

**Transcript of Oral History Interview with
Douglas Frenkel
April 25, 2003**

Ogilvy: What was your first exposure to clinical legal education?

Frenkel: Well I guess it was when I was a law student in the late 60s early 70s and I found myself gravitating to courses that would take me outside the classroom. And, we had something called Community Law and Criminal Litigation; something like that. I found myself assigned in a; in what was typical of the time, a farm-out situation with basically no law school oversight to speak of. I was farmed out to a local legal services program in Philadelphia; North Philadelphia and I spent most of the semester working on a; on a case involving a client of the office whose child lived point nine four miles from the school that he attended and the local rule required that the child be at least a mile or more from the school before the system would reimburse for public transit expenses. As I recall, we didn't get anywhere but I found the process of trying to get there memorable. Obviously I remember it 30 some years later. And, when I was at Penn I also was a student in what actually, looking back, was really an early fore run as a current clinical education. We had something called the Health Law project there, which was started by Ed Sparrow who was on the faculty of Penn at the time and I was one of the early students in that project and like a lot of other projects located at schools, at the time it was very much research oriented but with a public policy and public interest. And, so I did those two things in my; my third year of law

school.

Ogilvy: What year was that?

Frenkel: That would have been in 1971; 1970, 71. I graduated in 72.

Ogilvy: Okay. Tell me a little bit more about the Health Law project. What kind of things did you do? How long had it been going? Do you know?

Frenkel: The health law project; I don't recall specifically; the health law project was; was a grant-funded lawyer form project aimed at trying, I think, to put some practical meat on the skeleton of the vision that Ed Sparrow had about; an early vision about a right to decent health care. And, we had people; there were staff attorneys who included Sylvia Law, who's now a professor at NYU and she was then a staff attorney there and a number of other very; very smart young lawyers. The work that I did, frankly, I have a hard time recalling. It was research work and I'm struck actually as I talk to you about the difference between my ability to recall the legal services case where I had a responsibility for a real client's matter and my inability to recall any of a particular research project that I was assigned. That's actually a pretty telling difference.

Ogilvy: How many students were involved in the community project; the legal services project? Do you have any sense of that?

Frenkel: My guess is that, especially given the politics of the time, that the substantial number of my class took part in this, which is I recall, was a pretty, you know, a low credit, as I said; essentially no supervision farm-out program. These days we would think of it in the externship category but obviously there'd be a lot more law school resources devoted to screening and supervising the placement supervisors and so forth. So, I'd say, perhaps, as many as half the class did something in that program in different placements around the city.

Ogilvy: And, how large was your class?

Frenkel: The class was about 200, 220 students.

Ogilvy: Was this a long-standing program at the law school?

Frenkel: Well, Penn had a history being in Philadelphia; Penn had a history of relationships with the local legal culture and in trying to connect the law school to

that this program was, I think the bridge between some of the earlier programs, one of which, I think, was called Lawyers, Downtown in the; perhaps in the 50s and in-house clinical education which had started like in some of the other schools in the mid 70s. So, this; this was a sort of bridge that I think spanned, probably half a dozen years in the late 60s, early 70s.

Ogilvy: You graduated, then, in 72?

Frenkel: Right.

Ogilvy: And, what'd you do?

Frenkel: I; well, I got out of law school, I didn't know what I was going to do cause I had this notion that I was going to go follow the romantic side of my life to live in the rural area and I got in touch with reality in real life that that wasn't where I was going. I; when I finished law school, technically I didn't have a job, but I; while studying for the bar I noticed that a; an unexpected court clerkship opening came up in the appellate courts in Philadelphia; in Pennsylvania and having been at the right place at the right time I immediately applied for the opening and got it and so I was a law clerk for a year, right after graduation and following that clerkship

I went to work for Community Legal Services, the city-wide legal services program in Philly.

Ogilvy: Who was your clerkship with?

Frenkel: My clerkship was with a judge named Theodore Spraulding. He was actually, if memory serves me, the first African-American appellate judge in Pennsylvania. And, he was a very kindly guy. Unfortunately, he was increasingly ill during that time which had the side effect of making his clerks assume a great deal of responsibility. So, it was actually a more interesting appellate clerkship in the sense of front-line responsibility than I had signed on for.

Ogilvy: That's good. So, then you went to CSL.

Frenkel: I went to CSL and I was there for about five years. Of course, having had this clerkship I was instantly the appellate expert for the organization. I started out as staff attorney, doing housing cases mainly, public housing cases. As; as we set up a unit to do that work exclusively we quickly realized that staffing wouldn't allow; that funding wouldn't allow us to staff that adequately with the literally thousands of potential clients. So, we were; I was very early on involved in the;

in hiring and the use on the deployment of paralegal assistants to provide services to numbers of people that lawyer staff couldn't possibly reach. And, that was a very interesting experience cause it was actually in the days when there was some controversy about the ethics of using paralegals to, quote, practice law. And, we escaped that and, in fact, as I look back at it, one of people I hired is now a professor, a law professor.

Ogilvy: Who's that?

Frenkel: Doing great work. A woman named Susan DaJarnatt who teaches at Temple Law School. But, some of the; some of the paralegal assistants or paralegals with whom I worked were not only wonderful people but have remained as totally dedicated and incredibly effective legal services practitioners.

Ogilvy: Actually, I had a similar experience. I was in Northwest Pennsylvania about the same time.

Frenkel: Oh, really.

Ogilvy: And, after I left; some years after I left one of the paralegals that we had in the housing unit came back and was the executive director of the; of the program.

Frenkel: Yeah. That's a statement of how far we've come.

Ogilvy: Yeah. Yeah.

Frenkel: And, just to continue on, I guess in terms of legal services career, I, at one point, after about three years there I became; I moved to one of our neighborhood offices in South Philadelphia to become a supervising attorney and then, managing attorney of that office. And, at the point that I was running that office; it was an office of about thirty total staff and city-wide we had about a hundred lawyers. And, this was sort of a; the pinnacle of legal services programs in the history of Philadelphia was at that point about 1977, 78; the height of all; of all the funding. And, that; that period of kind of increasing administrative and managerial responsibility was both, interesting and ultimately the factor that drove me toward my long-standing interest in pursuing teaching cause I'd always known in the background mind that teaching was something that I; that appealed to me and I'd actually continue to do it. Even while I was at legal aid I was an adjunct at the; in the legal studies department at the; at Penn. But, being an administrator in that city-wide program at that point when the writing was on the

wall in terms of; in terms of the future of funding was a; was an enormous challenge. One of the things I, that as I look back that; that I did that was actually formative at the time was that during that period the legal services department was such a force in the Philadelphia bar that the local bar association found itself having to establish a special grievance panel for lawyers who wanted to file complaints about what was essentially the lack of professional responsibility or the alleged ethical infractions by legal aid lawyers. This was a bar program designed to defuse some of the political tensions between the private bar and the legal services organization which was obviously being very effective. And, I was asked by the executive director of the program to take on the defense, as it were, of these; of complaints against; against our lawyers. And, looking back at it that was my first exposure to professional responsibility because I had to really examine what it was we were doing and look at it in a context of an area of law that I had never studied. And, it was essentially undeveloped at that point anyway.

Ogilvy: How many cases during a year would you be involved in this thing?

Frenkel: That grievance panel probably existed for two or three years and I probably defended; I don't know, upwards of a dozen formal complaints at hearings. It's not clear what the sanctions could have been cause these were not disciplinary hearings. They were not conducted by the bar; the state bar authorities. They

were mostly a place for; for private lawyers with grievances to air their grievances. But, a lot of it; some of it got pretty testy and pretty ugly at times.

Ogilvy: Yeah. Were you also doing other case work at this time; while you were in managing or primarily just . . . ?

Frenkel: No, I always kept my hand; always wanted to keep my hand in client work. I didn't think that somebody ought to be a pure manager and just personally; just doing pure administration would have been; would have been hell.

Ogilvy: Yeah.

Frenkel: So no, I always kept my hand in client work and in supervising other lawyers and, you know, in some ways I've always had that model.

Ogilvy: Yeah.

Frenkel: So.

Ogilvy: Is there a case or cases that stand out this many years later from that period?

Frenkel: From the legal services period, well there are many cases that stand out. Of course the most; I worked; I had small roles in some celebrated test cases and initiated some myself but the cases that I really remember are the ones where the clients stick with you. I remember having a case on behalf of an elderly woman in South Philadelphia who lived in the last ramshackle, run-down little row house in an area that the city's redevelopment authority wanted to clear to create way for an industrial park and a shopping center. And, she wanted to die in her house and she was certainly upwards of 80, if not 90, if not older, years old. And, our office succeeded in representing her in ways that enabled her to stay in that house as long as she wanted to. And, she was living there, allegedly growing cotton, but growing certain crops in what now is a paved-over, enormous parking lot and loading bay for a non-descript warehouse. But, she lived out her years there. And, that's one at the end of my legal services career that I'll never forget because that involved a neighborhood that I drive through all the time, so.

Ogilvy: When it litigated how far was it litigated?

Frenkel: That case, as I recall, was handled administratively and, if I can, you know, reconstruct, it must have been litigated in the court; in the local trial courts and while we thought we had really good claims, especially appropriate to the times; procedural claims, when the government wants; wanted to dispossess somebody, it probably is also no accident that at the time, especially in the Philadelphia trial courts, like many other metropolitan courts around the country, we're notoriously slow. And, of course, that's a systemic problem happens not to the benefit of our client. And, I, you know, I don't know whether; whether to; we can't take credit for all of the; all of the time that our client was able to buy as it were. But, it was; it was a classic case of the government versus a powerless individual.

Ogilvy: Yeah, yeah. Do you remember her name?

Frenkel: I believe her name was Mattie Craig but don't hold me to that because we're talking about 35 years ago.

Ogilvy: Right. Yeah, yeah. Your resume also shows that you are a legal services corporation trainer and evaluator. Was this during the same time or did this happen later?

Frenkel: I think that I did this both toward the end of my career in legal services and then also a bit when I went into teaching in the late 70s. I; I remember that the legal services corporation did a fair bit actually at the time at the intersection of legal services and the early years of clinical education. And, I recall one of the programs I evaluated was actually a legal services funded legal aid program, housed at what is now Wagner Law School in Delaware. And, so, even then the intersection was there in terms of my work. I did that for a few years and found it interesting to reflect on, you know, what other; what other ways there were doing what we were doing.

Ogilvy: How did you make the transition to teaching, then?

Frenkel: Well, as it said, I'd always been interested in teaching and always had done some teaching formally and also because I'd been a supervisor of paralegals and lawyers all throughout my career. I always; I realized, looking back, I always found the desire to reflect as important as the desire to do in a short time span. So, I always have to have that balance. But, the actual transition to teaching; to teaching clinically came when I was feeling the seeds of discontent in being a manager of an increasingly unmanageable organization. And I remained friendly with some; some of my former colleagues who had left teaching. I'm sorry; left legal services to go into teaching. Two of them had actually gone to Penn at the time; Cary Minkle and Norman Steine, both of whom had been my colleagues at

Community Legal Services; both of whom had become among the first in-house supervisors at Penn's in-house clinical program. And, one day when I was dealing with one of the messier administrative problems that a managing attorney can deal with I got a call from the Penn clinic saying, might you still be interested cause we have an opening. Someone's leaving. It took me about twenty seconds to get the word yes out of my mouth. I was so excited. And, the rest is, sort of history.

Ogilvy: Yeah, yeah. When you arrived back at Penn to take up that position what was the state of the clinic at that time? What did it look like?

Frenkel: Well, the program at Penn was, I guess typical of a lot of other programs at the time. This was 1978. It was a relatively small and litigation only legal services model clinical program. Mark Spiegel was the director. He had; he had been the initial full-time faculty clinician at Penn who had first started on a sort of hybrid model of having supervisors placed at legal services for a year or two and then they brought the program in-house. And, the program was a four; is a; was sort of a director-staff model for supervising attorneys in, as I said, a program that did; it was one course called the lawyering process. It was a litigation course. And, it was located in the law dorms next to where law students were sleeping and doing whatever else they do. And, it was physically; while it was physically on the campus of the law school, it was physically separated and that said a lot

about it in every way. But, as, you know, as many of us I'm sure recall, the first year or two was so exciting that they could probably had us working; working on the street corner; it wouldn't have mattered.

Ogilvy: Was the law school totally funding the program at this time?

Frenkel: I think the law school was funding it almost exclusively. There may have been some leftover; there may have been some early Ford CLEPR money and; but at the point where I came on I think it was; the law school had absorbed almost all of the cost of the program.

Ogilvy: Tell me a little bit about the course as you walked into it and began working.

Frenkel: Well, the course was a typical clinical education course of its; of the times; of the late 70s. Each supervisor; the course had a curriculum interviewing, planning, counseling, negotiation; perhaps; perhaps some stuff about trial work; maybe a required class or two on ethics, as I recall at the time; that qualified to; for a student to; to satisfy the law school's professional responsibility requirement. That, of course, and the case work which was rich with these issues. Each supervisor; each supervisor had a; essentially a ratio of eight students to supervise

and you didn't get to teach in the big class room course until you'd been there a semester; over a year. You; you watched the senior people teach that and then you graduated. Each week we had a; two seminars; a more or less canned curriculum seminar for which there were standard readings and then a; what we would now call a case-round seminar and; that each supervisor taught himself or herself. And, we; sure, as I recall, we had the Belnaut book on our shelves and when Binding Price number one came out we used that. And, the cases that we handled were a general legal services mix of cases and to some extent selected because of the supervisors preference or expertise but it was always a generous model which I thought, which I today think; still think is the preferred teaching mix. I also remember, because my colleagues that first year included Cary and Norman, we were three of the four at the time; how much fun it was to go to work every day in the sense that; I was working with these, in such close quarters with these wonderful people and this new thing and how also I was exhausted at the end of every day, having spent more or less eight hours in process-oriented conversations with students without having produced almost anything directly myself. And, I'm always reminded of the; of a conversation I had with Cary at the end of that first year when she was leaving to go to UCLA at the time. She asked me, so, how did you like your first year? And, I said, I loved it but I have to say I'm really exhausted. This was a; this is really tiring work and this is fabulous to do but can you imagine doing this when you're fifty? Here we are. So, that was my first year.

Ogilvy: Yeah. Both you and Cary have made mediation a significant part of your practice. Where there any seeds of that at that time that you can recall?

Frenkel: Well, since I have moved into the; in terms of my principle clinical teaching, into the area of mediation, I can look back at a lot of things and say, well, I could have seen the writing on the wall long ago. I don't think there were any particular seeds at Penn for that. For me personally the seeds that led me in that direction had to do with my; with the increasing realization over time that litigation, even litigation done in the clinical model, and as much as I loved supervising it but litigation was ultimately not the best fit with my personality and those parts of my personality that needed expression; creativity; the ability to deal with the un; with what's unstated or beneath the surface; all of the things that mediation tends to; tends to emphasize. And, the, you know, the emphasis on stylized conflict which is the litigation system, was something I was doing and had done for a long time and was doing apparently really well, yet it was an increasing disconnect between that and what was; what I found satisfying. But, no mediation; really it came along later on in the 80s and when there began to be both, especially outside of law schools, and to some extent inside of law schools, increased focus on non-litigation approaches to conflict. And, that spoke to me and I got on that; on that train as fast as I could.

Ogilvy: Yeah. I want to move us up toward that; in that direction, but first what was your

status when you joined the clinic in 1978?

Frenkel: Everybody other than Mark Spiegel, who was a lecturer/clinical supervisor, a year-to-year contract clinical teacher; and actually I didn't even know it at the time; I was too excited to; or too naive or too stupid to even ask, but there may even have been a technical limit on the number of years that I could even be at Penn in that status; some very low number of years like three; something I never asked on the way in, but that was the status.

Ogilvy: Added the change over time?

Frenkel: Well, in 1980, in my second, I guess, near the end of my second year there, Mark Spiegel, who as I said had been the original Penn full-time clinician and who was on the tenure tract, was denied tenure. That was a very; a very difficult time for Penn; for clinical education at Penn and for those of us personally who had learned so much from him and had; had such high regard for what he had done to create this; to start this program institutionally. And, when he left in 1980 the dean at the time asked me if I would become first the acting director and then the director. I guess I was the senior person at the time. And, so I became the director at that point and have been ever since.

Ogilvy: Did that change your contractual relationship in terms of year-to-year?

Frenkel: Well, not immediately; not immediately. But, the school, in the wake of the situation involving Mark, the school undertook an examination of ways in which it could, on the one hand, maintain and stabilize the clinical education situation, while at the same time not falling into the same problematic trap as I think Mark had actually found himself in. And, that is being a full-time clinician, yet being held to the unitary scholarship standards at the time. And, so that shortly within a couple of years of my becoming director the school created a new category of clinical faculty called practice professor which was a very early version of what has now become known; become widely used around the country in terms of long-term contract presumptively renewable; essentially lifetime secure; lifetime security potential positions. Also, with standards for promotion and retention that are clinical standards. They're scholarly but also pragmatic rather than the unitary and traditional scholarship standard that had applied before that. And, I was; I became the first practice professor at Penn in the mid 1980s.

Ogilvy: Good. And, that's the structure today?

Frenkel: Well, that isn't the complete structure. We now have, fortunately, in the early

1990s the school created a practice professor tract. Between 1980 and the 1990s I was the only clinician with the security of being able to; eligible to be able to stay beyond a fixed number of years. In the early 1990s the school created a practice professor tract and since then we've been able to fill two of what we; an additional two of our current total of seven total clinical faculty positions with colleagues who are in the practice professor positions; in the current composition therefore has three faculty in that status and four who are in still year-to-year contract end capped statuses; something that I continue to work on to move.

Ogilvy: Wow. Let's go back and kind of walk forward in time as the clinic changes and talk to me a little bit about what the changes were; how they came about?

Frenkel: Right. Well, one of the first things that I did when I became director was take a look at both the place of clinical education in the institution and where I thought clinical education ought to go as a curricula matter. And, the first thing that occurred to me was the mismatch between what we were teaching clinically, which was only litigation, and what; and the changes that were going on in the profession; and, where our; my school's graduates increasingly were going. And, the; the first thing that occurred to me was we are; and in addition at the time; this was the late 70s, early 80s; this was the beginning of the Reagan era. The whole public interest world was beginning to recognize that; that continually to put our eggs in the court basket for issues even of social progress, was a; a very dicey

strategy going forward. But, more as a curricula matter, it occurred to me that by only teaching litigation we were offering a skew to curriculum as the case method was the skew method; teaching methodology. So, I; it occurred to me that I; we ought to explore offering clinical education in an area that so many of our graduates work in which is transitional work; planning work. Most of what Penn lawyers do is some form of planning work; business planning; estate planning; tax planning; constructing something going forward rather than what litigators do. And, in 1981 I got together with my counterpart who was the director of a; of a; and in fact, a clinical program in management consulting at the Wharton School on our campus and proposed the idea of a joint application to the SBA for seed funding for a new law-based clinical course in transactional planning lawyering which we would call the small business clinic and which would have as a natural feeder, the clients of the Wharton School's management consulting clinical practice. And, we did this and we got a small grant; I think in 1980 and 1981. And, as far as I know, the course that we created with real clients was the first course of this kind in any law school. And, we've had; that course has been a staple of our curriculum; in fact, perhaps, unsurprisingly, the most sort after in terms of enrollment course in our curriculum, since 1981 or 1982 and we've; we've significantly enhanced the sophistication of that course. It represents both for profit and non-profit, both individual and entity clients. And, while we started it on soft SBA government money and then title nine money we now have it on solid law school money and I know it's been; I know the model has been emulated around the country. And, looking back at some of the early ALS workshop stuff that I kept because I knew I was coming here to talk with you, I

noticed that; at an early workshop, I think in 1982, or conference, ALS annual meeting, I was on a program called groundbreaking clinics and that's what I talked about. I remember that it was in; it was in a room that was probably designed for about thirty people and I think there were about a hundred and twenty-five people in the room. So, that was the first shift or growth in the course that I oversaw after becoming director.

Ogilvy: Before we move on . . .

Frenkel: Yep.

Ogilvy: I want to ask a couple of questions about that. How did you make the connection with; with the Wharton? You'd taught there; taught in that program?

Frenkel: Well, I hadn't taught in that program. I went; I was actually a Wharton student myself as an undergraduate. But, the connection; the direct connection was actually made because I had a student who was a; also taking a course in Wharton. And, as I recall this student was sort of; was the middle man, the go-between who made the personal connection between the; the director of that program and me. And I recall we made this plan sitting around eating a sand;

eating a Philadelphia hoagie on the grass after classes ended in the spring of this student's last year. He was; he thought this was a great idea and he wanted to make it happen; make the personal connection happen. So, that's how it happened.

Ogilvy: That's terrific. Were they both law students in Wharton; non-law students involved in the program?

Frenkel: No. We; the course; our course is; has been limited to, because it's a; it follows the classic law school clinical teaching model in the sense that one of its major goals is; is the teaching of the role and skills of the transactional lawyer. It doesn't have business students enrolled in it but in the early days, especially, it involved a lot of interaction between the business school consultant to the client, or the would-be client and the law school student lawyer on the case. So, that it wasn't; from its inception actually quite a; it was an interdisciplinary effort as we would now refer to it. But, the goals of the business schools and the goals of the law schools are significantly different. The business schools are driven by notions of; they're not driven by the same educational goal; goals as we would understand what clinical education to be based on. And, so, it wasn't a perfect marriage. It was a great relationship but not a great marriage.

Ogilvy: And, you say you got kind of a planning grant from the ABA?

Frenkel: SBA.

Ogilvy: SBA

Frenkel: Small Business Administration.

Ogilvy: Small Business Administration.

Frenkel: Right.

Ogilvy: Okay.

Frenkel: And, that continued for two or three years. And, we even put up with SBA auditors coming through and looking through files. But, that was very important money to us to get that off the ground.

Ogilvy: How many people were involved in the clinic; supervisors?

Frenkel: Well, it's interesting. We began that clinic with visiting faculty; visiting supervisors from practice. It was an experiment and we brought in corporate lawyers from small and large firms who would two and a half, three days a week and maintain their practice at the same time cause one of the great differences about transactional practice is that the cases are much more manageable in terms of time commitment and the emergency factor. Unlike litigation, you don't have to; ordinarily you don't have to respond to; to crisis and clients tend not to be clients with; with planning goals tend not to be in the same kinds of; under the same kinds of stress as litigation clients. So, it was on some levels a more manageable kind of clinic although we haven't; we have over the years had our tax-sensitive New Year's eve closings to worry about, but that; those are the exception rather than the rule. We went to the model of a full-time faculty member after a number of years of using the part-time adjunct model. And, that's when title nine came in. And, we've had the full-time model ever since and now we have two full-time faculty members in that program, both because the student enrollment warrants it and the sophistication of the cases is; is such that the supervisors time is much more consumed with supervision.

Ogilvy: How long did title nine money lasts? Do you know?

Frenkel: Well, I don't remember the actual timing of title nine but we; we used title nine funding for that for several years, then when that program went on hard money we used title nine to fund experiments or seed projects in other developments as we went along because we added; in the middle 80s we added a mediation course and in the early days of that we also brought in some outside people who were working in the field and so forth.

Ogilvy: Sounds like Title XVIII was a significant source of funds to create new clinics at Penn.

Frenkel: Well, it's true. The funding battle; the funding debates at Penn like at many schools have always been not about the core of clinical education but about the ability to experiment and expand and I think we like most schools have; really did use these sources of soft money when they existed to cultivate new ideas and; which in most cases became funded by law school hard money after demonstrating their academic worth and their; and the fact that this was in demand. So, yes, it was our lifeline to diversifying the program.

Ogilvy: Were the decisions to; for the law school to pick those programs up Dean

decision or faculty decisions or a combination?

Frenkel: They were essentially a combination of; most decisions of that kind at Penn tend to be made by the dean and the clinical director. The clinical director, in turn, seems to me has to bring his colleagues in the program along to; especially when shifting; shifting course priorities or shifting the deployment of clinicians involves clinicians developing; moving out of one area and moving into a new area. But, the faculty overall hasn't been involved in those kinds of resource allocation or curricula shift decisions.

Ogilvy: I'm curious. Do you think the ability to do this sort of shifting is aided by the fact that you have several clinicians that are on short term commitments to the law school? That is, they're capped; they can't go beyond that. So, you can always bring in somebody new.

Frenkel: What I take; I mean, I take it that your question is that people who are there; people who are there longer term may be resistant to change.

Ogilvy: Yeah.

Frenkel: Oh, I've been blessed with wonderful colleagues, but to the extent that this sort of institutionalized turnover; the forced turnover, creates points along the way that force you to; to examine where you're going and what it is you're looking for and what kinds of traits; there have been a couple of points at which it has been a natural progression to say to a new person coming in, well, you've been a litigator but if you want a job here; if you want this job you have to make a commitment to develop an expertise in, for example, mediation because we see a shift in student enrollments or in curricula priorities from traditional litigation to someone who can teach partly in litigation and partly in conflict resolution. So, yes, whether that's been facilitated by the turnover or simply a product of turnover forcing; forcing us to; making it easy to tell that to someone that doesn't have a vested interest in what they've already done. I think; I think there is some; some connection to that. I would not, on balance, advocate turnover as a method of planning a clinical curriculum but we've at least been able to; to duck some of those; some of those potential tensions which I imagine can exist when; when people who have security may; may be resistant to having to; to make changes. My colleagues, I might add, who are on the practice tract have been anxious to diversify what they do. So, that hasn't been a problem.

Ogilvy: After the transactional what was the next evolution?

Frenkel: The next evolution was the mediation clinic. I think we began that also very early. We were one of the, I think, one of the first in about 1985. That was an area I got involved in because as I mentioned earlier. It was when I realized the fit between who I was and this new area.

And the first year we began, I began with an outside grant and I brought in a couple of people who were already mediation trainers to teach me and to model a course. And, after that first year I began to teach it myself as a course we develop relationships with; local courts to refer cases to us and we've been offering that course ever since. And, that has now become our, along with the small business clinic, our most over-subscribed area. This is an area; we've been doing this now almost 18, 20 years now. This is an area of enormous growth in student interest.

Ogilvy: How many supervisors do you have?

Frenkel: We now have essentially have the equivalent of about one and a half to one and three quarters supervisors doing that. I spent part of my time and my colleague spends part of her time and we also use former clinicians as adjuncts to; on occasion to teach in that course. So, we've been able to expand the; the enrollment that way. This is an area that I got involved in both inside the law school and in the early 80s outside the law school. And that; both of those got me; got me excited about this; really animated about this area. The American

Arbitration Association had a funded project in the early 80s designed; called the Task Force on Law and Business Schools. Business schools as it turned out were way ahead of law schools in the study of negotiation and alternatives to litigation. Perhaps somewhat ironically, but they were way ahead of; of us in both thinking and teaching and research. My task in running this faculty task force for the triple A was to; to basically convene law and business faculty from around the country to see if there were intersections and one of the things we did in that period was to stage two teaching conferences; one in New York and one out in; in San Francisco, in Berkeley at which largely business faculty and a few early pioneers in the field from the law side came and demonstrated very early thinking and teaching exercises and curricula approaches to things like negotiation and mediation and arbitration, but essentially non-binding. And, each of those conferences was attended by a couple of hundred people. And, it was very rudimentary stuff but a lot of people who were in that field on the law side today got their first exposure to this vocabulary and this material at those conferences. And, in some ways, myself included. And, so that was a very formative period in the early 80s. And, like many people, I went back and started a mediation clinic right after

Ogilvy: How did you get involved in the project in the first place?

Frenkel: I; I don't recall specifically other than I got a phone call one day from a young

guy who had actually begun that project, who was a young lawyer in the Philadelphia area and he was a little over his head in terms of commitments and a little out of, to some extent, out of his own element cause he wasn't a faculty member and he, as I recall, he asked if I might be interested in taking this over from him cause this needed someone who understood the academic side better and who was interested in this; in this work and he knew that I was a clinician who had some knowledge of negotiation already from the early days of my teaching. And, I got my dean's permission to do this and I spent a substantial part of about a year and a half doing this. It was actually a; one of the things that I've done that I feel best about. It's; because it was really a formative period in the growth of interest in the inactivity in ADR.

Ogilvy: Who else was involved with you?

Frenkel: Well, early on there were people like Frank Sander and I remember Steve Goldberg and Gene Brett produced a simulation at the height of this project that made its way into the case book that is now in its third or fourth edition in this field. There were other young people from the law side; people beginning; a fellow named Manukin, Bob Manukin who was then teaching at Stanford who; whose work was discussed at these conferences. There was a fellow named Glenn Riskin who gave a presentation at the New York conference; very basic, what today we would call a; a kind of, almost primitive presentation. Whether he

was just starting in this field; and then there were business school people; people like Lynn Greenhall from Dartmouth; oh, and a number of other people; Roy Luwicki from Ohio State; we published; who was in the process of publishing an early book on negotiation readings and exercises. So, there was a real coming together of people in; there was; Eric Green was involved in a tendential way in one of the conferences. So, it was an unheralded but a really important early; early period; early project in the ADR field. Anyway, that's a digression. So.

Ogilvy: (laughs)

Frenkel: Well, so, that; so, that was my period of starting mediation personally. The next expansion, just to go along with the sequence of things, the next thing that I always envisioned and that we finally were able to do in the early 90s, was to add, in terms of real case work, was to add a legislative course because it occurred to me that our graduates were increasingly working in the regulatory and legislative areas and yet not much was being done and nothing at Penn in this area. And, finally in the early 90s we were able to hire on the practice tract a colleague; a former colleague of mine at legal services who had done a lot of work at the city and state wide level on legislative affairs and who was very interested in developing something in this area. My colleague today and he developed a legislative course that took us into; into that; that next realm. As you can see the; our curriculum has been designed around major distinct lawyer roles. That's

been how we've evolved at Penn. In between there we had courses; simulation courses in interviewing, counseling, and negotiation and the like and the most recent addition to the curriculum; to the real case curriculum was actually something that we tried unsuccessfully in the early; in the mid 1980s with title nine money but are doing on a more successful basis now in the last year and a half and that's an interdisciplinary trial advocacy course. We did that in about 1986 for two years in a marriage; sort of a marriage between the law and the Social Work school. When the faculty member who was doing that left nobody else who was there wanted to pick that up. One of my colleagues now, who is also on a practice tract developed an interest in linking social work law and to some extent medicine in the same trial advocacy arena and we've been doing that for a year and a half. So, we've; we have; we have moved the clinic program in the direction of working with the discipline in the recent years.

Ogilvy: Do you also maintain the old core of the kind of general practice?

Frenkel: Yeah. Well, our general practice or our litigation; what I call our litigation clinic, lawyering process, originally, then, civil practice clinic but which is really on some levels still the basic course. And, it's still a wonderful rich course. The richest and still the heaviest credit-accruing course; academic-credit course is still our litigation; we still offer that and it's still team taught and in many ways it's not terribly different from the course that I began my teaching career in 1978.

And; and, there's still a strong student-interest in; it remains a strong interest in litigation and I find increasingly, actually; we're finding increasing interest in that after a few years of softer enrollment in that area. As the world outside; the hiring world outside and the training world outside becomes a little tougher and the students feel more needy of developing competency before they get out. So, that course still is going strong and while I originally thought the diversifying the program the way we discussed would; would end up competing with itself, its actually has; we have found that each of these courses draws, essentially, not exclusively, but essentially, from different pockets; different segments of the student body. So, these; these courses are actually complimentary and don't; don't eat each other up in terms of enrollment demand.

Ogilvy: What's on the planning board for the future?

Frenkel: The planning board for the future at Penn is; is a little undecided. I mean, we have; we've talked about some ideas. I'm curious about the idea of trying to explore the new lawyering that's involved with new technology as a subject. I'm not sure we'll do that. It's being done in a couple of places now. I think that's something that; that's worth exploring; to see if there's a there there. If there's a course there because in almost all of the fields that we're talking about, whether it's litigation or conflict resolution; resolution or transactional work for that matter, with work going on across boundaries because of technology, technology

itself becomes a player in the lawyering and similarly I think if you look at the service-end of things or the client population end the; I think the writing's on the wall that if it; if it can be done staffed legal services for this advantage is going to be; it's going to be harnessing technology if not consisting of technology in the not-too-distant future. And, I think that's something that we; we have to continue to look at cause I think clinical education needs to anticipate and at least mirror what; what the changes are in the profession. And, that's one of the; so, that's a possibility going forward.

Ogilvy: I note from your resume that you spent some time in Kenyon consulting with schools there about clinical education. Could you tell us a little bit about that experience?

Frenkel: I've always; I've had interest in; I love to travel but I'm also interested in other; interest in other systems, especially cause I've been teaching legal ethics since about the mid 1980s and that gets you to think about whether our system is the only way; the only way to fly. In; in the mid 1990s the ABA funded an initiative to the so-called emerging democracies of eastern Africa, including Kenyon and I was asked to take part in a; what essentially was a three-week long consulting mission. I did that with Homer LaRue from here; from Howard and the two of us spent three weeks, essentially two law schools in Kenyon trying to both share our experiences and help them; help the clinicians or the would-be clinicians of those

two schools figure out what it is that they can begin to think about doing in a practical sense with very, very challenging resource constraints to shift their curriculum; their very traditional curriculum in the direction of a more experiential learning and that's what we did. And; and actually at the end of that there was a week-long, as I recall, conference in Ethiopia at which the 8 or 10 American clinicians who had gone to four different or five different countries and their counterparts in those countries came together. It was a fascinating experience. I often wonder in light of all the events that have taken place whether that project had any legs. But, it was a fascinating experience at the time and there was some really and promising and interested young academics there who if given the chance clearly could have some great things.

Ogilvy: Yeah. You haven't been able to maintain contacts?

Frenkel: I did in the; in the immediate wake of that for a short period after that but not in recent years.

Ogilvy: Yeah, yeah.

Frenkel: There wasn't; unfortunately there wasn't; the program itself didn't have much

follow-up and; but I haven't either.

Ogilvy: Yeah. One of the things I'm interested in in terms of the clinical movement in its; its development is related to your; your talking about how influential you thought the ABA conferences on dispute resolution work that you put together.

Frenkel: Triple A.

Ogilvy: Triple A. I read that wrong. I wonder if you could talk a little bit about your experiences with the AALS workshops and conferences. When did you first start going; what's your sense of the role that they've had; that sort of thing.

Frenkel: Well, I began going as soon as I entered the field and I don't know if it was the first conference but it's certainly vivid in my mind is a conference that was held in, of all places, Snowmacid, Aspen, which may have been maybe my first or second year. And, the reason that sticks out in my mind is not only because of how beautiful it was and the memory of driving with Joe Harbaugh through the mountain; the almost closed mountain passes from Denver but in addition to that; to those memories, the fact that there were so few of us and that the; and that the; we actually had the luxury of being able to spend those conferences providing

each other with one-to-one individual critique in our own teaching. That was a time when we were all figuring this field out and I remember coming to that conference with a videotape of a client. This; we; we were; one of the things I did when I became the director was to expand what we had already started to do which was videotaping clients but we basically made videotaping a condition of representation for teaching purposes; with client consent, of course. And, that really has never posed a problem. But, I brought a videotape; I tried to create a lesson plan from the videotape of an actual client counseling session. And, I remember getting a lot of feedback on those lesson plans including the feedback about the question of whether I ought to be using client material at a teaching conference. This was a real client after all and a real; a real consultation; the tape of one. And, I think that; when I look now at what; what an ALS clinical conference is or has become or has evolved to, we've obviously lost something. Those were conferences attended by maybe sixty, seventy, eighty people. All of them got to know each other and now; now a conference may have three or four hundred people with a million concurrent workshops and it's; it's like a convention almost. And, so, obviously just like the new clinicians today, I think those things; those kinds of gatherings are most useful to the newer people on the block. And, it; the more experienced people clearly have a role in; in coming to those, at least, periodically and trying to help share; share the wealth of experience that we've gained. But, the conferences clearly aren't, I don't think, as intensive, substantive and individually helpful as they were in the very beginning. I do think that; and I was on the ALS committee on clinical education for a couple of years; I didn't think; and this is sort of a mild criticism; some

thought really needs to be given to both the frequency of conferences and the content of conferences. I think there's a danger that the conferences can end up being diluted by not having a specific enough focus, partly because of their frequency. When you have, in effect, almost two conferences a year, and certainly one a year, for a considerable period of time, it is difficult to have conferences come up with new themes and substance. And, so; each year; and, so, my own hope would be that the clinical conferences would become, although they might be less inclusive of the whole clinical community, more of an effort to; to be concentrated in; to go more deeply into particular areas cause there are a lot of areas we now offer. It's not clear to me why these conferences have to all be for everyone or why we couldn't go in effect, for parallel conferences for different groups of teaching specialists. I think people would get a lot more out of that by spending three days deeply in one subject than three days talking about every subject under the sun, including our political problems.

Ogilvy: Good. Thank you. You mentioned videotaping and I did want to talk a little bit about your use of videos. How did you; how did you come to decide that videotape was the thing that you wanted to use? Was it experience or?

Frenkel: Well, I certainly; it's not because I'm a techie by nature. It seemed to me that we had all this material. First of all, there were two reasons. The first was, that at Penn our original model was the supervisor sits in the room with the student when

the student conducts an interview. And, I've already told you the architecture was very confining. I wanted to absent myself from that room and give the student the autonomy and the client and the student a chance to form a relationship which was undermined by my being in the room. So, it was actually a practical necessity to find a way of being able to be in the room without being in the room. So, we created this simulcast system so that we could watch; we could film in one room and watch on a monitor in another room, which we still use today. But, at the same time we found that making video; making cassettes would be enormously helpful for reviewing for individual student critique and skill development purposes; this material. And, also we would create this wealth of material for; for classroom teaching purposes. There's nothing that can compare to showing the client to replicate the stakes in the classroom. To teach clinically from hypothetical struck me as silly when we had all this material and we could use one client and one client's matter and one client's presentation to teach eight or ten students important lessons to say about professional responsibility. So, to me, this was a no-brainer. So, it's just a matter of cost and hardware.

Ogilvy: Speaking of hardware, can you remember what you were using when you first started?

Frenkel: Sony Betamax; absolutely, the west coast standard. We were on the east coast.

That didn't last very long.

Ogilvy: Yeah. What did you do next?

Frenkel: Well, we went to, you know, the emerging VHS, whatever the dimensions are; it's still is the format of choice today other than obviously DVD, which is, as we speak, beginning to replace VHS as the; as the norm in this era of PCs.

Ogilvy: Did you; have you archived any of the old tapes? Do you still them to any extent?

Frenkel: We do; I do; we do still have some; some dust-laden old tapes; the very, very rich tapes and . . .

Ogilvy: Including Sony Betamax?

Frenkel: Including Sony Betamax; absolutely. One thing that we don't have as much to my chagrin, is a fabulous tape made by students in the early 1980s doing a spoof

on the clinic in binder and price terms; taking some of their jargon and taking it to its extreme. They created a videotape; a day in the life of the clinic on video which somehow has been misplaced. Those were the heyday of student; student-creativity. In any case we do still have some of that old material. I do; I make a habit of keeping, particularly rich client-material, if I can.

Ogilvy: Yeah.

Frenkel: There's; there's a joke going around my program which is that, you know, I would; if I could I would videotape everything because you never know when the teaching moments are coming.

Ogilvy: You talked a little bit about some future perhaps for the clinic at Penn. I'm interested a little bit in what your vision is of the future of clinical education; legal education, generally. How do you see it in the next five, ten, fifteen, twenty years?

Frenkel: That's a tough question. I think to some extent it depends to a large measure on what happens in the profession. You could look at it a number of different ways. For example, if; if the litigation system in the world of technology continue to

evolve the way they seem to be evolving emphasize; curriculum emphasis on litigation which I've often; which as I mentioned that I thought was misplaced a long time ago would be increasingly up for grabs or subject to question and we'll have to teach in light of that technology. I also think that the growth of technology is already and will continue to change the tenure, the note, the nature of clinical education. One-to-one student process oriented supervision which was the model that existed when I came into clinical teaching has been increasingly difficult to; to sustain in the 90s and now in the new millennium. Students are increasingly mobile. They don't understand why it's important to be in an office. They want to have a supervision session by cell phone. They want to work at home or anywhere else on documents and so forth. And, so the model of the clinic as the locus of excitement and intensity is challenged. And, I think that's something that we; clinicians are going to have to grapple with and it's going to affect both the nature of supervision and the nature of a lot of other things, perhaps even including physical plant. I think if those number of law schools continues to proliferate, the number of graduates continue to proliferate and if the world of hiring in the; in the legal market continues to; to be challenged by the factors in the market, I think you will find; you may find a ground swell of enrollment pressure to expand clinical education because I think students; students and maybe even the bar and the judiciary again, like in the; back in the 60s, are going to create pressures to be; pressure to create opportunities to develop skill-based competencies during law school. It won't be enough to; to assume that that will be gained outside which is still the operating premise, at least; at least in schools that feed large employers; that where students go to

major law firms, for example. So, I think that's another phenomena that could; that could happen. I also think that; that over time as borders get blurred, even international borders gets blurred, we're going to see more and more work in; clinical work involving other legal systems. That may not happen soon but if it becomes commonplace for a student to work on a transaction involving another continent and certainly another state, but if it's another continent, it isn't going to be enough anymore to; to understand how to interact with someone in your own culture. That's tough stuff to teach. It's very difficult; we haven't developed good ways of teaching that but I think that's going to become another major factor. So, those are some off-the-top-of-my-head thoughts.

Ogilvy: Good off-the-top-of-the-head stuff. That's mainly my; set of questions. Is there other; other area or topic that we haven't covered that we should cover?

Frenkel: I don't know. It's been pretty, you know, we've been talking for; over a lot; a lot of history but I do think that those of us who are involved in both directing programs and think about turning that direction over to the next generation of clinicians who've, you know, who are in the profession in such; in such large numbers really do have to; have to focus carefully on; on using resources in ways that are not out of sync with; with developments; both professional developments and political developments outside the; I think, clinical education is long past the point of; of the question of whether to have it but when the; but when the goal

now is to have clinical education be; be more a central part of the curriculum I think we have to be very mindful of; of the role of how we are perceived of inside of institutions and how relevant we are to students as they go forward because as we sit here I think we see that the; that the direction in; directions in faculty hiring in general in legal education and in the curricula emphasis in legal education is moving, in effect, away from traditional practiced oriented doctrinal subjects in to; into subjects that are highly theoretical and are infused with the thoughts from other; from other disciplines making it even further from practice and that can cut one or two ways for us. For clinicians we can become very central because we; we are the school's concession or embracing a practice but the cleavage between what we do and what are; what our so-called non-clinical colleagues do is; seems to be growing wider and wider. And, so, those are challenges and I think they're going to get harder not easier even though we are here and we're not going anywhere. Thank you.

Ogilvy: Thank you.