

Oral History Interview with Steve Wizner

Hall: My first question that I'm asking everybody is just what your first exposure was to clinical legal education?

Wizner: My first exposure to clinical legal education was at a law school that didn't have a clinical program. I was a student at the University of Chicago Law School from 1960 to 1963. And in those years, the Legal Aid Society of Chicago had a neighborhood office in the basement of the law school, and there was a wonderful, very idealistic Eastern European immigrant lawyer named Henry Kaganiec, who ran that office for the legal aid society, and he basically staffed it with volunteer law students. So for no credit and no recognition, we were permitted in our free time between the classes and the library and whatever else to go down and work with Henry on legal aid cases. There were, of course, no student practice rules. So although we could interview clients and do legal research and draft things and write things, we actually couldn't handle things in court. But that was sort of my first exposure to legal aid work and to having a mentor, to having an experienced lawyer who was committed to providing free legal services to poor people, and doing it at a very, very high level. And then talking with us about what we were doing, talking before we did it, reflecting with us after we did it. So Henry, although he was not employed by the law school, I don't think he ever thought of himself as a clinical teacher, was actually my first clinical teacher. So that was my first real exposure. When

I left the University of Chicago Law School, I went to work for the Department of Justice. Bobby Kennedy was the Attorney General, John Kennedy was the President. They were heady days, and it was an exciting place to go. Students who are now idealistic and want to do public interest work, I can identify with that. Those were the same feelings that several classmates and I had going off to the Justice Department. And in fact Bobby Kennedy had come to the law school that year and gave a now famous, passionate speech about the legal rights of the poor and the obligation of lawyers to do something about that. I spent three years in the Justice Department in the Criminal Division, because that was what Bobby was most interested in, and that's where he was recruiting the people for. During summers, we had law students who worked in our office. And the lawyers, of whom I was one, were assigned law students to work with them. So I guess that was sort of a clinical experience, although not in the context of law school. I left the Justice Department and moved to New York City to work with Ed Sparer. Ed had started the first neighborhood legal services office in New York at Mobilization for Youth, and then had gone off to Columbia University to start the Welfare Law Center at Columbia. And he was very suspicious of me coming from the Criminal Division of the Department of Justice. Ed was an old lefty, and couldn't imagine why I not only wanted to work at what he was doing, but that I also was willing to take a pay cut. His image of people who worked for places like the Department of Justice were that they were interested in advancing their careers, and that that was signified by increases in salary. So I actually had to give him the names of several people that we both knew whose politics he thought were pure to tell him that it was okay to hire me for less money than I was already making.

I spent a year at the welfare law center, but really wanted to have more contact with clients. We were doing welfare law testing and designing the strategy that would basically subject state welfare practices to constitutional limits. And so I went off to Mobilization for Youth from whence Sparer had come to be a neighborhood legal services lawyer. And there again, the three years that I spent at Mobilization for Youth I always had law students working in the office, some of them getting credit, some of them not getting credit, law students in the summer time whom we paid. But it wasn't. . . again, that wasn't really clinical education because what the students did is help me on my cases and do research for me on my cases. And if they wanted to, come to court and watch me do it. I thought that I had found my career as a neighborhood legal services lawyer. I couldn't imagine ever leaving my storefront office with the rats and the cockroaches, and my clients speaking several languages, and running to court every day. . . and usually to more than one court. . . and working nights and weekends on briefs. It was a time in the '60s when most of us in legal services really believed that we were going to put an end to poverty, that the War on Poverty would do something, but the lawyers were really going to do it. We were going to bring the system of economic injustice to its knees by bringing lawsuits. And we believed it. We really believed it would, that it were true. During the late spring, early summer of 1970, I got a phone call from Dan Freed. Dan was someone I had known in the Department of Justice. He ran the Office of Criminal Justice in the Justice Department, which was an in-house think tank that Bobby Kennedy used on criminal justice issues. And Dan had left the department and gone back to Yale Law School, from which he had graduated from many years before. And the law school had

hired him to set up a clinical program. Bill Pincus had targeted Yale Law School as one of the places that he wanted to establish clinical legal education. He thought that if he could do it at a place like Yale, that other schools would follow. Little did he know that other schools would then say, 'Well Yale can afford to do that. We can't..' But that was part of his idea. Dan hired my partner Denny Curtis. Denny had graduated from Yale some years earlier and was practicing in a Washington law firm and wanted to get out of private practice, and he also had known Dan from Washington days. So he was hired, and then shortly thereafter, I got a phone call from Dan saying would I come up and interview for a job in their clinical program. I had no idea what he was talking about. I had never heard of clinical legal education, and I said no. And he said, "Well will you just come up and talk with us and give us some advice about what you think we should be doing because a lot of people have told me that you always have law students working with you in your legal services program. And I remember back in the Justice Department, you used to always like to have students." So, I said, "Okay, I'll come up for a day and just talk with you about what you're doing." Somehow Dan knew how to get to me. He had about a dozen law students lying in wait for me when I came. Very idealistic, very committed students who really wanted to do something with the law they were learning, they wanted to help the poor and make their legal education more morally and professionally meaningful to them. So I spent a good part of the morning talking with groups of students and hearing about what they wanted to do, and saying, 'If only we had a lawyer that would enable us to do this stuff, it would be. . . there is so much more we could do.' They also told me, and I later confirmed, that from as early as the 1940s, law students at Yale had

been doing legal aid and public defender work in New Haven without any attorney supervision. They basically had been engaging in the unauthorized practice of law for 30 years before I arrived there. There was a whole tradition of students doing that. The organization was called the Jerome N. Frank Legal Aid and Defender Association. Jerome Frank had been a professor at the law school, and one of the founding patriarchs of the legal realist movement. And he had written some influential law review articles in the early '40s, middle '50s. One was called, *Why Not a Clinical Lawyer School?* And the other was called *A Plea for Clinical Lawyer Schools*. And he basically had used the legal realist critique of legal education and moved it a step further, saying that unless law students really experience what lawyers do, and what judges do, and what clients need, they're not learning anything significant in law school. . . that any theory that they're learning that's not grounded in practice isn't good theory. And similarly, if we can teach practice in law school, we can teach students that good practice should be informed by theory . So he had this idea that he articulated in these two articles that there ought to be a practicing law office in the law school with teacher practitioners as the partners and students as the associates. And students ought to be able to represent clients, and in that way apply some of what they were learning in law school. He didn't see it as skills training at all. He thought it was legal education. So skills training is a word that was invented much later. He never thought it was about learning to draft contracts or draft motions. He thought it was about the relationship between lawyers and clients, and the role that lawyers have played in society, for good or ill. So, I spend the morning talking with the students, and then we assembled for lunch at the Graduate Club which was one

of these campus. . . New England campus eating clubs. The table. . . again, the table was full of students. This was not a table of faculty. And Dan Freed opened this informal, relaxed lunch by saying, “Steve, why don’t you tell us a little about yourself?” So, it was then that I realized what was going on. So I proceeded to, in a fairly sanctimonious and self-righteous way, say why. . .told them why I would never leave the storefront office on the lower East side, that that was really where I had found my professional niche, and that I really admired the idealism of all the law students, and I hoped that when they graduated, they would come work in legal services. And that was kind of how it went, and the students kept talking to me and saying they wanted to do this, and they wanted to do that, and they wanted to bring this law student, and this horrible thing was going on in Connecticut, and people were locked up in institutions, and people were being deprived of. . . if only they had lawyers with them to empower them to do this kind of work. . . and they started kind of eating away at my resolve not to be wooed away from the Lower East Side to the Ivy covered walls of Yale University. And then after lunch, I was taken back for an interview with Abe Goldstein, who was then the dean. And Abe was totally committed to doing this. He really wanted to have a clinical program in which law students could basically move from a very, very theoretical academic curriculum to a clinic where they were actually seeing clients and doing cases and to make educational connections for themselves if they moved back and forth. It wasn’t a law school in which people with a lot of experience and practice had come to teach. It was, even then, a law school in which a large part of the faculty had, if they had practiced at all, had practiced for a very short time, and were really interested in law as a liberal, or liberating art. The

Yale Law School, perhaps before other law schools, had been very self conscious about being part of the university, and being intellectually respectable as part of the university. So scholarship and research and writing was what it was about. And if you would ask the entire faculty at that time at Yale School, is the Yale Law School a professional school, most of them would have said no, that our job is not to teach people to be lawyers, our job is to study law, teach law, but not in some professional. . . professionally oriented way. So, and that actually was, I think, part of the reason why the clinical program was accepted early at Yale because that enabled that ideology of legal education to continue to prevail, while the clinic could be the laboratory. So, many people in the faculty justified, I think, the hiring of clinicians as sort of like lab assistants. . . that we were running the laboratory, that they were teaching the serious stuff. And Denny and I, and to a lesser extent Dan, didn't resist that notion. Dan and Denny and I developed some tensions between us. Dan wanted a program in which would really be a program of policy study, where you would get together all the players around a certain kind of problem and get them into the room and talk it through and resolve it, and the idea of suing people and going to court, which is what the students wanted to do, was not really what he wanted to do. So eventually Dan and we separated, and for many years ever since then, has run his own sentencing workshops and other kinds of workshops in which he brings in all sides of an issue and they really try to work through, solve problems. Denny and I wanted to practice law with students. We didn't really have any theory of clinical legal education. The whole notion of clinical pedagogy was not one that even occurred to us. We thought it would be fun to practice law with students, and the students wanted us to practice law

with them. The first project that Denny and I took on for ourselves was to get the student practice rule changed. When we arrived, the student practice rule only allowed third year law students to go to court. And we had a plan that we would like to move it back eventually to the first year, because the Yale Law School being the Yale Law School, has only one semester of required courses. So in the second semester of the first year, it would be possible for students already to participate in the clinic. And in two moves. . . the first year we got it moved back to the second year. And that proved not to be a disaster. There was a student practice rule committee that would meet in Hartford twice a year to see how things were going. And eventually, we got it into the first year, which was what we had wanted to do so first year students could get involved early. We had a theory which I think was different from many other clinicians, which is that the fewer courses students have had, the better they'll be in the clinic. We thought that first year students were both more idealistic and more educable, that a kind of cynicism sets in in later years in law school that would compromise some of the idealism that students came to law school with. And we also thought it was a good idea for them to be doing the clinic at the same time as they were taking courses that related to the clinic. So rather than take evidence and trial practice first and then do the clinic, we thought it was a good idea for them to be taking evidence and trial practice and doing the clinic so that they could constantly move back and forth between theory and practice, and practice and theory, seeing the relationship to each other.

Hall: Looking back, did that work out satisfactorily?

Wizner: We're still doing that. We still take first year students into the clinic. But we're not as

rigid as we were at the beginning. We now take in second or third year students coming in for the first time. And we even allow students who've already had evidence and trial practice to come into the clinic. So although we were, in the early years, fairly committed to that idea of getting students much earlier, we're now more flexible on that. There were other reasons for our doing that. In some schools, clinic was viewed as a way of dealing with boredom in the third year, or the redundancy of the curriculum – one more case method course after another – or to create a transition between the law school and practice. We didn't view the clinic as a transition from law school to practice. We always viewed the clinic as part of the law school curriculum. And so part of why we wanted to start in the first year was an ideological reason, which was that we wanted to make clear that we viewed clinical legal education as of equal importance to non-clinical education, and not as something tacked on at the end for students, or not as something for which they need to take all the other curriculum before they could do it. It made sense to us as theoretical notions for them to be doing both at the same time. This is a conversation we have had with clinicians in other schools over the years, and not everyone agrees with us. And certainly not every faculty at other law schools will agree with it. But still, our guiding ideology is that this is not something tacked onto the curriculum. This is something integral to the curriculum. And that also informed our decision that we would not have clinical semesters, that we wouldn't have the students studying full time for a semester in the clinic, but clinical courses would be viewed like other courses. So a student who had to take three courses would take two academic courses and one clinical seminar and could do it for more than one semester, assuming that we had the person

power. Bill Pincus was very influential in all of this. Denny and I spent more time talking to Bill Pincus than we spent talking to people on our own faculty. He had very clear ideas as to what he wanted. What he wanted was students practicing law. And of course, that's what we wanted also. And he wanted them practicing law under the guidance of experienced lawyers, and with an opportunity to reflect on it. And also to use the practice of law on behalf of poor people to open their eyes to social injustice in the society, and the capacity of lawyers to address that injustice and maybe even their obligation to try to do that.

Hall: If I could ask you one question related to that, would your system of two different things have equal importance, or was one more important than the other – the teaching versus the social justice aspect of it – to Bill Pincus?

Wizner: I think Bill Pincus was appalled at what was going on in law schools. I think he thought that law schools, legal education, were fundamentally irrelevant to what was going on in society, and he wanted. . . and he really accepted Jerome Frank's arguments that there ought to be, you know, not a wall between legal education and the world of law practice, but that law schools ought to be part of the legal profession. I think Bill himself had not had a terrific experience in law school. He went to St. John's law school during the depression. I don't know that he had ever practiced law. He had been instrumental when he was at the Ford Foundation in developing Community Progress Incorporated, which was the anti-poverty program in New Haven. And New Haven Legal Assistance was one of the centerpieces of Community Progress, Inc., and one of the early legal services programs, Neighborhood Legal Services in Washington; Mobilization for Youth in New

York; Neighborhood Legal Assistance in New Haven; and Greater Boston Legal Services were the four kind of premier programs. But I'm not sure what the answer to that question is. His politics were fairly left, and I think that he was concerned about the failure of many lawyers to be involved. He thought that students coming through clinical programs. . . some would go to legal aid programs. But even those who didn't would be educated by the experience, and when they became lawyers, would be motivated to participate in some way in traditional legal services to poor people. Anyway, I left out the part that after that meeting with the students that day, Dan Freed called me and said, "How would you like to come teach here?" And I said, "I would." So, his plan of having me spend the day with students rather than faculty worked. But actually, it may not have been his plan. It may well be that the faculty had zero interest in this, that this was really something that Bill Pincus had talked to Abe Goldstein, the dean, about and Abe had brought Dan Freed in, and that this was done without a lot of discussion with the faculty. Abe's point man on the faculty oddly enough was Ralph Winter. Ralph Winter, who is now the Chief Judge in the Second Circuit, was a very conservative member of the law school faculty. But he was very interested in this. I mean, he was very conservative, but he also thought that a lot of what was being taught at the Yale Law School was not exactly what he would have chosen to be taught at the Yale Law School, and he liked the idea of the clinical program in which real lawyers would come in and teach practice to students. And so it's odd. Over the years, some of our best allies in the faculty have been the most conservative members of the faculty. Up to the present day, Bob Ellickson, who is, I think it's fair to say, a neo-conservative, and who believes that the best thing you can do for poor people

is nothing, is the only one on the faculty with a serious interest in poverty, and the relationship of legal practice to solving the problems of the poor, and actually one semester he spent the semester in the clinic teaching with us and working with students. Even though he is kind of ideologically opposed to the whole notion of legal aid, he is the one who's been so involved with the program. It's been sort of ironic over the years that some of the faculty that have been most supportive of what we do have been the most conservative. When the faculty was debating whether or not to have an environmental law clinic, he was the only one to vote against it, and I remember his words. He said, "I don't care whether Long Island Sound is clean for rich people with their sailboats. We should be representing poor people." So, it's very strange. On the other hand, some of the very liberal members of the faculty like Owen Fiss who was also in the Kennedy Justice Department when I was there is a . . . I would call him a career liberal. . . had been opposed to the clinical program from the beginning, and to the present day, I think, is opposed to it. He thinks that the law school is a place where scholars should do their work and students should sit at the feet of the scholars and learn from them, that it is a legal academy. And although, as he says, he has nothing against the people on the clinical faculty personally, as if we're not people, not persons, he is basically opposed to a clinical program in a law school like Yale. So, that seems kind of strange. Denny and I early on saw this as much a political struggle as an educational program, and our early conspiring was that we would basically not let the faculty know what we were doing. . . that we would keep our clinic, do our cases, not advertise all our great victories and all the people that we were suing, teach our clinical seminars, not invite other people from the faculty

to come in and just keep dealing with that. Also, doing fund-raising. We kept dealing with Bill Pincus. He kept giving us one grant after another to expand. The way he did it was that. . . he did this with all law schools. . . that if you wanted money from CLEPR, you., the law school had to commit to picking up the program after CLEPR pulled out. We also decided that we would grow very slowly and very incrementally so that CLEPR actually gave more money to some schools than they gave to Yale. And Denny and I had decided that we really wanted to grow very slowly and very incrementally. Part of the reason for that was that we didn't want the rest of the faculty to know that we were growing. Part of it was that we wanted to make sure that we had solidified each expansion before we moved onto the next one. At one point, Pincus gave a grant to the law school to raise our salaries, and that was the only purpose. He had asked us whether we made the same as the academic faculty, and we said no. We didn't make anywhere near the same. So he offered then Dean Harry Wellington a grant solely for the purpose of raising our salaries if the law school would commit to keeping us moving up from that point, which Harry did. In terms of status on the law school faculty, that was a very crucial move, that we suddenly jumped up from being lab assistants to having salaries on the par with what the academic faculty was making. And that was a Pincus move that was very artful. I don't know if he did that in other law schools.

Hall: Did he. . . did he talk about what his reasoning was for that?

Wizner: His reasoning was that he wanted the clinical faculty to be viewed as faculty in the law school. He didn't want us to be second class citizens, and I think that was his attitude across the country in the law schools that he was funding. From time to time, Pincus

would get us together. There was a CLEPR conference in Boca Raton, Florida in the early '70s where he brought in clinicians from all of the law schools he had funded. Both Denny and I were down there from Yale, and Gary Palm, I think, at that time from Chicago, and others. And he brought together people from the Ford Foundation and some selected deans from law schools as an audience. And he had us put on a dog and pony show. He had us in this very fancy resort hotel – with Pincus we always lived well. So, there was this group of clinicians staying at the Boca Raton beach country club, very fancy, but we had to sing for our supper. And he had a full program of a couple of days in which we presented to people who had not had any contact with clinical legal education, what it was that we were doing. And he met with us ahead of time to make sure that this would be both informative and entertaining. And he was the producer and the director of this show. And then he sat in the audience beaming while we thrilled the audience with these wonderful, educational innovations that we had introduced in our respective law schools. And in return for that, we got very good food, we got to swim in the ocean and stay in a fancy hotel. I remember another time he brought us together in Manhattan, put us up at a hotel and took us to this fancy French restaurant called Chantilly. He had very elegant taste. And we went to Chantilly, which was a fancy French restaurant, and it was again a group of clinicians sitting around the table, and Pincus is at the head of the table saying, 'What's going on? Where should we go next? Where should I be putting my money next? What should I be doing?' He was very, very involved all through the '70's in the growth of clinical legal education. And he would try one thing at one school, one thing at another school, see how it was working out, and then

take it around and try to sell it to other schools. He actually came frequently to visit us at the program. And when he would come, because he was a major funder of the law school program, the dean would shadow him. So he and the dean would come into the clinic and meet with the students and see what we were doing. And he was very influential in that way. So, we grow. . . we grew a little at a time. We had a very good student names Mike Churgin, who now teaches at the University of Texas. And he was really an incredible student in the clinic. We said, 'Let's try to keep him for a year. Let's see if we can get a graduate clinical fellow.' That was our first move toward expansion, and that was in the early '70's. I'm not sure what year Mike graduated. And Pincus agreed to fund it if the law school would agree to establish that position, a third position in the clinic. It's very hard to resist money in the law school, and that was our first expansion. I should say that it took us roughly 20 years to grow from two lawyers to our present strength of 10. And we did it over that period of time very slowly. I remember when the sixth or seventh lawyer was about to be appointed, suddenly we were at a faculty meeting, and someone realized that the clinical program was burgeoning and growing, and asked, Whoever authorized any of this? All through the year, early years, both with Abe Goldstein and with Harry Wellington, Denny and I had basically done it that way. These were all decanal appointments. They never went through a Faculty Appointments Committee. We would hunt around, Denny and I, find funding for a position. We would discuss it, the dean would agree. The position would be added. It would be funded. The faculty would never know about it, and suddenly they woke up to the fact that there were not two of us in the clinic, there were six of us in the clinic. And while we were doing

that, we were expanding into other areas. Denny and I had started out doing the program at the federal prison at Danbury, a post conviction remedy program at Danbury. To this day, Denny is the premier post conviction lawyer in the United States. He is doing post conviction work, what little is left of it. But in those days, there was a lot. There were parole hearings, and parole revocation hearings, and parole rescission hearings. And students could do all of that work. And we had arranged with the Federal Bureau of Prisons to do the program. The Federal Bureau Prisons actually paid us to do it, which is now common for the Bureau of Prisons to pay legal services programs, but in those days we may have been the first law school program that the Bureau of Prisons kind of bought the argument that if prisoners had access to legal counsel, there would be fewer cases, not more cases, because they would be screened. They wouldn't be bringing ridiculous cases because lawyers and law students would be looking at their claims and discussing with them what they had. While we were doing that, a group of students were working, volunteering, at New Britain Legal Services with a recent law school graduate from Yale. And they brought a lawsuit against the Commissioner of Mental Health in the state of Connecticut, challenging the whole scheme of civil commitment law as being unconstitutional. And they lost the case. The case was not handled well. They really didn't know what they were doing. They lost the case. They made very bad law. And at that point, Denny and I decided we better bring these students in-house, because there's a lot of work to be done. It was just kind of in the middle of the de-institutionalization movement, and there was a lot of work to be done on behalf of the institutionalized psychiatric patients. And we were very concerned that these students were just out there

filing cases with an inexperienced lawyer, not knowing what they were doing. So, we talked with Pincus, and Pincus agreed that he would fund a clinic to do that with a person. So that was our second clinic. So were doing a prison clinic and a mental hospital clinic. We taught one seminar for both groups of students in which we read some of the sociological literature on total institutions and talked about differences and similarities between locking people up for their own good and locking them up for other people's good. And actually that was a fairly interesting model for a clinical seminar. It was a total institution seminar. We later broke them apart, and currently we have two separate clinics. One is a prison legal services clinic, and the other is what we now call Advocacy for People With Disabilities. We're doing a broader range of things. So as we incrementally increased the size of the clinical faculty, we also gradually added different areas in which we were working. The first two were very similar, working in mental hospitals and working in prisons had a lot in common. Almost from the beginning, we had a program with New Haven Legal Assistance. New Haven Legal Assistance was one of the model programs of the War on Poverty, and had seven neighborhood offices. And we had students in all of them. And we offered a seminar for those students on civil legal assistance, which dealt with the various kinds of problems that poor people have, the whole range of civil problems. We taught everything in that class. We taught consumer law, we taught landlord tenant law, we taught family law. Again, to this day, we still have students working down in New Haven Legal Assistance, so that connection between New Haven Legal Assistance and us is very close. New Haven Legal Assistance now has one office, as a result of cutbacks in legal services. And it's walking distance from the law

school. We always viewed New Haven legal assistance as a teaching hospital for our students. So some students prefer to work in the legal aid office in the community, and they do that. Some prefer to work in house in the law school, and they do that.

Hall: From your perspective, were there any advantages to either approach?

Wizner: Well, I am a big supporter of in-house legal services clinics. A lot of it has to do with the transition I had to make when I came from legal services. When I was in legal services, students helped me on my cases. And the transition I had to make, becoming a clinical teacher, was realizing that I had to help students on their cases. . . that until we view the cases as the students' cases, the clients as the students' clients, that the students would never really learn what it meant to be responsible to another human being, and to be a servant, basically. . . a professional servant of someone else. And that was a difficult transition for me. I was so used to being in control of it, to say how can I make sure the clients are well represented? Well, now I'm not in control of it, so, then, how do I devise a system of teaching students how to do this, sitting in when I need to sit in, talking with them afterwards, intervening or not intervening, all of the issues that kind of clinicians have been talking about over the years were things that we didn't have. There was no blueprint for it and nobody had ever talked about it before. So Denny and I. . . I should say that Denny and I had lunch, went to the gym and had lunch together every day, and that's what we talked about. We talked about what we were doing, and how we were doing it, and how could we make sure the clients were well represented when we weren't doing the representing? And what is it that we need to teach students, and what is it that we needed to expose them to? And what conversations do we need to have with them?

Hall: If you could go back to the first couple of years and actually dissect it a little bit, and discuss some of the educational strategies that you adopted and sort of evolved. What are some things that you eventually were using did you find most effective?

Wizner: Well the single most effective thing was practicing law. The single most effective learning experience for students was having a client, and helping them solve a legal problem. That all the other stuff, as interesting as it might be, or as much as it might make you feel like a law teacher, none of that had even come close to the educational impact of a student having a client. . . having responsibility for the client. So, and we kept coming back to that and coming back to that. We looked around and we noticed that many other law schools were using simulations. We decided early on that the problem for us with simulation was that it focused on lawyers, and we wanted students to focus on clients. That simulations seemed to us to be about performance, and our idea of being a lawyer was not about performance, it was about a relationship between a lawyer and a client. And what that relationship obligates you to do empowers you to do. So, I think that the trend in our program actually was contrary to what it was in many other programs. We started with simulations and backed away from them. We basically stopped using them, except to moot students. If a student was going to court or making an argument, or even going to have a telephone conversation that they were nervous about, we would moot them. Say, okay, you're calling. . . call me. You know, let's do the phone call. Call me and let's do it. Or, you have to go to court. Let's prepare the argument for court. Or you have to examine this witness. Let me be the witness, let's do it. So that we basically stopped using the word simulation and role playing, and instead talked about preparation.

So everything came under the rubric of preparation. And again, this was, you know, kind of tendentious, so we used to say everybody else simulates the role plays, we practice law. But we were doing a lot of what other programs were doing, simulations and role plays. We were just contextualizing them, putting them in the context of actual client representation. So we very early on stopped creating problems that students could simulate, or creating situations in which they could act the role of the lawyer, and actually began immersing all that stuff in the actual representation of clients. And that grew out of our kind of early realization that what students learned the most from was actually doing the cases. And in our ideological position that practicing law should be about clients, and not about lawyers' performances. So, I don't know whether that's right. I still don't know whether or not that's right. It feels right to me, and in our current program, where there are ten of us, some of us do it that way, and some don't. Some of my colleagues use a lot of simulation and role playing, and they're one extreme of our clinical faculty. And some are, like, have the same view that I do, which is that you need to be in the context of actually practicing. And that also affects the caseload. I mean, those of us who do it the way I do it, the students have more clients and more cases, because that's what they're doing. They are not preparing a lot of simulated exercises. We also early on decided not to have any simulation courses to prepare students for practice in the clinic for the same reason. . . that we wanted students. . . we thought students learn the most doing. . . representing clients. And not pretending to represent clients, but actually doing it. That the reality of it was very important. But it also had a lot to do with what we wanted to do. I mean I have to be honest that Denny and I didn't want to teach simulation.

We wanted to practice law with students. So we developed the whole educational theory based on what we wanted to do, but I think it's the right one.

Hall: Well other than the fact you said you had to let go of control of the cases, how similar was this. . . your relationship with the students when you were back in the Lower East Side?

Wizner: It wasn't similar at all. I have to say that the most difficult adjustment for me in becoming a clinical teacher was letting go, or figuring out a way of keeping control indirectly. . . inefficiently. One of the things that I remember when Edwin Meese wanted to take away all the money from legal services and give it to law schools. . . Denny and I were very strongly opposed to that, because the whole goal of clinical legal education is to be inefficient. To take a case and work it to death. To spend hours talking with students about what we're doing, and going over their papers, so that later in practice, if they don't practice the way we teach the, in the clinic, at least they'll know when they're cutting corners. In legal services, I mean, the three years that I was at Mobilization for Youth, in addition to everything else I did, I did 500 divorces. And there's no reason. . . there is no reason for a law school clinic to do 500 divorces. . . it just doesn't make sense, because I was doing it routinely with paralegals and churning out the papers and getting people to court and giving people divorces, and that's not what a law school clinic should be about, I don't think. On the other hand, I think that a law school clinic has to provide students with a realistic experience. I think for them to have one case to spend the whole semester on it is not a realistic experience. They need to have the sense of what it feels like to

practice law, and that is to have more than one client, and sometimes to have to juggle, and to juggle with their other courses as well.

Hall: In your early years, was the caseload like then, and over the years?

Wizner: Oh, it's changed enormously. When Denny and I started, first of all, most of what we were doing were what could be called fairly routine administrative hearings before the Parole Board in Danbury Prison doing parole hearings, parole rescission hearings, parole revocation hearings. But very soon, within the first year, we found ourselves bringing post conviction remedy actions, habeas corpuses and challenging the procedures of the Parole Board. And that kind of design of the program has stayed with us. We are always involved in several major affirmative actions. We now have a huge lawsuit in Connecticut against the Department of Correction for failing to accommodate inmates with disabilities under the Americans With Disabilities Act. And the first thing we were hit with was a motion to dismiss from the state, claiming that the ADA was unconstitutional. And we said this can't be for real, but, there was a team of first year students, and the first case they had in the clinic they had to write a brief defending the constitutionality of the ADA, at the same time that they were dealing with the inmates. And early on, we saw that all the students should be representing individual clients in what I guess in legal services we used to call service work. I think that's the most noble work, service work. Law reform is something any of us can do. But service work requires you really to be in the trenches day after day. So all the students would be having

individual clients and representing them at their parole hearings, or parole revocation hearings. But then out of this caseload were emerging very interesting cases challenging some of the regulations and procedures of the Parole Board and going back to sentencing. We were doing sentence reduction motions for inmates. So the students had the experience of both representing the clients at their administrative hearing, and also bringing lawsuits, trying to stretch the law and use the law to benefit the client, and that also then grew into class actions. But we never stopped doing service work, and we still haven't. I mean, all of our clinics are primarily doing work for individual clients on individual cases, and out of those cases emerge what used to be called law reform cases in legal services.

Hall: Of all the cases you have had in your clinic, are there any that really have just stayed in your memory over the years?

Wizner: From the clinical program?

Hall: Yes.

Wizner: The case that stays most in my memory is one that we lost in the Supreme Court. We were appointed by a federal judge in Hartford to represent everyone serving a life sentence in state prisons who had been denied a sentence commutation by the pardon board, which would have accelerated their parole eligibility. It was a very odd procedure in Connecticut in those days that, if you were serving a life sentence, you could not get credit for good time until you had served 25 years, and then you would get five years good time, and you were back to 20 years. And then you were eligible to appear before the parole board. So what would happen is when inmates serving life terms reach their twentieth year, they

would apply to the Connecticut Board of Pardons to accelerate their parole eligibility, to give them the benefit of their good time, so they could then go before the Parole Board and see if they could get out on parole. But there were a group of lifers who weren't getting it, and we knew why they weren't getting it. They had killed a cop, basically all murderers, or the circumstances of the murder were particularly egregious, or the family was really insisting. So, they had brought a pro se action in federal court, challenging the constitutionality of the denial of the sentence commutations to them, saying that everybody else is getting it and they weren't. It was an equal protection problem. And we were appointed by the federal district judge in Hartford, Joe Blumenfeld, to do the case. And the students did a great job on the case. The students did incredible discovery, and depositions, and interrogatories. And we had a full hearing in the district court in Hartford at which Judge Blumenfeld allowed the students to do everything. And we tried the case for a couple of days in federal court. And, we won. And the state took an appeal to the Second Circuit, and the Second Circuit affirmed. And the students wrote the brief in the Second Circuit, and the students argued the case in the Second Circuit. And then the state petitioned for certiorari and it was granted. And we said, 'Oh man.' It was granted, but it was, immediately, the case was remanded to the Second Circuit for reconsideration in light of a recent Supreme Court decision called *Greenholtz v. Nebraska Board of Pardons*. So again the students re-briefed the case, and re-argued the case in light of this recent Supreme Court decision, and the Second Circuit affirmed again, and the state again petitioned for certiorari, and this time the case stayed there. So, Denny and I wrote a letter to the Clerk of the Supreme Court, asking whether there was a student

practice rule, because we would like to have students argue the case in the United States Supreme Court. And then we got a phone call from the clerk saying that Chief Justice Burger was highly offended by our request and insisted that we withdraw it. We had written to the clerk of the Supreme Court asking whether there was a student practice rule, because we would like to have students argue the case in the United States Supreme Court. And then we got a phone call from the clerk saying that Chief Justice Burger had asked that we withdraw that letter and he would. . . he was quite offended that we thought a law student should argue a case in the Supreme Court. So, it was decided that I would argue it, and then Denny and I started thinking about how could we involve students in the Supreme Court procedures. So what we came up with was that we would have the students moot me. And any student who would participate in mooting me for the argument would get a trip down to Washington, and get to watch the argument, and stay over with us in the hotel. So forty students agreed to do this, and I had several mootings in a large classroom of the law school with forty students mooting me. I have to say that when I finally got to the Supreme Court. there was no question asked me that the students had not come up with. I mean I can't imagine ever having better preparation for an appellate argument than I received from those students, who had not only written. . . worked on writing the brief, but had really read the brief carefully and studied all the cases. So we went down to Washington and I went down a day early just to sit in the court room and see the mood everybody was in and how grouchy everybody was. And we had arranged ahead of time for the students to meet with Justice Stewart, who is an alumnus of the law school. He had agreed to meet with them, but not with me. Since I

had argued the case, he thought that would be inappropriate. And the students had the experience of sitting in a courtroom and watching the Justices ask me the same questions they had asked me, which I think was a great experience for them, and an incredible experience for me. And, we lost that case. We lost it seven to two. Only Thurgood Marshall and Stevens went with us, which, at the time, was very painful, because we had had two victories in the Second Circuit and one at a trial, and my younger son, who's now a law student, was then 10 years old. And when the decision came down, he said to me, "Dad, you mean you got Stevens and you didn't get Brennan?"

Hall: Let me ask you about that. I mean you obviously feel that lawyering through doing is . . . has got a high value anyway. First, what was the year and the name of that case?

Wizner: The name was Dumschat. . . D-U-M-S-C-H-A-T. . . Dumschat v. The Connecticut Board of Pardons. And I don't know the exact date.

Hall: Okay.

Wizner: I do remember the year. It was 1981.

Hall: What was your sense of the lasting impact of your students going through this case, actually arguing it, you know, at the appellate level and winning. That must have been an extraordinary experience.

Wizner: I think it was an amazing experience. I think that, for those students who actually did that case and argued in the Second Circuit, that has to have been the highlight of their three years at the Yale Law School. And in fact that year, the students chose me to be the commencement speaker, and I think it was because of that case and their involvement in it. And it was the talk of the law school, especially when the Chief Justice got mad at us

for asking if students could argue it. But lasting impact, I don't know. That's such an interesting question. What's the impact of clinical legal education on the future legal career of law students. I have the sense that most students who go through clinical programs in most law schools do not end up doing anything to help. . . to provide legal services to poor people. We've taught students lots of things in clinical programs. We've taught them about representing clients. We've even, whether or not we meant to, taught them a lot of skills and helped them to graduate from law school feeling that they can do something. They can examine a witness, they can write a pleading, they can interview a client. But, I'm not sure – and I'm not sure why this is – I don't know that we've touched them in some fundamental moral way. And that, I think, would be a major disappointment to Pincus also. The idea was that if students could only see what the situation is of the poor in our society, and how desperately they need lawyers, and how essential lawyers are to help them address some of their problems, that it would have a morally transformative impact on them. And I'm not sure that's true. I'm not sure it's true. And that, of course, has to be a great disappointment for all of us who are clinical teachers, and for whom that's an important goal. So that case I remember because it went up to the United States Supreme Court, and because of the extensive student involvement without actually doing the final argument. Another case I remember very well. . . there were two women students who were representing a client who was a woman with AIDS, with young children, who had all kinds of problems. Her life was just chaos. She couldn't get to doctors' appointments. She couldn't take care of her kids. She couldn't go shopping. She couldn't do all kinds of things. The case that came to the office was

her social security disability case which they worked on. And it was one of the early HIV social security disability cases before the Social Security Administration established guidelines on HIV. And they prevailed. They won for her, and it was a very important case. They became very close to her, and they started helping her get her life in order. They were actually driving her to doctors' appointments and helping her pick up the kids and do things. And we would repeatedly have conversations, 'Is this what it means to be a lawyer? Do you drive your client to appointments? Do you make sure your client gets there? Or, do you try to sit back and help your client do what they should be doing?' And we never really resolved that very well. The best we could say is that sometimes, once we know what our client's goals are, sometimes being a client's lawyer means helping them reach their goals by picking them up and making sure they get to court so they don't lose custody of their children. Because if they can't get their lives organized well enough to get to court, and they lost their kids, not because anything they've done other than not get to court when they were supposed to get to court. And these students became very close to her, and she changed. She started paying attention to her appearance. The students obviously had crossed the line from being just her lawyers to being a friend of hers and being a social support network for her. And I remember that almost every day, one or both of those students and I would have a conversation about what they were doing, and I kept saying, "You just need to be aware of what you're doing, because it may be that we can't identify where the professional boundaries are here between being a lawyer and being a friend, but you just need to be aware that you're doing something that most lawyers would not do." This client died, and . . . which is a reason why I remember this

so well. The students were devastated. And I went to the funeral with the students. They needed to go to that funeral for closure. And I remember them sobbing and weeping for days afterwards that they had become so close to this client. And I'm still in touch with those students, and we still talk about it. And they remember it as the most meaningful legal experience they ever had, that they really cared for a client, you know? In their respective practices now, they just don't have any client that they care that much about, and that really had motivated them to use law in all kinds of creative ways to try to help this client. In ways, they miss that kind of involvement with clients, but they now are aware that you can't have more than one client, if that's the kind of involvement that you're going to have with a client. But that they do try to present to clients that they have now, something other than a professional facade. . . that they really see it as a human relationship. . . that it's possible to have a human relationship with a client, and not just a professional one. So I remember that case. I remember a case in which we represented homeless people in Connecticut. Connecticut passed a durational limitation on how long people could stay in emergency shelters. There were 700 families statewide living in welfare motels. Nobody thinks that a family should live in a welfare motel, but the state has said that after 100 days they had to leave, whether they had another place to live or not. So we brought a lawsuit in the New Haven Housing Court, which basically handles evictions on the theory that this was a mass eviction. We brought an affirmative action in the Housing Court to enjoin the state from enforcing this 30 day durational residence limitation on emergency shelter. And the Attorney General's office went berserk and sent, you know, a brigade of assistant attorneys general to the Housing Court. We were

fortunate that we has just the right judge in housing court who was a Republican liberal. And to this day, he says that that was the highlight of his judicial career, that case. The students tried that case. That case was on trial for a full week. Many of our clients testified about how they had ended up living in welfare motels, what efforts they had made to find other housing, but they couldn't find other housing. The Department came in and said we have housing for everybody. And then case after case, we would put a client on to say that they didn't have other housing. And students did the direct examination of all of our clients. We had about 40 moms testify. Other students took care of their children while they were testifying, took care of their children while they were being prepared to testify. There must have been 25 or 30 students working on this case. And while some of them were doing legal stuff, others were baby sitting and buying pizza for the preparation sessions. And the upshot of the case was that the judge enjoined the state from evicting these 700 families. So we had helped 700 families avoid homelessness. The state then took an appeal to the Connecticut Supreme Court. Again, students wrote the brief. A student argued the case in the Connecticut Supreme Court. I have to say, it's the best appellate argument I've ever heard anybody give. . . any lawyer, anybody. The student was brilliant and passionate. It was a great appellate argument, and we lost. The Connecticut Supreme Court basically overturned the trial court's injunction. The Connecticut Law Tribune, in its list of the 10 worst cases decided by the Connecticut Supreme Court that year, put this one at the top, criticizing the court for having reversed it. But during the time that it took to get the case up to the Connecticut Supreme Court, "miraculously," several hundred Section 8 rent subsidy certificates emerged, rent

subsidies and another few hundred public housing apartments opened up, and by the time the Supreme Court had reversed it, all 700 families that we represented were housed. So, in effect, we won. Although to any law professor looking at this case, they would say you lost. The students all thought they won the case. And I thought they won the case also. So that was a very memorable case also. It was most memorable to me because of the kind of commitment these student showed. I mean, they were willing to babysit as well as write briefs. And that was important to me.

Hall: I want to ask you a couple of questions. One is, you know, right. . . a few minutes ago, you were saying that very few of your students actually carry on public interest law after they leave the program.

Wizner: And I think that's true of law schools nationwide.

Hall: I guess one question I have is, do the motivations of the students seem different today versus when these programs were new?

Wizner: When I first started in 1970, it was still. . .we still had good courts and good judges and it still looked like you could do stuff through law. I think that students today, more and more, don't believe that is possible.

At this point, the interviewer announces that the tape is having some trouble. The interview never picks back up.

Transcribed by: Sabrina Hilliard