

**Transcription of the Oral History Interview with
Harriet Rabb**

Ogilvy: Great -- Harriet why don't you -- why don't we just start with you telling me what was your first exposure to clinical legal education?

Rabb: I think my first exposure was when I was hired to teach the clinic.

Ogilvy: Really?

Rabb: Yes.

Ogilvy: When was that?

Rabb: In 1971.

Ogilvy: And where?

Rabb: At Columbia Law School.

Ogilvy: Tell me a little bit about that hiring and first job.

Rabb: Sure. George Cooper was a member of the faculty at Columbia Law School, and he had been very much involved in some early implementation of Title VII of the Civil Rights Act of 1964, and became persuaded that unless there were lots of advocates trained up to implement the new statute, that the rights that were promised in the statute wouldn't be implemented properly. He persuaded the law school at Columbia to start a clinic that would commit to train 20 or so students a semester to do Title VII law. He looked for a colleague to teach with. And I was hired to be that colleague.

Ogilvy: How did he know about you?

Rabb: I don't know that he did. I was moving back to New York from living in Washington D.C., and was calling people to find out if they knew about job openings. I called the dean of the law school who had been a friend of mine while I was a student there – and thereafter – and he said, “There's this clinic starting -- why don't you apply for the job?” So as one of a number of jobs I applied for, I applied for the clinic, and George hired me.

Ogilvy: Was that the first clinic at Columbia?

Rabb: No.

Ogilvy: What were the other things there at the time?

Rabb: Mike Meltsner and Phil Schrag had already started teaching in the clinical program at Columbia, and I think Jack Himmelstein might have already been there, but I don't remember whether he was there before I was.

Ogilvy: Mm-hmm. Was there any action – interaction among the clinical teachers? Did you have much contact with Meltsner and Schrag?

Rabb: Yes, we did, although, it was nothing like in the later years when the clinicians met regularly and talked about methodology and style and focus and all the things that we talked about. But we were both social friends – all of us were social friends – and as well, our offices, were down the same hallway as I remember, and that made a difference. We did talk about the work that we did. But it was at a very rudimentary level compared to what came later.

Ogilvy: Won't you describe the clinic as it began, and the sorts of things that you did?

Rabb: Sure. George and I admitted 20 or 24 students to the clinic in the first semester and in every semester thereafter, and we were happily oversubscribed. Students really were hungry for an opportunity to do this work. I think it was both that it was clinical work and that it was civil rights work, coming as it did starting in the

fall of 1971. We had a classroom component in which we taught the law of civil rights and particularly Title VII. And if you had entered one of those classrooms, it would have looked a lot like a small group, a small class session on civil rights law and particularly on Title VII. We also taught a lot of civil procedure because we were going to be doing litigation. Most of the cases that we had at the outset were cases that we did as cooperating attorneys with the NAACP Legal Defense Fund, so our clients were often not available to our students, and we worked on record matters. We did discovery to the extent that we could from a distance. We wrote briefs. We did motion practice, but most of it was at one step removed from the clients. At some point we were in touch with people in New York who wanted to bring cases of their own. And, at that point, the classroom component of the clinic remained essentially what it had been; but the litigation component became more our litigation. We were the primary counsel, and we were representing clients for whom we were their only lawyers.

Ogilvy: Okay. Can you tell us a little bit about some of the early functions of the clinic?

Rabb: When we began, George and I had a classroom component which was very much focused on teaching students the law of Title VII of the Civil Rights Act of 1964, and also on some discovery and writing work, because the students were doing cases that were I think primarily from the NAACP Legal Defense Fund. Colleagues who had case litigation going on in the South asked us to do back-up

work for them, and we did. We did everything from motion practice to writing interrogatories and researching and preparing briefs and memos of law. In class, we did the substantive legal work that you would have seen if you'd gone into a small seminar or small class setting. It didn't look clinical in class, or what we came to call clinical later. But the work that the students were doing on the outside was in real time, and therefore not the sort of work that students often got assigned in other courses, but real work on real, real cases and real clients.

Within a very short period of time, George and I were asked to do work by people in and around New York City where our law school was. So we became, relatively early on, primary clients. . . primary counsel for clients who had no other counsel.

Ogilvy: Can you remember any of the cases early on that stick out in your mind?

Rabb: Yeah, I can. One of the first ones was the litigation brought by women at NYU Law School and Columbia Law School who believed that the – essentially the New York law firms that were loosely called the Wall Street firms did not hire women unless it was for the trust and estate departments of those firms. And even then the women believed that they were discriminated against in both being employed and in the terms of their employment. Before I got to Columbia, the women from both of the law schools together decided that in the next hiring

season that they encountered they would all take notes of their interviews. They went to interviews, and the material they developed was extraordinarily interesting and damaging, we thought, to many of the firms who interviewed them. Those women filed complaints at the New York City Commission on Human Rights and quickly our clinic, the Employment Rights Project, became their counsel.

In another set of early cases in 1973, the women of the *New York Times* decided to file charges against their employer, and we got that case as well. And then in short order we also had the women at the *Reader's Digest*, and for a period of time the women at *Newsweek* magazine. We also counseled, but we didn't ultimately represent, the women at *Newsday*, which was a newspaper on Long Island. And that became the focus of a lot of the work for the clinic for the next number of years.

Ogilvy: Was the – these obviously were not poverty clients in the traditional sense of the word. What – was there any reaction from the institution about representing this class of client or – [inaudible]

Rabb: The institution being my law school?

Ogilvy: Yes. Mmm-mm.

Rabb: Not exactly. There was a reaction -- and I understood it -- to how much money it was costing to do these cases, because we would sink a couple of hundred thousand dollars into discovery and experts and all that went with it. And in the summer we needed to have a full complement of students because litigation went on. We were litigating against huge law firms. So, there was some concern about that. I don't think anybody was worried about our taking money out of the mouths of lawyers. The litigation we did created an immense amount of work for a number of very big law firms from New York to California. So the bar was doing very well. We weren't competition that anybody worried about. Then, at the end, when we would bring counsel fees, it is my recollection that members of the faculty who had had nothing good to say about clinical education or nothing at all to say about clinical education -- including one particular one who I recall on the day that the counsel fee was announced in one of those cases, and it was coming to the law school, went to see the dean to see if he could use part of the recovered fee for a research project of his own in international trade work. But, by and large, the school left us alone, and was not particularly interested I think. Some people, I think, on the faculty were very pleased and very proud of the work, but for the most part, the school left us alone. And the deans -- the deans, because there were a number over time -- were quite supportive.

Greg Stack: Flip around. I want to make sure we get it.

Ogilvy: Okay.

Greg Stack: It keeps picking up the sound of your shirt against it. So -- okay.

Ogilvy: Did the case involving the female law students -- did that go to litigation, or did you resolve that in administrative hearings?

Rabb: A number of the complaints were dismissed at the administrative level. Some were resolved and two cases went to federal court because we were unable to resolve them at the EEOC. After we exhausted the EEOC process that the statute required, we went to court.

Ogilvy: Do you remember the case names?

Rabb: Oh yes. One was Kohn against Royall, Koegel, and Wells, a firm that became Rodgers and Wells. And the other was Blank against Sullivan and Cromwell.

Ogilvy: I was hoping you'd say that because that's in my Civil Procedure book, and -- Can you talk a little bit about the Blank case?

Rabb: Sure. Diane Blank was one of the number of women who had asked for employment at Sullivan and Cromwell -- and I don't remember the particulars of what the interviewer said to her, but it was actionable, and the New York City

Commission on Human Rights so found, as I recall. We went to court. The case was assigned to Constance Baker Motley, and that was by the draw out of the wheel in the Southern District of New York. The firm promptly moved to have her remove herself from the case, because she was a woman and a former civil rights lawyer. And in one of the more humorous and satisfying moments I'll ever have in court, she asked them to consider the alternative, which would be, she assumed, a man with no civil rights experience – and exactly who would be benefitted and who would be harmed by either of those draws? She refused to remove herself from the case, and the firm appealed. Judge Oakes in the 2nd Circuit, whom I've spoken to later about this, said that he and his colleagues thoroughly enjoyed reading the appeal papers in that case and also in affirming her decision that removal was inappropriate. We negotiated with Sullivan and Cromwell over a good period of time, during which various pieces of information came out about the firm, including a book that all partners signed when they ascended to partnership. It was called *The Ascension Book*. There were no women in the book. They hired to represent them a man who was known in the civil rights community in New York, Ephram London, and we fought hard during that case. I remember various personal events that happened, including an extraordinarily insulting letter that he sent me in which he used some terminology out of *Gulliver's Travels* to describe what Lilliputian brains we had. It was a very colorful letter which I then attached to some correspondence to the court that became known to the press. And the story was reported in the New York legal

press, I think to the detriment of the defendants. Not long thereafter we settled.

Ogilvy: Hmm -- What kind of involvement did the students have in these cases?

Rabb: Total. They did everything. They planned the strategy. They executed all the discovery. We never went to trial in either one of them. They wrote all the briefs. They attended all the meetings. They did everything.

Ogilvy: At this time, there's still just you and George Cooper?

Rabb: At some point George left the clinic, and I was joined, happily, by another wonderful colleague, Howard Rubin, who's now in private practice in New York. But he had been a student in the clinic and had been on some early cases. We prevailed on him to teach with me.

Ogilvy: Do you recall when that would have been?

Rabb: I'm not certain.

Ogilvy: Okay.

Rabb: But he certainly did the *New York Times* and the *Reader's Digest* cases with me. And I can't remember whether he was on the law firm cases. He wasn't there, I

think, for *Newsweek*, which was very, very early on. But I don't remember exactly.

Ogilvy: Okay. Before we go on in the chronology, I want to go back a little bit to your law school days. You were at Columbia.

Rabb: Yes.

Ogilvy: Did you have anything that approximated a clinic yourself?

Rabb: I don't think so. I did take a constitutional litigation seminar where we talked through -- looking backwards -- talked through the documents that we had. But I think it was more about the strategic choices lawyers made. We didn't talk about the human elements of the material. And there was also a course in criminology. Sir Leon Radzinowicz taught a course in criminology, which was interesting, though I had no hope or wish of ever -- to ever become a criminal lawyer. But he talked about evidence and data and people involved, and I think in some ways came close to being a precursor for me in thinking about these issues. But there wasn't any clinic.

Ogilvy: What was the -- what was the atmosphere of the law school at that time? That was a very heady time in the streets and whatnot.

Rabb: Well, Columbia had gone through 1968, and in an important way the law school had been a part of it. And the faculty had been, I think, shocked and discouraged by its own reaction in some ways to the student uprisings at Columbia. I was gone during that period. I had graduated from school in 1966, where we were all very interested in civil rights, but the schools themselves hadn't become what they became in 1968. So I was gone during that period. When I came back in 1970, there were still some who were quite bitter about the student uprisings, and others who thought maybe things had loosened up a little bit, and that was a good thing. But Columbia was still sending most of its students to law firm practice, and students were still happy to have that happen. They were graduating with, you know, 90 percent – or more, 98 percent or so of the graduating class finding jobs. So, for many people the world still continued to spin in its orbit, and that was a good thing.

Ogilvy: How many women were in your class? Do you remember?

Rabb: A huge number, because it was during the Vietnam War. So there were 325 people in the class, and maybe somewhere between 25 and 50 of us were women.

Ogilvy: Hmm -- After graduation from Columbia what did you do next?

Rabb: I went to work for Rutgers University and co-taught with Arthur Kinoy a seminar

in constitutional litigation, and then after that went with Arthur, Morton Stavis and Bill Kunstler to the Center for Constitutional Rights in Newark, where we represented SDS and yuppies, and -- not yuppies -- *Yippies*, and SNCC, the Student Non-Violent Coordinating Committee, and anti-wars protestors.

Ogilvy: How long were you there?

Rabb: Probably until 1970 -- I think 1970, when I left and went to Washington and worked at a small public interest law firm called the Stern Community Law Firm, and did consumer work, and then in 1971 came back to New York.

Ogilvy: How did you feel that your law school education prepared you for the practice that you were engaged in?

Rabb: Not at all. Except that I learned how to read books. You know, I learned how to read the law, and I learned how to write. But there was nothing -- not at all is unfair. I did learn how to -- I did learn how to be a lawyer. And I'm not sure anything could have prepared me to deal with representing SDS and having our phones tapped by the FBI and being hauled into Congress with clients who were being called communists and so forth. So it's not fair to say that Columbia didn't prepare me for what I had to do. It did what it could've, I think, to prepare me for that. And I'm not sure anything that I did with my students over the 30 years

would've prepared them to deal with being tailed by the police and having your phone tapped and having your FBI file grow fat and so forth. So that was sort of -
- that's an unfair answer.

Ogilvy: Hmm.

Rabb: It was an unfair answer.

Ogilvy: What was the next iteration at Columbia for you? What did you do next?

Rabb: At some point, it became obvious that clinical education -- obvious to me -- it had surely been obvious to others long before I accepted it -- that clinical education needed to look at the way students practiced law, not just at the practice of law. And there were members of my faculty, particularly Jack and Phil and Mike, who were already way ahead of me in believing that we ought to look at the behavioral aspect of clients and lawyers together and think about what students brought to the table in addition to their legal training. I would say that was somewhere in the mid-'70s. The clinical program was growing. We were hiring more people, we were doing more and different kinds of clinics. This was a great revelation and a wonderful opening to think that there was that much more for me to learn – for me personally – that there was that much more to learn if we expanded what I thought of as the scope of what was appropriate to all the interactive,

interpersonal behavioral pieces that are now really the core of, and definition of, clinical education.

Ogilvy: How did that play out in the way that you conducted the clinic?

Rabb: We did -- you know, I don't remember how we started down this path, but we did simulations to prepare students to interview clients. We did mock interviews on tape and mock counseling sessions on tape. We followed up with long and thorough examinations of those tapes with the students to help them see and critique their own behavior. We did lots of exercises in class that had to do with trying to develop counseling skills, testing the integrity of the students' learning and of their approach to matters, testing their judgment. We did only one seminar in which, as I remember, we had a whole exercise on talking on the phone, since for a lot of students talking on the phone was hard. If you'd have told me in the early 1970s that I would have thought that was a legitimate thing to do in class, I couldn't have imagined it, but of course it was, and I believe now totally legitimate and totally appropriate. So the whole of what we did in class did focus, at least in the beginning, on the substantive law that the students were going to have to master in order to be good counsel. But -- and we usually did that by doubling up three-hour class sessions. So in the first few weeks you would be in clinic six hours -- in clinic classes six hours a week. And then there were lots of individual sessions with your teachers. So the early parts of the semester were

heavily, heavily loaded to learning a lot of law. Then we just worked the rest of the semester on skills.

Ogilvy: Would -- did you develop your own materials?

Rabb: Yes.

Ogilvy: Do you still have any of those around, do you think?

Rabb: I found some of them recently. I do have some of them.

Ogilvy: Mmm-hmm. Are these things that you developed within the context of your own clinic, or were the other clinicians involved in a wider project?

Rabb: We did our own.

Ogilvy: Let's move forward a little bit in time. What happens and what comes next for you?

Rabb: After the Employment Rights Project, the school and I had run out our string on doing those huge cases, and for all the reasons that I had said -- they were an immense obligation, they were a huge money sink which we had to win back,

they required taking on an enormous amount of summer work and so forth. Although it was good and wonderful work -- ENOUGH -- time to do something different. So it occurred to me that my students were much too corporate in their approach and didn't appreciate what it was like to try to work in government, which I knew was not an easy thing to do. When I said earlier what my career had been, I left out a year that I spent working in New York City government. So, that had stayed with me -- how hard it was to find a working Xerox machine or photocopier of any kind and so forth. So we started the Big Apple Clinic, which I did with another colleague down at the City Corporation counsel's office. And we picked a couple of different kinds of cases to work on, and we did those. At the end of that effort, the students handled, mostly they were trip and falls, pothole cases. People made money -- lawyers and individuals made money by falling in potholes in New York. It was a guaranteed money-earner. And the City would pay. We started actually taking depositions of people who said they had fallen in potholes, and it was interesting how many of them couldn't remember where or when the pothole was, or they would say that the pothole had been in front of their house for five years and one day they fell in it to their detriment and surprise.

Anyway, the students at the end of that semester wrote a report about what we had been doing. And the pothole law changed for the City of New York, causing one of the members in the New York State Trial Lawyers Association to tell me at the

hearing on the new law that I better never run for public office – not a thing that had ever occurred to me – because the trial lawyers would never forget what we had done. But the students deserved all the credit, not me. At the end of that period, Cuban and Haitian asylum seekers were coming to the country. In 1980, we opened an immigration law clinic because there were 86 Haitians in a detention facility in Brooklyn, and it wasn't clear that they were ever going to get out. It was meant to be a short-term facility. There were no exercise rooms, there was nothing. So the students and I went down to Brooklyn, met the clients and represented them in their effort to get asylum. In addition to representing those people in the detention facility in Brooklyn, my colleague and I who taught that clinic made it a point to have lunch on Broadway near the law school in the summer before we started the clinic. And as we would eat -- Broadway is about a block from the law school – and as we ate lunch at the pizzerias and hamburger joints, we would just say to the waiter, “Here's a card for the immigration law clinic. If you know anybody who needs services, this is a place where they can get help.” At that point, the immigration bar was unhappy and wanted to meet us to make sure that we were, a) doing what we should be doing, and that we knew how to represent clients, and, b) that we were not running a major office that was going to drain business away from the bar. We met with bar leaders, we had a conversation. They became immensely helpful at that point. The American Immigration Lawyers Association became quite supportive. I think they just didn't know what the operation was going to be, and were worried about what

would happen. We had lots of cases, and we did asylum applications and deportations and so forth.

Thereafter, there were a number of other clinics that we ran, one with the City Commission on Human Rights where we represented people, black and Hispanic people, who were denied housing, usually individual cases. The students tried, worked up and tried or negotiated to a settlement in all the cases that we handled. We had one clinic that was of a different sort, and that was a policy clinic. Should I go on and describe it?

Ogilvy: Let's, let's go back to --

Rabb: Okay.

Ogilvy: – and pick up a little bit more detail on – on the pothole clinic. When did that start? How long did you run that?

Rabb: That was after the employment clinic – I should have brought a CV along so I could remember the dates. That was after the Employment Rights Project ended, and before 1980-81, so it was probably two or three years at the end of the '70s, before we started the Immigration Law Project.

Ogilvy: And I certainly can understand why you wanted to stop doing the big cases at that point in time, but how is it that you picked this particular area?

Rabb: The -- the -- New York City?

Ogilvy: Yes. Mm-hmm.

Rabb: It was me being grumpy. I really felt our students were very corporate in their orientation and felt that they had a disdainful attitude to people who went and worked for the government on the theory that that was not the employer of choice -- that you went there if you were denied your employment of choice. And I thought that was wrong. I had always wanted to do -- believed in doing work with the government if you could do it with the right government on the right cause. But, if you could do it yourself, if you could work for the government and then do good service, I thought that was important. And I also thought the students ought to be more respectful of what it was like to work in a place where you couldn't get secretarial services after 4:59 in the afternoon, where no one would answer your phone in the morning before 9:01, where the photocopy machines didn't work, where you couldn't get messenger services, where if you had to work late at night, there was no one to take you out to dinner, or to pay for your dinner, and that it could be harder to work in government than it was to work on multi-billion dollar matters in a big law firm. So that was what caused me to say, "All right,

I'm going to call the Corporation Counsel and see if there's something we can put together here." And after we did it for awhile, and it was working and it was enjoyable, NYU got into it as well. And for a period of time; and I don't remember who the supervisor was at the NYU clinic, but they also had students working at Corp. Counsel, I don't know whether that was for the same reason – it might have been.

Ogilvy: And then the – the transition to the immigration law seems rather abrupt. --

Rabb: I had learned everything I needed to learn about working for Corp. Counsel. And as with all of these clinics, I did them because I wanted to know about them. I thought they were important issues, and I thought how wonderful if Columbia could graduate a group of students who could be the leaders in dealing with these new issues. I remember sitting in my office one day in the summer, and I was looking at brochures that were coming across from ALI and everybody else about training sessions. I had one in my hand, and it was about immigration law. I threw it in the garbage and I remember, sort of like a bad sitcom, suddenly realizing that that was more meaningful than I had realized. I took it out of the garbage and thought, This is going to happen. It's been on the front page of the papers. The *Times* is reporting all these refugees landing in Florida. This is coming, and this is not going to go away fast, and people need to be involved in this. Civil rights lawyers need to be involved in this. We need to do this next.

Ogilvy: Hmm.

Rabb: And *did*. That's how we got into immigration.

Ogilvy: And, how long did the immigration program --

Rabb: That was a number of years, probably four or five, if I remember correctly.

Ogilvy: Are there any memorable cases that come out of that time?

Rabb: – lots of them for lots of reasons. And, you know, some of them -- certainly the cases on – the case on behalf of the 86 who were detained in the Brooklyn detention facility was an immense learning experience. The people were treated like criminals, but not as well, because there was no – there was no service for them there at all. We hooked up with the Social Work School at Columbia and did clothing drives, and we [inaudible] found out the birthdays of all the people down there and tried to get birthday cakes to them, only to have the extraordinary experience of having the guards in the prisons become immensely resentful. Students were turning over Nike sneakers that they didn't wear anymore because the shoes had lost one millimeter of rubber off the bottom of the treads. And so there were all these detainees in the facility wearing Gore-Tex jackets when it was

cold and nice sweaters and so forth. Needless to say, they were detained against their will. But the guards became extremely resentful. So we got involved with the Social Work School in working with the guards as well as working with the clients. We also went to court in that case, having gone down again to the Southern District and drawn off of the wheel Judge Bob Carter, a black lawyer who had been at the NAACP Legal Defense Fund, and who had become a judge in the Southern District, and a very well-respected and extraordinarily good judge. The day we drew his name, we went to the – to Brooklyn, to the facility, and we said, “Guess what? We got this judge and he’s a black judge and it’s going to be wonderful.” And they said, “So what?” It was so shortsighted of us to realize that the face of oppression in Haiti had been a black face. To us this was a big plus. To them it was incomprehensible why we were so delighted. We went to court in that case, and those detainees who were the main plaintiffs in the litigation were brought to court in shackles. I really can only barely talk about it now. I took my kids, who were very little then, to court that day. They’re both -- one of them is a legal services lawyer now, and the other one is heading in that direction in her first year of law school. It was pretty extraordinary. There were lots of other cases that we did, including somebody who had come here from Russia and who had brought his wife and children with him. And when we said to him, as he overstayed his tourist visa, “Do you have any family in this country?” He said, “Like what would be helpful?” And there was a lot of that in immigration law. And so it was a good. It was a good teaching vehicle because

students felt such sympathy for these clients, but often had to say the law simply doesn't provide any avenue for you. Learning how to do that was hard. We once lost a client in that clinic to a student who came in and said, "Mrs." – her name – "I've spent the weeks since I interviewed you thinking about the fact that you've overstayed your visa and you're undocumented, and it is clear to me now that there is absolutely nothing that can be done for you. You're illegal, and you'll have to leave." And she collapsed on the floor. She was revived, but the student I think will never forget that experience. There were a number of stories like that. Fake marriages came to the clinic – and when we would do the interviews of – that the immigration service would do, we would discover that they were fake. But we also had lots of asylum claims, including some that I can remember that I still – I can't talk about that all because it's too – it's just too painful. And the only reason that we stopped doing the immigration work at some point was that I couldn't bear it anymore. The kids were small, and I would go home at night too wrecked from what had happened in the office during the day. Even though I taught students about developing distance, it was over time, too hard. So we moved on.

Ogilvy: When you began the immigration law clinic, were there other clinics, immigration clinics at the other law schools that you were aware of?

Rabb: I know that there were – and I don't remember what the interaction was. I know

that we wrote our own materials again. But, I don't remember why we did that.

Ogilvy: Okay. The next iteration again was --

Rabb: I think after immigration law we tried the education project, although I'm not sure that came next. This was a completely different kind of effort. It wasn't litigation. The idea was to do something about the New York City schools. And again this was because of a personal experience. One of my kids had become ill and had missed much of the first semester of grade school that year. At some point the principal called and said, "Do not worry about whether your child is going to promote to the next grade. Your child is very able, very smart. Will -- whatever is missed will be reclaimed next year. So don't worry about school. Whatever else you worry about, you just make sure that if we can do anything -- you ask us for anything we can do to help you." The kids at school wrote cards and all kinds of stuff. I'm sitting in my office one day looking out as it did over the streets of Harlem, 116th Street in Harlem, and tearfully thinking that, after that conversation with the principal particularly, if everybody's kids had that kind of support and the medical attention that my child had, there was no reason why I would be looking at a Harlem that looked like that. So we decided to do an education clinic to see what it would take to fix the New York City schools. And my colleague Jim Liebman, who was also on the faculty at that point -- not the clinical faculty -- Jim was a tenured member of the faculty -- he had been doing education cases for the NAACP Legal Defense Fund, and he and I co-created and

co-taught the Education Law Project. Shall I tell you about that?

Ogilvy: Yeah.

Rabb: It was a different kind of experience for us. We spent one semester and the summer before we taught the clinic just cruising around town, interviewing everybody who knew anything about education. We obviously talked to the Legal Defense Fund about what they knew in New York City; but, we went to principals and teachers and principal unions and teacher unions. We went to the Black Teachers Unions and the Hispanic Teachers Unions. And we went to parent associations and to organizations that had represented various interests in the schools who were none of the above, but advocacy organizations of one kind or another -- children's rights organizations. We went down to the School Board, and we talked to as many people as we could in the schools' central offices. We went to -- at that time, New York had decentralized the offices and local schools up to the high school level, not including high school, but up to the high school level. And we talked to a lot of local school districts. [Inaudible] we started -- and we would ask them all the same thing, which is, "What are the problems with the school system?" And when we started hearing the same things over and over again, we knew that we had done what we needed to do. So we wrote up, profiled, 10 or 11 problems that we thought were the interesting ones and seemed to be structural. And we -- these profiles would be two or three pages long, and at

the end of each profile we would give three or four names and phone numbers. And those were persons whom we thought had spoken to us interestingly about that particular topic. Sometimes people were on two or three different profiles, and sometimes on only one. Profiles included things like why it was so hard to get teachers to teach in the New York City school system, or what to do about the buildings. Literally parts of school buildings all over the City were condemned and boarded up because termites had eaten the floor of the gym or because so many windows had been broken in one part of the school that there was no way to heat the classrooms, and so they had boarded it up for years. The physical infrastructure of the schools was crumbling. New York City had created an affirmative action program of sorts, an integration program, to try to keep some part of most of the schools racially, at least, mixed. There was nothing like balance, but mix, and, in fact, it wasn't working. And there were only a few schools left that were racially and ethnically mixed, and those were about to go. And the question was, "Was it worth trying to save what mixing existed? And if not, what would help? What would be a good thing to do?" And there were, as I say, 10 or 11 of those profiles, problems. The students, of whom there must have been, again, 20 or 24, came into the clinic for a year -- not for a semester, but for a year. And the objective was, pick -- you worked in teams. Pick the one you want to work on. Pick the profile you want to work on. You have a year. You've got to go out and do all the interviews. You've got to gather all the information from whatever sources, and it could be from libraries or from people you talked

to, or you might have to get material from Albany (the State capitol) or from New York City – City Council, or the mayor’s office or wherever you could get information – you had to get information. And you had to develop, by the end of the year, either an approach to solving the problem or a solution. We loved it. The first day of class we began with a guest speaker who was a former law school student who had never practiced law, but who was an investigative reporter for *The New York Times*, because we thought that was a good way to start. We still taught interviewing. We still taught all kinds of negotiating skills because it was necessary to do that in order to get the information you needed. Frequently you were dealing with a very hostile source, or fighting people who wanted to help but were worried about their jobs, and lots of ethics problems. We produced -- the students produced -- new statutes that were adopted, reports that became part of the legislative debates in Albany. Newspapers talked about what the students produced. It was terrific. They did great work. They didn’t like it as much as they liked the other kinds of clinics. They wanted to be -- they wanted clients. They wanted to be litigators, or they wanted to be doing transactional work, helping people who lived in a building that a landlord had abandoned to take the building over, to get loans to rent it themselves as a co-op. They felt by and large that they wanted to do that, because that is what lawyers did. I was sorry.

Ogilvy: How long did this, did this last?

Rabb: Briefly. Only a year or a year and a half. And the disappointment in the students and my own sense that I had judged wrong about this made me think I wanted to take a semester off. And I did take a semester off, and I thought maybe I've done this long enough, and I should think about something else to do. So I spent the semester interviewing colleagues in the city, lawyers in different kinds of practice, and lots of other clinicians at schools, not Columbia, about what they – what they had done before, what they were thinking they were going to do later about their clinical work, to see if there was something that would be better, different, more interesting. And everybody kept saying, “How can you imagine doing anything else? If I had my druthers, I would have your job.” They were right. So I went back. And I don't remember what came after that clinic. I don't remember which one came next. But, I did the -- with a new colleague we did a clinic at the New York City Commission on Human Rights on Housing Discrimination, which was shocking to me in that it was in the late '80s and we still had black clients who would tell us that they saw an ad in the newspaper, they would call to go at 6 o'clock with a spouse to look at the apartment – quite welcome. looking forward to meeting you. They would arrive and the apartment would have been rented, or in one instance, they literally. in front of a man and his wife and their child, the landlord opened the door and saw who was there, and spit on the applicants. It never -- I could not have imagined how often every day that was still happening in New York in the late 1980s. And pictures of Klansmen being drawn on doors and walls and hangman's nooses. I couldn't

have imagined it. Neither could the students.

So we did that for a while. And then I became more and more interested in doing ethics work, and with some colleagues created something called the Profession of Law at Columbia which is for all 3rd year students in the week before school starts. It is, instead of the usual ethics courses that we had had where students would go to class and they would read the Code or the Canons and people would talk about experiences, either guests or faculty would talk about experiences in the law that students pretty much didn't relate to. So we created a simulation for a week, three different cases that had serious ethical issues in them. In fact, they were -- it was about the ethics issues. And they still do that at Columbia. That was what I was doing in the last clinic I worked on.

Ogilvy: What was your status at Columbia?

Rabb: By the second or third year there, I think I was called something like dean of clinical education or something like that -- vice dean for Clinical Education. I didn't have tenure. I was there, I suppose, on a year-to-year basis, although I didn't much think about the basis on which I was there. But Mike and Phil were tenured members of the faculty at the time when I got there, as was George Cooper. Other clinicians came on, but on short-term, non-tenured bases. We were paid, I thought, what other people got paid, but I didn't have any way of

knowing whether we were or not, and found out in the early days that, of course, we were not. We didn't go to faculty meetings, it didn't occur to us to try to go to faculty meetings. I think we were -- people thought we were like the writing instructors who didn't have faculty status, although we surely had a more central role in the students' lives than anything that the school acknowledged.

In the -- sometime during the '80s, in the mid-'80s, I guess, I decided that I wanted tenure because there was a decanal rollover that was coming, and I thought one of the contenders would be disastrous, and so I wanted to participate in that. And I went to see the dean and said, "I want tenure." And she said, "Well, let me see what I can do." And I got it. I -- the rest of us didn't have it, the rest of the clinicians didn't have it. By then we were on long-term contracts. You came to Columbia on a contract for a year. If you bombed out in that year, you would go away. If not, you'd stay for another three, and thereafter, the default position was that you would stay for another seven, and the -- another seven and another seven, unless something really quite dreadful happened, in which case, presumably, it would have been the same standard as loss of tenure for doing something dreadful. And that's the way it currently is. I think everybody there -- except for someone who is just hired -- I assume everybody else there is on the seven-year rollover contract, because they've been there a long time.

Ogilvy: Mm-hmm. And the -- the participation in faculty governance?

Rabb: We began going to faculty meetings, all of us at some point -- I don't know why going to faculty meetings seems like a big plus. It's sort of like eating at the lunch counter: being told that you can't, I suppose, is the -- is the issue. We went to faculty meetings. We participated. We did not vote on tenured or tenure track appointments. We did vote for dean, even in our non-tenured contract status. And I think clinical people started getting paid better and clinical people were eligible for summer research grants and the like. We made a couple of decisions early on that I think were -- I take responsibility for them in the sense of other people may think that they were not good decisions, so I take responsibility for them. Two things were important to me. One is that we not do clinics that had very high caseloads because it seemed to me that with high caseloads we would be doing what looked to the rest of the faculty like service and not education. The only way we could maintain a foothold as faculty members was to be doing what looked like education. So it was the exact obverse of the medical model of clinical work where you're on for three days without sleep, and then off for a day and so forth. And the quantity is important. We did just the opposite. The other thing that was important to me was that the clinicians not have to publish in order to maintain their status at the school. That was for a couple of reasons. First, being we weren't hired to write. We were hired because we were practitioners of a sort. We might be good writers; we might be good scholars. That wasn't at all why we were hired. Our legal written work, briefs and the like, had to be

excellent. But that is a far cry from writing books and publishing scholarship. So I didn't think we -- it made any sense to make that obligation be part of our eligibility to stay on the faculty. Secondly, the school understood that if clinicians had to spend a semester a year writing, the law school would need more clinicians to meet student demand. And there was always student demand. There was never a time when clinics went begging, any of them. And so the school was willing to have it that way. Now, lots of the people who have been hired to teach clinically at Columbia publish, because they want to. And how they do it and when they do it eludes me. But they do. But they don't have to. And I still think that's the right way to go. I know that that is not the majority view.

Ogilvy: Your career in legal clinical legal education has spanned certainly what we call the modern era, since the CLEPR money came in and many, many schools started running clinics. What, in looking back over this period of time, do you see as the significant milestones of clinical legal education?

Rabb: I think it was the burgeoning of the number of clinics, and the organization of clinical teachers into both sections of the other organizations that existed for lawyers and law teachers and then into their own organizations. It was also important to develop a sense of solidarity because it was too easy to internalize the second-class status that people felt in the law schools. It was not hard to say that one didn't draw one's sense of self from the faculty, and that working with

the students and the clients was satisfaction that -- adequate satisfaction. And I honestly believe that that's true. But it wasn't without pain or cost to people who would, in the early days, be invited to faculty meetings, and at the point at which the admissions director and the student senate officers were obliged to get up and walk out of the room, we got up and walked out of the room too, because we had to. And everyone else remained seated and just sort of looked at the door and waited for us to leave. That humiliation was quite significant. What were important were the organizing efforts over years, and the sense that what we were doing had real legitimacy in the world we operated in, since it surely had legitimacy in the outside world, and with our students, both while they were in law school and when they graduated. But those developments gave legitimacy to what we were doing in the academic institutions, and each and every one of those organizational milestones mattered.

Ogilvy: Did you participate in the -- in any of the political work around, say, 405(e) or the other activities in creation of the section and whatnot?

Rabb: No.

Ogilvy: Did you attend any of the early conferences and workshops sponsored by AALS?

Rabb: What's early? I went to some, but I didn't do lots of them. I was greatly

advantaged by them, as were my colleagues, and as was the atmosphere at my school, but I didn't myself do many of them. I went to annual meetings and things like that, but the real sort of being on the organizing committees and doing the work, that I didn't do.

Ogilvy: What do you think have been the most significant contributions of clinical legal education?

Rabb: First, I think it gave students a way to understand that being a lawyer could be an immensely satisfying career. And because so many of the clinics have been service-oriented, it gave students a sense that doing that kind of work in your career was satisfying. In a universe where most lawyers polled today will say that they are not happy in their careers – or many will say that – we gave clinical students the chance, in law school, to be happier than many colleagues, and the sense that they could, by making their own way, be very satisfied in their careers. There were so many students who told me, over years at the law school, that I was one of the few lawyers they knew who looked like she loved being a lawyer every day. That was true. I did. I *do*. And it's because you make your career. And being in the clinic gave them a sense that they could make their careers. Secondly, I think clinics did offer the message that public service and public interest work, whether it's a full-time diet, or only as a part of your work, are immensely satisfying. They're an obligation of the practice. And people who are

trained as our students have been trained, have experienced the real satisfaction of making contributions in those ways. That seems to me an important piece of what clinical education has done. So I think we have humanized the law school. We have in some sense humanized the lawyers whom we have encountered, and made a difference in their own practices and maybe in the practice throughout the profession.

Ogilvy: Thank you. I think that's the basis of my questions. Is there anything that I haven't asked you that I should have asked you?

Rabb: I doubt it. I don't think so.

Ogilvy: Thank you very much.

Rabb: My pleasure.

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