't live here." In any event Bill, I guess, had read my ASU paper and thought I could make a contribution. He said, "The other thing I want you to help me with is Harvard." And I said, "Okay, what's that?" And he replied, "We have to get clinical teachers trained; let's put together an application to CLEPR, which I will fund, and your job is to get Harvard to accept it -- to train clinical law professors." I said, "Well, I'm not sure I know what a clinical law..." "Ah!", he interrupted; "that's what we want you to figure out." And so, Harvard accepted the money, and we sent out a flyer and attracted four really outstanding individuals, including Otis King, who was eventually on the CLEPR Board and dean at Texas Southern, where you were at one time. And for '69 and '70 we had that program. It continued after I left. Also, as I left for Washington in 1970, Bill told me that "we've got potentially ten more years for CLEPR to fund programs, and I'd like you be on the Board." I guess he had talked with Orison Marden,

(42:00) Whitney Seymour, and others must have said that would be fine, and he also put me on the Executive Committee, I think in part because I was local enough -- the meetings were always in New York and I was in Washington. I felt very privileged to be able to work with CLEPR for ten years on the Executive Committee, beginning in 1970.

**OGILVY:** What was the role of the Executive Committee? Did it change over time?

**FERREN:** It didn't change very much over time. It was mostly the New York people. Orison Marden was the Chair, Whitney North Seymour, Max Kempner, and Judge Florence Kelly were always there, Howard Sacks came from Connecticut at the time; I was from Washington. And there was the staff: Betty Fisher, Peter Swords initially, then Victor Rubino. Bill, basically told us what was next to do.

(43:00) Bill Pincus had an agenda that was unrelenting, and law schools bought into the program. Mostly the Executive Committee meetings were approving grants, and we were careful in reading the materials. This was not a rubber stamp deal, but Bill did his work very well, and I can't think of more than two or three times where we questioned what he did, and even those were cases where Bill said, "I'm not so sure, let's talk about it." So he was very honest about it. And then he would talk to us about the need for a conference or for pauses in the program, so it was a situation where the board was led by Bill but made sure that there was a

(44:00) check on CLEPR activities. I would add that the Executive Committee was as much an enjoyable social gathering at it was a hard-working meeting. But we did go over the work and take it seriously, because we wanted to keep expanding the number of law schools that were involved. There were three things that were terribly important to Bill and to the members of the Executive Committee. First, that students have lawyer-client interpersonal relationships. Simulations could be an aid, but there had to be interactions with clients, This was not skills training as much as it was professional responsibility, helping a client, knowing what you do and don't do in that kind of relationship. Yes, learning the skills to accomplish such interaction, but also finding out that you are – or are not -- the kind of person who can do that. Secondly, Bill and the Board wanted academic status or faculty status for the supervisor, and third, they wanted academic credit for the students. And those were the three things. There may have been times when they would settle for two of the three in the hope that they would eventually get the third, but Bill and the Board were very strong about not letting law schools get money if they weren't going to commit to that three-fold effort. We always tested applications by reference to those three goals.

(45:00)

**OGILVY:** Was there any tension about the direction of clinical education? One of the splits has always been skills training versus client service and that sort of thing.



**FERREN:** Well, yes. There was tremendous tension, which I think abated over time, about CLEPR's basic notions: that the only valid kind of clinical work is lawyer-client legal aid work, and that you had to have "faculty" status for somebody in a field that has never been part of legal education except in what some people would call

(46:00) "fringe" law schools, and that you have to have academic credit for this. What law schools forgot is that Northwestern University Law School, back in Wigmore – even post-Wigmore -- days had legions of Chicago practitioners who were adjunct faculty, These practitioners worked directly with students. Northwestern even had a four-year program at one time, where students were circulated through law firms and legal clinics. Certain professors such as Howard Sacks from Northwestern (later dean at Connecticut) and Dorothy Nelson, dean at USC, are real believers, as Bill was, in CLEPR's goals, and so over time law schools

(47:00) wanted the money more than adherence to their skepticism about the educational value of legal clinics, especially because there was great pressure from the students. So commitment to CLEPR's requirements evolved, and once these criteria were established, then of course CLEPR was willing to give money to help develop curriculum materials and simulated exercises to help students get better prepared to do the clinical work. I remember that Bob Keeton, my torts professor at Harvard, got involved in computerized work with a professor from the University of Minnesota. I look back on this history, and I'm very pleased even though I initially thought that Bill and CLEPR defined clinical work too narrowly. To me, clinical lawyering involved all kinds of field work, but I think

now that CLEPR was right to stand firm with its criteria, because now, virtually every law school in the country has some form of clinic where students relate to clients as well as have these other, fieldwork opportunities.

(48:00)

**OGILVY:** Was there any tension among board member that you remember as to the proper *focus* of the clinic, that is the type of clinic they want you to have, you know like poverty law versus patent law or something like that?

**FERREN:** Oh yes. Well, probably more than I remember. You mentioned patent law. A faculty member at the Franklin Peirce Law School up in New Hampshire hooked up with MIT and made a proposal for a patent law clinic, which I trust we turned down, I think we did, but I'm not sure of that. I remember that there was a discussion about saying this is just not what we are all about. Thanks for

(49:00) mentioning "patent" because I hadn't remembered that for years. And you probably could coax other memories out of me, but I think that the tensions and differences of opinion came more out of conferences, where faculty came in from around the country who were not CLEPR family. Obviously as you open the Board more broadly, you get more diverse views. We had an outstanding Board, I mean people like Judge Alvin Rubin from the 5<sup>th</sup> Circuit to Maynard Toll from Los Angeles. I shouldn't mention names because I'll leave out some. Oh, John Robb from Albuquerque, New Mexico, was a wonderful contributor. I mentioned

(50:00) Dorothy Nelson, so you had very thoughtful people. I think one of the important things that CLEPR did do was have national conferences, where, you know, antagonists could come and speak their minds and had a lot of very important, useful things to say.

**OGILVY:** Why do you think Bill and the Board structured it that way? To have people that weren't committed to Clinical Legal Education.

**FERREN:** Oh, you have to bring the non-believers into the fold. First of all, nonbelievers have very important critiques. Clinical work can become too soft and, after all, your principal goal has to be legal education. Legal services organizations can do that, but the real trick here is to figure out how you can provide service in a context where there is education without cheating the client. You know it's an interesting, complicated thing to do, and I think it was so useful to have nonbelievers attend CLEPR conferences. By "nonbelievers" I mean a broad term to describe, for example, a business planning professor who doesn't know diddly or care much about human relations issues, but comes to a CLEPR conference and begins to see potential for broadening the way of doing things. I'll give you a little example. CLAO students had a neighborhood client group that wanted to incorporate a chicken-hatching co-operative and sell shares. That involved making sure it's a private offering under the Securities Act of 1933, and you've

(51:00)

got state “blue sky” laws. I asked Louis Loss, the legendary securities law professor, to get involved. In this way, clinical work can affected a law student’s education more pervasively over time than one might think.

**OGILVY:** CLEPR, in addition to getting grants for clinics, sponsored conferences and other  
(52:00) publications that you mentioned, can you talk a little bit about any of the conferences specifically or workshops?

**FERREN:** I don’t think I can. I can remember settings, and I certainly remember being on Panels, and CLEPR always held these meetings in very nice places, such as Buck Hill Falls in Pennsylvania. The Board meetings always seemed to be in Boca Raton, Florida. So, there was some overhead spent on some nice places. I can’t give you memories about them that I think would be useful, but I do remember that these meetings had people staying up late at night in small groups, and I don’t mean just sitting around; I mean the gatherings were serious, and people came with a serious purpose.

(53:00)

**OGILVY:** I was especially interested if you remember anything about the last kind of big conference which, it was in 1979 in Key Biscayne, Florida.

**FERREN:** I'm sure I was there, but I don't.

**OGILVY:** Okay, can I list some of the other member of the Board?

**FERREN:** Sure, sure.

**OGILVY:** And maybe just maybe say a word or two about them. You already mentioned Max Kempner.

**FERREN:** Yes.

**OGILVY:** Leo Levin?

**FERREN:** Leo Levin was not in my experience as active as some of the other Board members, but he was very supportive. I remember riding in a taxi with him from

the airport in Phoenix to the Arizona State Conference in 1968, so he was committed to inquiry into this area as far as I'm aware.

**OGILVY:** Bob McKay?

(54:00)

**FERREN:** Oh Bob, what a wonderful man. He was another, like Howard Sacks, who was very *very* interested in clinical work and its potential and very supportive. Bob McKay was one of those persons that everyone listened to. I think everybody respected one another, but Bob I recall very much as one we were especially eager to hear from.

**OGILVY:** James Nabrit?

**FERREN:** Jim was not as active in my recollection. I think he preceded my time. I don't recall that he was active when I was on the Board.

**OGILVY:** Alvin Rubin.

**FERREN:** I mentioned Judge Rubin. Yes, he was very interested, came to all the Board meetings, and was a very strong participant.

**OGILVY:** Bernie Segal, Bernard Segal.

**FERREN:** Again, I think he preceded my time for the most part and was not as active in the period of the meetings that I attended.

(55:00)

**OGILVY:** Whitney North Seymour.

**FERREN:** Well, he was a giant. I loved Whitney Seymour, and here's a man that was really committed to making the profession more available to people in need, and I respected him tremendously. He was, with Orison Marden, our leader. I mean it was kind of a co-leadership feeling you had about the two.

**OGILVY:** Maynard Toll?

**FERREN:** Maynard, from Los Angeles, was a very strong supporter, he came to everything that he was invited to and always had something very useful to say.

**OGILVY:** Max Kempner.

**FERREN:** Max was on the Executive Committee. Thoughtful, committed to this. Always had a new idea or like Bob McKay, something very useful to say. I was pleased to learn that he then went on to become dean up at the Vermont Law School. I saw him not long ago, and it had been many years. I just enjoy him very much.

(56:00)

**OGILVY:** Yeah, we're actually going to get an interview with him soon.

**FERREN:** Are you?



**OGILVY:** Lyman Tondel, Jr.?

**FERREN:** Yes, he was president of the ABA, and CLEPR was part of his involvement with the ABA, I think. I did not know him well, nor did he participate in any of the meetings that I can recall.

**OGILVY:** Bill Hastie?

**FERREN:** Judge Hastie was not involved when I was, and he did not live much longer after his period of service with CLEPR.

**OGILVY:** Sam Thurmond?

**FERREN:** Oh, Sam Thurmond from the University of Utah, a great supporter. He was so committed to clinical legal education and it was a delight to have him. I keep saying these things because I'm reminiscing and thinking of people for the first time in a long time, and my affection for them I'm sure shows. Bill and the others  
(57:00) really picked a group of wonderful people to deal with this.

**OGILVY:** Do you know how Bill went about selecting the people that he did?

**FERREN:** No. Bill got around. I suppose it's like anything else, you run into people who are interested; you size them up; you get interested in them; you ask about them; you put together your group.

**OGILVY:** Yeah. Ed Levi?

**FERREN:** He was not involved when I was.

**OGILVY:** William Gossett?

**FERREN:** I did not know him, he was president of the ABA and I think that's how he happened to be on there.

**OGILVY:** David Cavers?

**FERREN:** David Cavers was one of my great friends and mentors, and I think he goes about as far back in my experience as anybody interested in clinical legal education. He was on our neighborhood law office committee and extremely helpful to me at Harvard.

**OGILVY:** Bill Avery.

(58:00)

**FERREN:** Bill Avery from Chicago was not as involved as many others. I think he was just on the Board, but he came at it from the NLADA background, and so he's been a great supporter of Legal Aid all his career.

**OGILVY:** Sure. Can you talk a little bit about some of the staff? The interactions, you interactions and maybe the Board's interactions with them?

**FERREN:** Betty Fisher, of course, was the organizer of the meetings, and I loved Betty.

She had a wonderful sense of humor, and as far as I was aware everybody loved Betty. Whatever her individual relationships were with Bill Pincus and the other staff, I do not know, but they seemed to enjoy each other and have a very workable team. Peter Swords was very, *very* able and was Treasurer. He did a lot of statistical work for us and wrote a CLEPR book, I believe. His successor, Victor Rubino, was also a very supportive fellow. Just to show you how friendships and relationships develop over time, when I was Corporation Counsel (59:00) and desperately in need of some training for our staff, I learned that Victor was director of the Practicing Law Institute (PLI) in New York. Victor had heard what I was doing and wanted to expand PLI's reach. He came down to Washington and took over our training program pro bono.

**OGILVY:** Wow.

**FERREN:** So that was nice.

**OGILVY:** Yeah. I guess I kind of want to ask I'm going to ask you if there's anything else that you want to just mention but, kind of a wrap up question, to the extent that you know. What do you think the legacy of CLEPR has been with respect to clinical legal education?

**FERREN:** I think without any question its legacy is the grand stimulator of law schools to take a look at clinical education, discover its value, and integrate it into their curriculums. I just have no doubt about that, and I think as I mentioned earlier that

(1:00:00) Bill Pincus and the Board, the Executive Committee, were right in saying, “You start with the clinic one-on-one and then you expand into broader clinical matters.” I think he had it right. I really liked Bill, he had a good sense of humor, but he was like an oak. You couldn’t move him on any of this stuff. And, I mean, these three principles of faculty status and grades, and a one-on-one clinic. I look back at that and I really respect Bill for his vision and his indefatigable efforts. I think the Ford Foundation, by the way, was quite right in setting up CLEPR as an independent institution with money to give over two five-year periods. That gave us the responsibility; we had confidence in our Executive

(1:01:00) Director; and it worked because the right people were in place to do this. I don’t know that you can say that Bill was the whole thing; I mean maybe Whitney Seymour picked a Board member or two, I don’t know the inter-relationships there. But however it worked, I think it was probably largely Bill’s initiative -- and it worked.

**OGILVY:** Do you have any sense of how Bill came to kind of those three principles?

**FERREN:** No, I don't, and I'm sure this all occurred before my time. But, I do know that Bill -- and I don't know that he ever practiced -- believed that unless you had a client you would have no idea what "professional responsibility" meant. And I think Orison Marden, for example, would say that unless you have a client who is

(1:02:00) not your normal client in a big firm, you're not going to know what people go through in relating to legal institutions that so affect our lives. Or private enterprises that so affect our lives. Therefore, if the profession is to have a responsibility to make the legal system work for everybody, then you've got to meet people and learn from their experiences. I don't think any of us thought -- even though we might like to think it's true -- that you can spoon-feed students and create empathy or create sympathy or moral responsibility with things like that, but I think we all can agree that unless students have this kind of experience,

(1:03:00) they wouldn't get the insights that we felt the profession required in every lawyer. And there's a lot of self-knowledge that has developed in this, and self-knowledge is probably as important as learning about other people, so it's a two-way interaction.

**OGILVY:** I'm going to show you what I've marked as Exhibit One. Here, let's see if you can recognize this.

**FERREN:** (LAUGHS) Why yes, it's a conference.

**OGILVY:** (LAUGHS)

**FERREN:** A CLEPR conference, and I see a guy with very long hair that I recognize in a blue tee-shirt. Where is this in Boca Raton?

**OGILVY:** Boca Raton, yeah.

**FERREN:** Yes, oh and there's Betty Fisher, Victor, oh this is nice, Lester Brickman, Marshall Seidman, he was one of our clinical fellows, graduate fellows, in our Harvard master's degree program to train clinical law professors.

(1:04:15)