Transcription of the Oral History Interview with
Tony Amsterdam
May 7, 2001

Guggenheim: Good morning Tony. For the record, just so all will know, I'm Marty Guggenheim, and I'm gonna be asking you to tell us a bit about your involvement in clinical legal education. And um, of course we've talked about many of the questions I'll be asking you in the past many times, but this is for the purpose of having, you know, a formal record. And I'll just begin by asking you how and when did you begin in clinical legal education?

Amsterdam: I began in the mid '60's, Marty. I was teaching at Penn at that time. And I started a program which was the first clinical program that Penn had. It was not what we would think about today as clinical legal education. It was more in the nature of the Prettyman Program. It was a graduate program called the Graduate Program in Criminal Law and Litigation. And it was one of several things that Penn was involved in, and I was involved in. We also did Reginald Heber Smith OEO lawyer training at Penn. All of this was a tremendous upsurge of activity in the mid and late '60's. Of course, that was also the time when OEO was passed, which stimulated a great deal of clinical activity, including ours at Penn.

Guggenheim: And, what was the social context that . . . around that time?

Amsterdam: Uh . . . I guess that a non-cynical answer to that would be that the law was suddenly feeling that it had a responsibility for unrepresented and previously disregarded classes of our society. My answer, which is somewhat more cynical, is that society began to feel guilty about the total failure of law to take account of poor people, of disenfranchised and disempowered groups. And with OEO, the beginning of OEO legal services, a new, at least token, effort to bring within the legal family, to bring within the recognized group of people who had rights and whose rights were to be considered and to be enforced – all of those disempowered and disenfranchised groups – was beginning in some circles to crop up. Prior to that time, those who couldn't afford high-priced lawyers were essentially relegated to old-line legal aid, which was truly a handout. It wasn't so much a matter of quality as it was a matter of spirit. There were, to be sure, some legal aid organizations, including the organization called [the] Legal Aid [Society] in New York, which had a less "charitable" (if you will) attitude toward things. But when I went to law school and when I started in law teaching, the overall environment was of either total disregard of people who could not afford a lawyer, or the notion that a lawyer, at the lawyer's behest and charitably on the part of the lawyer – whatever the [lawyer]-sponsoring [legal aid] organization was – would do a little for these folks. That was changing. Legislation recognized

that there was a change. It was a new spirit blowing through the law schools. What had happened was that the civil rights movement, which had started out as primarily a political movement, and a movement for equal rights for racially disadvantaged groups, had begun to see the connection between race and poverty. And so poor people had become an object of concern on the part of those forward-looking and progressive people who wanted to find a career in the law serving not just the racially disadvantaged and racially discriminated against, but poverty-deprived part of the population. So, so. . . it was an era of great ferment in the mid '60's.

Guggenheim: So you're on the Penn faculty . . . and I take it the academic faculty, since there was no other kind . . . and why did you begin in clinical education?

Amsterdam: Combination of two very, very different things which later became for me a bit of a, a tussle, because the two things that were driving me were really quite different. One was that I wanted to have the opportunity to bring to students the experience, while they were in law school, that I had found enormously rewarding after I graduated from law school, of working for civil rights, civil liberties for people whose rights had been trampled on, who had been oppressed . . . to give students the opportunity to do that, and to see whether that was something that

would turn them on and make them find themselves as people, as well as lawyers in a career in that field. The second very, very different thing was a feeling of what was lacking in traditional legal education. Because when I had myself begun to practice law, which was a real baptism of fire, it was going South in the days of the civil rights movement . . . trying to protect demonstrators, trying to prevent demonstrators from being, you know, arrested, prosecuted, beaten, whatever . . . I had felt totally out of it. I had to learn everything on the job. My legal education had done very, very little for me. It wasn't so much that I didn't know what to do as that I didn't know how to go about thinking about what to do. I didn't know how to take a fast-breaking volatile situation . . . get a handle on it, get a legal handle on it. In a sense, this was because I was practicing in a field where there weren't any traditional handles. It wasn't as though . . . if I'd gone into corporation law, all the forms would have been in the files. There would have been standard procedures, standard form contracts, standard form pleadings for law suits, etc. We were doing some-thing radically new, you know, something that nobody had done before . . . trying to stop prosecutions and mass arrests in Biloxi, Mississippi. Hundreds and hundreds of people suddenly in a local hoosegow. No forms, no nothing. And the *doing* was easy. I can still remember. . . this was before Xerox, believe it or not Marty. You do go back, I think, a little bit. . . I don't know whether you remember those wonderful mimeograph machines that smelled of wax. You typed out the wax stencils and you cranked the machine. We turned out hundreds of *habeas corpus* petitions in [duplicate] form by cranking the mimeo machine. And I can still remember

working in Jackson, Mississippi in the middle of the night. It must have been 101 in the shade, and I had stripped down to my underwear and was cranking out the machines, when a Jackson newspaper photographer arrived and took my picture. And it appeared the next day in the paper, "Civil Rights Lawyer Working on Briefs." There I was and . . . "On His Briefs." But, you know, that part of it was easy. The part that was hard was figuring out how to wrap your head around it, how to conceptualize what we were doing. What were our goals? I found myself again and again taking a step and not thinking ahead to what was the next step, what was gonna happen. And my clients did not do well as a result of that. When I went into law teaching, I began to ask myself, 'Why can't we make a systematic discipline out of the processes that lawyers go through in analyzing unstructured, unformulated situations and turning them into situations that have a legal handle? And why can't we study that process in the same way that we study the process of judicial decision-making, or common-law making, you know, that sort of thing. So what was driving me, really, was two different things. It was the interest in getting students involved in the kinds of cases that I had found so exciting and that I believed in . . . [to] try to increase the numbers of lawyers who made a career of this. But also [to] try to fill one of the major gaps that I had sensed in my own legal education . . . [to] build a program in which the practice of law and the thinking processes that lawyers use in doing all of the things that lawyers do do came under the same kind of critical examination that law-making and doctrinal law had occupied in the traditional curriculum. So, it was doing those two things at once. It was trying to create a program in which students were

thrown into practice, but also had the opportunity to step back and criticize and plan an activity, carry it out, review it, try it again, making changes based on what your review had indicated had gone wrong or might be done better . . . criticize that and have the whole program built around a kind of a three-step cycle. Plan, do, review. Plan, do, review. Later I got to thinking that the planning and the reviewing really are very much the same thing – that the same kinds of thinking processes that you use when you look back on an experience and try to figure out what went wrong, what went right, how to assimilate it – is the very kind of thinking that you do the next time you do it. You're anticipating, if you will, the problems that are gonna come up. So that began to drive in my mind the notion that there could be a pedagogy which trained upon lawyers' thinking the critical skills and the systematic discipline that had always been what was great in traditional law [school education]. Traditional law schools were good at one thing. They really did force students to think critically, make no assertions without questioning your premises, ask whether you touched all the bases. Is there a missing pedestal here? Is there a hole there? Could this be subject to X or Y criticism? To take that whole methodology and apply it to what lawyers did was driving me. So those two things were . . . were what moved me in this direction.

Guggenheim: Following up on some of that answer, can you say something more about how the methodology of the pedagogy came to you? Did you read about it? Did you hear about it? Did you invent it . . . planning, executing and reviewing?

Amsterdam: The idea of review . . . I did[n't] . . .the, the short answer is that I didn't read about it, and it was not at the time that I began doing it, something that was out there as an established technique in the law. Several others began to do it at the same time. Mike Meltsner and Phil Schrag began to do it at about the same time, and Gary Bellow and Earl Johnson began to do it. The idea of critiquing came to different people at about the same time. I think most of us had somewhat different stimuluses for it. Interestingly, Mike Meltsner, with whom I did a lot of talking in those days about these kinds of things, derived it from acting, from the training of actors, something with which he had some familiarity. And that analogy struck him and seemed useful and meaningful. I had done a good deal of work with mental health. Actually, when I was an [Assistant] United States Attorney in the District of Columbia, I got to be a bit of a specialist in St E.'s . . . St. Elizabeth's, the mental hospital there, and representing the government. Later I turned out to be representing a lot of the inmates. But, at that time I was representing the government. And I got to be somewhat savvy in psychiatric, psychological [thinking]. That's what turned me on to it: the process of critical review is absolutely essential in medical training. Between Mike's insight about rehearsing and acting, and my familiarity with medical training type of stuff, the

three-part model just kind of grew. The idea of planning something out and thinking it through probably came as much as possible from rehearsal and acting. The idea of critical review – of looking back not in general, but in specifics, try[ing] to preserve the actual language by taking notes and then as the art developed, audiotaping and then videotaping, looking back at what actually happened, that came directly out of psychiatric training. So those were where the pieces came from, Marty. There wasn't in the law at the time a model for it. But it must have been out there in the atmosphere because there were several people who developed it at the same time and developed it fairly independently.

Guggenheim: Now I know that among your goals as a legal educator are to help develop the reflective practitioner so that lawyers [internalize] these techniques and then apply them as they grow post law school. But I hear you saying that, the. . . when you went to law school, and when you practiced law coming from that era, you didn't even think in terms of being reflective about your own practice and critiquing what had just happened. Is that right?

Amsterdam: That's absolutely right. And a good part of the stimulus for the development of a new model was to try to correct that. The idea of planning, doing, reviewing was not with the aim that the reviews that one conducted while one was still in law

school would teach you everything you knew. But rather [they were] to develop the habit of reviewing so that you would become systematically self-critical. The idea of this kind of clinical legal education was to teach people the methodology of being reflective. Reflectiveness is partly a bent, but it's partly a technique. And you can give people the kind of almost prosthetic devices – the idea of cultivating memory, using, first, videotaping and that sort of thing as surrogate memory, but then by comparing what you remember of an event with what you can see on the tape of the event – developing the ability to replay in your own head what was going on. More important, developing the motivation and the analytic skill of breaking down what has happened so that one can process and think it through and plan the next act in light of what went before. The goal is not . . . the goal of critiquing is not just of [using] critiquing in clinical training in law school. It's not just to get as much out of the experience of practicing in law school as possible, but to develop a lifelong methodology of being self-critical so that learning will continue lifelong. The thing that had always struck me was the bizarre notion that if a lawyer is gonna practice for 40, 50, 60 years, that the three years of law school should be the end of learning, except for the traditional kind of mentoring or whatever you pick up. My notion was you can maximize the learning that law school enables if you treat law school, not as discontinuous with practice, but as a training for learning in practice, so that there's a heavy emphasis in the clinical training on developing methods which will be used in critiquing after law school as one, throughout one's life, does all the things that lawyers do do.

Guggenheim: So clinical education certainly for you is deeply about pedagogy.

Amsterdam: Yes.

Guggenheim: And about transforming what it is students study and think about in law school. Is it more for you? Is it about any kind of movement, or about social justice schools or . . . how would you . . . what would you say about what more it is as you see it?

Amsterdam: Well that's the thing I mentioned earlier, Marty, that there was a tussle – and I'm still struggling with that tussle – for me. It kinda goes this way: I would like to see vast changes in our society and in our legal system in the direction of a closer approach to a truly egalitarian society – a society in which every human being, without regard to their race, without regard to their gender, without regard to their national origin, without regard to their, you know, physical appearance or handicaps – has a genuine opportunity to realize themselves as a human being, to become as great, to become as happy as the human condition allows. And we are

a society vastly distant from that aim. And while some progress has been made, I gotta say, looking back on the long time I've been in this game, that the progress that has been made is very, very small in terms of the road yet to go. So, I've always wanted, of course, to help other lawyers to be . . . [to] develop aspirations like mine. Everybody wants to clone themselves and have other people spend their lives in the service of your goals. That's always been part of what I wanted because it's what I believe in. On the other hand, I've always had the sense that every student who goes to law school deserves a fair shake, too. And if a student wants to, you know, work in a traditional law firm and serve GE and GM and whatever, they pay tuition and the years of their lives and the sweat equity that it takes to become a lawyer, too. And I've never felt that the law schools had the right to be depriving those folks of an opportunity to get the same kind of rich training and the same kind of training in depth that I would like to give lawyers who serve the aims and the goals that are important to me. So, I've always been kind of tugged between wanting to create clinical programs in which everybody, without discrimination on grounds of subject matter – and without discrimination even on grounds of desire to serve General Motors if that's what you wanna serve, or the insurance companies, if that's what you wanna serve – has an opportunity for the same kind of deeply reflective, rich clinical training. On the other hand, the way I choose to spend my time – and, to be honest with you, the students that I get really excited about – are the students whose interests, like mine, are in changing this society in a direction that looks toward greater equality, greater fairness, greater self-scrutiny, because so many of the legal injustices are

just simply a matter of slovenly performance by government and inadequate, you know, internal [correctives]. Lawyers are supposed to exist to make the system self-conscious, to make it correct its errors, to make it be aware of its errors. And the bureaucracies and the government institutions and the private institutions with whom people below the poverty line almost invariably spend most of their lives wrestling, are peculiarly slovenly, peculiarly unlikely to engage in any self-critical activity. So to get lawyers in there raising those questions and changing those things, I think, is just a matter of equality in a kind of conceptual sense. It's partly a matter of getting lawyers out in the field to start poking people to be reflective about what they're doing. That's very important to me, and I'm turned on by students who do that. But, I've never wanted to create programs that exclude from clinical legal education people who didn't want to do that. And so I spent a lot of time on programs like the one here at NYU called the Lawyering Program which is, as I see it, an introduction in many ways to clinical legal education, which is . . . services the entire student population. And it's not focused on the students who do civil rights or civil liberties or poverty work.

Guggenheim: Okay. Um . . . we started talking about your beginnings in clinical legal education. And you're at the University of Pennsylvania, and it's the mid 1960's. You have been at three law schools in your career, and I'd like you to talk a little bit about . . . just describe your own role in clinical legal education, maybe

by talking about your journey through the three schools, and some of the things you've done in them.

Amsterdam: Well, it's really very different at the three schools. At Penn, basically I was involved in three things, none of which we would today think about as a mainstream clinical program, but which were new for Penn, and [which] embarked Penn on the inclusion of clinical legal education in its curriculum. One was the program that I've described to you, [a] graduate program, which put students in the Philadelphia Public Defender office. And the students had – like the Prettyman program – a [course of] studies independent of their work in the office, but it was basically a fieldwork program. And, it enabled that office to mount certain kinds of law reform efforts that proved invaluable. For example, the techniques we had used in the South to defend demonstrators, we used in Philadelphia to crack the money bail system. We had mass *habeas* petitions cranked out in huge numbers and filed every Monday morning after the Saturday-night and Friday-night sweep-ups had left thousands of people in jail without. . . who couldn't make bail. We so flooded the system with *habeas*es that we precipitated a crisis. The judges called . . . The chief judge called in the judges who were sitting in the *habeas* courts, and before very long Philadelphia had an O.R. project. So, you know, that was a very exciting program. The students did begin to work at a kind of systematic criticism of their work, but it was not terribly conceptually evolved at that point. The second aspect I also mentioned

briefly before, that Penn and a number of other law schools were involved with: Penn was very heavily involved in the original Reginald Heber Smith Program which was training "Reggies" – people who went out as graduate students to do work in the OEO legal services offices. And we put on crash summer programs for the training of students to go into those. Again, that's sort of, you know, not quite clinical legal education, but it has the same theme of taking students who had a gap in their legal education and trying to bridge that gap to get them out into practice. The third thing, and this is something I've done all my . . . throughout my entire career . . . we don't think about it as clinical legal education, but it really is. It's to work with students on an individual basis who may be volunteers. In the days I'm thinking about back at Penn, we had a very active chapter of the Law Students Civil Rights Research Council. And indeed, one of my first close co-workers, Alan Lerner, a student of mine at Penn, became the Director of Law Students Civil Rights Research Council. His brother Ben, by the way, was in the graduate criminal program and later became the Public Defender in Philadelphia. Several other people who were in that graduate program – Lou Natali, who is now teaching at Temple, Dave Rudovsky, who is now teaching at Penn – have also become clinical teachers. But Alan worked with me originally as a volunteer; he organized the local chapter of LSCRRC. I worked a great deal with LSCRRC people, not only from my own school. When we did a South-wide study of racial discrimination in capital sentencing that Marvin Wolfgang and I did in order to undergird litigation against race discrimination in the death penalty . . . we brought in and trained dozens of LSCRRC students, volunteers who spent

an entire summer out in the field. And so, I've worked all the time – as long as I've been in teaching – with [individual student volunteers in] what you don't think about as clinical teaching, but really is. Some of the people that I've worked most closely with, [students] that I've seen [develop and] grow with the greatest satisfaction, I've seen in connection with just volunteering to do work. As a matter of fact, just this . . . a month ago, I borrowed two students who were fieldwork students in a capital defense clinic that Randy Hertz and Debbie Fins teach here at NYU. We put them together with . . . they got together with two other students, including the chair of the local Law Students Against the Death Penalty . . . and we put together a team. We had six weeks to get a stay of execution in a case that we had lost . . . I had lost along with co-counsel in the Fourth Circuit. The Fourth Circuit typically did not give us a stay. We had six weeks in which to get a stay from the Supreme Court before the guy was scheduled to be executed. And that meant, as a practical matter, six weeks in which to draft a *cert*. petition as well, because the Supreme Court these days has not been giving stays to file for *certiorari* except in extraordinary circumstances. [So we] took this group of students, sat down together and had an incredibly intense six weeks producing a stay and a *cert*. grant 36 hours before our client was scheduled to be executed. And that kind of . . . you know, is it clinical legal education? Well, my sense is that these students got an awful lot. And I know I got an awful lot out of working with them on it. So, that kind of thing dates all the way back, and I had begun to do that with volunteer students at Penn. So,

those three kinds of things basically, none of which are what we now think about as the mainstream of clinical legal education.

At Stanford, the thing that was in common with Penn was that Stanford had done absolutely nothing in the field of clinical legal education before I got there. And I started there as I started at Penn, as an academic teacher. 'Cause, as you say, there wasn't nothing else to be. You wanted to be a teacher, you were an academic teacher. But I started with the Penn experience behind me and a feeling that if something could be done at Stanford, that that would be great. I had an asset there that I did not have when I went into [teaching at] Penn, which is that the then Director of the Public Defender operation in San Jose, the Santa Clara County Public Defenders Office – Shelly Portman, a truly great public defender – had worked with me and I'd worked with him in a number of programs already. Not education programs, but test litigation programs. He was one of a number of defenders who were very active in a set of test litigation programs that spun out of the NAACP Legal Defense Fund effort, which was done under the auspices of something called "NORI," . . . uh . . . National Office for the Rights of the Indigent: NORI. With a Ford grant, LDF set up this NORI operation which was designed to help traditional legal aid and public defender lawyers develop test litigation capabilities and strategies, okay? And that had been done while I was still at Penn. I became pretty close to Shelly Portman, who was a public defender, who worked in that program. And so when I went out to Stanford, I knew that I had a friend on the scene who could and would be helpful in providing a home for

any kind of clinical program that I might wanna set up. Which, unless you know the mid-peninsula in California, you do not appreciate the value of, because literally there ain't nobody to service there but cows. [There was no client pool] at Stanford [in Palo Alto], unless you had something set up, ready to go, [in a more urban location nearby]. San Jose, on the other hand, while not . . . you know, Chicago or New York or even San Francisco, had an awful, awful, awful lot of legal problems. And an awful lot of legal problems of the disadvantaged and the poor. Farm workers, people of Hispanic background, mostly Mexican ancestry, were discriminated against. And Shelly's office offered a terrific opportunity. I was also very lucky because when I started to set up a program down there, a couple of things fell into place. First of all, it turned out that Rose Bird was at that time a junior person in Shelly's office, but was very, very interested in this operation. And Rose and I got to be very close. We had a real meeting of the minds as to what was needed in legal education.

Guggenheim: Let me just interrupt for one minute and frame this. So you left Penn in what year?

Amsterdam: Marty, you gonna ask me years? My guess is it's probably around '69.

Guggenheim: And through that. . . so you taught at Penn for four years or so?

Amsterdam: No, I taught at Penn for, I guess, six. [*Note:* the correct number is 8.]

Guggenheim: Six years. But never taught a course that we would today recognize as being a clinical course.

Amsterdam: Absolutely.

Guggenheim: Okay. So now you leave in '69?

Amsterdam: Yeah.

Guggenheim: And go directly to Stanford?

Amsterdam: I go directly to Stanford.

Guggenheim: Okay.

Amsterdam: And Rose Bird, later Chief Justice of California, for those who will be watching this tape sometime in the future who will not know who Rose Bird is. Rose was then a deputy PD in Shelly Portman's office in San Jose. Rose and I worked out a program that placed students in the public defender office with Rose supervising their fieldwork and with Rose and me teaching a related seminar. And I kind of second-chaired in some ways some of the fieldwork, but Rose was primarily on top of their fieldwork stuff. We got a . . . I think we had a Title IX grant. Actually, it was a grant that encompassed education on both sides: prosecution and defense. But, we were able to work it out by convincing people that students from the same school should not be involved in both prosecution and defense. We worked it out so that Santa Clara [Law School] took the prosecution side, and Stanford took the defense side. So Rose and I had this. Now, this is the first thing, Marty, that does match what we would now think about as clinical

legal education. It was a fieldwork clinic with a seminar component. And this is the point at which I began very, very, heavy use of videotape critiquing and much more organized protocols for [experiential] student learning of lawyering skills. Lists of questions that people ought to think about before they go do a task, whole sequences of activities for preparing to do something, doing it, a self-criticism usually, then peer criticism, then faculty criticism on top of that. And this is the point where the old joke [begins] about how many clinical teachers does it take to change a light bulb – which ends up by being about 80 – because, you know, you have to critique the changing of the lightbulb, and then critique the critiquing of the changing of the lightbulb. This is the point at which I [really] could get into that bag and begin to multiply that kind of critiquing. So at Stanford, I guess I did two things primarily. One was to develop a fieldwork clinic of the model that we now have. And the second was to begin what has now come to be talked about under the term lawyering training, which was an effort to distill from a clinical training model something that could be given to everybody as an introduction to clinical legal education. For political and other reasons, I originally designed a course of exercises in basic lawyering skills: interviewing, counseling, negotiation, case analysis, something that you can think about as back-dooring (it's making an argument to a government bureaucrat), and trial litigation. I broke those out as skills and developed a program of simulations which were designed to serve as a basis, as a foundation, for upper-level clinical training which would involve both more advanced, reflective work with [additional] lawyering skills and fieldwork. But this was designed to be a

fieldwork-free program that could break students in. For political reasons, it was not designated as a first-year course, although it could be that. It was a freestanding course that could be given either in the second or third year, if a law school didn't wanna have a fieldwork program (or was situated where it couldn't have one, either because of its location or because its funding for one reason or another disabled it from having one). But, in a school that could have and wanted to have an upper-level clinical program, this could serve as the foundation. And with a Rockefeller grant, I developed with a couple of colleagues, including – again, most intensively, Don Lunde, a psychiatrist – a basic model for teaching that lawyering [course]. So that is the second of the two things that I did at Stanford. Although interestingly, as I think back and remember, [once] again I realize that some of the stuff that sticks in my mind as in many ways some of the most intense aspect of clinical teaching didn't fit exactly in that mold. For example, Don Lunde and I also taught something called the SICK Seminar, which was an acronym for Seminar In Defense of The Mentally Disabled Criminal Accused (or something like that), which was largely a simulation course. It was designed to teach substantive criminal procedure and substantive law and psychiatry as much as anything else. But, we developed a pedagogical model that involved having students who had been through the program once, come back and serve as what we called "retreads" for obvious reasons, to supervise new students at the entry level coming in. So that every year, we had a crop of twelve or fourteen new students, second year students who took this course. It was a course designed to teach criminal procedure in the context of mentally disordered

defendants' [available] defenses: insanity (and, under California law, diminished capacity), incompetence to be tried, etc., etc., etc. What happened, though, was we developed projects with the retreads which enabled them to do their own kinds of clinical fieldwork. And one of the most exciting experiences I had in clinical teaching was we spent an entire year, with the retreads working as a group, working up a piece of test litigation that went to trial the following summer, challenging the process of death-qualifying juries in capital cases. The students worked up, first of all, a tremendous body of legal research and analysis. What kind of legal arguments could we make against death-qualification? Then they began to work with expert witnesses. And we flew Phoebe Ellsworth in. We flew Hans Zeisel in. And we prepared over the course of an entire year a presentation which, as it turned out, the only time we could get on the calendar ended up by being tried in the summer after most of the students had left. But two of them stayed on and second-chaired that entire trial, which went on for 19 or 20 trial days with, then, a recess, and we picked up again [with post-trial matters] for most of the summer. So that didn't fit any of the models; but again, I think if you talk to any of the students who went through that, including our colleague Randy Hertz, who was a retread at that time and a participant in that, they will vouch for the fact that in their world, that was clinical legal training as well. Although again, it doesn't fit the model of what we now think about as clinical teaching. So that was pretty much it for Stanford.

Guggenheim: Let me slow you down and stay with Stanford, because at Penn, you're only a member of the academic faculty because there's no other faculty in existence. By the time you're at Stanford. . . that's from 1969 to 1981?

Amsterdam: '81.

Guggenheim: There are clinicians around the country, but you're still on the academic track and you're the . . . there are no clinicians at Stanford?

Amsterdam: So far as I know, the first persons to be . . . the first two people that I know about who were brought to Stanford with the express notion that they would do clinical teaching – Miguel Mendez and Chuck Marson – were brought in close to the time I left. And they were brought in as members – not yet tenured members – of a tenured academic track. Stanford did not have at that time a separate clinical track, no.

Guggenheim: But, you went to Stanford, in part, to continue developing this new pedagogy and advancing your own ideas of what students oughta learn and think about in law school.

Amsterdam: Correct.

Guggenheim: Was that easy for you to create courses in that environment where people say you're not doing enough of what we regard as traditional teaching, or did you have to fight for that role, or did they cede it to you?

Amsterdam: They ceded it. I would say that you've got your finger on an interesting phenomenon at this point in the history of clinical legal education. It is that the people in my generation . . . people who [thought they] were the first generation, for the most part, of clinical legal teaching . . . I didn't find out, Marty, until twenty years later that there had been clinicians two generation before I came onto the scene. All of us who started in my generation thought we were doing something new. We learned later that we were reinventing the wheel. But, there hadn't been any models in our background. And when I went to law school as a student, when I began teaching, I had no exposure to any of this stuff.

Guggenheim: And that's the 1950's?

Amsterdam: Yeah, that's right. And, you know, later I found out Denver had a clinic in, you know, 1905 or something like that; but, I wouldn't have known about it. Folks in our generation, for the most part . . . Now, it's a little different here at NYU, where you know the history better than I do. But, in most places, the people who started my wave of clinical legal education took advantage of the anarchy of law school to do their thing. I see that there's a contradiction there in this sense. It was kind of a glass ceiling. Anything that anybody who came in with the right credentials wanted to do, they were permitted to do. As long as you continued to play the game according to the way that they expected it to be played . . . that is, you looked like an academic, you wrote like an academic, you talked like an academic, you fit all the standard academic concepts, you could do, in fact, whatever you wanted to do if it didn't cost money beyond what regular academic teaching costs (or if you were willing to raise – go to the trouble to raise – your own money), and if it did not involve faculty additions. [As soon as the question came up, though, of building a clinical program through] faculty additions, then either the other person [proposed for a faculty appointment] had to play the same game, or you had to face the question, "Are we really bringing somebody in to

teach clinically?", okay? So as long as you were working within a system where you were taking advantage of anarchy, [an established "academic" faculty member could teach clinically.] By anarchy, I mean literally, that. When I began teaching – and I believe this is still very largely the case in most law schools in the country – nobody knows what's being taught in the classroom next door. You go into [Room] 101 and somebody else is teaching a class in 102; you neither know nor care what. There is no central administrative clearance or academic conceptualization of the curriculum.

Guggenheim: You'll know the name of the course, but not. . .

Amsterdam: That's exactly it. You'll know the name of the course. So, for example, I taught Criminal Procedure for a number of years at Stanford. Nobody knew that I had turned the course in criminal procedure away from the Paulsen & Kadish casebook [model and made it], you know, start with arrest and work your way through sentencing – [made it] into something in which it was all problem-oriented. It was a class of 100 students, but it was, you know, my first [day's] class was: "You get a telephone call at night. And on the telephone, the caller says, 'Help! My husband's just been brought down to the police station.' What do you do?" And we spent the first two weeks on what do you do, and what kinds

of considerations . . . I mean, that was criminal procedure by me. Nobody would have ever known that I was teaching that rather than something else. John Kaplan was teaching another course in criminal procedure, which believe me, didn't look anything like this one. Although John was a litigator, and a, you know, hard-nosed, practical guy himself, his conception of law and criminal procedure were very, very different. So, what I'm talking about is that people, just within their own turf, took advantage of the fact that nobody was looking over their shoulder – that as long as you had the right label on the bottle, nobody cared what the wine was like, or whether you, you know, put soda pop in it or gin. And so we did our thing. So, no, there was no resistance. There was no . . . nobody was giving me any grief. But I was paying the cost for it. The cost I was paying was I had to do all the traditional academic things, and look very much like a traditional academic, but at the same time I was doing most of this other stuff.

Guggenheim: By that you mean producing scholarship?

Amsterdam: Yeah.

Guggenheim: And what you say is you produced it to retain the freedom to do what you were doing? Is that part of what you're saying now?

Amsterdam: Part of the cost of doing what I was doing was having to lead two lives. And part of the second life was turning out scholarly articles, yeah.

Guggenheim: Because if you led a distinctly different life, you assu . . . you, you believed that more heat would come . . .

Amsterdam: Absolutely. It wasn't a matter of tenure, 'cause I went to Stanford with tenure.

Guggenheim: Right.

Amsterdam: I had gotten tenure at Penn and I went to Stanford with tenure. For people who entered after I did, and who wanted to do clinical work at a time when they were

not yet tenured, they had a terrible problem, because they had to meet the tenure requirements, which usually were publish-or-perish. I did some traditional academic writing, although some of the book stuff I did was a practitioner's book – a trial manual, a [criminal] defense trial manual, for example. While it qualified in some sense as scholarship, it was not a legal article . . . law-review-article type of scholarship. But, the law review stuff and the other things I did do, I did because, yes, I believed that that was paying union dues in order to keep people from examining too closely, I think, the question of whether the clinical teaching that I was doing had a legitimate place in the law school. People were willing to let you do your thing, but only because they didn't inspect it terribly closely.

Guggenheim: So along with the work that you're talking about now is your 1974 4th Amendment article?

Amsterdam: Yes.

Guggenheim: Well I have to say, I'm real glad that something made you feel that it was right to write that, even if it . . . even if it wasn't . . .um . . . because that's such a

remarkable piece that we all are grateful to have. You've left something out in talking about the Stanford story . . .

Amsterdam: Right.

Guggenheim: . . . that I think is important to add. Because you haven't said yet what many who might see this will know, but some won't. . . and that is that you maintained throughout your law teaching at Stanford, if not and at Penn – and when we get to NYU, at NYU – an extraordinarily large, complex litigation docket. That is, you have been throughout your law teaching career a significant, consistent litigator. Would you. . . was one of the reasons that you liked clinical education . . . that it would help find a more compatible opportunity for you to litigate?

Amsterdam: I don't think so Marty. That's something I'm beginning to explore now. And in the last couple of years that I've taught at NYU, with the capital defense clinic here, that idea has begun to be very important to me. And what I'm planning to be doing in the near future involves that. But no, not originally. In a sense, again, Marty, the answer to why, has to do a great deal with the struggle that I tried to describe to you earlier. My vision of clinical legal education has always involved

a very systematic regimen of learning. And therefore, whether I was doing fieldwork, or whether I was doing simulations, I have always tried to select cases for students to work on, and to select simulation problems, that maximize the opportunity for student self-reflection and for learning to be reflective. Much of my litigation docket just doesn't lend itself to that. I have been in the fire-putting-out business for most of my life, although you rightly described the fact that I've litigated all my life. And although some of that litigation – including campaigns to end [the] money bail [system], campaigns against vagrancy and discon [disorderly conduct] laws and that kind of stuff, capital punishment litigation, campaigns for school desegregation – although many of those kinds of things have involved considerable advanced planning and long-scale carry-through, almost none of it, in terms of actual casework, has fit within an academic calendar or been the kind of thing that I could bring a student in on from beginning to end, and have the student really work through fully on the academic calendar. So, the problem with getting my litigation together with my clinical teaching has always been that I simply never worked hard enough to find an interface which enables me to make the cases fit the teaching model. If I were less systematic – less rigorous, if you will – about the way in which I wanted students to do clinical training, and to be reflective, if I was, you know, just willing to have a student kind of fill in and tag along and do everything that needed to be done, I'd have much more of a marriage going. But since I've not been . . . It's interesting Marty, and I never thought about this until you asked the question, when I realized it. So, one of the reasons why I've kept referring to the fact that I always

have a number of other students – volunteers, Law Students Civil Rights Research Council, a pickup team of law students against the death penalty – that aspect of it works fine. Those students, for some reason, I don't feel that I have to put through the same kind of very systematic process that I do with clinical courses. It's not that they don't learn a great deal, and it's not that – once they're in – I don't try to work with them to maximize the learning experience. But I don't feel a responsibility with students who volunteered –because they're primarily interested in the case – to take them through it in a kind of very systematic way. But I've never thought that having a course or a clinic in which I had students would help me to do the litigation, or that the cases I litigated for the most part, in terms of numbers, would be the bulk of what I would teach. Usually, the teaching cases that I do, when I do fieldwork teaching, have been selected for their teaching aspect. It . . . while some of them have also developed into something significant beyond the particular client, for the most part, they don't. Most of the stuff that I do elsewise [as a litigator] comes up in a rush. It can come up at a time when, if I am teaching students who are in fieldwork, all my students are occupied on something else, and I've gotta get somebody outta jail. I gotta get a stay. I gotta, you know, the new school term is starting and, you know, they still haven't desegregated. I mean, that's all my life has been – hurry up – so that there was just no time for the most part. And what I'm trying to do now is find ways to beat that, and to get a greater integration of, you know, litigation that I do for its own sake and teaching. But historically it has not been a marriage.

Guggenheim: But there's been some overlap. I mean the example of the jury [death]-qualification work wasn't accidentally selected. It was to advance a deeper litigation interest of . . .

Amsterdam: Absolutely. And going back to Penn, the *habeas corpus* [project] to get the bail system knocked out was a part of the same thing. Yes. It's just that it hasn't been a mainstream part of . . . if I had to talk percentages, I would say that 80, 85% of the clinical teaching I've done has no connection whatever – the field work – with the, my regular litigation docket.

Guggenheim: So, it's 1981, and you move from Sanford to NYU. I mean, now for the first time, join a law school faculty that has a pre-existing and somewhat robust clinical program. Let me hear a little bit about those years.

Amsterdam: Whole new ball game. That is, I said that what Penn and Stanford had in common was that nobody was there who was doing this before I went. NYU was totally

different. I went to NYU precisely because it had one of the very best clinical programs in the country. It was robust, as you said. There were a substantial number of clinicians that were doing excellent work. It was work that was – your work, for example was . . . my [Stanford] colleague Mike Wald introduced me to your work, Marty, while I was still on the West Coast – very highly regarded nationwide. And I wanted to try out what, in an environment like that, I could find for myself that would help me to help the institution and advance what I thought of as the general goals of clinical legal education. What struck me at NYU when I came here was that, despite the extensiveness of the clinical program – the numbers of students who were involved, the numbers of clinics and the number of areas that they were in, and the extraordinarily good litigation work that was going on – there wasn't any kind of coherent picture of what clinical legal education was about. That the clinics were largely freestanding and, while the clinicians talked with one another and certainly shared experiences in clinical teaching, there wasn't an effort to talk through as a collectivity what a clinical program might look like, what the goals and objectives of clinical legal education were, and that sort of thing. I think to some extent, and again you . . . I should be interviewing you. But my sense was that some of the clinicians had begun to talk with each other about that. And some of them had begun to talk with some other folks on the academic faculty about that before I came here, when people were considering whether I should come here, in other words. And Norman Redlich, then the dean, broached the idea of having a director – an academic director of the clinical program, as distinguished from the director of the office, Washington

Square Legal Services, which was the umbrella company out of which the fieldwork clinics all operated, which had the student practice order and that sort of thing. Having an academic director as distinguished from the director of Washington Square Legal Services was Norman's idea. I had the sense when I came here to visit, as I thought about coming here [to teach], that people were beginning to talk about what a program oughta look like – [this was just] before I came – in connection with the question, 'Should we hire a beast like this?' But when I got here, although those conversations had begun, there was clear evidence from talking to folks that they had been talking with each other over a long period of time about the specific experiences and techniques and methods they had had. There didn't seem to have been a lot of talk about what a program as a whole oughta look like, what the objectives of a program might be, how it fit into the law school experience generally. So what I tried to do at NYU, and I tried to address, was the question of how a clinical program might fit within an overall educational curriculum. The metaphor that I was then using and other people then used was that clinical legal education for the most part was a fifth wheel on the car. And at NYU it was a Caddy with a superb fifth wheel on the back. You know, beautiful gold spokes, you know, all those kinds of things. But it still was not driving the car. And it was not spinning at the same rate as the four wheels that were driving the car, nor was it on the ground so far as, at least, the academics thought. So the idea was, could we get the wheel on the damn car? Then at NYU, because it had this extraordinary base – considerable strength, substantial number of faculty, very good faculty – what we were able to do and

what I devoted myself to [doing] in the first 10, 12 years I was at NYU, was two things basically. One, having the clinical faculty think through their goals and objectives. Bring more simulation work into the fieldwork clinics, not for its own sake, but in order to make the maximum possible mix of the kinds of reflective techniques that simulation allows and the kinds of reflection on real experience that fieldwork is. And also build a three-tiered [program], three-tiered simply because there are three [annual] units to law school. [Build a three-tiered] clinical program so that a school which wants to do the maximum that a law school can do by way of clinical training is not locked into everything you can achieve with a single student in one year. The law schools that have clinical programs limited to a year, the third year, by definition in terms of the life an individual student, can bring a student so far only as it is possible for a human being to grow in a year. And the idea at NYU was a continuation: – the idea of a three-year program, [beginning] with proper preparation in the first year, when for the most part, students could do no fieldwork except on a volunteer basis perhaps, paralegal type in housing court . . . sometimes they can do some things of that sort, but no more than that. Second year, some students can do some degree of fieldwork, but it's still gotta for the most part be simulation. And third year, which, if you use the first two years for adequate preparation, can be a superb experience centering on fieldwork. That kind of a model also was in service of something I've described before, the idea of developing self-critical techniques. In the first year, you introduce students to a set of practice skills – interviewing, counseling, negotiation and rudiments of litigation, case planning,

that kind of thing – and get them in the habit of being critical in thinking about these, but you do it in terms of a smidgen of this, a smidgen of that, because you can't get them very deep into any one thing. Moving into a second year, what you do is give them an intensive experience at something, take a case, for example, all the way through, a criminal case from arrest to trial. Or take a civil case all the way through from the first interview of a client until you get a hearing. But one way or another, take an episode and have them use all of the skills which they learned piecemeal as skills in the first year, bring that all to bear on the experience of handling that case. Develop it through time so they have an opportunity to see the mistakes they've made come home to roost, to see how if they had done it a different way, something else might have happened – the consequences of their choices to do this or that. You do all of that before the students then get into fieldwork. And then, in the third year, let them take this terrific substructure of experiential learning, conceptual developing, that sort of thing, and bring it to bear in a fieldwork context. So the idea that at NYU we eventually succeeded in building up, was this three-tiered program which serves to maximize the extent to which in law school, we do give students the equipment to learn lifelong by being self-critical; but, also it means that, within law school itself, a student gets as high on the aspiration scale, as high on the achievement scale, as possible for somebody in three years to get, and not just in one year. Now of course, that requires a lot of thinking about the question of what's basic, what's rudimentary. If you're gonna have three years, what do you put in the first year? What do you put in the second year? What do you put in the third

year? The effort to systematize it over a longer scale forced us to think a good deal more about what are the skills involved? What do you wanna teach students in interviewing? What's basic in interviewing, you know, assuming that interviewing is one of the basic skills? What are the other basic skills, and how much of each do you put into the introductory level? And so forth. So I spent with colleagues talking this thing through at NYU, 10 years or whatever working through the . . . all of those questions. In order to design and put into operation the program we now have at NYU, which is this three-level program with a very rich development of many students before they take a fieldwork clinic at all. And then, thank God, Marty Guggenheim took over for me as the Director . . . and liberated me from the administrative work that necessarily goes with building a program like this, leaving me [with only the first-year Lawyering Program to run]. And fortunately my dear colleague Peggy Davis had soon taken that off my back, too. So I'm a happy man.

Guggenheim: You're right to say that I could be being interviewed at this point a little bit about the role you played when you came here. I would say briefly that the years, the first several years you were here, when we were challenged to talk about what we're doing and why, I think were transformative to all the clinicians, because we all replicated the methodology of our teaching by now turning it onto ourselves as teachers, asking what are we doing and why and reflecting back. Could you say a

word about how you brought us together and some of the methodology of even developing those conversations?

Amsterdam: Well, um. . . I took local advice in terms of how to do it. What we did was a series of grand-rounds presentations with faculty members talking about their clinics. And just as you and I earlier were saying that academics very often don't know anything but the label or the name of the course that's being taught next door, the clinicians surprisingly did not know as much as today they do know about what their colleagues are doing. It was not anywhere near as bad as it is in academia. That is, all the clinicians had some idea, because I think clinicians as a group tend to be somewhat more collegial. Possibly the reason for that is that clinicians, even at NYU, have always been to some extent a beleaguered minority who need a certain amount of peer support to survive in an environment which wasn't made for them – although NYU was way ahead of most law schools in terms of receptivity to, acceptance of, the clinical model. Because, here again, Marty, I got a second [helping] hand. You know that when I came, Norm Redlich was the dean. He was extraordinarily supportive of this. I understood that Bob McKay, who had been the [preceding] dean, was also supportive of this. So NYU had had a supportive administration for some time. Despite that, the clinical faculty was still not the academic faculty, and it was not viewed by the academic faculty as peers in any real sense. So that I think that a part of the collegial quality of the clinical faculty was the result of their being kind of isolated from

the mainstream and feeling a certain amount of need for support. But partly it's contextual. Partly it is that clinicians understand by the nature of their work the value of interactivity. And I think that clinicians tend to talk more with each other. In addition to that, the fact that clinicians were always challenged to do something new, and therefore, how do you do it? – how is it working with you? – what ideas have you got? have always been a part of what we've had to do. When I started in academic teaching, I had talked to absolutely nobody as an academic teacher. The first . . . I don't remember how long it was before I did any clinical teaching – six, seven, eight years, whatever it was – I don't think I talked about pedagogy with anybody, at any point. And I think that's not an uncommon or unusual experience. I had been a student. I knew what a large class looked like. I knew who the good teachers were – the ones that I thought were good. I knew who the bad teachers were. I tried to emulate, in the classroom, the ones I thought were good. I tried not to emulate the ones I thought were bad. The casebooks were out there. It was a matter, not of making one, but simply of choosing. There were too many casebooks to choose. Why did anybody have to think about pedagogy? You know, you just didn't. The answer is, of course we should have thought about it, and we would have done a whole hell of a lot better if we had thought about it. But clinicians never had those advantages. And the advantage of not having the advantages was they had to talk a little to each other. So, it did not surprise me to find when I came here that compared to the academic faculty, the clinicians really did know a little bit more about what each other was doing. They had talked a little bit about stuff. Still, the extent to which they

didn't know what each other was doing absolutely floored me. Why is this? I think you put your finger on it a minute ago when you said that the idea really had not come across that the clinicians should be critical of their teaching in exactly the same way that they were teaching students to be critical of their practice. That is, you don't do it in generalities in a non-systematic manner over lunch or when you're tired on a Thursday afternoon and you happen to have the same half-hour free as another colleague has free. What you've got to do, damn it, is to set out an agenda for a series of systematic meetings. Make time in the week, bring everybody in, and in an orderly way look at each of the clinics, or look at an aspect of each of the clinics, put it on the table for discussion, have other people bring in their views and criticisms and ideas about that. Move, then, from the subject of what we do to why we do it, [get] different takes on what we might do in the alternative. And what our grand rounds discussions – this was a series of meetings that rolled over from a year into another year – did was we set aside a standing time in the week. Have, you know, topics with people ready to speak on them, about originally their own clinics and what they were doing, moving then to a why, and then identifying issues, cross-clinic issues of pedagogy that we then made the subject of discussion. That, in effect, turned the technique which we used in teaching students, as you say, back on ourselves. The clinical faculty was great at it because they . . . it was second nature to them. It was mostly a matter that they had not thought to do it. But it wasn't only the matter of their not thinking to do it. Everybody had been brought in with a very heavy job to do. And the problem with clinical legal teaching, as compared with academic

teaching, has always been that with a casework – a fieldwork – docket, a caseload to worry about, with students who not only have all the problems every student has, and problems of a sort that they bring to academic as well as to clinical teachers, but also have casework problems and that sort of thing. It's a very long day just to stay on top of the stuff that you're teaching day in and day out. You don't feel guilty about not thinking about what you're doing. Even clinicians, whose whole mission is to get people thinking, don't feel guilty about not stepping back and thinking, because they have so many damn good excuses for doing the immediate instead of thinking. It's, you know, Oppenheimer's law, which is that the immediate takes precedence over the important. And clinicians have always been the subject of Oppenheimer's law in the worst of ways. So, what we really had to do was not to get people thinking in new ways, really. That is, no new ideas or concepts had to be brought in for the group or even [any new spirit of] willingness to share. It was simply a matter of discipline in a sense, getting the group to break the habit of spending all their time worrying about the emergencies, and make time every week to stop and talk together. Have a common vision that this was important to the overall program and that we would do the job better for our students and for ourselves, if we really thought this stuff through. And then what you have to do is you sit on top of it. And as each new session brings up ideas, think about a way . . . "Well, let's schedule a session a month from now in which we'll come back and revisit that; that's a great opening." "Why don't we put that on the agenda for talk across the clinics instead of having a presentation a month from now by another clinic?" "Let's break this

topic out and ask people to talk about how it crops up in each of the clinics." We went through that process – and I think that's what you're describing – that brought about a very much richer, I think, vision of what we were doing.

Guggenheim: So, NYU did establish a required first-year course which is the base of the pyramid you described – Lawyering – that you had first designed at Stanford?

Amsterdam: Right.

Guggenheim: And modified somewhat when you began teaching at, at NYU?

Amsterdam: Very much modified, yeah.

Guggenheim: Could you say a word about the politics of accomplishing the remarkable achievement of taking what you consider to be a significant clinical course and making it mainstream in the first year at a law school?

Amsterdam: Really very much the same dynamic that I was describing earlier: taking advantage of anarchy. Over the years, first-year curricula in virtually every law school have crumbled. The problem is that nobody had ever thought through what a first-year curriculum really should be like. Most law schools just continued to repeat the traditional [courses], you know, criminal law, contracts, civil procedure, etc. But for one reason or another, usually because faculty appointments [were not curriculum-driven], usually one weak subject [emerged]. Some people wouldn't teach property, or whatever. Almost every law school that I've seen developed a weak [spot], a hole in the first-year curriculum somewhere. There was often a wild card course. When I came to NYU, there was a wild card course in the first year. It was "Enrichment . . ."

Guggenheim: Legal institutions.

Amsterdam: Legal institutions, right. It was there because they no longer could staff a full roster of first-year courses that everybody was confident belonged in the first year. They had the idea we would have this "think course," Legal Institutions. It could be an elective in some subject matter of [a student's] choice. All we [the Lawyering Program] did was simply moved into that gap. Anybody with an idea could move into that gap. It could have been done in any law school in the country with the support, I think – this was essential – with the support of the administration, and with an adequate number of people who could be recruited to do it. I don't mean it could be done in any law school in the country in terms of having the support of teachers who were willing to teach it. But in terms of politically putting it in, it was a matter, in effect, of filling the vacuum. A very large part of the growth of clinical legal education has been filling a vacuum. I described clinical legal education from the beginning as driven, at least in my world, by a feeling of something missing in traditional legal education. Spotting what's missing, including the institutional hole that you can fill, has been a very large part of the process of making clinical legal education happen politically.

Guggenheim: Okay. We're now on tape two of the interview, and you've just described the success of accomplishing, . . . making Lawyering a first-year mandatory course at NYU. And you had talked earlier about the pyramid structure, and I'd just like to ask you to say a little more about what the second-level courses ended up looking

like, and how they were identified. . . how the content of those courses came to be developed.

Amsterdam: The whole idea of a second-level course grows of necessity out of the limitations of the first, the first-year course. What you certainly want to do in the first year – that is, as an introduction to clinical legal education – is to give the students a vocabulary for talking about a set of concepts, for thinking about them, and a little bit of direct experience, in a number of separate skills: interviewing, counseling, negotiation, case planning, informal advocacy, trial litigation, and so forth. It is extremely difficult, if not impossible, to do that in the context of a single fact scenario, because very few fact scenarios fit in a way that creates interesting problems – and problems that further the objective of reflective lawyering – in each of those areas. Think for a moment about, you know . . . You could; but it would be incredibly elaborate, to create a scenario. I once tried it. It grew horribly out of shape, and became utterly unreal, [trying] to create a single situation in which students could learn interviewing, counseling, negotiation, etc. So what you do is you have students work with a number of very different scenarios, which means that they don't carry anything through very far. Their interviewing is a single experience. They build later on interviewing and counseling to some extent, because when you counsel a client you have to use interviewing skills. But very often they have to learn a new scenario. And if you go way, way back to what I said brought me into clinical legal education in the

first place, which is that we never, when I was a law student, learned how to take an unstructured situation and structure it, give it coherence that enables you to get a grasp on it. It's no accident that a first-year program does rather well if it tries to teach interviewing, counseling, negotiation, in different fact scenarios, because the students have to get a new situation, structure it each time, get another new situation, structure it. That's part of the process of learning to get a grip on facts from a lawyer's standpoint. On the other hand, what you cannot get is the experience of carrying a relatively complex situation through from beginning to end, such as handling even a minor criminal case, or minor civil case, from the stage when a client brings it in, [when]you [first] think about "what are the problems?" to the stage at which you have exhausted all of the negotiative options, planned and prepared the case for trial, and actually tried it. So, the idea of a second-level course is to have a single scenario of some sort, a civil case, a criminal case, some other single situation looked at from multiple perspectives. And as you, Marty Guggenheim know, because you and I co-taught the course for quite a period of time, that doesn't necessarily mean having a single real-world . . . an episode that looks like something in the real world, like a criminal case from arrest to trial. It may mean that [or it may] not. We created one course in which we had, first of all, a law-school disciplinary proceeding against a student accused of stealing a book, and then a trial – a defamation trial – brought by that student against the accuser, the prosecutor, in effect. But like the courses that work off a single criminal trial or a single civil trial, the genius of – the feature of – the second-level course, is to take a single situation so the student

can get completely steeped in it and think about it from a variety of angles from which they learn more and more about facts. They learn about the ductility of facts. They can put one spin on a set of facts and put another spin on that set of facts. They are forced to make a series of decisions and see their consequences. And what they do is they take the (if you will) separate skills that they've learned in isolation in the first year, and bring them to bear in a coherent way on a series of decisions that they make whose consequences they can see and evaluate. So it's a matter of working through in time a set of lawyer's tasks centered on a single problem situation, and deepening and deepening the understanding of the facts and the rules that make up that situation. That's the idea of this . . . of our second level. We selected the various courses that go into it, again partly depending on, or partly in order to give students a range of options depending on, their interests. We have civil, and we have criminal, because some students are interested in civil, and some in criminal. We have some that are odd beasts like the Evidence: Litigation Planning [course] that I was describing a minute ago, that was designed to teach the rules of evidence and to have the students look at a fact situation refracted through various evidentiary rules. For that, we first of all had a law-school disciplinary proceeding where you don't have formal evidence rules. And then we had a proceeding in court where you do have formal evidence rules so that we could milk both sides, in effect, of that. Now at the second level, in addition, there are other [courses] that have grown as the methodology has, you know, attracted other teachers in their own substantive subject-matter field. But the idea is: first level, a whole set of separate skills, and

the basic idea of self-reflection; second level, bring the entire group of skills to bear on a rich, complex fact scenario developed over time. And the third level is fieldwork and advanced work, such as work with expert witnesses and things of that sort that deepens the experience in the first two years.

Guggenheim: Wonderful. Final question is just what you imagine to be the future of clinical legal education.

Amsterdam: You know, every good restaurant goes bad after a couple of years. You know, entropy. The world is not progressing toward Heaven, it's more toward Armageddon, Marty. I don't know. I suspect that clinical legal education, as it becomes established – and it *has* now become remarkably established – I think probably the people who view this tape years from now will never believe what clinical legal education was like when you and I went into it. That is to say, it virtually didn't exist. I'm not . . . I'm not denying the fact that if you look at the history books, you find that Denver had a clinic in 1905. I'm saying that for most people who like you and me went through a law school, clinical legal education just didn't exist. There were a couple of law schools that had a couple of things. But the main stream of law students went into and out of law school without ever thinking about [what it was like to be a lawyer]. They learned about

law, but not about what lawyers do. That has changed incredibly. It's extraordinary, the extent to which, in a very few years as the history of legal education goes, clinical legal education has caught on, has mushroomed, has grown. I think that unfortunately, that's the formula for good new restaurants going bad. They get too big, they get too self-satisfied. They lose the drive that comes from the need to establish a beachhead, to make a place for yourself in a world that doesn't have a place for you. It becomes much, much too easy to fit into the place that the world has made for you; and I think the challenge of the next generation of clinical legal education is to grow beyond the niche that legal academia has been willing to cede to it. (That's "c.e.d.e," although there's also a "seed" somewhere in there.) But the idea basically is . . . you observed earlier that there had been a problem in many law schools – and even in the law schools where I've taught where it was an awful lot easier than in most law schools to make that beachhead and to get a good solid foot on the beach – there has always been that glass ceiling. There has always been the notion that there is a place for the clinics, but, by God it is *a* place, and it is not [throughout] the law school. Once that place becomes established, there's a real danger that clinical legal education will be like legal education in general, that it will become thoughtless about pedagogy in the same way that traditional legal education has been thoughtless about pedagogy – that it will simply accept the place that has been made for it in the same way that most of us, when we began as academic teachers, remembered what it was to sit in a class and modeled ourselves on our teachers. Unfortunately now, we have models. Unfortunately, the new people

who are going into clinical legal education, for the most part, have as students been in clinical legal education. Unfortunately, most law schools have ceded now to the clinics about as much space as they're willing to cede until new ideas and a new drive begin. And I think there's a very real risk that those new ideas and those new drives are not gonna come, because having established a place where it's comfortable to live, clinicians are gonna fall into just living comfortably in that space the way traditional academics have. I hope that ain't gonna happen, but there are some very real signs that it is happening.

Guggenheim: Well, despite having worked with you for twenty years, I learned a terrific amount today, and thank you very much.

Amsterdam: Thanks Marty.