

**Transcription of the Oral History Interview with
Michael Meltsner**

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

Meltsner: Well, I was the first assistant counsel of the NAACP Legal Defense Fund from 1961 to '70. Because of the importance of our work and also I suppose the glamour, an incredible number of talented and ultimately very successful young lawyers and law students passed through the organizations. I had a few years seniority on them, and so I offered to supervise them. In the late 1960s, a law professor at Columbia, George Cooper, decided that he wanted to take advantage of the opportunity that William Pincus' CLEPR Foundation was making available to some law schools. And he wanted to bring clinical legal education to Columbia as one of the first schools to have it. George and I had an acquaintance from him having lectured on equal employment law and similar issues to Legal Defense Fund staff attorneys, and he started talking to me about what a clinical program would look like. Neither of us had the vaguest idea. But out of our dialogue came some notions. And he finally said to me, "Put this in a letter to me." So I wrote him a letter, and the next thing I knew was I had an offer to teach the program at Columbia. This was 1970. Using these ideas, they'd hired six months earlier a man named Harold J. Rothwax who was then the legal director of Mobilization for Youth on the Lower East side of Manhattan, which was a Ford Foundation, as was CLEPR, sponsored legal assistance setting. And Hal came six months before I did, and he started a criminal law clinical program at Columbia. I

came shortly thereafter and did primarily civil cases, but there were some criminal cases involved also. And then Hal was appointed by Mayor John Lindsey to be a criminal court judge. He later had an extraordinarily influential career, was known as the 'Prince of Darkness' by both friends and enemies. And Phil Schrag took his place.

Interviewer: One of the things I was struck by about some of the articles I'd read was, as you said, it wasn't a lot of. . . there, there was really very few, if any, models to draw on in building the programs. One other question I want to ask you is about Columbia itself. It obviously was the sight of one of the really famous, you know, campus, you know, building takeovers. Was there any sense of unrest within the law school that you sensed when you first got there? Was there still a lot of ferment among the students wanting some like this?

Meltsner: I think the Columbia campus was still in a state of shock. It was still vibrating from the events of 1968. And I think one of the reasons why George was able to get faculty approval of the first clinical program was not that there was an intellectual approval of the idea. In fact, the faculty was *at best* divided. More likely, the people who wanted the clinical program were in a minority. But there was a great feeling of the need for healing and reparation. Law students saw clinical legal education at this. . . at this time as a way of working for poor people. The educational values were secondary. And that's why Hal was hired from a poverty law program, and I was hired, as was Philip Schrag subsequently from what later was called Public interest jobs. So we came in

on this wave. The feelings of anger and frustration about the events at Columbia were in the law school classroom, too, for several years, because many of the undergraduates of '68 ended up in the law school in the early . . . in the early '70's. And I taught criminal procedure as well as the clinical program for a number of years at Columbia. And I remembered certain students screaming in approval or disapproval of court cases that we would discuss, things like, "Off the pig." Feelings were very raw, and in a sense, this affected the clinical programs in those early years. But very quickly, Philip and I realized that we had to come to terms with the educational goals of the program as *well as* our service goals. In the beginning, a lot of the support did not come from the educational side of the ledger. On the other hand, the faculty. . . or some members of the faculty. . . saw this as a sop to campus radicals rather than evaluating it as an important educational venture.

Interviewer: Had any of the three of you had any aspirations to be academic before this all happened?

Meltsner: I can't conceive of Hal Rothwax having that aspiration in a full time way, although he taught at Columbia even when he went on the bench, because he was a rough and tough criminal lawyer. He'd been a criminal lawyer for Legal Aid, and he was a rough and tough judge. And I could see him wanting to be in a classroom occasionally, but he was not of an academic type really. Philip will have to speak for himself. As far as I'm concerned, I spent the last year and a half of my Yale Law School career on the

Merrit Parkway, driving to Manhattan. I disliked law school by and large, with the exception of some important classes with Alex Bickel, who was a kind of mentor to me, and Benjamin Kaplan, who was visiting. I think I would have left if it wasn't for them. I found law school narrow in ways I had not expected, and left the country as soon as I took the Bar exam in 1960, came back in '61, and fortuitously went to work for Thurgood Marshall and then Jack Greenberg. So, law school was not a place I'd ever thought I would see again.

Interviewer: Is it possible to sort out, itemize a little bit about what were your biggest disappointments with the experience?

Meltsner: Of law school?

Interviewer: Mm-hmm. Yeah.

Meltsner: Um, well, maybe we can get there by starting with the high points. Aside from the . . . a few courses, the high point was a voluntary non-credit program run by something called the Jerome Frank Legal Aid and Public Defender Association, which sent a few of us. . . my closest friends and roommates. Harry Subin who clinically teaches at NYU was one of the very first clinicians in the country and Stan Fisher who is also a clinician as well as a regular law school teacher at BU. All three of us at different times worked for the Public Defender in New Haven. There was

no reflection here. This was nothing like a clinical program. This was labor for a guy who, I think, was, basically, a single practitioner representing every indigent criminal defendant brought before the Bar in the city of New Haven. And Harry, Stan, and I did various jobs for him; I'm not sure he ever gave me the slightest bit of feedback. But there was something wonderful in doing the work, and then seeing some of the things that supposedly I was learning in the classroom applied. Aside from that, I thought that Yale Law School was full of wonderful and brilliant people, some overrated teachers, however. And the truly interesting thing about most of them was what they did outside of the classroom. There were exceptions. Bickel and Ben Kaplan were the major ones for me. Most of my peers went to work for large firms. This was not something I ever wanted to do. I didn't disdain their doing it, but I wasn't good at it. So I didn't want to go in that direction. You wanted to know what was wrong with legal education?

Interviewer: Yeah.

Meltsner: Well, that was just a little. I think the thing that bothered me the most was the . . . I'd gone to a college where vocational matters did not impinge, yet they were present early on, even at Yale where no one needed to worry about getting a job. And I think the thing that bothered me most about the law school was the feeling of mystification. The faculty members saw no need to orient students at all. You were given a case, and then you were let go. And I found that unduly harsh. . . and I'm tough. But it just sounded

unduly harsh. And as I said, I thought the quality of the teaching, as teaching, was overrated.

Interviewer: Um. . .

Meltsner: (interjecting) The great teachers I've known, if I can just expand on it, were a couple of lawyers at the Legal Defense Fund like Jim Norbit, who was the Associate Director Counsel; consultants like Anthony Amsterdam; acting teachers; language teachers. . . teachers I've seen in a variety of other context. There were only two or three people at the Yale Law School I thought were great law teachers.

Interviewer: Um, you said early on. . . I mean, clearly some of the established faculty had doubts about the scholarly value of what you were doing in the clinic. But it sounds like you and Phil early on came to your own conclusions that you wanted more of an educational component to the program. Can you tell me how you sort of came to that conclusion, what you did with that?

Meltsner: Well, we learned clinically! We started. . . let me talk about myself. He can talk about his piece of it, which is I think, in a way, more important. But I started doing at Columbia what I was doing at the Legal Defense Fund, only I was a single practitioner doing it. I had a large docket of various cases, most of them involving constitutional rights, but not all of them, one sort or another. And I had twelve to eighteen student

helpers. And I did this for a year and a half or so. Philip started along those lines. He then took six students off to Harlem for an intensive semester. And between my experience trying to treat students other than just labor, and his intense experience working with students on poor people's cases in Harlem, we realized that we weren't going to be very good legal practitioners, as such. We could not operate at the same level we had at the Legal Defense Fund where we both had handled very important law reform cases. And we were shortchanging students, because the model we had didn't give them a range of experience in the legal system, and that we were really also interested in more than skills training. We were interested in teaching them how to learn, and interested in their value conflicts. And so for the next six or seven years we engaged in what I would call a search for better ways to do it. This was not a linear search. We didn't start at point 0 and end at 10, the piece of perfection. Philip, for example, is still, in his way, trying to find better models. And I'm doing the same thing at Northeastern Law School, though I'm not sure whether what I'm doing fits some purist definition of clinical. If Gary Palm was here, he'd be laughing. Or, Bill Pincus maybe. So, in any event, we then experimented with a range of models. We did intensive simulations and published a book about it called *Toward Simulation in Legal Education*. We set up the first poverty law clinic on the Columbia campus, and gave students a larger role in running the clinic, and more responsibility in dealing with their clients. We engaged in efforts to bring the emotional and relational side to lawyering into the room. We brought a talented person like Holly Hartstone into our work who deepened our understanding of certain issues. We also were, I guess, early in seeing

that we had to publish the results of what we were doing in order to make an impact. To a certain extent, we did that for typical and conventional tenure related reasons. But actually, tenure was less of a challenge for us than it has been for others. Philip's credentials were extraordinary, and I think he would have gotten tenure anywhere on the basis of whether he was a clinician or not. And I'd published a book that was well received, and I'd just represented Mohammed Ali in the case that brought him back to boxing. So, we were both, I think, lucky that the Columbia faculty didn't see us only as clinicians. It gave us both tenure relatively soon. But we did feel that we had to involve a larger community. And Bill Pincus gave us some money to publish a book about simulation. And the material was so exciting, so novel for legal education, and so intrinsically interesting to both of us that it had deep effects on our lives. Just a few examples. . . I don't know whether this is true of the other people you're talking to. Both Philip and I and later Holly Hartstone ended up going to fascinating group relations training conferences run by the Tavistock Institute of London's American operation that changed the way we look at group relations. I took acting lessons at the H.B. Studio in New York. We started using videotape when you had to carry a forty pound port-a-pack, Sony port-a-pack on your back. You might know the precise dimensions of this thing, but one of us would have to carry this around while the other talked into a mike, for example. We also discovered out theatrical selves. One particular vignette I remember is Philip and his wife with a couple of dozen fortune cookies and tweezers pulling out the fortunes and replacing them with fortunes that were related to our teaching exercise. For example, there were secret agendas for

interviews. We would come in to the class with a bowl of fortune cookies. A student would take one, open it up, and be told that she might have to lie to the interviewer. We did things like that. And loved it.

Interviewer: I would really like, if you don't mind taking a few minutes to explore some of the individual strategies you attempted. For instance, with simulation, what discussion led up to that? What made you decide that that was something worth experimenting, and how did you actually try to implement it?

Meltsner: Well, in one of the articles in . . . I can't remember which one. . . in a book Philip and I published called *Reflections on Clinical Legal Education* last year, which is a compilation of our work, this is gone into in some detail. And what I'm saying here is superficial in comparison, but basically we needed more control over what happened in a litigation to the extent we were training people in litigation skills and in a litigation context, even if we weren't skill focused. And, of course, we had very little control over real-world cases. Eventually, we had students working at hearings before a the New York City Housing Authority and then hearings with the New York City Department of Consumer Affairs. We put our students in charge of hearings because we thought those were much more manageable events than court hearings. But in a transitional way, we wanted to see if we did the whole thing in a simulated fashion, what would happen. So we produced a semester-long litigation in the Meyers case, which is written up in *Toward Simulation in Legal Education*, which a lot of libraries

still have. And then I showed the tapes at an early '70s AALS conference in San Francisco. And I'll never forget Bill Pincus who was, of course, supportive and friendly of our efforts in general. . . but he was totally committed to service to the poor. . . was sitting in the corner of the room with Bill Greenhalgh of Georgetown. And when it became apparent that we were not serving any actual clients in this particular semester, but were simulating the entire thing, Bill turned red in the face. He looked like a teapot that had been on the stove a little long. And after I finished my presentation, they both. . . I'm not sure Bill Pincus said anything, but Greenhalgh asked some very nasty and difficult questions. So, there was a great deal of hostility, and maybe a later division which one would find among clinicians. We never saw simulation as a total end in itself, but as a teaching technique which you could use just as readily in a clinic that was serving the poor or the under-represented. But in the beginning where everything in the particular universe we were operating in was more ideologically charged than certainly it is today, this was taken as if we were rejecting one path and accepting another. So it was really in response. . . I'm giving you a long-winded answer here . . . but it really was a response to wanting to have more influence over the context our students were learning in. And after trying it for a year and a half and publishing a book, and having a lot of videotapes. . . which by the way presently reside in the archives of Northeastern University in Boston for any historians who see this tape. . . we moved on and set up a legal services office at Morningside Heights at Columbia, approved by the Appellate Division of the State Supreme Court, and servicing people in the community.

Interviewer: You mentioned one other thing that intrigued me, that you'd actually taken acting training. What was the connection between legal education and that?

Meltsner: One of the subtexts of the decade and of the beginning of clinical legal education was that, as a group, clinicians were really the only people who were consistently looking at legal education. And so there was a sense of righteousness about us all, the founding group. And we often found ways of meeting together. One of the great opportunities was when people like Gary Bellow, who represented a different kind of approach and Joe Harbaugh, who worked in a different way also, and then Philip and myself who would find ourselves in the same room. We would debate how to teach. Once I was talking about a particular problem, and Gary said, "Well, you know, what you're saying is that you need a better way of preparing. And maybe the way actors prepare would help." I had actually acted in high school, although I'm sure I didn't understand very much about how real actors prepared. And just on a lark I did some research, and found out that the Herbert Berghof Studio in New York (his wife was Uta Hagen, the actress) was the place to train. So I got myself down to Greenwich Village and started training, and I was very fortunate. There was a woman named Carol Rosenfeld who was my teacher. She's probably the best teacher I've ever had, and I've taken a lot of courses in a lot of places from a lot of high priced people. But this woman had a marvelous talent akin to that of great therapists or politicians of being able to read what was going on inside you from the surface presentation of self. She was also adept at giving her students exercises that would allow her to do that. This is very much akin

to a need when training law students about practice – having some sense of what identity they were both presenting to the world in a particular legal context, and experiencing at the same time.

(Break for direction.)

Interviewer: Were there any. . . there must have been some dead ends also, any time you're improvising as much as all of you were. Were there any approaches you looked back on and just said, "that was simply one that didn't stand the test of time"?

Meltsner: I wasn't prepared for this one. It's been awhile. Okay. Well, for example, institutional negotiations were always tricky. We were searching for an agency experience where students would get to deal with clients, prepare case action, and see some fruition within a semester, and not have them feel torpedoed with respect to the rest of their academic schedule. One of the secret problems of clinical education, of course, is the interface with other courses, which is a totally different operational condition. So that involved negotiation with these agencies. Some of the agencies were really grateful to have us. They needed a defense function. They needed a group of students or lawyers to come in. And they were also sold on the idea. One such agency was the New York City Housing Authority. The general counsel was a man named Ed Norton, and Ed had gone to high school with me, and he was sold on the project we described and he made it happen. At the New York City Consumer Affairs Department, we had friends also.

But the hearing officers treated us as if we were a viral intrusion, and they made life hell for the students. Later on, just before I left Columbia to go to Boston, we tried to create a clinic called the Big Apple clinic at the Corporation Council of the City of New York. And it was heavy going to work out arrangements that worked for students. So that was one set of dead ends. Those were frustrating experiences. Of course, there were frustrating experiences with the rest of our faculty. We didn't expect immediate acceptance, but we believed enough in the fascination of what we were doing and its importance that we expected interest from our colleagues. And some were extraordinarily interested, but many were totally indifferent and almost willfully blind in trying to find out what we were doing. When we set up Morningside Heights Legal Services, the legal services organization on campus, we were located perhaps 300 yards from the law school but actually it felt as if we were in New Jersey. There were a range of relationships with non-clinician faculty and the myths and fantasies they had about our work. And of course, we had perhaps myths and fantasies about their work. Naturally this was not unique to Columbia. In fact, it was easier in a way at Columbia, because we also taught 'regular' courses.

Interviewer: Michael, were there any things you proposed for your clinic that brought you into outright conflict with the law school administration?

Meltsner: Not really. Michael Sovern was the dean during our years. He was largely supportive. If, I think, anyone had said, "Well they shouldn't bring this case because the defendant

is represented by a big contributor to the law school,” or something like that. . . something that’s happened in various other places . . . I think he would have told them to take a hike. That doesn’t mean we got approved a lot of our major budget requests. We had inadequate secretarial support. We had to fight for years to get a third teacher in the clinic. We needed more assistance in the summers. We needed more space and so forth. But by and large, the clinic wouldn’t have been as great a success as it was if it weren’t for the support from the dean’s office. I think having been a dean myself, I know how deans often need something to crow about, and I think Michael crowed about us. And of course, behind all this is the support that came from William Pincus, who I certainly disagreed with about a lot of things over the years, but who made it possible for so many of us to do the kind of work we did.

Interviewer: You actually raise an interesting topic. A lot of people have talked about the friction with the established faculty. But it sounds actually like there was a lot of debate, dialogue, even disagreement within the clinical community. You mention one where you were talking about the simulation the first time. Are there any other issues you can think of that really brought like a real early, strong reaction among different people within the clinical community?

Meltsner: Well, I think the main one was service versus education, but there were disagreements about virtually every move, because none of us had been trained by anyone else. There was no literature. We were inventing it all the time, and I think haggling over almost

everything was absolutely essential. I think that's why you have a thousand or so clinicians who do such interesting work and produce such interesting articles these days. That doesn't mean that law teachers as a whole pay them any more proportionate respect, but so what? Legal education was not transformed in the way that the early clinicians hoped it would be, but I suppose, like all such grand designs, we also knew that we were unlikely to reach our greatest ambitions. Does that answer your question?

Interviewer: I'm just wondering, particularly coming back to that scene you were talking about where Bill Pincus and Bill Greenhalgh were both listening to this description of simulation and getting agitated. Were there other sort of major sort of . . . areas or moments of disagreement you can remember where there was just like a sharp dialogue within the clinical community about different things that were being attempted?

Meltsner: Well, as I say, I think almost every important decision was that way. . . There were also issues about whether a clinic has to deal with poor people or not, whether clinicians should write the way regular faculty did. If so, the standards to evaluate them would be different. What sort of grading would be undertaken and so forth? Whether the essence of clinic legal education was skills training, or something greater than that might be the other issue about which people divided. And there, the division was more in fact than theory. Some folks taught skills. That's what they thought it was all about. That's why they thought students took their courses, and they may have been very right about that. That's what they were trained to do, and that's what they like to do. I like

to do that too, but I personally had other fish to fry. I was more much interested in. . . in how people learned, and how they felt and experienced the life of a lawyer, and what kind of relationships they had. I felt that. . . with clinical legal education was a. . . just the way it was clearly a perfect place to work on ethical issues. It was clearly a wonderful context to work on what kind of life do you want to lead as a lawyer. But I think many clinicians would say that's not for me. And I think different flowers can bloom in this garden.

Interviewer: Of all the different cases you worked with, or other educational experiences, are there any that most stick out in your mind? Either for their impact in their larger social sense, or for the impact they had on your students.

Meltsner: You mean cases I worked on after I came to Columbia?

Interviewer: Yeah, Columbia within the clinical legal education.

Meltsner: One that stands out, for example, from the early days – I was representing a man who had been convicted of a federal crime involving an assault on the high seas. He was a diabetic and had a history of some heart problems, and I appeared at his sentencing representing him, along with one of my students who worked on the case. And, truly coincidentally, she was a registered nurse. That was not why she was there. The judge had taken a dislike to this particular defendant. . . thought him a liar. If this judge had

been sentencing today under the sentencing guidelines, he surely would have penalized him for obstruction of justice, because the defendant took the stand to testify in his own defense – and the judge the man a lecture before he imposed a heavy sentence, given the particular crime. In the midst of the lecture, my client stood up and keeled over, causing utter confusion and chaos in the Southern District of New York courtroom with court clerks calling for an ambulance, for the nurse who was on duty in the building. Some of my clinical students rushed to the man’s assistance, but the class member also was a nurse ended up giving him a closed heart massage. The judge stood up – almost like a character out of Dickens – saying “He’s faking. He’s faking.” Finally the EMTs came in and spelled her and took him off to St. Vincent’s hospital, and I thought, “Well, she’s gotten her money’s worth.” So that’s just one story that comes to mind. I think the highest points were when we worked in duos and trios with students who never had worked as carefully or closely on a project themselves before. And they came to have to deal with each other in ways that were novel, and you could see the learning going on while you were watching.

Interviewer: In general, how would you describe the relationship between teachers and students, and among the students in your clinic versus in the traditional law school classes?

Meltsner: Well, there was more of a sense of common venture, and less of a sense of, “He’s out to getcha.” I mean, there was no. . . if we can take “The Paper Chase” image as a kind of stereotype of one form of law teaching, we were very much at the other end of the

continuum in the clinics. Of course there were less positive aspects about the early years. There were a lot of students who took the clinic not because they thought it would be easy, but just because it was different. So they wouldn't have to prepare, for example, in the same way, so forth and so on. And they had to learn that wasn't the case, that in fact, you could not say, "Well, I'm on vacation now," to a client. And there were occasional students who didn't get that, and that led to sparks flying. Of course it was really difficult for clinicians to bring that message home because they were so much closer to the students than other faculty. They had far less professional distance with their students than the normal academic relationship and this created a problem for some clinicians where it became privy to confidential materials one sort or another. We were really more like a coach or a mentor than a classic law teacher. Fowler Harper, my torts teacher at Yale, never would have wanted to know what was going on inside my mind. Or Boris Bicker, to name some of the great teachers I did have.

Interviewer: This I assume is something probably written about in depth. But your earliest use of the videotape, what specific uses did you put that to?

Meltsner: Oh, we did everything. We had students doing depositions. And then they would have to sit with us and go over the deposition, or at least a portion of it. And then we would show them to the classes – with permission of course. And you needed just five minutes of videotape to teach for three hours. For our semester long simulation, we

had to videotape “real world” events. A man who was an ex-offender who had been denied a job or dismissed from a job. His supporters were picketing an employer, and this was videotaped. So we used it both as a source of data for our exercises, and most prominently as something that our students did on videotape, and we would then show them. We also used it in house to compare the way we taught, which was another thing that came out of working with Gary Bellow who at one point I think offered to videotape some of his colleagues at Harvard, and then talk about the way they taught with them. We would do that to and for each other.

Interviewer: Before we move on, is there anything else about the Columbia experience that you think is particularly worth recalling this kind of history?

Meltsner: It'll come out as a result of your questions. There's no. . . I'm not carrying a big burden about it that I haven't shared with you, but I'm sure I'm going to talk about it for a long time.

Interviewer: Well let me just ask you, how exciting was it to actually be creating your curriculum as you went along?

Meltsner: Oh, it was difficult and wonderful, yeah. It was the time of our time. I think for me, it was particularly wonderful because I'd come off something even greater and thought that was the end. I could never come anywhere close than the ten years I spent during

1960s as a lawyer for the Legal Defense Fund. And while it's hard to compare these two experiences, they both hit me with equal power so that very little in life, except maybe you know, the birth of a child could compare with these experiences. They made powerful impacts.

Interviewer: Let's ask you about your first. . . it really sounds like everybody was contributing in different ways as the whole field moved forward. Looking back, is there anything, any innovation you first suggested or thought of that you feel. . . you feel particularly proud of looking back?

Meltsner: I let others say that. I think we were constantly innovating, but it's easy to say that because there wasn't anything before we came. You know, one way of looking at this whole thing is we were. . . or I should say I was repairing the defects and lack I felt in my own legal education. Because when I first cross-examined a Southern Georgia sheriff, for example, in a 1963 civil rights case, I realized I didn't have enough preparation. I was not well trained to do that task in law school. And when I argued my first appeal to the Supreme Court, I realized that law school hadn't done what it was supposed to. . . what I thought it was supposed to do. It had done other things. And so, in a sense, this was a way of redoing my own legal education by changing the system. That's one way of looking at it.

Interviewer: How long did you stay at Columbia, and then what caused you to move on?

Meltsner: I arrived at Columbia in 1970. I left in 1979 to become the dean of the Northeastern Law School. Philip had gone to Washington in 1977 to become the Vice General Counsel of the Arms Control and Disarmament Agency. Eventually I wanted to play a more influential role in the way an institution operated, as opposed to running my own little program. The thing about clinical legal education that I most wanted to get across during the years at Columbia was that it wasn't a course. It was a way of looking at education. And it was clear that in Columbia it was. . . it would, even if highly successful, be thought of as a course. Northeastern Law School was one of the very few law schools that took a different view institutionally about what we might call clinical values. It had its own unique work study approach, which some would think of as clinical, and others would say it was not, but it did have a view of itself as institution that was shaped by. . . by this approach as opposed to having a course, a little segmented area where you do things. And that was extremely attractive to me.

Well, you asked me about the intensity of those years, and I just thought of a small little example of it. Somewhere in the middle of the 1970s Philip moved into my apartment building on Riverside Drive in New York. And he was on the 9th floor, and I lived on the 11th floor. We discovered that there was a totally unused fire staircase that went down from the top floor to the basement that actually could be used to connect our apartments. So we often found ourselves late at night sitting in his kitchen or my kitchen, having snuck down this illegal but totally private staircase, discussing what we would do in our classes the next day. And another piece that I think should be included

is how our interest in relationships and helping students to understand the importance of them in legal practice in a variety of ways came from us having to cope with our own relationship. Now, its not. . . this isn't a soap opera. We weren't enemies or anything like that. But we did have. . . we were strong minded, and convinced that we had a good part of the truth, and yet we also realized that when we could see ourselves as a unit that had worked through issues. . . a system rather than two isolated atoms who appeared in the same classroom. . . that our work, both intellectual and teaching work, was dramatically better. So we would spend time where we would both work on the thing itself, and then work on how we were experiencing each other. And finally used those models, or presented the opportunity for those models to be available to our students.

Interviewer: If there's an example that comes to mind that would illustrate that, I'd actually really like to hear about it.

Meltsner: Well, I mean, this is not the example you want, but it's the best I can do. Philip is an extraordinary human being. There would be days I'd get to my office at Columbia, and there would be an agenda or xeroxed papers on my desk. Philip for many years, maybe he still does, carried a card in his lapel, and he would write things down. That's not the way I am. I'm an associative, much more associative. And he would have to get used to the fact that I might free associate to something that was not on his little card, or on our agenda, but I thought was important. And I had to get used to the fact that he felt

more comfortable when he went through an operation which allowed him to put things in a certain order and place. And I became more. . . not linear, but more organized, let's call it that . . . through working with him. And he became more tolerant, you might say a little looser in working with me. . . with me.

Interviewer: I'm sorry. I interrupted you. Do you recall what you were starting to say a moment ago?

Meltsner: I wanted to say that, I mean, I think the greatest failing that. . . that Philip and I encountered. . . at least I'll put it again, I think I'm speaking for him, but he should say it his own way. . . is that we got into this business in order to encourage lawyers to do certain kind of work in a certain kind of way. And all too often, we had the feeling that we might just be producing better lawyers for Wall Street. Well now, it's not a social minus that Wall Street lawyers are well trained. I think Wall Street lawyers do some good, as well as not some good. But we had higher hopes that there would be a transformation of legal practice in a variety of ways. And I mean one has to say thirty years later, years after we started, that the prospects of decent representation for many poor communities in this country are far worse than they were in the '70s, We've seen the deterioration of legal services for indigent and under-represented populations. And there are many more lawyers doing this work, and that's certainly a plus. But I think our ambitions, that our ideas. . . I don't mean just Philip and my own, I mean those of us who were doing this work, because we did feel a commonality . . . I think we just

have to face the fact that our impact was far less than we had hoped.

Interviewer: Michael, others have certainly shared this observation that you didn't _____ generations of law students to doing poverty law, for instance. Why do you think there hasn't been more of an impact on people's professional choices after they leave the clinic?

Meltsner: Oh, I think those are larger social forces at work. And you know, the illusion that many of us carried into the '70s was bred in the '60s. . . and maybe those of us who were working in the area at that time were more susceptible to the illusion. . . is that we were engaged in. . . The Supreme Court was, for example, not a court but a kind of revolutionary committee. How I ever believed that, I don't know. But certainly, it was an illusion. So I think what happened was a response to the deep, deep trends in our culture.

Interviewer: Actually, I want to ask one other question specifically about Columbia before we move on. You had mentioned that one part of the training you developed had to do with human relations, specifically within this context of training lawyers. What was your actual focus?

Meltsner: Well our actual focus was relational in the range of. . . of connections that lawyers had. I mean, with adversaries, with clients, with supervisors and supervisees, with peers. We were not doing therapy. We were trying to focus attention on the non-intellectual

but introspective emotional and relational experiences, values, conducts, myths that affected how people did their work, how they felt about the work, and how they felt about themselves. I think in a sense, this was the kind of people we wanted to be and felt we were. And we felt this related to work. We were not involved in solving people's personal problems, whatever hang-ups they may have had.

Interviewer: Obviously that's a dimension of training that you did not experience in law school yourself. I mean this is something that was a whole different approach to what you considered relevant. Is there a way of illustrating how you wove that into your daily clinic work with students?

Meltsner: Wove what in?

Interviewer: This whole relational aspect into your clinic work with the students.

Meltsner: Well we set up, for example, the meetings at Morningside Heights Legal Services so that people talked about their cases in certain ways, and then gave feedback to each other. We insisted that students work on cases as pairs so that there was a relational context. They had to immediately decide questions of power and allocation. Remember I said earlier how Philip and I conceptualized ourselves as a system. Well we conceptualized Morningside Heights Legal Services as a system with variety of interactional components. There were task related groups sometimes. And how the

group performed, how it did its business and what came out of it was always on the agenda if students wanted to put it on the agenda. Sometimes we did, because we had strong feelings. Sometimes students wanted to avoid these issues. And sometimes we went along with that. When we thought we could intervene in a creative way, we did. Here's a particular exercise. In one of our articles called 'Scenes from a Clinic', we described how we worked or how people experience cross-examination, and whether students could be assertive without being aggressive as lawyers. Could they relate to someone in a way which was non-hostile, and yet not passive either? Too many law students in our experience immediately went to the aggressive, hostile place to cross-examine with all sorts of negative impact on the decision-maker, the witness, even themselves. But there was a way of being assertive where you got what you wanted and you weren't experienced that way. There was no law school background, no casebook that dealt with issues like that. Nor did we feel people had to lie on Dr. Freud's couch to deal with them. It was a peculiarly work related contextual issue, and nobody seemed to have ever been there before. I'm not sure we did all that well with it, but I do know that someone should have gone there and we went. Later we were accused in a fascinating law review article of being a little too non-political about this, as if we were engaging in some kind of masturbatory conduct. I never thought so, and I answered it in print. But that's the other side. That's the devil's advocate view of this. "Hey, this gets in the way of social change. Because all these people are worrying about how they're experiencing other people." And maybe he accused us of bordering on psychobabble. I hope not, because I don't think we did.

Interviewer: Let me ask you this. This is actually a question we're asking everybody. How do you primarily think of or define clinical legal education. . . as a teaching method or as a social movement or what?

Meltsner: I pass on that one. I'm not good at definitions.

Interviewer: Okay.

Meltsner: Our work had to do with people in action and applying things and how they experience them while serving clients and learning about the relation with clients. And learning whether they're deceiving themselves or not when they relate to clients. I mean, that's too bookish for me to just lay a definition out for you. I wouldn't be very good at it. I'm sure others know what to say, and I'll accept any consensus definition.

Interviewer: Okay, now when you moved to Northeastern, this is at a time when many instructors didn't even have a hope of tenure or anything even approaching tenure, and you're suddenly a dean. How did that come to pass?

Meltsner: How did what come to pass? Being a dean?

Interviewer: Yeah, to be a dean at a time that so many other clinical teachers had virtually no standing.

Meltsner: There's never been a distinction between clinicians and others at any moment at Northeastern, really. And it saw itself as a practice oriented school. A little history, Northeastern was a night school taught by Harvard Law professors moonlighting until the ABA raised the standards in the 1950s which would involve the university in investing a lot more money in libraries and other facilities. And the then president of Northeastern was unwilling to do it. The law school closed in '56. When it reopened, it reopened as a co-op law school. That's what Northeastern University does. It's organized around a co-op program or work study arrangement. And the founding dean of the new law school, a regular law teacher named Tom O'Toole, decided that he wanted people who believed in this. And so he went out and hired a lot of people who were dissatisfied with their mostly Harvard law school education, and who had had relatively successful practice careers. And they built the school into something that had a remarkable success, at least in New England. In part for political reasons, a lot of students who could have gotten into much better schools, schools with higher ratings, went to Northeastern. First, it was a friendly place to go to school. You got to work for lawyers or judges for a third of your legal education. And these people were very proud of what they did. I'm sure getting someone from Columbia, regardless of his name, was thought of as a feather in the Northeastern faculty's cap. The school needed an outside dean for reasons that aren't quite relevant to what we're talking about today. And so they offered me the job.

Interviewer: Okay. Tell me a little bit about your deanship. What were the highlights there?

Meltsner: The highlight was that Northeastern Law School was housed at the time I arrived in a building that would not have passed muster as a New York City or Chicago junior high school. And interest rates were about 18% at the time. But nevertheless, we persuaded the university to build a new building. And I, much to my amazement, spent most of my five years organizing the school and planning a building. That's not something I ever thought I would do, but, fortunately, my wife is an architectural historian, and I've always been interested in architecture, so I figured out how to do it.

The other high point in my deanship was the low point, which was the first time in my life I ever was thought of as being on the right. Northeastern is a law school that as one of my students and a guy I used to jog with used to say, "This is a school where the silent majority is New Deal Democrats." In other words, New Deal Democrats were the right wing of this school. And so many of my decisions or attributes were thought to be those of the establishment. This was a new experience for me. I'd always been the house radical. At Columbia, you see as I told you earlier, we sort of sailed in as the people who represented the good spirit of 1968. Here I was plainly an academic fuddy-duddy. So, that was hard to get used to.

Interviewer: As far as the clinic, actually it sounded like Northeastern had enough. . . a very different model from a lot of the other. . .

Meltsner: (interjecting) Do you not know Northeastern models? Should I state that?

Interviewer: Go ahead and state it, yeah.

Meltsner: Alright. Very, very, very briefly. You go to school for nine months just the way you do anywhere else. And then a class is divided, and every quarter until graduation, half of the class is working out in the field under the supervision of lawyers or judges. Some are working for private firms and getting paid lots of money. Others are working for public interest firms not getting paid anything. You have to do four of these co-ops to graduate. You have to do them successfully, but you can do them in Alaska, Hawaii, Vermont, on Navaho Indian Reservations or in Calcutta for all we care, as long as you're being supervised by a lawyer.

Interviewer: I guess I'm thinking in a way that it almost seems unique compared to all the other schools.

Meltsner: It is. There's no other law school that does that.

Interviewer: You don't have the same division between the academic approach to legal education versus a hands-on approach to legal education. It seems like you really have your students "getting out in the real world." Is there a clinic. . .

Meltsner: (interjecting) There actually are clinics. . .

Interviewer: (interjecting) At Northeastern?

Meltsner: My colleague Clair Dalton and Jim Rowen run wonderful clinics. But you should remember just. . . just so were not going too far. . . that many of the faculty came up to non-clinical modes at schools. And while they couldn't be at Northeastern very long without being sympathetic to the co-op, they see themselves as doing what most law professors are doing in most places. But there's no way you can avoid a co-op at Northeastern. It infuses the classroom in a totally different way. We get visitors who come in and say, "Wow! Your students know a lot more about practice than mine do." So it is a different environment, but it's never been imitated in any American law school, really. And one has to wonder why.

Interviewer: Well actually, that's probably a good transition to some of the more general questions we've been asking people. One topic that consistently comes up when I ask people wh. . . how they see the future of clinical legal education relates to the cost. . . does the cost justify the approach? But what do you see as the future of clinical legal education, or ways of achieving its main goals?

Meltsner: You know, I'm just not good at predicting those things. I think that it's kind of run its course in a way. When you get a document like the MacCrate Report, and very little following from it, that I can see, then you kind of think that clinical education has just become another territorial piece of the action. It's a little bit like what's happening to

legal writing now. Legal writing instructors are trying to put down their own territorial imperatives in legal education, and I hope they're successful. But writing is an endeavor, as clinical legal education really is an endeavor that crosses the curriculum. Clinical legal education by and large has influenced the way law is generally taught. The number of law teachers who use video and role plays, who bring in problem solving exercises, all this and more indicate clinical legal education has a vast impact. But CLE also has not moved the rock of typical student/faculty interactions. It has not become *the* method that's transformed legal education. So I suspect we will see pretty much what we see now, unless a crisis occurs. And, oh, there are some people who think that the cost of legal education will cause a crisis, and some events in the firm world will cause a crisis. It's hard to see it when we have an economy that seems to cover all our lacks and our evils with constantly escalating successful numbers. But eventually, maybe there'll be a crisis, and I don't know what will happen. I'm just not good at predictions. I'm focusing more on the question that Howard Lesnick taught me, which was, "How do you want to live you life?" These days I try to find models where students can explore that, so that perhaps down the road, they'll be less susceptible to the ills that the profession has been known to cause less creatures in a bad joke, or one of the bad jokes about lawyers. So, I'm not focused on the future of clinical legal education as an organizational matter anymore.

Interviewer: I want to ask a few other questions. One, something you alluded to earlier, that there was almost a kind of a crusading or reforming mentality among all the people who have started off with clinical legal education. How much of a disappointment is it to

you looking at it now from thirty years of hindsight that there hasn't been more widespread change?

Meltsner: Well, it's a great disappointment, but it's not just a disappointment about clinical legal education. It's a disappointment about the course of development in a country that needs more social justice, that's all. I think it would trivialize it, for me at least, to talk about it in terms of clinical legal education. Sure, I wish legal education were different, but I also wish American society were different.

Interviewer: Mm-hmm. I'd like to ask your memories of some key people. How extensively have you worked with Bill Pincus during the early years?

Meltsner: You know, I didn't sit in his office, but he was there at critical times. And I think he had the passion and he also had the willingness, the flexibility, to let people be different. Now maybe he felt he had to, but whatever. . . there were many strong people in there not doing his will, but he still found ways to support them. He's a tough guy, a New Yorker through and through. That's where I grew up. And I kind of enjoyed working with him. A great man who didn't get. . . never gotten as much attention I think, as he deserved.

Interviewer: Can you recall any times where. . . you say he was "always there when we needed him." Can you. . . can you think of any times where he actually interjected himself into

issues that affected you directly?

Meltsner: I meant it very personally. For example, we wanted a small amount of money to put the simulation materials out. He was willing to do it. He certainly wasn't crazy about our simulation, but he supported it. He produced context where people could work. And he left them alone in many ways. Lance Liebman once was doing an evaluation of clinical legal education for the Ford Foundation, which was the ultimate source of all this. And it was sort of whether Pincus should be funded for another five years. And I remember to this day saying, "Pincus is a great success, and he should be proud of what he's done, and so should the Ford Foundation." And I still think that.

Interviewer: In those early years, who were some of the other sort of major figures in the whole clinical movement?

Meltsner: I won't give you major figures in the clinical movement. I'll give you the important people in my world. Harriet Rabb, who was the dean for clinical affairs at Columbia, and a clinician herself, was a charismatic and valuable and important person. George Cooper, who was a tenured Tax Law professor. . . he's now out of legal education, but he also taught clinically. . . and he was the key person at Columbia. My association with South African people and helping their legal resources agency get going came out of clinical legal education. And my connection with Felicia Kentridge, who was the first clinical law teacher in South Africa. I've mentioned Gary Bellow as everyone

will. There were the whole group of first generation clinical law teachers who, even though they were going their different ways, very supportive of each other. One of my old friend Harry Subin, did this at NYU, and that was very supportive for me. There were people behind the scenes in a sense, like Peter ____ who was a dean at Columbia and who did pioneering work on the financing of clinical legal education. There were people out there who I may have never met or met rarely, but who were influential in the larger law school. So I think of Ken Pye would, for example as a dean who said favorable things about clinical legal education. That Tony Amsterdam was willing to not only see this as a valuable way of working, but eventually years later take this up himself, was tremendously important, a morale booster that a man of that quality and ability who I'd worked with in regular cases thought we were doing good work was extraordinary. And then of course, you know, the feedback of lots of students who would tell you that what you did actually made a difference to particular cases, or to their lives, was probably the most valuable of all.

Interviewer: Michael, I know you have a little less enthusiasm for sweeping kinds of questions, or abstract questions. But are there any particular milestones or watersheds you can think of in the growth of clinical education from its earliest routes over the years?

Meltsner: Well I think one was the Buckhill Falls conference in Pennsylvania where we all were brought together in a fancy setting, and a lot of interesting ideas were shared. There were smaller meetings of the Northeast Group of clinicians that were particularly

valuable to me. A personal milestone was when Philip and I published our first article, "Report From a CLEPR Colony," which was. . . I don't know whether it was good or not, but it got a lot of people talking to us in a lot of different ways. And that gave us, I think, the strength to go on. Gary Bellow started circulating materials for years before he published them in a casebook with Bea Moulton. And those various drafts were particularly important in an intellectual way. Getting the money to purchase that first Sony video rig was totally liberating to me. Suddenly, I could bring the data of practice into the classroom. Also, it's hard to call it a milestone, but whenever I first started using an audio tape recorder, a similar thing happened. Getting tenure was important. It allowed us, not only whatever one gets when one gets tenure, but it allowed us to speak to an audience of clinicians and say, "Stay with this. Do this. Look, good things have happened to us." I think Philip and my willingness to go in a place we'd never thought we'd gone towards human relations was very important in deepening our understanding. But again, I don't know if that's a milestone. I think the clinical conferences that the AALS finally started funding were extremely valuable. That's all that comes to mind now, but you know, I suppose at a different time you could come up with 20 or 30 others.

Interviewer: Can you talk a little more about the first conference you mentioned? I'm sorry. . .
Buckhill Falls.

Meltsner: Well, it's like. . . was 1973 or so? So it's a long time ago, and I'm a little unsure of

whether my recollections will be totally accurate. But we were all invited. Everybody who had anything to do with clinical legal education was brought to this resort in the Poconos. . . fabulous kind of resort. And a number of people had prepared papers in advance. The one that stands out for most people is Gary Bellow's "On Teaching The Teachers," but there were a number of others. And Pincus had done his work carefully. They came from a range of places. Bill was nothing if not savvy about getting support from judges and deans and the like. And then the whole thing was published in a book thereafter, so that you mean, it wasn't. . . it was not even in a law review. It was a hardcover book. It was substantial. I think this was the first time that many of us had ever talked to clinicians who weren't in our own city. And there was a kind of dignity to the number and scale and intensity of presentations. And that gave us a big lift.

Interviewer: I would like to actually ask you. . . several time you talked about being given a lift, or given. . . being given the strength to go on. Did you ever actually feel discouraged enough in any way to want to give up what you were doing, or think about doing the clinical work?

Meltsner: Yeah. But probably just in a blowing-off-steam way. I mean, I don't suffer ___ easily, and I thought some of the arguments about clinical education were so foolish as to make me question whether I wanted to remain in a faculty with people like that. Again, I started with a rather large skepticism about legal education based on my own, which was "pricey", not in the sense it was costly, but you know, the really great people there.

And well regarded, very valuable degree, and yet never in my judgment came up to what it should have been. So I was skeptical about the entire enterprise of legal education, that I became a law school dean is truly absurd. So there were moments of doubt, but anyone who knows me well will say, “Well there’s an entitled fellow.” I’m an only child. Some of my dearest friends overlook my sense of entitlement. And so I guess I felt I had a sense that I would succeed, because it was my work. That’s what being an only entitled child can do for you. So I wouldn’t say I was flirting with other things. I guess I always assumed that at a certain point I would move on and do other things. I wrote a novel in the late ‘70s, just before I left Columbia. And I was sure I would be. . .write 70 or 80 others. At one point, I flirted with a judgeship, and that didn’t happen. But I don’t think I was ever on the verge of resigning.

Interviewer: You use a phrase like “the CLEPR colony” – and that first article obviously talked a lot about isolation within the law school. How debilitating, I guess, was that sense of alienation within law schools that a lot of clinical teachers talk about in those early years? I mean how badly – did people feel like they were a part of the greater whole?

Meltsner: By the time I hit Columbia, I’d argued before the Supreme Court five times. I’d gone to a wonderful law school that gave me a lot more clout than deserved. I’d worked with some of the greatest lawyers in American history on some of the most important cases. The Columbia faculty, and I don’t really mean to pick them out, but they could have any opinions they wanted. They just didn’t shake me that much. I liked what I

was doing, and thought it was valuable. On the other hand, there were scores of clinicians who felt marginalized, whose legal educations maybe didn't protect them as much, who had struggled just to get their jobs, who didn't have the kind of support from other lawyers that we had, who maybe were at marginal institutions whose faculties and whose deans maybe were less supportive. Those were the people who were in trouble. I was not. I can't claim great pain and suffering.

Interviewer: I think that's one thing that struck me, is that obviously it's a strong-willed group of people that made up the clinical programs. Looking back, what do you think have been the greatest successes, either of your own personal career or clinical education as a whole, within the context of clinical legal education?

Meltsner: When I was a kid growing up in New York, there were three great center fielders. There was Willie Mays for the Giants, Mickey Mantle for the Yankees, and Duke Snyder for the Dodgers. And you couldn't talk baseball in New York in those years without trying to figure out who was the greatest center fielder. And a lot of wasted hours were spent on this debate. I suppose it kept us off the streets and out of the criminal law. And I feel a little bit like that about this question. For me, the high point was doing it. For me, the highest point, I guess, was doing it with wonderful people, especially being able to have a successful relationship with a brilliant and caring person like Phil Schrag who I felt I influenced as he influenced me. And again, being an only child that relationship was not so easy to deal with. So to be able to have that

relationship and be productive and affect a lot of people. . . what more can you ask?

Interviewer: Michael, I've reached the end of my questions, which a rarity. I find a way of usually stringing that along. Is there anything we have not talked about that's come to your mind during the conversation that should be added into this?

Meltsner: No, I think you've. . . you've asked a range of wonderful questions. I hope I've given you what you need.

Interviewer: Thank you very much.

Meltsner: Thank you. Thank you.

END OF INTERVIEW.

Transcribed by: Sabrina Hilliard