Transcription of the Oral History Interview with
Robert Condlin
January 4, 2003

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

Condlin: Do you mean as a student or as a teacher?

Ogilvy: I mean your first exposure.

Condlin: My first exposure wasn't really in an educational program. I worked in the Denver Model City's program after my second year of law school representing a Police Community Relations Committee and that experience was the first time a lot of law school class material made sense to me. It was such a good experience, in fact, that in my senior year of law school I registered for classes in Boston, returned to Denver and worked for the Committee all semester, and then returned to Boston to take end-of-semester exams. I prepared by reading the case books from beginning to end before each exam. While formally in law school in Boston therefore, I was in fact working in Denver and having a great time. Developmentally, being in the field in Denver was much more important to me than being in the classroom in Boston. That was when it hit me that doing stuff was critical to understanding it.

Ogilvy: How did you get the position in the first place?

Condlin: I wanted to work in Denver. I had work-study money for the summer that I could use anywhere, so I made contacts with Denver Law School faculty members through my professors at B.C., and through them ended up working for the Police Community Relations Committee.

Ogilvy: What attracted you to Denver?

Condlin: I had never been there but had heard great stories about the Rockies. I had grown up in the Adirondacks in upstate New York and I wanted to see the Rockies.

Ogilvy: That's great.

Condlin: One experience in particular stood out. I was negotiating with a lawyer for the Denver Police Department on behalf of the Committee over the number and types of police patrols that should be permitted in certain City neighborhoods. We met for the first time at the lawyer's suburban home, around a table next to a pool in

his backyard. Just after we sat down for the first time he pulled an old fashion six-shooter out of a holster on his hip and slammed it down on the table. It was straight out of a western movie. I burst out laughing, since it had all sorts of funny associations for me, but the guy didn't think it was funny and got really pissed at me. I probably set back the negotiation back a month or so, but it was so funny I couldn't help myself. That was my first memorable clinical experience.

Ogilvy: It sounds like you had a great deal of responsibility.

Condlin: In retrospect, that's probably true. I think the Committee had had trouble getting legal representation. For Denver Law School students, the work probably was too close to home to be interesting, and I was from "back East." There was a certain cachet in not being local and so for that and a whole set of reasons good and bad, I ended up being a kind of attorney of record for the Committee. It was a great experience, and so much more important to me than being in law school classes.

Ogilvy: Did Boston College have any clinical programs at that time?

Condlin: It had had a student run legal aid bureau for a long time, and students got one or

two credits for working in it for a semester. But it had no formal clinical courses as such. This was nineteen sixty-eight, and it would be another four years before the School created the full semester Urban Legal Laboratory program that I ended up directing. My first clinical experience in a law school course as such was trying a case in the Newton District Court on behalf of a woman named Mrs. Caliri while directing the ULL. We were able to keep her in her apartment for probably six months beyond the time the landlord wanted her out, raising defenses the Court probably didn't hear all the time. But, the Denver experience was first time I put theory and practice together.

Ogilvy: What did you do after graduation?

Condlin: I worked for the Massachusetts Attorney General's office as an Assistant Attorney General. It was a great office. The Assistant AGs I started with included future U.S. Senators, Massachusetts Governors, Supreme Judicial Court Justices, and the like. Elliott Richardson was the outgoing AG and Bob Quinn was the incoming one. Both took the position that we should do good work irrespective of politics. Richardson in particular was going to be in office for a short time. As a Republican he had a limited political future in Massachusetts and decided to use his time in office to do good things. So, I had a great case load. I defended the first anti-snub zoning statute in the country, brought an original action in the US Supreme Court challenging the constitutionality of the

Viet Nam war, and defended the Massachusetts birth control statute so successfully that I created the precedent that made the Supreme Court decision in Baird v. Bellotti possible. I represented State administrative agencies, constitutional officers, and boards of regulation, and also had a docket of free-standing civil cases, mostly constitutional challenges to state laws. I argued in the First Circuit and Massachusetts SJC frequently, usually once month when the Courts were in session.

Ogilvy: How were the cases assigned. Was it something you could kind of fish for?

Condlin: The Civil Division of the Office was small, maybe ten people, and the head of the Division pretty much parceled stuff out based upon who had a background in a particular area of law. I got the Viet Nam War case because I had written a brief on the topic and argued it as a member of the BC Law School team in the National Moot Court Competition during my third year in law school. When the case came into the Office I had a background in the law, so it was assigned to me.

Ogilvy: Yeah.

Condlin: It was an exciting case.

Ogilvy: Yeah.

Condlin: The Office gave me a chance to work on important matters from the outset of my law practice, and to write and argue at the highest levels. In some ways, it gave me a chance to start my career at a point where I would have thought I'd be lucky to end it.

Ogilvy: Your Supreme Court case; did you actually argue it?

Condlin: Nope. It was an original action in the Court, asking the Court to take jurisdiction in the first instance, and as such was submitted on briefs. Had the Court taken jurisdiction I would have argued it, but it did not. We had a big ceremonial filing ceremony though, covered by all the major newspapers, and Justice Stewart invited us into his chambers to discuss the case and the War at length, but there was no formal argument to the Court. The decision of the Court denying jurisdiction in in volume 400 of the U.S. Reports.

Ogilvy: What's the name of the case?

Condlin: It's Massachusetts v. Laird. Melvin Laird was the Secretary of Defense at the time.

Ogilvy: Okay. Okay.

Condlin: We couldn't sue the government in name because of immunity problems, so we sued the officer in charge of sending Massachusetts citizens to Viet Nam. After we lost on jurisdiction we filed the case in the Massachusetts District Court, lost on the merits there, took an appeal to the First Circuit, and lost again. I got to argue the merits of the case to Judge Charles Wyzanski in the District Court and a panel chaired by Judge Frank Coffin in the Court of Appeals. Wyzanski was regarded widely at the time as one of the best Federal District Court judges in the Country.

Ogilvy: What was the experience like in the Supreme Court?

Condlin: It wasn't as awesome as you might expect. The courtroom itself was a lot smaller than a lot of other courtrooms I'd been in. Mostly, there were just more people

everywhere. All in all, it was a pretty underwhelming experience. We got three dissents, from Justices Douglas, Stewart, and Harlan, and that was a lot more than we expected. We had always viewed the case as more of a political phenomenon than a legal one; just another political pressure point for ending the War. None of us thought the Supreme Court was going to declare the War unconstitutional. We saw the case as another one of the thousands of fires people were lighting everywhere to pressure the government to get out of Viet Nam. For me, it was a chance to see places I'd otherwise never see, meet people I'd otherwise never meet, and develop an expertise I'd otherwise never use. I knew original jurisdiction law pretty well back then. The lawyer on the other side, from the S.G.'s Office, was Peter Strauss who went on to be a professor at Columbia. I've never talked with him since then.

Ogilvy: What did you do after the Massachusetts AG's office?

Condlin: While in the office I was approached by BC Law School to design and direct a full semester clinical program the School had received a CLEPR grant to establish. That was when I first entered clinical teaching. The program was called the Urban Legal Laboratory, or ULL. I think it still operates at BC, though I'm not sure about that. Students took the course for fifteen credits and for a full semester. They worked out the ofices of the Massachusetts Lawyers Committee for Civil Rights in Park Square, Boston, and their caseload consisted of Lawyers

Committee cases. The Lawyers Committee partnered with Boston area law firms on what at the time would have been called "law reform" cases, cases intended to make structural legal reforms for the benefit of low-income citizens generally. In a given case students would work in tandem with, and be supervised by, a Lawyers Committee staff lawyer, a cooperating law firm lawyer and me. I taught a three-hour seminar each week based on issues common to all of the students' cases and practice skills all of the students were called upon to use.

Ogilvy: On what or who did you model your teaching?

Condlin: You know, I really don't know. I'd never had a clinical course as such. Early on, at the School's prompting, I went to a lot of conferences on law teaching, and they were sometimes helpful. But for the most part I tried to imitate my own best teachers, and the most prominent of those was Arthur Berney. Arthur was the farthest left politically on the BC faculty, and he taught his courses from a public justice and civil rights perspective. So inevitably, I took a lot of my guidance from the way he taught, but in truth, I was so overwhelmed by what I needed to know substantively that I was not focused at all on how I should be teaching it. It was hard enough just to know what to talk about in the classes, without being concerned about presentation.

Ogilvy: And how was the supervision of the student structured?

Condlin: Everyone got involved in different ways. The students and I kept nine to five hours at the Lawyers Committee offices, not at the school, and all of us would talk with one another about the cases on an ongoing basis. Periodically, and in a more structured way, the students would meet with the outside lawyers in the cooperating law firms to discuss legal memos, pleadings, and other documents the students had drafted, and sit in on depositions, client and witness interviews, and bargaining sessions the lawyers conducted with adverse lawyers. I would discuss the students' work with the outside attorneys over the phone, or in person, on a regular basis, but always at least once a week. We kept things pretty informal, all of us had busy schedules, and if any of us saw that a student was having difficulties, dealing with them moved to the front burner. The students who took the course tended to be the most academically successful and responsible members of the BC student body and so there were only a few who didn't work out. When that happened, I would adjust case responsibilities accordingly, reassigning teams, working directly on cases myself, or asking the outside lawyers to take a more active role. As a rule, the outside lawyers were terrific. They too were self-selected for the work.

Ogilvy: How much responsibility were the students given?

Condlin: A lot, but running the program convinced me that you can never give students enough responsibility to convince them that they are being taken seriously. For example, we had a case involving the construction of a reflecting pool and office tower on the grounds of the Christian Science mother church in the Fenway neighborhood of Boston, in close proximity to Boston Symphony Hall. In the course of a single semester a group of students in the ULL drafted a federal complaint in the matter, briefed a motion for a preliminary injunction, observed the evidentiary hearing and argument on the motion, took an interlocutory appeal to the First Circuit, briefed the appeal, watched the oral argument on appeal, and observed a multi-day trial in the matter in the District Court when the First Circuit denied the appeal. At the end of the semester the students who had worked on the case were upset because they did not consider the case truly theirs, because other students in a prior semester had done the preliminary fact investigation and identified the legal theories used and argued in the case. The second group of students felt short-changed by their clinical experience. That experience convinced me that no matter what kind of opportunities students are given in a clinical course, there always be those who think it was inadequate; that other students did better than they did.

The case itself was a front-page type story. The Church wanted to build a reflecting pool and office tower on land occupied by 400 units of low-income housing and had enlisted the City of Boston to take the land by eminent domain to make that possible. The students, working with lawyers from a cooperating

law firm, represented a tenant's association made up of the occupants of the housing. At first, the Church and City wouldn't negotiate with the association over adequate replacement housing. So, borrowing a tactic from Saul Alinsky, members of the tenant's association went to a Christian Science meeting and stood up and spoke from the floor, asking the Church leaders why they were displacing low income residents to build a pool. This came as news to most of the congregation and shortly after that the Church leaders agreed to meet with members of the tenant's association and its lawyers, including some of the students, to discuss the matter, as long as the neighborhood residents would stop disrupting Christian Science services, as the Church leaders put it. The students had had the clinical experience of a lifetime, but they had no sense of that. They were focused only on what they hadn't done and not on what they had.

Ogilvy: What was your status at the law school?

Condlin: Well, I'm not really sure. The program was not part of the School's formal curriculum, was funded with grant money, and existed in a probationary state. I was the Director of the program, but it was not clear what that meant in terms of faculty status. I definitely was not on the tenure track, and I'm not sure if I was considered an adjunct or not. At the end of the two-year probationary period the School agreed to make the program a permanent part of the formal curriculum, to finance it out of law school operating revenue, and to turn the Director's position

into a regular faculty slot. I left at that point to go to the Teaching Fellow program at Harvard and work with Gary Bellow. Gary Laser, who eventually went on to Chicago Kent Law School, succeeded me in the position for a couple of years, and then I think Bob Blooms took it over after Gary left it.

Ogilvy: Because it was a CLEPR grant did you have any contact with Bill Pincus at the time?

Condlin: I first met him at the Buck Hill Falls Conference in 1972 and saw and talked with him periodically after that. CLEPR had funded a series of tapes that Andy Watson made on clinical case taxonomy, Andy was a good friend, and I used to see Bill in conjunction with Andy's project. But most of my dealings with CLEPR were with Lester Brickman, who was the CLEPR point guy for most on-site matters. He even attended a few of my ULL classes.

Ogilvy: Tell me a little bit about Buck Hill Falls. What do you remember about that?

Condlin: It was exciting because I was new to clinical teaching, didn't know anyone in the field, and saw the Conference as a chance to get connected. I went with Arthur Berney, who knew everyone, and he introduced me around. What I remember

about the Conference content itself is that it consisted of a series of presentations describing the wide variety of programs people were running, and how reinforcing and supportive of one another that was. It was a time when clinical programs were under attack on most faculties and it was good to be with a group who made you feel good about what you were doing, and to realize that there was a lot good going on. But mostly I remember the Conference for the opportunity to meet Gary Bellow, Dean Rivkin, Earl Johnson, Bob Redmount, Andy Watson, Mike Meltsner, Phil Schrag, and others like them for the first time. They were the superstars in the field and my role models. I had done a crash course on reading to get up to speed for the Conference and this was my first chance to put real people together with names. It also was my first academic legal conference ever, so I was a kid in a candy store.

Ogilvy: So that's where you met Watson?

Condlin: I had met him once before through Steve Pepe, a mutual friend. I don't know if you remember Steve. He ran the clinical program at Michigan for several years before becoming a federal magistrate judge. Initially, BC wanted to hire Steve and me as Co-Directors of the ULL but CLEPR wouldn't agree to it because it thought making us divide the Director's salary treated us as second-class citizens and would cause the faculty to take the program less seriously. So Steve joined the Harvard Teaching Fellow program and worked there for the next couple of

years while I ran the ULL. I first met Andy at Steve's house in Ann Arbor. Steve had gone to Michigan for law school, Andy taught there, and they had became good friends. Andy was a commanding presence in any setting. He was a huge man with a shockingly white head of hair and beard and towered over people. He was a terrific speaker and just a delightful human being.

Ogilvy: What was the physical setting at the Conference?

Condlin: Buck Hill Falls is in the Poconos, and the Conference was in an old mountain lodge surrounded by lots of stone, waterfalls, rolling hills, trees, hiking trails, and the like. It was my first time in an elegant resort and that only added to the excitement. Clinical people seem to like going to nice places: Rockport, Big Sky, Arrowhead, and the like, and Buck Hill Falls was as nice as any of those places.

Ogilvy: While at BC, did you assist in teaching other courses as well?

Condlin: No. Directing the ULL was my full-time job. I don't know how I could have helped in other courses. There weren't that many hours in the day.

Ogilvy: What caused you to leave the Urban Legal Laboratory?

Condlin: The two years running the program taught me that I needed to know more about what I was doing, and I thought the Teaching Fellow program at Harvard would provide that opportunity; that I could broaden my perspective by learning from the best minds in the field. I felt a little like a lawyer who had read law in a law office. I knew how to do a lot of specific things, but I lacked any sense of the big picture and I thought two years of working with people who were doing lots of different things would provide that. I knew that the clinical world was bigger than the ULL, that there was stuff I needed to learn, and that I would never learn it if I stayed at BC.

Ogilvy: Yeah.

Condlin: Financially it was a big hit. I traded a law professor's salary for a Teaching Fellow's modest stipend and lived on savings for a couple of years. But it was the right decision. It gave me the chance to work closely with Gary Bellow for two years, and there's no price I could put on that.

Ogilvy: Yeah. Tell me a little bit about your experience in the Teaching Fellow program.

Condlin: Well, it was a mixed bag, with up and down sides. Let me start with the down side. People from all over the clinical teaching world would come to the Teaching Fellow seminars and because they had been superstars in their home schools they seemed to feel the need to demonstrate that in conversation. It was common for them to compete for Gary's attention by arguing every point, often at great length. The Seminars frequently were three or four times as long as they could have been because people wouldn't let go of a point until everyone else gave up. This didn't come as a surprise to me since I had sat in on the Seminars while running the ULL and I had seen the pattern ahead of time. It was a mistake to expect to stand out in that environment. There was too much talent, and Gary was better than everyone. It was best just to blend in and try to learn from others, but that didn't stop people from trying to show that they were first among equals. Gary let anyone who wanted to come to the sessions and that caused some friction with the full time Teaching Fellows. Sometimes there would be more people who weren't connected with the program than people who were and they usually were the one who tried hardest to show that they belonged. Periodically they even would get into arguments with Gary. He was the father figure in the field and killing off the father often seemed to be the agenda. Working on the cases, not debating big theory, usually was the best part of the sessions. That and Gary's formal classes. I still remember being mesmerized by the classes.

Ogilvy: What was it about the classes that mesmerized you?

Condlin: Well, because Gary was so good. He was just an engaging lecturer. He could run with any idea or comment, and without notes. To this day I think my tendency not to use notes in class, to make the experience as spontaneous as possible, is because Gary convinced me that that's the standard for really good teaching; to be able to think out loud with students and go in any direction the conversation takes, without fear or artifice. For me, Gary's classes were the best part of the Teaching Fellow experience.

Ogilvy: This is before the Lawyering Process book came out. Was Gary working on the book while you were in the Program?

Condlin: Yes, all of the time. The book went through almost as many mimeograph versions as the Hart and Sacks Legal Process book. I still have half a dozen versions. It kept changing and changing and changing as Gary gave Bea new suggestions and she incorporated them into the latest version of the manuscript. And when everyone thought it was finished, Gary would come along and change things radically at the last minute one more time. It must have been frustrating for Bea at times, but Gary's ideas were so good that she probably just adjusted and moved on. He didn't believe ideas ever were final until you stopped thinking

about them, and he couldn't stop thinking. So, yeah, work on the book never stopped. In fact, it was kind of amazing that the book came out at all. And when it did, as one could have predicted, it was different in major respects from the last version you had seen, and you had to learn it all over again. In its published form, it was a little like a nineteenth century medical textbook, full of lore, practical wisdom, ersatz social science, esoteric and sometimes questionable theory, interesting anecdote, and lots of other such stuff that would appeal to intelligent but non-systematic thinkers. That made it a hard book to teach from, and I suspect a lot of people didn't use it for that reason, though everyone had a copy on their bookshelves. Foundation Press kept publishing it long after it stopped making money, probably as a gift to the legal education community. It's easy to find technical flaws in it, but it embodied a way of thinking about law practice that was unmatched in sophistication, intelligence, and vision, and provided an archeological record of the best thinking of its time. One should treat it the way one would a talking horse: don't quibble about grammar, just marvel that it happened at all.

Ogilvy: Did you ever teach from the book?

Condlin: I used it until about two or three years ago.

Ogilvy: Really?

Condlin: Yes, though I might have been one of the few people still using it.

Ogilvy: I was going to say you might be the only person still using it.

Condlin: I wasn't concerned about having students buy the book given its difficulty, because I could translate it for them and make it manageable. But it finally became so dated that it required more than translation. I had to supplement it with so much additional material to bring people up to date that it got to be more trouble than it was worth. I also began to feel guilty about making people spend money for something that was more archeological record than modern instructional material and so about two or three years ago I stopped using it.

Ogilvy: Is it still available?

Condlin: I don't know if Foundation still publishes it. Do you know?

Ogilvy: No, I don't know.

Condlin: Foundation had reduced it to paperback version of its various Interviewing, Counseling, and Negotiation subdivisions and sold them separately.

Ogilvy: Tell me a little bit about the course work that you did in the Teaching Fellow program.

Condlin: The seminar structure and content were a work in progress, left to individual Teaching Fellows to construct. Initially, my seminar consisted of a hodgepodge of skills training in mainstream subjects like interviewing, counseling and negotiation; and a segment on what you might call the jurisprudence of being a lawyer and the nature of legal practice that consisted mainly of readings on how to motivate yourself to work for people you didn't like, justify lawyer behavior to the outside world, and do things for clients you would hesitate to do for yourself. Eventually I added a segment on legal institutions that asked students to consider, among other things, whether courts were particularly good vehicles for dealing with all kinds of legal problems, and a legislative segment that covered the drafting, enactment and interpretation of statutes. I took very much of a catch-as-catch-can approach to constructing the seminar, often flying by the seat of my pants. There was no single, consensus, and established model, no

orthodoxy if you will, that I had to follow. I did whatever looked interesting at the time, and if it didn't work I junked it and tried something else. I still have several binders of different instructional materials that I used over the years. At one point, I became so interested in the question of how to teach the material that I included a segment on learning theory in the course materials. As I look back, I realize that that segment was more for mu benefit than the students, but I justified it at the time by saying that not only was it important to learn to do things, but to learn how to learn to do them. My seminar, and I suspect that of the other Teaching Fellows, reflected the Lawyering Process book itself, a little bit of everything constantly changing.

Ogilvy: How did you bring your fieldwork into the classroom?

Condlin: There were twelve people in the seminar, all working out of the same clinical office, and they hung out there because the clinic was an exciting place to be. While there, they talked about their cases constantly with one another. My seminar was in the same office and often amounted to little more than a continuation of the same informal conversations. I prepared materials for class discussion, but often they were just outlines of issues the students were facing in their individual cases, and the classes were just a continuation of the water cooler and corridor conversation that had been going on.

Ogilvy: What did you do next?

Condlin: Well, the two years at the ULL had convinced me that I really liked teaching. Until then I hadn't given it much thought, didn't even know that there was such a job. I knew there were law professors, of course, but I knew nothing about the nature of the work, felt no attraction to it, and had never thought about doing it. So, when I went to the Teaching Fellow Program I did so with the explicit goal of getting into the law teaching field and thus, at the end of Program went on the open law teaching market. I attended the AALS hiring convention at O'Hare Airport in Chicago over the Thanksgiving weekend, took around twenty preliminary interviews with different schools in two days, and followed them up with callback visits to half a dozen schools. My dominant memory of the hiring conference is that it is difficult to constantly depict yourself as worthwhile. I remember stopping at Steve Pepe's house in Ann Arbor on the way back to Cambridge and being hard to get along with because of the lingering resentment I felt from having had to sell myself over and over again.

I ended up taking a job at Virginia because my wife had been born in Virginia, loved the state, and always had wanted to live in Charlottesville. The School had decided to start a clinical program and so I agreed to go there and try to do it. Virginia was not quite halfway between my wife's and my cultures and it looked like a good compromise choice. In retrospect, however, that turned out to be

wrong. I didn't adjust to the Virginia culture well. I learned a lot about the place, how there are two Virginias, for example, one made up of outsiders who contributed to the quality of the school but who weren't included in its social world, and the natives, authentic Virginians who lived in a social and cultural world of their own. My wife was a local, so I got access to that second group, but just enough to realize that I did not fit into it. And so, when it came time to be considered for tenure I decided not to go for it. The decision was easy, both because I hadn't written anything to justify tenure, hadn't written anything at all in fact, and because Maryland made me a generous offer to move there. Maryland had made a substantial commitment to clinical education, but the subject was still controversial at Virginia. I would have had to ask friends to play political capital for me in the tenure process, and I didn't want to do that when I knew that if I got tenure I would take the first good opportunity to leave. Virginia never has institutionalized clinical education to this day, so in retrospect the decision looks even better.

Ogilvy: What kind of program did you construct while at Virginia?

Condlin: I used the cooperating outside law firm model that I had used in Boston for the ULL. I placed students with local Charlottesville lawyers and had the students work as law clerks on cases pending in the lawyers' offices. I sometimes helped out as co-counsel in the cases, but my principal task was to supervise the students

and teach the Clinic's weekly seminar class. Virginia did not have a separate clinical law office with its own independent caseload, so working with local law firms on an externship model was my only realistic option for getting a program up and running right away. The model also provided access to a broad cross-section of legal work for students to do, as well as the opportunity for me to meet lawyers and become part of the local legal community a little sooner than I had expected.

While there, I also started teaching a separate clinical skills course in interviewing, counseling, and negotiation based on videotaped simulation exercises. I was the first person to use videotaped simulations at Virginia and I still remember wheeling video equipment through the halls of the School and having people whisper among themselves about what could possibly be going on. After three years of exposure to the phenomenon, however, people pretty much got used to the equipment, me, and the course, so much so in fact, that by the time I left Virginia the course was wildly oversubscribed and had somewhere between 10 and 15 Supreme Court clerks as alumni. It was hard to keep all of this up in the air at the same time, however, particularly with no one to help, and still find time to write and administer a clinical practice program. If those had been my only concerns it still would have made sense to leave Virginia, but the truth of the matter is that leaving the School was a social and cultural decision. I just didn't belong.

Ogilvy: Where did you first start writing?

Condlin: I published a small article in a journal in Denver in the late Sixties based on my work with the Police Community Relations Committee, and a slightly more substantial piece in the Boston College Law Review in the early Seventies based on my work on the Viet Nam War case. But my first substantial law journal article was the "Socrates New Clothes" piece, in the Maryland Law Review in the early Eighties.

Ogilvy: What was the genesis for that piece?

Condlin: The ideas of Chris Argyris. I'd taken a course from him at the Harvard Graduate School of Education when I was a Teaching Fellow and found his cognitive dissonance based empirical methodology appealing. He compared people's ideas of what they wanted to do or thought they had done in a learning situation with what transcripts of what they actually did, and used the dissonance created by the inevitable contradictions between the two to motivate people either to correct the errors in their theory or bring their behavior into line. I did that for myself while in Chris's course and saw how powerful a method of self-learning it provided. From that point on it was easy to look around and see opportunities for using the method in law practice situations. I started collecting tapes and transcripts of

supervisory sessions and when I had what I thought was a representative sample, I decided to write about the process as a method of clinical legal supervision. In truth, I wrote the piece to myself more than the outside world, but it had outside world implications as well.

Ogilvy: Where did you get the transcripts?

Condlin: From law teacher friends, Teaching Fellows at Harvard, Bellow, and books and articles others, often Chris's grad students, had written. Once I had a transcript I would ask the person in it to fill in the left-hand side with his underlying thoughts and feelings, his theory of how he intended to act. Not everyone returned the transcript with the left-hand side filled out, so in the end I worked with what I had, which was about thirty transcripts. The transcripts included the work of both men and women, living in different parts of the country, teaching at different types of law schools, and working with different levels of students, and I thought they were representative of law school clinical supervision generally. At the time nobody had written empirically based scholarship on clinical supervision and I thought something on the topic, even if flawed, was better than nothing at all. The only thing I promised people was that I never would identify them, though I can say that Gary is in one of the transcripts, I'm in another, as are a number of other well-known people in the field.

Ogilvy: Are you willing to name names without identifying their particular transcripts?

Condlin: No, because it would not be hard to put names together with transcripts if people had both.

Ogilvy: Right.

Condlin: It doesn't matter anymore with Gary, but it might with others. There are people in there who probably don't want anyone ever to know.

Ogilvy: What was the reaction to the piece?

Condlin: It was pretty negative. The article came out early in the life cycle of clinical legal education, clinicians often were under siege at their home schools, and the prospect of an insider being critical of the enterprise was too much to take for many people. I would go to conferences and people would be genuinely unfriendly and leave no doubt about that being their intention. Not many people in the field thought that inter-disciplinary disagreement was healthy and this

surprised me a little. Well-established legal disciplines are famous for having multiple perspectives on their subjects, and internal disagreements over which perspective makes the most sense are common, and I thought the same thing would be true for clinical study; that it would be stronger if it had multiple schools of thought and a tradition of internal critique. I thought that even traditional law faculty would see that as a sign of health, but in retrospect that was me being overly pollyannaish. Instead, clinicians were mad at having to deal with a kind of criticism they hadn't seen coming, and as a result, I decided to back off and let things settle down; though I was still torn between my sense of what was important to say and what was necessary not to say in order to get along. As I look back, I regret backing off, but at the time I consoled myself with the thought that in twenty to thirty years what I said would be appreciated. It was uncomfortable to be criticized and I gave in to that concern probably more than I should have. And so, after a couple of additional brief pieces on the topic, I just stopped writing about clinical supervision.

Ogilvy: Did you get any response from Gary?

Condlin: Yes and no. Gary was always interested in different views and encouraged people to express them. He even wrote a response to another article of mine critical of clinical pedagogy published in David Luban's book, "The Good Lawyer," that was pretty typical of the conversations we used to have. He liked

disagreements over substantive ideas and thought being around people who thought differently from him was a good thing. We would argue over stuff, the way we did in Luban's book, but not over whether we should argue. Once I got over the initial star-gazing period Gary could produce, dealing with him was easy. He gave me all the time and attention I could have asked for and was very supportive of my different views. He had a crazy life in which everyone wanted a piece, and for a time I thought that I had to perform at that level or my teaching was fraudulent, but after I worked through that mistake dealing with him was easy. He never did anything to contribute to or exacerbate that situation. He just was who he was.

Ogilvy: Yeah.

Condlin: It was other people who were critical. I remember an incident at a clinical conference in Rockport, Maine, where I was the subject of the entertainment at an evening social event in which various groups of clinicians sang made up ditties, in Capital Steps like fashion, about me and my writing. My reaction to being roasted for about an hour and a half remains with me to this day and was the principal reason I said. "okay, this is it. I'm done. This is not for me anymore." It was just unpleasant.

Ogilvy: Were those events the kind of things Bob Dinerstein would put together?

Condlin: I guess, although at the time I didn't have any idea of who was behind it. I remember only faces, not names.

Ogilvy: Yeah.

Condlin: I've just blotted all that out.

Ogilvy: Yeah.

Condlin: It was not the kind of experience that one could learn from. It was just unpleasant. I liked substantive disagreements. But this was more personal. It was as if they were trying to shut me up rather than engage me in conversation. In retrospect, they were probably trying to stop me from saying things that were being used against them back home by unsupportive faculty. But I didn't understand that at the time. The comments were just mean and nasty, and so I said, "I don't need this." And that's when I stopped going to clinical conferences.

Ogilvy: What attracted you to Maryland?

Condlin: In part, it made a nice offer at a time when I was ready to move from Virginia, and in part, it looked like the kind of place that would accommodate my different views. It had a dozen clinical programs of various types and subjects already in place, and a Dean who was committed to clinical instruction and willing to spend school money to support it. It didn't run its programs on grants. The School agreed to let me configure my courses in whatever fashion I wanted, and to give me the first semester off to look around and see what everybody was doing. Everything about the place dovetailed perfectly with what I was looking for. And like Virginia, it too was about halfway between my wife's family and my own. We would be located perfectly for driving to both sets of grandparents, and this became even more important when we had our first child the year we moved to Maryland.

Ogilvy: What year was that?

Condlin: Nineteen eighty. The prospect of fifteen to twenty years of long car trips with kids in the back seat got our attention. So, for lots of reasons, Maryland looked like a perfect fit. Good job; supportive colleagues; plentiful resources; geographically well located; and we liked Baltimore. It's a funky city with a lot of interesting people.

Ogilvy: Did your new colleagues welcome you as you had expected?

Condlin: The Dean, yes. The clinicians, not so much. The clinicians had read all the same articles as the people at Rockport and were nervous about what I would be like. There were a couple of people who wanted to work with me. Bill Kerr was the most enthusiastic. He was the director of the biggest clinic at the School at the time, though he has since left law teaching to practice. I'd know him well before going to Maryland. Like Steve Pepe, he was a Michigan Law graduate and had worked with Andy Watson. But a lot of others at Maryland didn't know me as well and they were worried that I was going to come in and trash everything they were doing. They were standoffish as a result and I never forced the issue. They had divided the clinical instruction at the School up into various domains and I respected those divisions. I did some joint work with Bill, and some with Roger

Wolf, Phil Dantes, and Jerry Deise, but that was pretty much it.

When I first got to Maryland I had done a lot of clinical supervision, two years at BC, two years at Harvard, and four years at Virginia, and I was ready to sort stuff out theoretically rather than accumulate some more experiences. So, I appreciated the fact that I didn't have to get involved deeply in a high intensity, long hours, supervisory situation and that I could spend much of my time thinking and writing about the clinical subject. At that point, I didn't think there was much about clinical supervision that I hadn't experienced and that if I was going to do it, it would have to be for its own sake, with someone I enjoyed working with. Since the Maryland clinics already were well run and settled into their respective niches, there wasn't a place where those conditions were present. As I look back, that is when I began to drift away from mainstream clinical practice instruction.

Ogilvy: What new subjects did you take an interest in?

Condlin: Mostly, Alternative Dispute Resolution and its subdivisions of negotiation and mediation. I developed a negotiation course, for example, that asked students to do seven or eight negotiations in the course of the semester, videotape them, review the tapes with me, and write small papers on various aspects of their negotiation strategies. I also made tapes of lawyers doing the same negotiations

and had the students compare their negotiation behavior with that of experienced lawyers. Even though the ADR world divides into the sub-categories of mediation, arbitration, negotiation, and the like, I believe that everything is negotiation in one form or another, and if students learn to negotiate well everything else will fall into place. There really are only two pure types of dispute settlement, adjudication and negotiation. Everything else is a hybrid of those two processes. The longer I taught negotiation, however, the more I realized that I couldn't understand it fully without understanding the background procedural context in which it was set, and that meant I had to learn more about Civil Procedure. That's when I started teaching the first year course in Civil Procedure.

Ogilvy: How did you teach yourself Procedure?

Condlin: The same way I prepared for my third-year law school exams when I was in Denver. I read every book and article I could find on the subject. It was not a very exciting process, as you might expect, but I just kept reading and reading and reading, and soon there was very little anyone could tell me about Procedure that I didn't already know. And then I realized that to understand Procedure I needed to understand Statutory Interpretation, and so I agreed to teach a course on the subject and repeated my reading pattern all over again. It was a case of setting out on a path and following it wherever it took me.

Ogilvy: [question missing]

Condlin: Bill has his own firm now and does mostly appellate work on referral from people who don't want to argue in the Court of Appeals. He continues to work halftime at the law school. I think he enjoys the law school work more, but he has kids in college.

Ogilvy: When I talked to Roger Wolf he said that for a long time you used an old OEO training case as one of the exercises in your negotiation course.

Condlin: That would have been the James v. Stead Motors.

Ogilvy: What about the Mary Joyce Allen case?

Condlin: That was about door-to-door freezer sales, and it predated the James case.

Ogilvy: Right.

Condlin: I used a lot of the old Legal Services training videos. I still have videos from the James case – the ones made in Arizona with the finance company lawyer with the goatee, Stan and Harris, and the legal services lawyer with the frizzy, semi-afro. I still use those videos every now and then. There's stuff on them you don't see on more professionally produced tapes. Those guys just negotiated the case, they didn't try to demonstrate specific negotiation tactics. That's the key to making a good tape. Don't ask people to depict tactics, just ask them to settle the case the way they would in practice. Give them a file with background materials on the case and enough time to understand them, and then bring them together and have them settle the case just as they would if they had picked up the file from an associate in the firm. Don't tell them what you want on the tape, just work with what you get. The tapes I made at Maryland were all made in this way and while there ae some clunkers, there are also are some wonderful ones.

Ogilvy: When did you start making tapes?

Condlin: In the early Eighties. I'd been at the School for three or four years before I started doing it. It took me a while to make the right contacts and convince people to do it.

Ogilvy: Yeah.

Condlin: I made one pre-trial settlement conference tape that's been used all over the world - a Title Seven race discrimination case involving a guy who was sent on assignment to Venezuela by Exxon and wasn't given housing comparable to that provided white employees on the same assignment. I had the lead Title Seven litigator from Piper and Marbury represent the company, a member of our faculty who had been Associate General Counsel to the UAW represent the plaintiff, and a local federal district judge conduct the conference. It lasted almost four hours and the judge was terrific. He even said that by the end of the conference he started to clammy hands the way he would in an actual settlement conference, when he was worried that the parties wouldn't settle. Many judges have used the tape at judicial conferences to teach pre-trial settlement management techniques and it has provoked spirited discussions about whether the techniques on the tape were legitimate. Judges at conferences have even shouted, "he can't do that. That's not legal." It's a wonderful teaching tape, the kind you get when you ask talented people to just do their job and don't ask them to play a role or stick to a script.

Ogilvy: How much information did you give each of the participants?

Condlin: The full case file. All of the pleadings, motions, briefs, orders, deposition transcripts, and the like that were in the file in the real case, along with videotapes of client and witness interviews to give the lawyers images of the actual parties who would testify in the case in the event it went to trial. The interviews themselves were reconstructed versions of what happened in the real case, but they were realistic depictions of real people.

Ogilvy: Would you add issues and facts to the cases that were not in the real case?

Condlin: No. Basically, I worked with the case as I found it. If I wanted variety in the tapes I would have different lawyers make them rather than ask individual lawyers to demonstrate different styles.

Ogilvy: Would you add constructed notes or things like that?

Condlin: Occasionally, I would supplement a file if I thought there was stuff missing that should have been there, situational facts one would know in real-life, lawyer interview notes, and things like that. But for the most part I worked with what I

found in the files. My overarching goal was to keep things as realistic as possible. I take the same approach to writing Procedure exam questions. I construct questions from real cases and never try to make up facts. I don't want anyone to be able to say about a question, "this could never happen." If I'm using it, it did. I want the same verisimilitude in my negotiation video tapes and lawyers seem to understand that. The company lawyer in the pre-trial conference tape was great in that regard. His first reaction to the problem was to say, "this is like a thousand cases I've seen. I know just how it comes out," though he proved to be wrong about that latter point. People like that fill in factual detail even without knowing they are doing it. The same was true for the former UAW lawyer who represented the plaintiff. So, I look for people who have extensive experience in the type of case involved, who will provide or fudge on the necessary detail the way lawyers do in real life. I challenge anyone to look at the tapes I've made and tell me whether they are real or Memorex.

Ogilvy: Are you still making tapes?

Condlin: No, I stopped making them once I had enough for the course three times over, so that each class of students to take the course would be able to work with tapes earlier classes hadn't seen. Sometimes tapes would grow too old to use. Usually clothing or hair styles could make a tape out of date, and when that happened I would make new tapes. I wanted people to be able to identify with the lawyers

on the tapes and that became harder and harder the older the tapes got. The problem usually was more optical than real, not much has changed over the years in the way lawyers bargain, but the visual world plays a large role in maintaining student attention.

Ogilvy: Have you done any case supervision at Maryland?

Condlin: Not since the early days working with Bill Kerr and Phil Dantes, and that was ten to fifteen years ago. I brainstorm with other clinicians about their cases every now and then, but I don't sit in on their student supervisory sessions. I mostly just consult and spend my discretionary time trying to write up what I understand. The School has allowed me to configure my classes to have time to write. This coming semester, for example, I will teach a Procedure seminar with twenty-four people, and the rest of my time will be available to use as I see fit.

Ogilvy: Is that schedule typical?

Condlin: Last semester wasn't much different. I had one seminar with twenty students and another with ten. The School is giving me the time to finish a number of manuscripts sitting on my bookshelves. It would rather I do that than cover a lot

of teaching responsibilities.

Ogilvy: Can you tell me what you're writing?

Condlin: Sure. I just finished a long piece on the "lawyer as friend" conception of the lawyer-client relationship, tracing discussion of the topic from the early contract-based understanding of friendship described by Charles Fried up through the Christian love-based view of Tom Shaffer and Bob Cochran, examining both through the prism of Western philosophical writing about friendship. It turns out that the lawyer as friend argument finds support in conceptions of friendship in classical antiquity and much of the Western philosophical canon, everyone from Aristotle to Emerson and those in between, and I discuss much of that literature in my article. It's not a short article as you might expect, and it took a long time to write. The title reflects this. It's called: "What's Love Got To Do With It? It's Not Like They're Your Friends for Christ's Sakes: The Complicated Relationship Between Lawyer and Client."

Ogilvy: Yeah, yeah.

Condlin: I have several other equally large projects in gestation, sitting on shelves waiting

to be revived, even a piece on the "Erie Hanna" doctrine.

Ogilvy: How do your students react to the lawyer as friend argument?

Condlin: I'm not really sure. I've never discussed it in class. Most of the people I've discussed it with think the analogy is counter-intuitive. Charles Fried made the most well-known version of the argument and its essential points went something like this. "We know intuitively that friends can do things for friends that harm other people. Friends are people who make another person's interests their own. Lawyers are like friends for the purpose of using the legal system, in effect, they are limited purpose friends. Therefore, lawyers ought to be able to do things for clients that harm others." Arthur Leff made the most trenchant criticism of the argument, describing the concept of "limited purpose friend" as a limited purpose analogy. He argued that if Fried had begun by saying "we know intuitively that lawyers can prefer clients over others" that would have been the end of the argument. Conflating intuitions in the way Fried did, Leff argue, was a rhetorical boot-strapping move more than an argument. And when the rhetorical move failed one was left with the naked claim that lawyers ought to be able to harm others on behalf of clients. And that was a much more difficult argument to make convincing. How to think of the lawyer-client relationship is an important topic in the study of law, but it is not high on the agenda of law students in clinical programs more concerned with the development of instrumental practice skills.

Ogilvy: Yeah, yeah.

Condlin: So, my article is intended to join the conversation Fried, Shaffer, Cochran and others started, but Bill Simon's reaction to the piece may suggest otherwise. After reading a manuscript of the article, he said: "You think you're going to put an end to this discussion, but you're not."

Ogilvy: Have you been involved in the development of the Cardin clinical requirement program at Maryland?

Condlin: Only in the sense of participating in the debate over whether to adopt the Program and defending decisions about its design against criticisms from some of our more traditional faculty. The Program has changed a lot in the development process and no longer is it a program everyone is required to take. There are all kinds of courses that can be used to satisfy the so-called "Cardin" requirement and not all of them are tied to the idea of public service or the representation of poor people. Unless, of course, you think of a tax clinic as a service for poor people. It's no longer a program modeled completely on a legal service for poor agenda. Like a lot of law school courses, the brochure description is often

different from the underlying reality. A lot of people at Maryland probably don't even know about it. The School as a whole, however, is committed to public interest practice and the representation of poor people and that commitment is evident throughout its curriculum. The Cardin requirement is just another manifestation of that commitment.

Ogilvy: I have two, somewhat related, final questions. The first is whether you think the clinical education movement has made a real contribution to American legal education, and if so, what it might be? And the second is whether you think there is a future for clinical legal education in this Country, given all the monetary and political law school constraints in its path?

Condlin: I will take up the second question first because I think it's easier. Clinical instruction is here to stay. Instruction in lawyer practice skills and lawyer role is an inevitable part of the education of a lawyer. Every law school in the country has some form of clinical instruction and some have a lot. A school without it wouldn't be competitive. Clinical programs may shrink or expand depending upon the conditions at various schools, but that's true of the law school curriculum as a whole. Clinical programs will thrive because they are based on a simple and fundamental proposition – you cannot become a lawyer without learning to practice law. Down the road, no one is going to come along with a new argument to demonstrate conclusively that practice instruction is an alien

element in the education of a lawyer. The future of clinical education is bright. It's not clear how it will develop intellectually, or what structural forms it will take, but it is not going to go away. There always will be practice instruction in law schools. In a sense, there always has been. Now, what was your first question?

Ogilvy: What does clinical education contribute to legal education?

Condlin: To begin with, it embodies a distinctive intellectual perspective on law based on the uncontroversial proposition that the legitimacy of a legal system depends as much upon what it delivers as what it promises. Clinical study is grounded in a kind of "bad man" jurisprudence that looks at law from the perspective of how it can be manipulated and abused and asks how to prevent that from happening and neutralize it when it does. Its intellectual contributions on this topic appear regularly in articles in the Clinical Law Review, where clinicians describe ways to respond to "bad man" behavior and tactics and strategies for making the legal system more responsive and fairer. I expect one day that The Clinical Law Review will do for the study of lawyer practice behavior what the Georgetown Journal of Legal Ethics has done for the study of legal ethics, turn the field into one of undeniably first-rate scholarship.

Clinical education also has energized generations of law students to think of law

practice in social rather than individualistic terms, to see themselves as citizens more than mercenaries, and to think of ways of practicing law for the collective good that wouldn't have occurred to them studying law exclusively out of books as a disembodied economic and intellectual enterprise. In a sense, clinical education has reconfigured law from a realm of disembodied ideas to one of human sentiments, feelings and beliefs, and shown how the effects of lawyer behavior for good and bad on real people contribute to the justice of a legal system. In the process, it also has contributed to the development of law students as human beings and made them psychologically more sophisticated and emotionally more sensitive.

Clinical education also has contributed new insights to the age-old debate about the relationship of theory to practice. Seeing ideas and actions intertwine in day-to-day clinical practice to produce a more complete understanding of each, narrows the gap between the two realms and refines the debate over their relationship. In doing so, it helps shake legal education out of the comfortable intellectual doldrums it enjoyed for most of the twentieth century. It's a sign of intellectual health when people argue over theory and practice and clinical education has revitalized that argument, opening important intellectual, political, and psychological doors to let fresh breezes blow in. The law school of today is not your father's law school, or even my law school of the Sixties, and the clinical education movement is in large measure responsible for that change. It has had a liberating effect on every feature of the legal education enterprise. It is not too much of an overstatement to say that clinical legal education has produced

the single biggest structural change in the history of American legal education, and that's a contribution of historic proportions.

Ogilvy: Terrific. Thank you.

Condlin: My pleasure.

Ogilvy: Is there anything else you'd like to talk about?

Condlin: No, I think we've covered everything on your list. Though I should add in response to your question about important people in the development of the clinical education movement, that David Binder at UCLA was as important as anyone. David came into clinical teaching from private law practice, unlike most clinicians who came from a legal services practice, and he developed teaching materials more reflective of the skill than political dimension of legal practice. His scholarly work in the subjects of interviewing and counseling is second to none, however, and his book on the subjects with Susan Price and Paul Bergman is the bible in the field. He contributions are sometimes overlooked in a world dominated by former legal services lawyers, but he contributed as much as anyone to the success of the clinical education movement.

Ogilvy: Good.