Transcription of Oral History Interview with
Dean Rivkin
January 6, 2001

Hall: What was your original exposure to clinical legal education?

Rivkin: Well, I went to Vanderbilt Law School and began there in 1968. I went to Vanderbilt because I was interested in the Civil Rights movement in the south, and I was interested in being a lawyer. And at Vanderbilt they, at the time, were publishing a publication called *The Civil Rights Law Reporter*. They had Ford Foundation money at the university and in the law school, and it seemed like an opportunity to pursue a practice. And being a lawyer, that made sense. Vanderbilt did *not* have a clinical program when I started in '68. There was a legal aid society, and I remember literally within the first couple of weeks of school, the legal aid society, which was almost exclusively, as I recall, student driven, asked first year students if they were interested in going to the jail. And I was, and I went. And we were interviewing prisoners, as I recall, for the public defenders office that had just started in Nashville at the time. And I recall the excitement of doing that. I recall the power that I felt that lawyers had in being able to walk in and do that. I wasn't a lawyer. I was a law student, but we certainly had authority to be there. But of course, the curriculum at the law

school at the time was quite traditional and non-clinical. During the summers, I did work that I guess today would be called externships at some places. I was a law student civil rights research council fellow after my first year of law school and worked for a law firm in Memphis that was the only bi-racial firm in the state and was supported by the NAACP Legal Defense Fund and was involved in a number of civil rights cases, lots of desegregation cases. Of course, it was the summer after Dr. Martin Luther King was killed. It was an extraordinary time to be there. And there's no doubt that I felt part of a movement of law and lawyers and activists.

The summer after my second year of law school, still no clinical courses, I shifted gears some and worked on a project that several of us at the law school . . . students worked on with med students . . . that took us into Appalachia where the med students were conducting health fairs, and the law students were doing benefits counseling and working with some of the emerging grassroots groups there around issues of strip-mining primarily, and land ownership and taxation. Finally, my third year of law school, a very nascent, unstructured clinical program started. I recall I think my first case was a divorce. And it was very rote and unsupervised, but there was credit attached to it. It got me doing some lawyering work. There was no classroom component to it. But it was the start, there anyway, of a clinical program.

Hall: Was this the result of any kind of student demand for something like that? Or was it just simply instituted by the school?

Rivkin: You know as I recall, there was a student demand for it. I mean, there were a handful of us who were involved in draft counseling and anti-war activities at the time, and civil rights activity some. And there was a segment of students who I know felt that clinical education was an opportunity to be expressive and to be faithful to some of the ideals that we had at the time about being a lawyer. And I do recall there were efforts by students to get this in place. Somebody from the legal aid society in Nashville was hired as kind of the supervisor. He had no idea, of course, what he was getting into. And that's how it started there as I recall.

Hall: Well the program you're describing sounds pretty rudimentary, but what were some of just your personal experiences in doing that during your third year?

Rivkin: Well, other than divorce, my recollection is I did some very small sort of what we call 'general sessions court work: consumer case, maybe a landlord/tenant case. I don't recall if we did any criminal cases, preliminary hearings. We may have,

but I just don't remember. It was pretty routine, at least it seemed that way to me. And pretty sort of rote practice work where the supervisor had, you know, almost a script for us, and we followed it. Very little reflection on the work, connecting it up to anything bigger. No talk about interviewing and counseling and negotiation. It was quite routine. But *still*, there was something about doing it that was galvanizing, and that was interesting. Being in the courthouse was itself something that was extraordinarily enriching from the traditional . . . from the other third year courses that I was taking. And I knew there was something there that was much bigger than what we were doing. I wasn't quite sure at the time what it was, but it was definitely there. And I went on, then, to a clerkship with the United States Court of Appeals for the Second Circuit, which was a very unique clerkship. I didn't wanna be a clerk. I thought that was an opportunity to work with judges who I felt were progressive judges. So I figured out a list of them and looked in New York and several other places. I was at this time pretty interested in prisoners' rights work. And sure enough, there was a clerkship still in the Second Circuit, and it had started in the '60's, called the *pro se* clerkship, which at the time were two law clerks who were under the supervision of the Chief Judge of the court at the time. While I was there it was Judge Henry Friendly, and then Irving Kaufman. And we screened for the court all the Section 2254 and 2255, and other . . . section 1983 and some other *pro se* petitions, people who were representing themselves. It's a great . . . It was a great clerkship.

Hall: My assumption is a large majority of those would have in fact been from inmates.

Rivkin: Large majority were from inmates. Our job was to screen them and to recommend in the cases where we felt there were viable issue, the appointment of counsel. And we succeeded when we convinced a panel that counsel should be appointed to represent the inmate. And so there was a lot of strategy to what we did when we screened these cases. And once we got the go-ahead, we were the ones who called the lawyers on the list that the court had maintained and asked them to take the case. And of course, when you're calling for the Chief Judge of the Second Circuit, and you're the big Wall Street or other law firm, no one turned us down. So, it was a terrific experience at a time when there was *room* in *habeas corpus* for developing claims. And there was a lot more latitude to the review than certainly exists today.

Hall: Okay. Did you start into clinical work after the clerkship, or did you go in another direction?

Rivkin: No, I became a legal services lawyer. New York wasn't the place where we

wanted to stay, and the work I had done in Appalachia after the second year of law school was work that I wanted to continue. And I was able to get a Reginald Hebersmith community lawyer fellowship to do that. And I went to work for what was then a *very* new legal services program called Appalachia Research and Defense Fund. And I negotiated being in Lexington, Kentucky as opposed to Prestensburg where the office was located. Coming from New York, it was a little bit better transition for us. But there, I really was able to pursue issues that had been of interest to me and moved me while I was in law school. A lot of environmental work, what's today called Environmental Justice Work is what I would consider we were doing. We were representing a lot of low income people, and environmental problems ranging from wills that had been destroyed, to homes that had been destroyed, to pollution . . . air pollution related issues, land related issues, a whole spectrum. Overweight coal trucks, a whole spectrum of legal issues that was certainly not the typical legal services fair, but were of extreme importance to the groups that we represented and the people we represented. And I did that for three years, from '72 to '75. And I had always wanted to be, from the day I graduated from law school . . . even before . . . I wanted to teach. I felt that there was room there to be faithful to what I wanted to do, which was both practice and teach and write. And the opportunity to do that came in the form of a fellowship . . . a teaching fellowship . . . a clinical teaching fellowship at Harvard that was funded by CLEPR. I have no idea right now where I even saw the availability of it, but I obviously did. Gary Bellow was the director of the

program, and I applied and was accepted. And we moved from Kentucky to Cambridge, and it was the most transforming year of my career without doubt.

Hall: Unfortunately, very sadly actually, we were not able to talk to Gary before he passed away. So *anything* you can tell us about working with him, and just the experience at Harvard would be really wonderfully helpful.

Rivkin: Yeah. It was a program with a mission. It was a program that was still developing, so there was opportunity for all of us who are in the program to contribute. The lawyering process book was still in draft form. We used it in the course that Gary taught. The course was called Lawyering Process. There was a large class component where every student who took the course participated along with the teaching fellows: Gary; Jean Kettleson; (now Jean Charn, Gary's wife). And it was a time of great, sort of, ferment about clinical legal education. Gary, of course, had been at USC and had written some of the _____ pieces. Put the lawyering process book to this day, I think, is *the* most extraordinary book in legal education, has the iconic status, in my opinion, of the Hart & Sachs materials that people over the years have thought of as an extraordinary intellectual model. And Gary and Bea Moulton's book . . . I don't want to leave Bea out of this because she, although she wasn't there the year I was there, she had left Harvard, she was

certainly an extraordinary contributor, writer, hand-in-hand with Gary with the book.

The course was structured with the large lawyering process course which Gary taught, which was . . . You know, when I was talking about before about I know there was . . . there were content in what we were doing back when I was in the clinical course at Vanderbilt, the content just exploded before your eyes. Both the content and the method.

Hall: I want to ask you if I can, cause people have had some difficulty articulating their thoughts on Gary and Bea's book. Because everybody says it's brilliant. I tried it on students. They hated it. It was way too dense, but it still remained useful for me in my working with students. It doesn't sound like in your case you had the option of evading that full book and that full text being thrown at you, because you were being taught directly by Gary. So as a student, what was his level of use and difficulty? It sounds like you were very enthusiastic in your reception of it.

Rivkin: Oh yeah. Of course we were, as teaching fellows, both students and teachers, because we each had eight students we were supervising. My recollection is that those of us who had practice for four or five years and had done legal work

certainly got a great deal more out of it than the students we were supervising. But, *why* is that the case? I haven't figured that out yet either. I still see, when I go back and look at various parts of that book when I'm teaching a negotiation class or looking at something in counseling or what have you, I still see the genius of the sequence of those materials, and the richness of the integration of the social science materials and the notes which bought the social science materials into a legal context. It was sensational, and I used the book with students when I started teaching at Tennessee. It still hadn't been published I guess, the first year. I don't think it was published until '77 if I'm not mistaken. And I was so happy to be using those materials, and ultimately I used the book for several years. And I felt as if I had an understanding of the book and its rationale and how to use it that seemed to work. But it was frankly just too much, ultimately, for the students, at least in *our* clinical course at Tennessee.

Hall: Let me ask you now as a teaching fellow at Harvard where you'd had some prior practice. I get the feeling almost, in looking at your body language while you're talking about it like it just opened whole new horizons in your understanding and thinking about what you were doing. If that's a correct impression, is there any way of articulating some of the sort of revelations you were experiencing?

Rivkin: I think it's very much . . . I'm trying to think of the best example. I mean, it's very much like becoming an expert in *any* field where you, before you're an expert, you see, you read things, and there's not much in it. All of a sudden, you're both reading things and looking at things, and it's like every word almost all of a sudden started to grow and inflate and fill with ideas. And words that before . . . And not just words, but images, cause we used a lot of video tape and case files, and of course observation of lawyering and what have you. All of a sudden, you could talk, and I found myself being able to put it into framework, and being able to talk about different dimensions of it. Before, it was kind of flat on the screen, and all of the sudden it became multi-dimensional. I hope that helps in trying to understand this magic that took place.

Hall: Tell me about Harvard during the _____. What kinds of cases did the students take on, and what kind of interaction did you have with them as an instructor?

Rivkin: The supervision, the model that we used at Harvard was . . . I mean, we were there full time to do this. And we had sessions weekly with Gary and Jean, and Chris Arjuris and . . . I'm trying to think . . . Don Shoen. These were people who ultimately wrote a book on the reflective practitioner. And we would talk about pedagogy, and we would talk about supervision, and we would talk about

the power of reflection in practice. And we each . . . Each of the clinical fellows had eight students as I recall. Students were practicing. My students were practicing at Cambridge Summerville Legal Services doing a standard fare, at the time, of legal services practice. I remember we did a lot of landlord/tenant cases primarily. And we were available 24/7. We were there to review just about every significant piece of work the students did. We did *extraordinarily* detailed evaluations, written evaluations as well as oral evaluations at the end of the course. We had a weekly seminar with our eight students where we linked the legal work they did with the ideas that were developed in the three-hour lawyering process segment of the course. So, it was a very close relationship, supervisory relationship that was formed with our students. And the students were . . . It was a very popular course, and the students were very, very good in their commitment to it.

Hall: Bea also very much described it as a kind of round-the-clock operation.

Rivkin: Yeah, it felt that way.

Hall: What accounted for that level of excitement and drive and just almost like,

boundless commitment to it?

Rivkin: Well there's no question, Gary was a motivator in that regard. And I think what drove the energy was . . . for me anyway . . . was the ability to bring into the process issues that I cared about, social concerns that I cared about, working with people, into teaching, which is also something that I cared about. And there's no question it was exciting to be part of, literally, the creation of a new subject, I felt at the time. And I think from the history, it *was* literally the creation of a new subject, but it was infused with a movement type feeling.

Hall: If I might ask, cause I'm struck that you have a lot of energy about there, as you're talking about you went to Vanderbilt in part because of its civil rights . . .

Rivkin: Opportunities.

Hall: Right, opportunity. So, I think that, and I think of a lot of people from that era really see the course as a way to kind of change society, very activist. I think of teaching a lot of times nowadays as being a different thing, as being in the

Academy. And obviously, this is a different model of teaching you guys had stumbled upon. But what was it about these early clinical years that seemed to satisfy too what seemed to be kind of different drives?

Rivkin: Well it's . . . I mean, that's a question that's . . . is a good one. I think that a lot of us who went into clinical teaching from legal services practice were looking for a heightened understanding, and a more *critical* understanding of the work we did as legal services lawyers. At least I did. And it seemed to me that the best way to do that was to go in the direction of being a teacher. And at the same time, here was an opportunity in clinical teaching not only to go in the direction of being a teacher and having not only the opportunity, but sort of the right to read and to think and to write and to talk about those kind of issues, but at the same time to practice with our students, and to take on the kind of . . . to create the kind of practice that was consistent again with the values at least I was . . . I saw as what being a lawyer was all about.

Hall: Did you, in all your conversations . . . you know, Gary and the others as you spoke . . . was there a conscious goal of trying to create a new type of lawyer or new model for lawyer, or is it something less ambitious than that?

Rivkin: No, I think it was very *explicit*, *very* explicit that there was an ultimate vision of trying to create lawyers who were more reflective and community grounded. And I remember Gary in particular talking about how the frameworks of practice that the book was developing, and that the course developed, could give . . . at least the hope was . . . it could give students who then went into practice wherever an alternative framework to assess and judge what they were doing wherever they were. And by creating that kind of almost sort of dialectic, it would potentially allow students to understand the restraints and the norms that exist in a particular area, I mean geographical area and practice area, and to fight them some and to say, 'Wait. I have something over here that I can draw on and that I recall thinking about and discussing when I was in law school,' and using that as a way of building a critical theory of practice, I guess you might say. So it was very explicit that there was a mission to this effort, and that was to create lawyers that were more critical of their own practice, more socially aware of what they were doing, had horizons. You know, the book broadens your horizons about practice, and students who had those horizons, or could at least have course work and discussion and discourse about how law practice can do that.

Hall: Dean, looking back, do you have any sense as to why some of those new models crept into the process as opposed to . . . It seems like it would have been very

easy to say, 'Let's just use these clinic to train new public interest lawyers without trying to create a new kind of lawyer.' Do you know how the second notion began evolving?

Rivkin: I'm trying to grasp your question.

Hall: Let me try another . . . Let me take another crack at it. It seems like it would have been easy . . . In fact, some models of these programs did pretty much just do that. 'Let's make these kids,' in a sense, 'almost like adjuncts in the standard legal aid programs and just try, through exposure, to get more kids to do lawyering in the same way its always been done, but in a worthier cause.' It seems like what you were taking part in at Harvard was not just, 'Let's direct students practicing the traditional way to this cause, versus like being a lawyer at a law firm. But let's actually teach them the public view of the process of what is a lawyer in a different way.'

Rivkin: I mean, I understand what you're saying.

Hall: So the question is, do you have a sense as to how that second part of it became as important as it did?

Rivkin: I hate to attribute it just to Gary, but his vision and his politics about law and law practice and lawyering were, for me, were very central. Here was someone who had a well articulated politics of practice and of social justice. And to hear that get . . . that very abstract sort of . . . Well, it wasn't very abstract. It was sort of well worked ideas connected up to things such as client interviewing, and talking about issues of autonomy, and talking about issues of empowerment and control and looking at it at both the micro-social sort of level of practice. You know, thinking about how the first minute of the interview had an extraordinary impact on the relationship, and ultimately on the information. And then seeing that placed in the context of a political world view or view was, to me, a terrific eye-opening path to take.

I remember when I first came to Tennessee and started teaching in the clinic, I remember we had a good bit of CLEPR money. And I remember being visited . . . I don't remember whether it was by Bill Pincus, or whether it was by Victor Rubino. But I remember I had on my desk 50 books, none of which were casebooks or what-have-you, but I must have had 50 books that I said to Victor, 'I really need to read these books. They're sociology, they're psychology, social

theory. I really need to read these books Victor to understand what I'm doing in a way that I wanna understand it.' And he said, 'Well, you'll never finish them.' And of course he's right. Some of them are still sitting on my bookshelf. But there was that dimension to it, a very exciting intellectual dimension to it that was connected to practice in a way that I had never experienced before.

Hall: My next question I'm gonna ask you is very concrete. Just in the day-to-day dealing with Gary, are there any anecdotes that you can think of that would just help people, hearing the anecdotes, just to sort of get a gut sense of what he's about?

Rivkin: Sure. I remember going, working with a student on a very difficult landlord/tenant case. One of the things that made it difficult was our client was . . . the student was having *tremendous* problems with the relationship with the client who was sort of . . . had a good bit of conduct disorder in her, as best I could tell. And she had a son who was also . . . *very* difficult person to deal with. And this was a critical case. It was an eviction case, and it was critically important testimony about . . . and the case was critically important. And we spent days with her working on her testimony, and we *never* could . . . first the student and then I can't . . . We just couldn't get a handle on it. And it was a

couple of days before the hearing, and it was . . . I remember, we called Gary and we said, 'We can't do this. We just can't figure this case out.' We called in the afternoon and he said, 'Come on over the house tonight, 8:00,' or something like that, 'and we'll talk it through.' And we spent hours talking about very concrete ways . . . there was no theory here . . . This was a case where we were keeping a client in shelter in her home, in her apartment. And we talked about very concrete ways of how we were gonna handle the hearing, and what was gonna happen if *this* happened, and what we were gonna do if *that* happened. And I mean, it was . . . We spent all night talking about this problem. There were a lot of students in the course. There were probably six clinical supervisors. I remember saying to myself, 'This is an availability that is pretty unusual.' I mean, there's lots of other day-to-day work that we did. We used to have these sessions that I mentioned before. . . I remember in one of the sessions with the clinical supervisors and Gary and Jean, we were asked to take a case that we had handled when we were in practice before we came to the program, and sort of present it to the group. And I remember presenting a case involving an eviction, a school conviction in a small Kentucky town of an African-American kid who was a rare family of color in this community, very small community. And I remember we talked about . . . I presented how we went to federal court, and we got an injunction, and we were requesting a hearing before he was removed, expelled, or suspended and what-have-you. And I remember I thought we had done a fairly decent job on this case. But the kid had been out of school for some time before we had gotten the case.

And I remember Gary in just a very kind unassuming way saying, 'Did you ask for damages?' And I remember just going, 'Oh no. We didn't ask for damages.' We were so focused on getting the kid back in school, that we didn't even *discuss* it with the mom, or among ourselves. It was just such a penetrating observation. I mean, it seems now pretty routine and what-have-you. But I remember saying to myself, 'You know, he sees things,' at the time, 'he sees things about being a lawyer much more broadly than I do, and I need to be able to do that.' And I hope today I can, if I saw the same situation, I would ask the same. And over the years I *have* asked the same question to students.

Hall: How was he in terms of . . . Like, one of the things that's unusual in clinical is you have to look at how are cases being handled. It's not just how a paper's being written or something like that. When he saw that things weren't meeting his level of satisfaction, how did he communicate that to you or to the students?

Rivkin: Well in these meetings, we would present cases. Not just past cases, but we ultimately worked up to cases that we were handling with students, too. And the discussions were . . . I remember Gary asked a lot of questions, just like he did I mentioned a minute ago. And they were questions, again, that comes from a richness of seeing the world that you're presenting in ways that none of us, at

least certainly not I, was seeing in what I was handling. How you develop that kind of cognitive criticalness was something that . . . well, to this *day* still fascinates me. But that's how it took place. I mean, he was modeling the model with us certainly that we were working on, and of supervision with our students. I mean, it was all very kind of interlocking. And again, full of new ideas and learning. For me, I remember the first time Gary . . . I guess it was in the lawyering process class . . . opened up a case file. And he handed out copies of this case file . . .it was a welfare case as I recall . . . to the class. And he said, 'We're gonna spend three hours with this case file.' It was pretty narrow. It was a pretty small case file, right? And we started right from the first line in the opening intake memo, and we worked out way for three hours through a complaint ultimately, and through memos I'm quite sure was one of his cases that had been documented. And I remember again saying to myself, 'This is an extraordinary way of teaching, using these materials as the casebook,' if you wanna look at it that way, gives infinite sort of opportunities for learning that certainly couldn't take place in a class where the traditional sort of materials and methods were used, and then linking up certainly the materials in the case file to video examples of work that was . . . of the tasks and the legal work that was done.

Hall: Dean, how actually were you using video in this in those early years?

Rivkin: Well, there were case files that had video simulations that went with them. The Allen case file. Mrs. Allen bought a freezer food plan. And I think Bea may have developed this, the Allen case. I'm not sure. But we were . . . there was a client interview, and I certainly remember there were depositions. There were negotiation simulations. And they all went with the case file which had a rules part of as well as a case file part of it, and it all fit together. It was great for the seminars we had with our students. The discussion was really rich. Gary used it in the larger lawyering process tape, in the larger lawyering process class, and in very strategic sort of ways. I remember saying, I remember knowing how much time had to be spent in reviewing the tapes and selecting the segments for the class and working at the case file. It was an entirely new approach to teaching about lawyering than I had certainly ever seen, and I think at the time that *most* people had ever seen.

Hall: The court room aside of this, were there any cases that you have any recollections from during your time there?

Rivkin: With my students?

Hall: Yeah.

Rivkin: Sure. I mean, I remember trying cases, and I forget the name of the county that Summerville was in. But we did a succession of landlord/tenant cases is what predominates with me for that year. And the rules, the landlord/tenant rules in Massachusetts were rich for opportunities for tenants. You know, other than the case I mentioned before, I don't remember any really specific cases that we worked on, but they were a succession of eviction and conditions cases.

Hall: After you left Harvard, did you go straight to Tennessee, or was everything intervening?

Rivkin: I did. I went straight to Tennessee. I only stayed as a year as a teaching fellow. I had the option . . . *All* of us had the option, and several people did, of staying two years. But I felt as if from a standpoint of my family, it was time to settle in.

Hall: I have one question. It'll lead into some of our status questions in a few minutes. My understanding of the Harvard model. Gary was the only person of tenure, long-term contract.

Rivkin: Correct.

Hall: Was there a rationale for that that you were aware of?

Rivkin: I mean, Gary had tenure.

Hall: Yeah, he had tenure. I gather everything was consciously kept as all of his other people were just teaching fellows.

Rivkin: Right. Jean was an instructor. There were other instructors, maybe not many at the time. And then there were those of us who were fellows. I mean, and we had a faculty status. We certainly didn't have any voting or participation in that sense. But we were invited, certainly, to all of the faculty events. We could sit in on

faculty meetings if we wanted to. But it was a very pyramid . . . in that sense . . . a very pyramid structure with Gary being the central . . .

Hall: (Interrupting) Did Gary ever share his thoughts on why he thought that was a best structure?

Rivkin: You know, my recollection is we didn't start talking about . . . *I* didn't start talking or thinking much about clinical status, the status of clinicians until after I left Harvard. I don't remember that it was much of an issue while we were there at all.

Let me mention one other thing that occurred during the year while I was at Harvard. Bob Keaton and Gary worked closely together on developing kind of a NITA model. And as teaching fellows, we taught at the beginning of each semester a three week intensive trial ad course to the clinical students, students in lawyering process. And of course, as in NITA models, there were lawyers flown in . . .

Hall: Help me with that term. The NITA model is . . . What is the NITA model?

Rivkin: It's a simulated, intensive, all day, simulated trial practice course that leads to the students doing simulated trials at the end, starting with very basic exercises in examination and what-have-you, leading to putting it altogether. And in fact, I remember attending the AALS meeting that year. Bob Keaton brought those of us who were clinical teaching fellows to the AALS meeting. I didn't even have a *sense* of what the AALS *was* at the time, and certainly not what the meetings were about. And all of a sudden we were asked to make a presentation on what we felt was the impact of teaching this intensive trial ad course to students who ultimately went onto practice. And we talked about the ethical practice dimensions of it and what-have-you. It was very fast. Things happened . . . I remember Bob Keaton was running us around to different meeting having is talk about this. Gary wasn't involved in *that* aspect of it, but it certainly was an important, I think, part of the model that was developed being at that time at Harvard, trying to wed the two different sort of pedagogies in one dimension. I think it was an interesting experiment.

Hall: Dean, as you went to Tennessee, what was the state of the program there when you arrived?

Rivkin: I went to Tennessee for several reasons. A geographical reason, I liked the region. I'd been there. My wife was from Arkansas. We had met at Vanderbilt. We were happy to go back. More importantly, though, I went to Tennessee because the clinic at Tennessee was rich in funding because we were the legal services program for Knoxville and surrounding areas at the time. I think we were, at the time, one of two law schools that were recipients of the LS . . . It wasn't LCS, but . . . Well, maybe it was . . . of the legal services grant. I think LSC was created . . . I wanna say '74, or '73, or '75. As a result we had a great deal of funding to integrate the clinical program and practice, cause we were all one. And it seemed to me a terrific opportunity, and I know Gary felt that way when we were talking my going down there. Terrific opportunity to have the room to do both practice and teaching with people of different . . . Talking about status, there was lots of different positions. I came down as a tenure track assistant professor. And the clinic had, at the time I arrived, there were at least three, four tenure faculty, a number of faculty who were instructors, other faculty who didn't teach. When I say faculty, other members of the clinic who were lawyering but were not teaching, except to the extent that they're just sort of brought in to different classes or what-have-you. But they didn't have any line responsibility for supervision. We had social workers. It was a sizable, well-funded program in which we were obligated to deal with issues of service and responsiveness to the community, as well as develop a clinical program. So it

was a terrific place to be, I felt. I left Harvard in ‘76 and joined the faculty at Tennessee.

Hall: We will need probably sooner or later to start moving into some things like when the CLEPR money ran out. But tell me some highlights of your time at Tennessee. What were some of the significant things that happened?

Rivkin: Wow. Well, there’s no question that the tradition at Tennessee, of the clinic, made it . . . wasn’t mandatory as I recall, although it could have been the first couple of years I was there having a clinical course. We were on a quarter system as opposed to a semester system, which we changes to in the early ‘80's. But it was just a tradition at the school that students were going to take a course in the clinic. There were civil . . . There were cases. We did both civil and criminal cases. That’s because not only were we an LSC grantee, but we were also the de facto public defender. There was no public defender in the city, and we got the grant from the Law Enforcement Assistance Administration, LEAA, to essentially serve as public defenders also. So it was a wide ranging program. And that certainly was a highlight, I guess you might say.

The next thing that stands out most prominently for me was the extraordinary

conflagration over statutory attorneys' fees, and what people I guess now call political interference in our work. This was a major crisis in the clinic. Because we were the LSC grantee, we were doing a full range of litigation against the state, and there wasn't, as I recall when I arrived, there wasn't any restraints really, or much prudential thought about what we would take on if we felt it was a case that we wanted to take on. One of the lawyers in the program took on several prisoners' rights cases, sued the state, needless to say won the cases. Very nice decisions in the Sixth Circuit about discipline of prisoners. And we met and we said, well, we certainly should take advantage of the *then* relatively new Civil Rights Attorneys Fees Award Act and cover our statutory attorneys' fees. And I, to this day, feel as if that statute is a potential deterrent, although certainly one could argue that today, that it has fallen into a big pit of problems. So we did that. We filed a petition for fees, and 'all hell broke loose' is the fairest way of putting it. I mean, this is a long story, so I'll give you the short story.

The attorney general's office, who was on the other side of the case, contacted the university. I think actually contacted some of the legislators. The legislators contacted the president of the university. The president of the university was none too sympathetic, directed the dean of the law school to direct us to withdraw the petition for fees. The dean of the law school refused initially to do it. Actually, it went from the president of the university to the chancellor of the university. The chancellor called us in for a meeting and said, 'I'm not gonna give you this order. I just as soon resign.' He was a wonderful . . . He was an

English teacher. He was a wonderful guy. He said, you know, 'For me to tell you guys you can't do this is like telling one of our religion professors that he can't preach on Sundays, as far as I'm concerned. So I'm not gonna follow it.' We said, 'Follow it, because we need you as chancellor. We don't wanna risk,' you know, 'something happening.' There were real threats coming from the state and the president's office. So he said, 'Alright. I'll give you direction to the dean of the law school.' And we said to the dean of the law school, 'We don't wanna lose you either,' cause he didn't wanna tell us that we couldn't do this. And he told us that we shouldn't do it. And we said we'll take our chances. I was tenured at the time. I think I was. I'm positive I was tenured, but sort of newly tenured. So I felt quite comfortable sort of taking the lead on this. And we mobilized support among the Bar. We mobilized support among our students in the clinic who saw this unfold. There was an extraordinary hearing before one of the federal magistrates who was dealing with the fee petition in which we appeared, the state appeared, and representatives of the Bar who were with us sort of appeared. And all of a sudden came the general counsel of the university who was very much aligned with the president of the university, seeking to intervene in the case so that he could prevent us . . . ask the court to prevent us from having fees. And the federal magistrate said, 'Look. I want you folks to work this out.' He said, 'I'm not here in the position to rule on all of this, and certainly not today.' And he gave us some cooling off space and some breathing space. The upshot was that we felt that it was ultimately prudent to spin-off the legal services program, kind

of a reorganization, if you wanna call it a corporate reorganization. And this came about after lots of discussion and lots of meetings. One of my law school classmates and a very good friend of mine was the second in charge in the state attorney general's office. And we had a lot of talk about it. They understood very well our position and was sympathetic to it. On the other hand, they also were hearing the legislators say that we were circumventing the budget process of the state by having the university get money from the Department of Corrections, and this was not something that the state was gonna tolerate. Particularly since we were representing prisoners and winning cases and what-have-you. So we ultimately did develop a deal where the university would substitute the legal services funding that went to the clinical program into the law school's budget. LSC then separately funded a newly created Knoxville Legal Aid Society. And the Board of Trustees, who were none too sympathetic at *all* to what we were doing, passed a resolution saying that the clinic was barred from suing the state where statutory attorney's fees were available, which was a blow. I mean, it really was a blow. It forced us to re-think the kind of practice that we could do and wanted to do in the clinic. We had this vision initially that if we, which we *did*, confronted issues that involved litigation against the state where there were fees available . . . and of course, that's most cases against the state . . . we would simply sort of take them out of the clinic and bring them over to the legal aid society, which at the time was sort of our twin sister, although we were not siamese anymore. And for a variety of very complicated reasons, that just didn't

work. So we really *did* rethink the areas of practice where we got involved. We did not have a ban on suing the county or the city, so we got involved in lots of cases involving public housing and the jails and other municipal entities, and collected fees. They were none to happy about it, but we weren't circumventing the state budget process at all. So there's a lot more to that episode, but certainly one that stands out.

I was director of the clinic from '88 to '93. And we went through some periods where our practice . . . where the course was not oversubscribed as it had been. The demand had slackened. We re-thought the practice areas where we . . . that we were doing. For example, we were doing a lot of gal practice at the time. And we were continuing these cases. I mean of course, we felt we had a responsibility to do that into the foster care system. But these were case files that started to grow and grow and grow, and we ultimately felt that that was an area where, number 1, was not conducive to student practice. And number 2, we immediately began to see places where the rules needed to be challenged, state rules needed to be challenged and what-have-you. So we pretty much transitioned away from *that* as a practice area and pretty much went to very short cause landlord/tenant cases and non-clinic comp cases. We brought back criminal practice into the clinic, cause a lot of our students go into practices in their communities where they're doing kind of a general practice which includes criminal work. Public housing, I know we did an awful lot of that and other selected areas. Social

security and the like. Now I . . . . To sort of close this picture, about four years or so ago, after a lot of discussion and talk, I had been teaching in the clinic pretty much full time for years, although I had taught other courses from time to time, that I felt I wanted to teach less in the clinic and try to develop some courses that had field components to them where the students were not under the student practice rule, which only allows third year students in Tennessee to practice. And to try to develop some public . . . what I've been calling public interest law courses that develop skills that were not available in the kind of shirt cause clinic cases that were being worked on. And that's what I've been doing for three or four years now.

Hall: _____ more into like simulation type processes or something . . .

Rivkin: (Interrupting) No, no. They're not simulation courses. They're courses where students are working with community organizations, but not on cases. On campaigns and on projects that have legal dimensions to them. And these are groups that I've worked with for some time. For example, one of the course that I taught was called . . . I developed as Environmental Justice and Community Lawyering where my students were working with groups that I've been involved with. I've taught environmental law courses ever since I arrived at Tennessee

when I could. And I've gone to teaching them more intensively since. But the students are doing work with clients who I've . . . grassroots groups that I've had longstanding relationships with, and working on issues of community education and organizing and a range of skills that the short cause model in the clinic is not conducive to. I mean, that's very panoramic.

Hall: I need to shift into a slightly diff . . . or in a significantly different direction actually. One thing we're trying to track in our interviewing is some of the turning points in clinical legal education on the national level. It seems like within a few years after you arrived at Tennessee, CLEPR money was running out nationally. There was some discussion over Title IX money coming in. How actively engaged were you at that point in some of the national discussion?

Rivkin: Well I was actually *very* engaged. I remember . . . because I read this question in your scheme . . . I remember being asked to give a paper at a conference that was held at Vanderbilt. And I think it was '77, just a very short time after I came to Tennessee. I was invited by the director of the clinic at Vanderbilt who was running the conferences. His name was Junius Allison. He was the former director.

. . . and CLEPR was funding this conference. I'd never been to a clinical conference or an *academic* conference, I guess, up to that time. And I remember he asked me to do a paper comparing clinical legal education to medical education. And I gave a . . . I did it. And there were proceedings, actually, for that conference. And it was a short paper, but I remember sort of making a call there for national . . . for federal funding for clinical education. Because medical education had tons of it, and I made a case as to why representing the poor as much . . . is infused with as much national interest and importance as medical education. And from that, I guess Bill Pincus . . . Well I had known Pincus, because I was at Harvard. I was invited to Key Biscayne, and it was there that the effort that the Key Biscayne group put together to raise the status of clinical education in the whole decision-making apparatus of the ABA and the AALS, and to equalize the status of clinicians in law schools.

Hall: Dean, it would be an understatement to say we've had varied recollections of the Key Biscayne meeting from people who profess virtually not have remembered it, to people who have given very detailed accounts. What are your recollections of that meeting?

Rivkin: Well, I remember that . . . I remember Joe Harbaugh and Gary Palm, and I'm

quite sure Elliott Milstein was there, although I may be wrong. And I'm trying to remember who else, but I don't. Roy Stuckey I believe was there. But I recall we gathered, and we said, 'Look. We've got to take some political control of what's going on.' We saw this as a political arena that we were in. We felt that what we were doing was extremely important to the future of legal education. And we, as I recall, developed and agenda of some kind that called for greater inclusion of clinicians into the decision making arenas. We presented that agenda . . .

Hall: Can I pause real quick? Just to put it in context, at this point, the CLEPR money was running out. Was it your fear that the clinical programs were just gonna flat out die if something wasn't done? Or . . .

Rivkin: I don't think so. I mean, my recollection was that there was certainly a need for a funding source, and that's where Title IX . . . That's where this conference at Vanderbilt and the idea of some type of federal funding came in. But my recollection is that when Key Biscayne took place in '78 maybe, '77?

Hall: Seventy-eight as I recall.

Rivkin: The clinics were, certainly at my school and in others, were pretty much a part of the law school, of the curriculum of the law schools and were supported that way and were gonna continue.

Hall: So I guess the question is, in another way, when you all gathered and simply needed to take come political control of the situation, what exactly was the fear that you guys were rallying to prevent, as it were?

Rivkin: I'm not so sure that it was a fear that we were rallying to prevent something. But it was certainly a sense that our movement was *not* going to grow and penetrate the way we felt it should without our participation, active participation, and acknowledgment of that participation by the legal education establishment. And my recollection is that some of the early demands were we need clinicians on committees and accreditation teams. If this segment of legal education is as important as the rhetoric around it in the establishment of legal education said it was, there should be participation in the decision-making corridors. That's my *main* recollection. The whole second class citizenship rhetoric was also very powerful at the time, I felt. Now I personally wasn't affected by that, because I was at a school that had a tenure track system that was . . . that made clinicians

full citizens in the law school. But there were so many of my colleagues that were not in that situation, and it was *so grossly* unfair to see people disenfranchised from voting on issues that affected them and their teaching, and their work at the law school. The salary issue is certainly one that was prominent, the differential in salaries at the time . . . And still today from clinicians from non-clinical faculty made no sense whatsoever, given the roles that clinical people were playing in the curriculum and in scholarship and in the life of the law school. So that was a real motivating drive. It was a guild type action. There's no question about it. But it was one that, again, we felt was justified certainly, because going back to what were discussing before. Because we felt that the politics that we were able to bring into the law schools through our clinical programs were politics that law schools needed, and our students needed, and the subject-matter of law school needed to broaden those horizons and dimensions of what was going on. So it was easy to embrace it.

Hall: Dean, physically, do you remember where the Key Biscayne group, or the so-called Gang of Eight first met?

Rivkin: It was a room at the Sunesta Beach Hotel, right? I think that's where it was. I mean, I remember at the time, I had never . . . There was the Vanderbilt

conference, but all of a sudden I was invited and I was gonna get my way paid to Florida. I mean, it was really well beyond my experience as a legal services lawyer or what-have-you. And you're talking physically, it was in . . . It was around the breakfast tables and what-have-you.

Hall: I gotta keep you with this for a few more minutes

Rivkin: There's a lot more to talk about. I'm sorry.

Hall: But I'd like to hold you with it for a few minutes.

Rivkin: Sure.

Hall: I think it's a worthwhile topic.

Rivkin: It's what, 12:30 now?

Hall: Yeah, just about.

Rivkin: Just about? Okay. I need to . . . I'm fine. I can . . .

Hall: Don, can you _____ about 15 minutes?

Don: Sure.

Hall: Great. Tell me, after this initial meeting, were there any sort of strategies or sort of different areas that each of you guys were gonna take on? How did it work? What _____ of some of those early meetings?

Rivkin: I don't remember any . . . Not that it didn't happen, but I don't remember any specific delegation. One thing I *do* remember very vividly was we . . . The ABA was receptive, and they asked those of us who were at the meeting in Key

Biscayne to come to New York to meet with the person who was either the *then* chair or the incoming chair of the ABA section, Max Kempner. May be wrong, but a New York white shoe lawyer who understood, I felt anyway, that what we were saying about this new field and it's importance. And I remember at that meeting, I remember it very vividly because my dad was having bypass . . . quadruple bypass surgery at a nearby hospital in Manhattan, and I was kind of going back and forth. But it was at that meeting where there were some demands, as I recall, that we had drafted up that were presented to a very small group of ABA people. And there were some understandings reached that this was . . . that some of the demands were gonna be met. I mean, they were not . . . they were demands that were more sort of demands for participation and acknowledgment that, if in fact the legal education establishment was going to embrace this new field the way it seemed to be embracing and encouraging it, that clinicians had to be much an integral part of the decision making as possible.

Hall: Were there any other follow-up meetings of this group that you can think of? Gary mentioned one maybe at like the Yale Club in New York.

Rivkin: You know I don't remember. I don't remember that. I vaguely remember something being done there, but I don't remember any of the details of it. I'm

sorry.

Hall: Do you physically remember being there, or . . .

Rivkin: I think so. Was it Yale or Harvard Club? It was something . . .

Hall: Some academic club.

Rivkin: Right. Something that took place in New York. I don't remember the meeting, though. I don't remember really anything about it. What I do *vaguely* remember, though, was clinicians started to be put on accreditation teams, started to be appointed to section committees, ultimately to the council. And . . .

Hall: Hold one second.

Rivkin: Sure.

Hall: Okay, let me ask you . . . Or actually within this group of eight, did any of them, including yourself, play what you think was like a particularly central role in moving this advocacy forward?

Rivkin: Well Joe Harbaugh played a very important role as I recall, both at the Key Biscayne meeting and afterwards. I mean, Joe was kind of the spokesperson, as I recall, who was respected by the ABA people, was a good negotiator as one may expect. And I recall Joe, and I recall Gary Palm being quite vocal. Roy Stuckey was heavily involved in a lot of sort of the background work. I mean, I contributed what I could contribute. I don't . . . That's about what I could remember about it.

Hall: Dean, what do you remember about the AALS . . . Was it AALS or ABA that did the 405E? Was that ABA?

Rivkin: That was ABA, right.

Hall: Yeah, ABA. Okay, what do you remember about those . . .

Rivkin: (Interrupting) Well I remember a lot about that cause, I actually was on the council at the time that the ABA adopted 405E. And I had been a member of the accreditation committee where issues of status were raised. I mean, the issue that I was talking about a minute ago about status I felt was an important one. And there's no question that I felt very comfortable advocating for my broader colleagues that they be a full partner in the enterprise of their institutions. There were just horror stories about clinicians being excluded from decision-making, and from equal treatment. And it just wasn't right. And actually, the lawyers on the council understood that as I recall. The lawyers from the larger firms understood that. The idea was, if you had two lawyers in the firm doing pretty much the same kind of work and contributing equally to the enterprise, arbitrarily having one a partner and another one not, just didn't cause for terrific moral and was not right. And I remember that. So that was sort of the argument that went into the 405E fight. And it *was* a fight, because there was a lot of resistance from the legal educators, the non-clinical legal educators on the council about what this . . . opening up this sort of pandora's box of substantial equality would do. But ultimately, a compromise was reached. I mean, it was a compromise that talked about substantial equivalency in the perquisites of employment that seemed to me

to be acceptable at the time, because it was a decent leap from the present circumstances of clinicians, and I felt it was gonna take some time to be implemented. There were some fears, and I think those fears were born out, ultimately, that this kind of standard was not a full equality standard, that it was still going to create dual citizenship in the law schools. And my sense is that just like any political compromise you make, you're taking a risk that down the line, that's gonna happen. And I think it did.

Now, let me say one other thing about 405E and about the drive toward equality. I also feel that today, I think clinical education would be better off *not* seeking full equality for every clinician on the faculty or in the clinic. I really *do* think that there have been some down sides to that that have retarded thinking about clinics' strategic sort of role in delivery of legal services in their communities that would be better served by an explicit acknowledgment that clinics can have people, a variety of hierarchies of status and what-have-you. But that's a long conversation and beyond the scope of . . .

Hall: (Interrupting) One question. How do you feel that the focus on equivalency has hurt the delivery of the ___?

Rivkin: Yeah well, I really *do* think that by creating tenure standards, and even long-term contract standards in some places that have required substantial commitments to scholarship and to institutional governance, that clinical faculty have not . . . and this is a big generalization . . . had the time to practice and to think about issues of service in the clinic as opposed to pedagogy, that I think would happen more if there were faculty in the clinic who were without those kinds of responsibilities that I mentioned before, but who could work hand-in-hand with clinicians who did. And under the present model, at least as I understand it . . . I haven't been that involved in recent years in the accreditation process and how it's all played out . . . that's a model that's discouraged by the substantial equivalency sort of idea. So, that's a very general statement.

Hall: I have one last question on status, and then I'll wrap up. In your mind, was the primary issue just fairness and equality, or did you see this two-tiered process as actually somehow thwarting the progress of clinical legal education in some broader way?

Rivkin: Well, both. Both. I think that the fact that it wasn't fair as a guild matter was certainly a driver to this. But also, as I think I mentioned, I think we felt that we had some power, some intellectual power to bring to legal education that also had

with it a normative component that we've talked about earlier on . . . at least I felt that way . . . that was extremely important. It's very interesting. I taught at UCLA in 19 . . . in the fall of 1980 as a visitor. And I taught with David Binder and Paul Bergman. And Paul Bolen was there and Gary Meadow was there. And it exposed me to sort of a whole wing of clinical education that was so analytically focused . . . it was like analytical philosophy . . . that didn't have the normative component to it, that it was quite startling. I mean, it was very powerful as an intellectual model. But there was not the kind of socially conscious aspect of their model of clinical education, what they were publishing about fact investigation, interviewing and counseling and negotiation. And it fit much more into the traditional faculty's . . . at least there, and I think other places . . . their view of what being an academic was. So . . .

Hall: I'm gonna ask you two last questions, one of which was on that list of six questions that Sandy gave to you. In your mind, what is the relationship between the social justice mission of clinical education versus the skill teaching mission?

Rivkin: Well in my view, the two can't and shouldn't be divorced. I mean, I would say that clinical education without the two infused shouldn't be called clinical education. It could be called something else, skills education or what-have-you,

but to me, the ferment that started clinical education was a ferment that grew out of a recognition of the social justice mission that lawyers should carry and should transmit and teach about and write about and think about and work with clients on, and students of course. And a simulation model, even if the simulations are focused on social justice issues or public law issues, doesn't strike me as being what the original sort of undertaking at least contemplated.

Hall: My last question is, you've obviously been in from quite early on in this. What do you consider to be the biggest successes of clinical legal education, and where do you see its future headed?

Rivkin: *Boy*. I'm not sure we have enough time to do that. I don't wanna hold anybody up. But as I talked about earlier, I think that the development of this field of lawyering has been both an extraordinary intellectual development and also a very powerful sort of force in expanding the horizons of legal education. It has been extraordinarily heartening to me just to read the clinical law review, and to read Sandy's bibliographies, to see how people have taken issues that were simply issues without much flesh about lawyering, and about clients, and about teaching, and develop them into wonderfully path breaking pieces, and that are both useful to those of us who are teachers, and just develop the field. I mean, that is an

extraordinary achievement to me. And I have to put that kind of right up there. I think clinical education has certainly brought in a much more diverse group of people into legal education over the years . . . many, many, many more women than were joining non-clinical faculties. Clinicians of color, although I think we've not . . . I think legal education across the board has not done a very good job of assuring diversity in our faculties. And that's just a very short response to your question.

Hall: What about the less pressing future issue?

Rivkin: You know, I haven't given that much thought. I think as a result of the work I've been doing on the equal justice project, I'd like to see clinical programs think a whole lot more strategically along with the equal justice communities in their cities or states or regions where they deal about how they can become a much more useful part of a delivery system for poor people. And I'd like to see those conversations really begin soon. And I think the next four years of the Bush presidency are gonna crystalize those issues even more.

I'd like to see clinical programs look at issues of delivery, something that in a systematic sort of way, that clinics haven't done yet. So I think there's rich resources. I *know* there's rich resources in the clinical community and in clinics

to be able to do that. And I think it has to be done in conjunction, strategically. It's gonna take some time. I'd like to see those conversations begin. And to me anyway, that's a major future sort of challenge.

Hall: One last question. Were you on the accreditation committee or on the council when 405 was gonna be amended the first time?

Rivkin: I was on the council when it was enacted.

Hall: Okay. Do you know what brought that *to* the council? What was the impetus?

Rivkin: Initially?

Hall: Yeah.

Rivkin: Well, it grew out of the Key Biscayne discussions. The issue of status was one

that was always part . . . Status, I talked about participation, but certainly status was a part of that.

Hall: Gary . . . We spoke to Gary earlier, and he had suggested that there had been an accreditation visit at a specific school, and then the team had come back and said essentially, 'They're not treating their clinicians as full members of the community, and we read 405 as requiring that.' And it was somehow *that* that got the schools to say, 'Woe, wait a minute. We're gonna be in trouble here. We need to address that issue.'