

**Transcription of the Interview with  
David Barnhizer  
January 7, 2000**

Hall: . . some of the questions we're asking everybody, and then some we're. . . we're aiming. . .you know, we tailor to each person. And then one of the greatest interests is that you were one of the early heads of the clinical legal section, you know. I guess as a starting point, what I'd like to ask is just what was, in fact, your first exposure to clinical legal education?

Barnhizer: Well, the first exposure was in law school. It's really. . . it's funny because I went to Ohio State for my JD, and then got an LLM at Harvard. So it really was two-fold, because one. . . Ohio State had sort of a clinical program, but it was more of a volunteer kind of thing. And so I volunteered to do something in the criminal clinical program there. And there was a campus takeover by students of the president's office, you know, that kind of ti. . . that kind of time. So I get involved in helping defend the students on a voluntary basis. And then Bill Pincus actually . . . CLEPR had basically just been started. And so when I was a third year law student, he came serendipitously and made a speech that impressed me a great deal. But I didn't think of it for another two years. I remember the speech very, very much. And it was 1968 or. . . '68, I guess it was. And then I went to become a reggie in Colorado. And there was a. . . an advertisement for a LLM clinical teaching fellow, Ford Foundation Urban law fellowship that one of

the basis' were Harvard. So I put in for that. I got that. And Gary Bellow called me and said, "Did you. . ." he's just moving to Harvard to set up their clinical program. . . "Do you want. . ." you know, would I be willing to do that and work on that? And I said, "Sure, it'd be great." And so I went there, and Bea Moulton and I who I assume you're talking to, 'cause she is certainly a very historical figure in clinical education. . . Bea and I and I couple of other people: John Denver who's at Golden Gate, I believe. . . either San Francisco or Golden Gate, doesn't do clinical stuff. So John Denver, a guy named Bob Bone, Bea Moulton, and another legal services attorney Robby \_\_\_\_\_, who was from Atlanta, went back to Atlanta, did. . . and stayed in legal services and then maybe private practice there. The five of us helped Gary set up the. . . the first real clinical program at Harvard. And then we got involved with that. A number of us . . . CLEPR and different kinds of activities at that point. So, the Pincus involvement, the volunteer involvement in '68. . . 1968, and then just sort of fell into place. The second part of it just fell into place.

Hall: Every detail \_\_\_\_\_. Tell me about that Pincus speech. What do you remember about it?

Barnhizer: I remember the, you know, law school doesn't. . . and this is funny, because this is why a lot of us got into clinical education. . . it was not about social reform, it

was not about justice, it was not about poverty, it was not about civil rights. There were little pieces here and there among faculty even in the late '60's, but basically it was ignorance and did not respect legal education. I liked legal education in part. But that aspect of it, it just lacked the soul. Had a technique, had a method, did not have. a focus on the soul other than that technique and method. And so when you look at that, I sat there and I listened. . . listened to Pincus, and he. . . some people think he's dull, but he in fact, made a very compelling speech, a very challenging speech about the role of social justice. I mean, I could have gone in the Justice Department and a number of law firms and everything that I think that influenced me in part to go in . . .go into the re. . . putting an application for the reggie pro. . . the Reginald \_\_\_\_\_ Community Lawyer Fellowship Program. So, you know, I think without even knowing it, it really had a very profound, directing effect on where my career went.

Hall: What. . . what prompted you to do the volunteer clinical program originally?

Barnhizer: Interest in it. One of my. . . one of my aspects of my personality is that I don't like unfairness. And so it's always been something, no matter where I find it. And so sometimes I offend civil rights people because if I think they're. . . regardless of who it is. If I think they are behaving in a way that. . . that puts more helpless people down, I can't help resisting it. And that really was

something. This was a poverty thing. Nobody else was doing it. This was students who did some stupid stuff, but nonetheless deserved some kind of representation. I felt very strongly about the necessity of representation in legal. . . in the legal system, because the legal system for most people is frightening. And so, you know, certainly frightening for these students and the implications of what might happen to them were very strong in terms of their lives, their careers. So, you know, that's really what, in significant part, motivates me. . . and still does. I mean I do a huge amount of international environmental work and work with natural resources defense counsel now and really starting to get much more into the human rights work. So I mean the thread is there from the beginning. . . I trust through the end of what it will be. So. . .

Hall: You mentioned up from that obviously there's very small choice \_\_\_\_\_ time in the late '60's. And, you know, colleges were, you know, very much into \_\_\_\_\_ of that. When you started law school, did you find much satisfaction in your just regular law classes for those kinds of instincts?

Barnhizer: Not for those instincts. I mean, law school at that time. . . I remember the first time I asked a question. And this is sort of almost a classic thing that everybody has had this feeling. First time I asked a question in my Property class, my first year, my professor who became a friend later, he said, "That's a social issue.

We're not concerned about that. I want legal analysis." And I'm sitting there not stupid, but feeling like the dumbest person in the world. You know, I don't. . . you know, I can blush and I can get embarrassed, but I sat there and I thought, "Oh my god," you know. "Am I going to be able to do this?" And so, it. . .but I needed. . . and so, when I criticized, and I have done it many times. When I criticize legal education, I do *not* and will never criticize the methodological technique, analytical technique part of it. Because I have found in my work that that is such an important aspect that so many other disciplines lack. They lack the ability that lawyers have. You know, we used to make fun of it about thinking like a lawyer, as being. . . but the problem is the exclusive and soul focus is not adequate. But I would never say that it is not a very critical aspect of what we do in law schools, and I think we oughta. . . that part we oughta be very proud about. The problem is that beyond that, as I said earlier, law schools lacked a soul. They had no focus. They were implicitly driven, and they still are, by a corporate kind of structure and value system where lawyers then go fit into that system, because that's where the money, the prestige, the jobs are. And if you make too many waves, you don't yet become part of that system. You're an outsider on that. So law schools are very leery about ins. . .for people who want to track into those traditional careers, which still means the majority of people. They're very leery about offending the people who pay the bills and hire them. . . hire their students and their graduates, their product. So you know, that's something that's still a problem. You can. . . but you can go too far the other way. You know, if you don't have technique, anybody in any field, if you do *not* have very solid, critical

technique, then you can use all the words and all the empty phrases you want, but it's meaningless. You know, you can have great beliefs, but unless you can implement them, unless you have some ability to achieve your goals analytically and creatively, strategically, you. . . you're just not where you need to be.

Hall: Tell me that original. . . is it Ohio State you went to?

Barnhizer: Yes.

Hall: That original volunteer program. Did it have any standing of any significance in the law, or is it very much a fringe kind of operation?

Barnhizer: Well, it was. . . it was a fringe operation, but it was directed at that time by a woman named Linda Champlian, who went on. She married a wonderful, my wonderful Constitutional Law professor, Alan Schwartz, and they both went on to Rutgers. And she may have spent some time at Hofstra. But she was sor. . . she wasn't really fully on the faculty. Some kind of administrative position which isn't surprising to a clinical. . . in a clinical setting. But she was very supportive, very good, very helpful, even though I was just giving my time. It wasn't for

credit or anything. There may have been a few students who got credit for it. I think there may have been, but I just said I would do it because it was. . . I thought it needed to be done, and it would be a very interesting thing to do. So I mean, that's really what happened there. I mean, it's just. . . Ohio State since then, I think, has. . . I think they do a significant amount of work with clinical programs. They once asked me if I'd come teach there, and I said I would except it's in Columbus. And so. . . I was there for three years. No offense. You can cut this part of the tape, but too many cows in Columbus. That's all there is to it.

Hall: Personal takes are allowed.

Barnhizer: That's right.

Hall: Actually, let me ask you a question. What you're saying \_\_\_\_\_ actually earlier, one thing you said \_\_\_\_\_. I guess \_\_\_\_\_ a lot of people went into clinical legal work one way or another, clinical legal education, really do have that strong sense of wanting fairness to be a value in the law. If clinical legal education hadn't been there in any form, would you have felt at home. . . as at home in the law school?

Barnhizer: Um. . . as a teacher?

Hall: No, \_\_\_\_\_ even as a student \_\_\_\_\_.

Barnhizer: Well I did that in my third year. I just would have left and I don't know what I would have done. I was interested in international activities. I talked to people in the state department. But, I don't think I would have ended up in civil rights activities, legal services work. And that's been a defining. . . the clinical, the legal services, and then my NRDC work, you know, in a professional way, not in my family way. But they are the defining aspects of my life basically and, and I love to be with clinical people and legal services people, people who really are doing things and really commit themselves to doing things. And so yeah, but I would have. . . it made a difference. I have to. . . and I hadn't thought of this for years. I'm glad you're asking this, because I hadn't ever quite associated that. But the opportunities to represent poor people, to represent the students, and to do something that I think was. . . help synthesized, to bring together the theoretical activity and thinking that we had. . . that we had done and had a chance to. . . it made it. . . and I liked being a student. I'm. . . there's no issue in that. But it made it less sterile, and it made it substantive, and it made it have a heart to it. So, yeah, I think that was really part of a defining. . . career defining kind of



opportunity for me.

Hall: Tell me about your experience at Harvard.

Barnhizer: Well that was a classic, because we got there. . . Gary got there basically a month before. They had. . . the Harvard Legal Aid Bureau. . . The Harvard Legal Aid Bureau was respected for year because Harvard did it, right? It was a complete mess. I mean, we went into the Cambridge office where they shot ‘The Defenders’, you know, years ago? We went in. Robby \_\_\_\_ and I went into that office. Steve \_\_\_\_ actually who teaches at DePaul now was one of my students. At that time we did cases together and everything. It was only clinical students. I think that helped to get . . . and he got into that, and I hired him subsequently as a clinical teacher years later. What. . . we walked into that office, and then Robby and I started looking, and a couple of other people started looking at the files, had students all over the place. You have to understand. Cambridge is not an organized place. Harvard is offended by efficiency. And the office is so abysmal. We would go through and we would find. . . if students didn’t want to work on something. . . they really weren’t being supervised. They’d be given case assignments by the lawyers in legal aid, and they would just go bury them in the file cabinets if they didn’t want to spend the time doing it. It was the worst, awful, god-awful, sloppiest, unprofessional mess. So what. . . that’s the

environment into which we went. And then Gary. . . Bea had worked with Gary in California at SC. She was. . . in fact, she was also a reggie in my class. We'd met each other in Haverford in 1969 in our reggie training class, and then somehow just got back. We didn't know each other really well, but then we got back together there. And she showed up. So that was. . . that was a lot of fun. But then, but we walked into this, and Gary set up a very. . . he had the lawyering process concept. He had the case book that was forever in draft on that. We would use that in the process. But it was about the first time that anybody had. . . had taken a coherent approach and examination of lawyering skills, both in the practical and the theo . . . you know, trying to bring them together in a practical and theoretical mixture of that. I mean there had been people who did training manuals. There had been people who did phil. . . philosophical issues on justice. But I think the importance of the lawyering process work that Gary and Bea did was to try to bring us together. You know, they. . . I'm not going to criticize because I think it was very important. It drove a lot of thinking. And it did. I used it for several years in my own teaching when I went to Cleveland State, and it helped shape things. So Gary systematized much more than had been existed before with Bea's help, although she was in, you know like a. . . she was in an LLM fellow, such as a clinical fellow like myself and the others. And, but we did that. He did seminars, we taught the seminars, we each had about, say eight to ten maximum students, 'cause we were also doing courses at the time for the LLM. Probably six to eight. I. . . you know, don't quote me on that one. But you will quote me on that one, so I. . . But that was really. . . we developed

approaches, strategies for supervision, methods of instruction, small class activity feedback mechanisms. So within a y. . . within that first year, basically, we'd taken something that had been a complete mess, you know, *really* bad, and created something. Not only the base, but created a project, a program that that was very, very good. And you know, that continued. I mean, there were a number of people after that. I mean, Marjorie McDermott is at West Virginia. Steve \_\_\_\_\_, who's a magistrate up in. . . he taught at Michigan for three years, but he's a magistrative in Ann Arbor now. Bob Bone, who was with me, stayed in there, stayed in the program for a while. . . after that, maybe even ran it for a little bit. Bob Conlin, who's at Maryland, was one of the early people on that. And then Susan \_\_\_\_\_, about two, three, four years later came in to help run it. Jean \_\_\_\_\_ who ended up marrying Gary, became a very significant part of that. So, it was really just a fascinating time. It was. . . it was a very significant moment in clinical education. And, as I said, if that had not occurred, if Gary had not done it. . . and I praise him for this very much. . . If he had not. . . along with Bea. . . but if he had not systematized and created a greater intellectual base for the clinical strategy and approach, it wouldn't even be close to what it is now.

Hall: Why is that component crucial to the development of clinical legal education?

Barnhizer: The intellectual component? Because, first of all, I can take. . . you asked about

the soul of law school before, and what we learn as professionalism, professional responsibility. . . I can take a simulated method and a classroom method and teach technical skills as well or better. And I do frequently. I teach strategy. I teach trial advocacy. I teach negotiation \_\_\_\_\_. I can do that as well or better than it's done with the clinical program. I can do it more consistently. I can do it more cheaply. I can do it more predictably. I can do it in a better environment. So it's like flight simulation and training. It doesn't mean it's perfect, but it doesn't have the randomness or the sporadic nature of many clinical experiences. You can create something that you can guarantee the students are going to have the opportunity to get a certain. . . certain realm of learning. . . certain categories of learning and enough of it. And clinics sometimes, you know, you have to pay a lot of attention, sort of put a lot of time into doing that. The thing that is unique and special about clinical education is the mixture of social criticism and the connection of self of the person . . . the student in this sense. . . the connection of the self of that person with that body of concern and activity and fact in a real prime, in an actual content. I mean, it's no longer hypothetical. It is. . . it is something for which they are responsible. And it is something that then takes on meaning if the clinical teacher and the student are sincere and honest about what they do, and focus on. . . takes on meaning beyond what you can do in any other context in education. Now when I say that, I'm also say. . . I'm also recogni. . . I mean, people learn in different styles. So when I say that, sure. There are a certain number of people who can learn better in a different way, or will be offended by the clinical methodology because they don't want that closeness.

They don't want that responsibility. And so, and you can't get through them. So they'll turn off because it's very threatening to them. So I'm not saying it's a perfect methodology. I'm saying that it is something that is worth doing and that cannot be done effectively in basically any other vehicle to which we have access on that. So, that's, I think, why it's very important. It's the justice, it's the responsibility, it's the acceptance of responsibility. It is accepting the weight of, really, life. Accepting the fact that you are a professional, and you have these values and you have these responsibilities. And you can fake it in every other way. You know, when it's simply theoretical, when it's simply hypothetical, you can fake. You know, the student, the faculty, you know, they can. . .and we do this all the time. . . we can deceive ourselves as to the nature of how deeply we are engaging with ourselves in the subject matter. I mean we're very good at finessing and self-deception and rationalization. And so, done right in the clinical context, over enough time with the skills of the clinical faculty and the honesty and the sincerity, it helps strip away some of the finessing self-deception. And that's a major part of, I think, what we're responsible for doing.

Hall: You had mentioned that the legal aid office was a mess when you came across it. I suppose \_\_\_\_\_. I was wondering what was your sense of the response as students as the changes were implemented?

Barnhizer: Oh I think the students loved it, mostly. They were very competitive. They still . . . it was a graded clinic. So they wanted the grade. Of course, Harvard has a B+ curve minimum, actually. Most of the students were very excited about it. They felt good about it. They felt it was much more professional. They felt they were getting a lot more out of it. I mean, I had one student whose name will remain anon. . . unsaid who actually was an author along with someone else of very well known annual review of Congress who I tried to give. . . he was not very responsible. . . and I tried to give a D to at Harvard. That was my bad time. I mean, Harvard changed it to a B or a B+ or something. But he completely blew off the course, and I never could tolerate that. So, but I'm not going to defame him anymore than that. So. . .

Hall: Tell me your memories of Gary. What was his role in putting this all together?

Barnhizer: You know, I'll be glad to. I'll just preface that with saying, you know, there are other people, you know. . . I think Gary is one of Bill Pincus is one of the most critical, obviously one of the most critical figures. Jerome Frank historically who . . . I may be old, but I'm not that old. . . I never knew. John Bradway, and then \_\_\_\_\_ who I dealt with toward the end of his career who was at Vanderbilt. I mean they were people who were very important. A guy named. . . I'm gonna answer the question, but I wanna make sure. . . a guy names Mort Cohen who

went to Hawaii. He was at Wayne State early in the '70's, late 60's, 70's went to Hawaii with John. But Mort was an important part of this. Joe Harbaugh, the dean at Nova. Bob Olifant, who is now at William Mitchell. At that time he was heading the clinical program at Minnesota. A guy names Marty Levine who was at Southern California. And George Johnson who was at Southern California with Gary. I mean, these people are all important parts of this. Gary took the work and since. . . as I said. . .this is one of the critical things synthesized it, and that was very critical to what we did. I mean, he pulled everything together. He had a very, very creative way about him on that. And that was a ve. . . I want. . . I praised. . . I want that very clear. But there are other people who also made significant contributions during that time.

As for Gary, Gary is one of the most unusual people I and anybody's who's ever dealt with him knows. I mean, it's like you have a love-hate relationship with Gary because he's brilliant. He's creative. He is warm on the surface, and he is very distant. So, you never know what you're going to get from Gary. He wants to be loved. He wants to be your friend. And that's the way it was back then. And then, but he can't, he can't himself engage in that way. So you know, it was a sad part. A lot of us felt tremendous love for him and still do. But you know, it's something that's just a fundamental part of his personality, and it was unfortunate for him, because it just really held him back to some degree on that. Because he's brilliant, he's a wonderful person in many ways, and he just. . .it's just very hard to deal with.

Hall: In terms of the day to day, actually \_\_\_\_\_ last question \_\_\_\_\_ pulling it all together \_\_\_\_\_ talking about the Harvard program as opposed to clinical legal education as a whole. Bea was described as just like a real dynamo, sort of always on the go.

Barnhizer: Absolutely.

Hall: Yeah, just sort of \_\_\_\_\_. Tell me something a little about that first year, the actual nuts and bolts of putting together the program.

Barnhizer: The nuts and bolts? I mean, I just wanna say , the first year was one of the most exciting, stimulating challenging. . .and this was all due to Gary. . . challenging experiences I think I and the others ever had. I mean it was. . . we had never quite thought about law practice in that way. He brought that. He brought that methodology. I mean we worked with the seminars. We had worked with him for pairing our own seminars, going through in terms of what he was going to teach, meeting regularly about the supervision problems.. . supervision issues. . . getting, because he knew a lot more about that kind of thing than we did. It was just a constant process, a very enriching kind of process.



Hall: How about you? I mean you obviously had come pretty freshly out of law school yourself, and now you're more in effect supervising and teaching other law students. How prepared were you for that experience?

Barnhizer: I was still calling Gary for the next two years or so after I took the Cleveland State job, saying, "Gary, what do I do?" So, you know, even at that time when I started that thing in 19. . . June, July 1972. . . no one was prepared for that. It's like we had to. . . and we spent a lot of time on, and *he* spent a lot of time on teaching us how to supervise. . . what was expected, what were the dynamics, what were the limits, what kinds of goals we were seeking, how to critique. We spent a lot of time on critique and evaluation of students and each other and self-critique and feedback and all kinds of videotape review, so all kinds of the techniques of it, but the strategies of it. And so. . . and Gary was responsible for creating that process. And that, I mean, the classroom part is very important, but the whole. . . you could. . . you could do a clinical program without a classroom component. You should not, but you could. You cannot do a clinical program without the one-to-one teaching and the small group teaching that goes on, because you know, the various models, supervision, and sharing with each other and having other students trust each other enough, and supervisors trust each other enough with the students to be able to communicate their own fears and

their own anxieties. One of the toughest things is, as a new teacher of any sort, and certainly as a new clinical teacher, is having the courage to show your ignorance, and having the courage to let the students know that you know how to get whe. . . or you think you know or you can get the end result, but you're learning, too. Because you have the drive as a teacher to want to be seen as a credible model and . . . authority figure is the wrong word. . . but a credible person who knows what they're doing that these people can fall back on. And in fact, you know, you feel as scared and as ignorant or barely little more than they do. And, you know, there's . . . well, I won't tell you about it. That's enough.

Hall: That was the best answer coming up.

Barnhizer: No. I just had. No, it's just funny. I mean, what do you do when you're a clinical supervisor, and I get a call from one of my students. I'm sitting in the Cambridge Legal Systems office, and this student, who is a law teacher now, said to me, "Okay, now what do I do now? I'm. . . I have to. . . I went to the. . .there was somebody, a client who was getting threatened by a car dealer for non-payment. And that the threat. . . and that they'd repossess the car." The student went, without telling me, went to the car lot, said he wanted to take a test drive, took the car, test drove, called the guy, the owner of the car lot back and said, "Okay I have your car. Now will you talk to me about this client?" It was a

fascinating negotiation strategy that in many developing countries in which I work would work exceptionally well. But, you know, in this situation, you know some say, “How do you create a model, a professional responsibility in that situation? No, so I can’t tell you who that one is either, but, cause he’s still around. No, that’s fascinating. I mean it really. . .

Hall: I wanna ask you, with the relationships that you formed with your students or, you know, that were formed generally in the clinical context, were they materially different from the relationships that typically were formed with uh. . .

Barnhizer: Absolutely.

Hall: So tell me a little bit about that.

Barnhizer: Um. . . they still, I mean. . . Bruce Freedman who was one of my students who just died a couple of years ago. He was in New Hampshire. He was one of my clinical students. Henry Hecht who teaches out at Berkeley was one of my clinical students. Ron Simon who teaches at American was one of my clinical students. I mean, and there are a number of others. And we still remember each

other, just as Steve \_\_\_\_\_ as I said was one of my clinical students, teaches at DePaul. Even. . . and I noticed, because I don't do. . . I do an Environmental Law clinic now, but I don't do the intensive close clinic that we did then. And I still remember clinical students now who come up to me at alumni gatherings and everything else from 20, 25 years ago. And they remember me, I remember them. And as a law teacher, I basically remember other students in my other classes perhaps for a year to two years. And, I mean, that's the real difference in the dynamic, because you bec. . . and I don't want to call it friendship, because a lot of the times it does become that, but you have to maintain a distance. But there's a. . . there's a closeness and a human contact and then knowing each other that you have in a clinical. . . in a clinical teaching setting that you basically. . . I mean, I'm not saying it never occurs in others settings, but it is far less likely to occur. And so the mentoring relationships. . . and mentoring becomes, you know, the extension of that. Mentoring, because it has gone downhill so much in law firms, a lot of students, young lawyers just simply do not have a real support structure. And when they want to. . . when they want to talk to somebody about, you know, "What do I do, how do I do this," and so on, they don't have anywhere to go. They don't have anyone to trust. And so often, you know, the trust becomes a very important part of a relationship. So with clinical students, you still have that kind of trust relationship and you communicate, so it's a very different dynamic, a very positive one.

Hall: David, during that first year at Harvard, are there any cases that really stay in

your mind? I mean, beyond the borrowed car?

Barnhizer: Yeah. My first trial with a clinical student there. It was in District Court, not the Superior Court, but it was a District Court in Boston, in Cambridge. But you know, Boston and Cambridge are dominated by. . . and I come from a steel mill background, a blue-collar background. . . they're dominated by the Ir. . . the political system. . . dominated by the Irish and the Italians and that, and so. . . they're very basic, blue-collar political animals in Boston. And I like 'em fine. But this first trial, I came. . . I grew up in Ohio. I grew up in Youngstown, worked in the steel mills, went to law school, went out to Colorado, and then came back to Boston. And so I was comfortable with the people, but the judge was. . . it was funny, because it was a criminal trial where a guy named Phil \_\_\_\_\_ and I. . . he was a student. . . we had to try the case. We prepped it. It was a police claim, disorderly conduct, assault on a police officer and the like. . . were two guys: James. . . I don't know how I remember this. . . James \_\_\_\_\_ and another guy names \_\_\_\_\_ had been sort of squatting in. . . in a building, and the police and landlord told them to leave, and they . . . but they didn't create an. . . a timely eviction order, but the police went in and beat 'em up and took 'em and then charged them as police will do with disorderly conduct and assault. . . and they assaulting the police officers, and accused them of hit. . . attacking the police with a hammer, which was \_\_\_\_\_. It was not a jury trial. The judge was so conservative, you know, in a reactionary way, that he was going to do anything

the police told him. The police. . . I asked for a separation of witnesses. There were about 15, 20 police officers in uniform in the court room. They chose to go in, and the judge let 'em sit in the jury box. You know, and I said this is, you know. . . I tried to get 'em. . . I said, "We don't need that," you know, "I know what I'm doing." And it's a judge only. . . it was a judge only trial so what do you do? The judge can do basically what the hell he wants to do. So, you know, the cops are sitting there as jurors in uniform with guns, and you know, these guys long hair, beards. . . my clients. . . you know, long hair, beards, were testifying, and the cops would snicker, and I would object, and the judge would say, "Overruled." This was the first introduction to it. And we basically won because two reasons. He gave us a \$50 fine, but we appealed that anyway, because it was a situation where it was a matter of law. We were gonna win on appeal. The judge knew it, so his ruling was guilty, but he tried to make it so we just accepted and not take it on appeal. So we took it on appeal and we won anyway. But even did that, it was fun because halfway through, when they were talking about assault on the police with a hammer, I looked at the hammer and it was hanging. The head was hanging on the shaft, the middle shaft, by about a quarter inch, and it was flopping. And so, I'm looking at it, and I'm saying, and all of a sudden I said, "Your honor, if this hammer," and I snapped the top off, "If this hammer was used in any way, you would have broke it." You know, the police were completely lying. And even the judge had to crack up at that one. I mean it was just a pathetic bunch of lies by the cops. You know, now how can you . . . with students. . . how can you compare the sterility of anything we can do

with simulation with that kind of. . . with that kind of an environment? I'm not saying that it's al like that, but I've handled so many weird cases that there have been enough like that. And you can't create the same kind of experiences. And so you take those, you use 'em. You can use that to show and make the students understand. There's about 10 or 12 students observing. Then too, Phil was. . . did about two-thirds of the trial with a student. But you cannot. . . you can use that as a vehicle where they actually experience it, and see it, and it's real. It's not just, god, how can you make this up, you know on this? And so that's the kind of thing, the liveness and the reality of that is how you teach. Clinical teaching is about using reality to be able to make people understand, you know, the kind of life they're going to be living, and the rules of that, and help other people behave.

Hall: I need to jump ahead. I'm not sure how far I'm jumping ahead. You were the second hand to the clinical section. And so if you take the one dot of you being at Harvard and the becoming the head of the section at the second dot, what happened in between to connect those two?

Barnhizer: Um. . . I went to Cleveland State. We did some conferencing in Buckhill Falls. CLEPR did Buckhill Falls conference in 1973. I was doing writing on. . . and Gary Palm was also very active in Chicago. . . I was doing writing on clinical

activities, thinking and everything. I mean, it wasn't enough at that time. Gary's thing had been very good. It was very good, and a lot of us used it. But people still didn't have a real sense of what you could call a clinical methodology or set of methodologies or function of it. They had, you know, it focusing, but it just wasn't there yet. I did a lot of work on that. And so somehow I left a meeting, an AALS meeting in Washington, to go to lunch. I came back, and the rest of the clinical people told me that they just elected me chair of the clinical section. I said, "Thanks." And so, you know, that I was gonna start next year, in '75 or something. So, and then so that was the bridge there. And then so I did some connecting with people: Gary and Joe, and Judy Potter at Maine, Gary Bellow, Steve \_\_\_\_ at Michigan, Bob Conlin, brought them together as a group and we got things ready. Then in '76, I had talked to the . . . as soon as I started, I convinced the AALS to let me try to raise money for the clin. . . a series of AALS clinical conferences, 'cause in my mind, it was necessary if this was gonna be any movement at all, you had to be able to get the clinical people together. Most of the cli. . . most of the law schools were not treating clinical teachers as faculty so. . . not as serious faculty, so they didn't even pay their expenses to go to conferences and everything. So, Millard \_\_\_\_ at the AA. . . who was head of the AALS said, "Okay David. You can do it." So I went out to Bill Pincus. He gave money for a 3-year grant to pay for clinical teachers. So we did three clinical conferences. The first one was in Cleveland in '77. The second was in D.C. in '78. And the third one was in Snowmass, Aspen in '79. Then we did the Key Biscayne, CLEPR's going away thing in October of '79. So Bill did that, but the



key thing was the AALS sponsored it. So that helped legitimate it. And CLEPR's grant paid for bringing clinical teachers there. And then we embarrassed the schools enough that they began to pay for the clinical teachers coming. And then in the same grant series, Bill. . . I got Bill to agree to fund the AALS/ABA Guidelines doing guidelines projects that I talked Millard into supporting if I could get funding for it. So he did that, and then we talked Bob McKay into chairing it. And so then so that created a two and a half, three year process that \_\_\_\_\_. So, it was a very important time.

Hall: If I could bring your attention to sort of the very beginning of when you had found out that you had been elected by a claim at lunchtime. . .

Barnhizer: (interjecting) When I wasn't there.

Hall: Exactly. What was your sense, or what was the sense of you and your colleagues of what the biggest voids were? Or what was even the state of the section when you took it over in terms of significant. . .

Barnhizer: Um. . . it was small. It was weak. And, I'm amazed to go to the luncheon

yesterday and see, you know, and hear that there are 1200 and some clinical teachers, because you know, there were basically 30 or 40 people around on that. So, I. . . I don't think it had much stature. I *know* it didn't have much stature at that time. It was. . . it was a very inactive kind of section. It would do a sort of program that the AALS had done it for a year or two, you know, a clinical section meeting, but that was it basically.

Hall: And in terms of just the needs of people in your shoes as a clinical teacher, what were the most pressing needs of that when you first took it over?

Barnhizer: I think a sense of political will; a sense of coherence; a sense of strength; a sense of momentum; a sense of. . . and this is one reason I wrote the things I wrote. . . a need to understand the importance of it. You know, in the context of what law schools were about and what it had to offer. There was not enough. . . there was a lot of. . . and this is why Bill's original speech that I mentioned earlier, Bill Pincus' original speech was I think so important. But he wasn't running around enough to law professors and then clinical educators *still* feel second class. But *then* they probably felt third or fourth class. I meant they were absolutely beyond marginalization. And so I think you can talk about technique, and we did a lot of that. And you can talk about methodology. We did a lot of that. But we had to focus on something that gave clinical teachers a *real* understanding. Not

propaganda, but a real understanding of the weaknesses of traditional legal education, the things it did not do, and the special thing that can be done. . . and I still feel very strongly about this . . . the special thing that can be done by clinical education as a strategy of learning, as a strategy of teaching. But that I think was the greatest thing. The rest of the stuff is technical. There's money, managerial kinds of things. And you know, that's relatively easy to do that. It has been done. But I think the sense that you are worth something. . . what you're doing is not only valid and legitimate but vital. . . is a critical aspect of that.

Hall: The. . . I get the sense that a lot of schools, that if the Ford money hadn't come through, there just would not have been a clinical pro. . .

Barnhizer: CLEPRmen?

Hall: Yeah. Or even with a \_\_\_\_\_. You \_\_\_\_ had a program here, but not necessarily a law school that was that supportive of the program.

Barnhizer: Right. Right.

Hall: Maybe I guess as a result of the work you did, what have been the biggest milestones in that changing? 'Cause it's certainly more integrated now than 30 years ago.

Barnhizer: It's more integrated, but that's almost. . . in some ways that's almost a danger. You know the funny thing is, when you're talking about clinical. . . and I said for years, clinical is vital. The clinical education has had a profound impact on legal education, but you can't see it because it's been. . . it's like \_\_\_\_\_ Freedman once said, you know, that originally when he started writing about monetary theory and monetarism and that kind of thing in economics, people made fun of him. You know, the other economists made fun of him. And so that went on for a while. And then part way through that process, they stopped making \_\_\_\_\_ and said, "Okay, maybe there's some ideas." You know, they made fun of his ideas originally. Then they started the second part. They accepted some of his ideas, they still made fun of him. The third part, they took the ideas and pretended they were theirs. And so, you know, this is a major part of what has happened in legal education where, when I see 25, 30 years ago, the fundamental issues that clinical education. . . professionalism, professional responsibility, social justice. . . I'm not saying they didn't exist in other courses to some degree, but there has been *nothing* that has driven those processes into the law schools in the way that has occurred through the analysis and the work of clinical educators that has then

been taken, spread out through the rest of the curriculum, become acceptable. And the whole professional responsibility movement, for example. . . the professionalism movement. . . as far as I'm concerned, the ground, the seed of it was totally laid by the clinical movement. And so there ha. . . and the ADR, the trials, the major part of the trial skills. . . NITA had something to do with trial, but CLEPR even funded NITA's start. You understand they gave them a lot of money, and they even sent me out to NITA when I first started on that. They paid . . . they took \_\_\_\_ a lot of clinical teachers out there because that was a way to help train and make connections for clinical teachers. So that was in the early '70's there too. So, to me there's been no, you know. . . there may be like three. . . we can have four if we're talking about the diversity movement, which is in many ways a healthy movement, but more incoherent movement since it has so many pieces of it. But you talked about \_\_\_\_\_. You talked about legal realism. You talked about the clinical movement, and you can talk about which diversity difference movement. Those are the four fundamental aspects of it in \_\_\_\_\_, you know, \_\_\_\_\_.

Hall: David, during that time when you took over the section and you're trying to, in effect, almost give people an argument for their reason \_\_\_\_\_, what were the kinds of messages you communicated?

Barnhizer: Well I tend to be pretty outspoken, and you know, the fundamental things. . . same thing Gary was tal. . . Bill Pincus were talking about: social justice, critique of legal education itself. I never took the position. . . as I said earlier. . . I never took the position that thinking like a lawyer is bad. I said it's not enough. You know, and that it has its limits. And it cannot be the sole justification of what we do. So, virtually everybody who got in to clinical education in the late '60's, early '70's, did it because they wanted to reform society, and they saw the law schools and the legal profession as a fundamental way. . . pathway to reforming that. And you know, we over-fought, we overstated what we were capable of doing, no question about that, you know, by far. But we have had a significant impact on various aspects of it. But the, you know. . . not nearly as much as kids, which was what we were at that time . . . would think or hope that we thought we were going to do. But that's just the way life goes. So, you know, the justice issues, the reform issues, the political issues, the professional responsibility issues, the uniqueness. . . and so the uniqueness of clinical education as a vehicle to achieve these goals or at least move in the direction of achieving these goals, I mean that's a method that they think. I mean it was designed to achieve these goals. . . to inject or infuse the curriculum and the legal profession with these beliefs and attitudes on that, and to have an impact in that way. So it was no accident that we were all civil rights, legal services, public defender \_\_\_\_\_. Now that's. . . to some degree that's changed. Not completely, but to some degree.

Hall: Actually, one of the things we've asked everybody: how would you even define clinical legal education? Do you think of it as a teaching. . . teaching methodology, or a social justice movement, or how do you look at it?

Barnhizer: Well *now* I think it's a teaching methodology. Then I thought it was a social justice movement that was a critical element of which was a teaching methodology. You know, because by teaching methodology, recognize that the cases that we were, the cases and clients that we were able to handle, and that we were expected to handle, it wasn't a methodology without a predictable substance. . . substance were the cases and the clients and the nature of the issues we handled. So you had a methodology, but there was a substantive background/backdrop. . . political backdrop to that in terms of race, in terms of poverty, in terms of injustice, in terms of criminal issues and things like that, and test litigation, but not all test litigation by far. So it was something that. . . it's impossible at that time to *really* separate the substantive, political message from the methodology. And that, you know, that's in what many ways is a strength, and some ways it's a weakness.

Hall: Okay. You had mentioned a number of people you felt were very influential. But from '69, or late '60's to the present, what would you consider

\_\_\_\_\_ to be the biggest milestones in the evolution of clinical legal education?

Barnhizer: The biggest milestones?

Hall: Mm-hmm.

Barnhizer: Um. . . Gary's program was one. Buckhill Falls meeting in '73 was another. 'Cause you have to remember that CLEPR designed its meetings to bring together the ABA section on legal education, you know, Professional. . . whatever they call it now. . . bring together that. He was very active on that. He was always. . . part of his strategy involved the ABA, because he recognized that law schools on their own will never change. And so he was constantly pressuring them through influencing the ABA. And so the section on legal educa. . . *section* on legal education admissions to the Bar. So part of that. . . Remember, legal education is one part of it. The state Supreme Court justices were another critical part of what he. . . what his strategy involves. So you know, Bill had a completely coherent strategy. He was attempting to. . . to use State Bar examiners, for example. They were *always* at his conferences. The judiciary were always at his conferences. Political figures were always at his conferences. And the organized



law school, the AALS, hated it. You know it's funny. Yesterday. . .for example, yesterday. . .

Sandy, were you at the. . .?

No. Okay, yesterday, \_\_\_\_\_ who is also a major figure in the \_\_\_\_\_ was given the Pincus Prize for excellence in that. Just as an aside, I got the first Pincus Prize. That's what we called it then. But yesterday was the first time that the AALS allowed the name legally to be used on it. When I created it. . . I created this thing about 20 years ago before I stopped it, it was \_\_\_\_\_ and got the AALS to agree to it. But they *refused* to put Bill Pincus' name on it. Because they give him grudging respect, but they hated him. That's the reality of it. I mean, because he caused them and the law schools so. . . I mean, the AALS is a trade association of deans and things like that. They're not really what you think about it. They're an association of law schools that's made \_\_\_\_\_ for them. Bill did more than anybody else you can imagine he did. That's the single most important aspect of it. So only now, after 20 years of an award, are they willing to formally legitimate the use of his name on that award, which I find amusing. Not surprising, just amusing. So, you know anyway, back to that Buckhill Falls, the whole str. . . that was part of Bill's whole strategy. I think my three terms as head of the clinical section was critical, because one would not have been enough. It required getting the conferences together, getting. . . and the clinical people understood that. That's why, you know, they allowed me to do that. Getting the

conferences together, getting the base together, getting the Guidelines Study together, getting the awards. And then John Kramer. . . he was successful in convincing, along with the aid of Dan \_\_\_\_\_ who's at Drake now. . . convincing Neil Smith, who was the Congressman from Iowa, to really push, the cli. . . the Federal Clinical Funding bill. So, I would say Bill's entire thing, Gary's setting up at Harvard because that then legitimated clinical education. That was the importance of that. You know, the methodology, yeah. But without it being at Harvard, it would have been. . . since Harvard did it in a very important way, it was okay for other schools to do it. So that became a very critical aspect of it. Bill's con. . . set of conferences that he would do, but his *political* strategy was critical to it. And I say this very humbly. My three years, you know, in leading clinical teachers, I think, was a very critical thing. John's lobbying successfully for the federal funding was absolutely vital. And that was it. And the Guidelines Study. The Guidelines Study. Because the Guidelines Study kept the ABA in the game. And that's why when I talked to Miller to create the Guidelines Study, I didn't want it to only be AALS. I said, you know, I want the ABA to be part of this too, and then that brought that in. And that then put clinical people on the ABA. . . the section managing committee, 'cause that's where *really* a lot of the work is done. You know, everybody thinks it gets done in the law schools. But it doesn't. It gets done at the ABA level. And that was. . . that was a critical aspect of it.

Hall: Can. . . I wanna ask you one thing. You said you were in Key Biscayne in '79 when the CLEPR money ran out. Was there anything significant that was done at that meeting?

Barnhizer: Um. . . well we had tried to get CLEPR re-authorized. We tried to get more money, and tried to get the AALS to back CLEPR with Ford. Ford really wasn't gonna \_\_\_\_\_ away money left for a year or two or so. That was the key thing. But the answer to that is, I mean, there was a lot of give-and-take, there were a lot of presentations, but it was really the end of the. . . end of the time. We knew by then that the federal money was gonna be there, so people weren't as frantic as they might have been otherwise. We spent. . . spent three or four years a lot of us, reading, you know, going for the Department of Education which is. . . administered the funding and evaluating programs, and that was a useful process for a lot of us for the next two, three, four years. And then other people did it later. But it's funny. And you'll have to educate me on this, 'cause I talked to Elliott on this. I left clinical education for about. . . and did. . . went to NRDC, taught a lot of different things for about eight or ten years after 1981 basically. And then when I came back to a conference, and Sandy, I'd really like to hear your historical take on this. . . when I came back to . . . from a conference, or to a conference of clinical teachers, everybody was talking about the Key Biscayne group. Now I was. . . and this was. . . and some people are not going to take this well. . . but I was still chair of the clinical section at that time. I was

turning it over. I was a \_\_\_\_\_ at . . . in Key Biscayne. I mean I worked with a lot of the people and constantly worked with that. I was there. I was there in everything. I'm supposed to be *part* of the Key Biscayne group. I didn't even know it existed 'til . . . it's like, it's like this. . . I'm trying to figure out for years. I told Elliott this a year or two ago. I was trying to figure out this revision of history that had occurred. Because he told me Elliott who's writing a thing on history. So I sent . . . I went through these things, and I sent a packet to him. And I said. . . he said, "Key Biscayne happened in what, '77, '78?" I said, "No Elliott. It happened in October 1979." He said, "No, you can't be right because it did all these other things." And I said, "No, it didn't do that. We did 'em before that." And he's saying, "But I'm sure it happened in 1978. And I said, "Elliott, I have the thing. Here's the thing." You know, "Here's the program, here's the. . . October 10. . . 9 and 10, 1979." And so he finally agreed. And I did not find out that the Key Biscayne group, which I had. . . sort of have a sense of what it is now and who was on it. But I know I'm told I'm on it, I didn't even know it existed. So, you can cut this from the tape, but you understand what I mean? Yeah. I mean, it just, it really amazed me because I didn't know. I mean it just. . . I mean the people who then feel like they're part of the Key Biscayne group, and you know who. . . Gary and other people, they've done wonderful work. But I'm just. . . I didn't even know it was there. And I was there all the time. So, at least through 1981.

Hall: That was a moment in history, \_\_\_\_ a dramatic moment in history.

Barnhizer: No, that's what I'm. . . that's what I'm saying! I assumed that was part of your question. The formation of the Key Biscayne group. And I was there, and it wasn't done. I mean we were sitting around tables and everything and talking, but you know, there were people *at* who may have subsequently names themselves the Key Biscayne group, but news to me.

Hall: David, looking. . . I know you've grown more distant from it, or were away for a while.

Barnhizer: But I still love it.

Hall: When you look at the relative sense of where clinical legal education fits into the larger scheme now compared to when you first were taking over the section, how many of your goals do you think have actually been achieved over time?

Barnhizer: I say this in a partial state of ignorance, because I talk to clinical people, I do

*some* clinical stuff, but I'm no longer involved in the political maneuvering and structuring and everything that goes on. And my sense. . . You know, a lot of what. . . It's almost impossible to evaluate. I mean first of all, go back to the point. A lot of our major contribution has rippled throughout the curriculum and teaching method. People use methods that we created. The simulations are by people. . . *mostly* by clinical people. We did this. We did the work on the attention to professional responsibility. I'm not saying it's *all* clinical, but I'm saying that a major part of the impetus for this stuff was generated throughout the rest of the curriculum and teaching strategies and approaches were generated by clinical teachers. You know, writing stuff, doing stuff, showing people. I spent years showing other teachers how, you know, the kinds of things that we used in teaching. Law teachers don't tend to be very reflective in their teaching. So you know, you look at it, and you show them anything that seems to work and make. . . more exciting and more dynamic, they get very excited about that. You know, at least the ones who *want* to be good teachers. But they, you know, most law teachers do not understand law teaching. So, you know, we've made a major contribution in that. So it's, you know, sort of a collateral consequence impact, but a very fundamental, important one. The diversity aspect of it. . . but I'm not gonna go too far on that because we have brought people into teaching who would never have been in teaching before. The problem is that a lot of them are still blocked from movement throughout the entire faculty. So, there were multiple diversity movements. There was a clinical one which had some overflow into the rest of the curriculum, the rest of the teaching faculty, and

certainly \_\_\_\_\_ administrators and things like that. But there was a simultaneous effort going on with women and minorities being hired as faculty for other causes. You know, because the clinic was. . . it was just reflective in many ways of what was going on in the rest of the society. So, you know, it had that. And so it had the teaching methods. You know, my sense, and you guys would have to. . . you know, I'm not the best person to ask this. But my sense, and I have talked to people about it, is that clinical programs tend to be very specialized now, many of them. . . most of them . . . and tend to be very peripheral to law schools. That they have not penetrated as programs. As live client programs, they have not have. . . they have not penetrated the awareness of the rest of the faculty. And that's my sense. You know, they do fascinating stuff. They do very important stuff. But they're sort of still tend to be on their own, you know, still sort of a compartment right there. You. . . and you talk about \_\_\_\_\_ to the. . . appendages to the law school, they could still be cut off and removed, sort of like a little tumor.