

NATIONAL EQUAL JUSTICE LIBRARY ORAL HISTORY PROJECT

INTERVIEW WITH

*Peter Edelman*

Georgetown Law Center

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Conducted by Alan Houseman

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**ALAN HOUSEMAN:** This is an oral history of Peter Edelman, who is the Carmack Waterhouse Professor of Law and Public Policy at Georgetown University Law Center. The interviewer is Alan Houseman for the Nation Equal Justice Library. Peter, let's begin by going through your background and resume, where you grew up, where you went to college, and some of the many positions that you've held.

**PETER EDELMAN:** I grew up in Minneapolis, Minnesota and went to West High School, public high school, went to Harvard College and Harvard Law School; clerked for Henry Friendly on the Second Circuit United States Court of Appeals; clerked for Arthur Goldberg on the Supreme Court of the United States. I worked in the Justice Department for a year when Robert Kennedy was attorney general, and worked for John Douglas who was the Assistant Attorney General for the civil division, and because I was there, I ended up working for Robert Kennedy in his office, from the time in his campaign for the Senate in 1964, until he died in 1968.

I helped start -- I was the deputy director of the Robert Kennedy Memorial for a little over a year, helped Arthur Goldberg run for governor of New York, disastrously, and ended up unemployed. I became vice president of the University of Massachusetts and was then the director of the New York State Division for Youth, which is the youth corrections agency of the state.

After that, I was in private practice, during which I took ten months off and worked for Ted Kennedy and ran the issues staff for his presidential campaign. I went back to the law firm briefly. Then I've been at Georgetown Law School ever since the fall of 1982, except for almost four years that I spent in the Clinton administration in the Department of Health and Human

Services, where I was counselor to the Secretary, Donna Shalala, and then assistant secretary for planning and evaluation.

**AH:** You've had a long involvement in poverty law and antipoverty work. Talk a little bit about your teaching and your involvement in poverty law in the academy.

**PE:** When I came to Georgetown Law in the fall of 1982, the main idea I had was to find some way to apply my interests and commitment to issues about poverty in the United States. I was also interested in teaching constitutional law, which I did end up doing and which I do to this day.

But I created a seminar, which at the time, starting in the mid '80s, was a one semester classroom course that involved kind of a survey of readings about poverty, law and policy, somewhat more policy than law, but a history of what we had done and examination of various policies, various issues, but including the law, particularly the Supreme Court cases in and around the early 1970s.

So I did that one semester version for something on the order of 20 years, and after, I also did some clinical work, ran our federal legislation clinic, did a clinic about D.C. I realized that it would be a real improvement of the class if I were to add a field placement, like an externship tied to the course.

So in about 2003 or '4, give or take, I turned it into a full year course, and as far as the classroom was concerned, and I had the same thing that I'd been teaching all along in the fall and then had a series of guests in the spring and a number -- added a number of simulations of testifying or doing press releases or press conferences and a simulation about initiatives -- place-based initiatives regarding concentrated poverty, and they had to write a long paper. The field

placements ahead of their time, at least in the Georgetown Law Center. They were the first practicum course as we now think of it, and so every student spends at least ten hours a week all year long at speaking broadly of poverty, so poverty and race, gender, education, health, immigration, anything that goes with poverty.

And because it's Washington, they have placements with local legal aid, with national civil rights organizations, within the federal government, in either the Department of Justice or Department of Education, occasionally at Housing and Urban Development and also on the Hill. They have a very broad set of choices. By now, I have it down quite regularized so that for the vast majority of the possible placements, they can come up with one of their own if they want, but if I have a chat with them and they say I'm interested in X, I can generally just send a quick e-mail and the person is placed. So it works very well.

So all in all, I think it is somewhat unusual, not just about poverty but in terms of a multifaceted way of teaching, and looking at poverty courses around the country, including the unique aspects of being in Washington. I think its multidimensional aspect is kind of special.

**AH:** Besides teaching poverty law that you've just described and constitutional law, you also run or are the faculty director I guess it is, but whatever the right title is, of a center that focuses on antipoverty work. Describe a little bit about what that does and what you do with it and what it's trying to accomplish and what it's doing now.

**PE:** We have a nice and growing mix of things that we do here at Georgetown Law. So in addition to the course that I teach, we also have a law journal that we've had for over 20 years that's about poverty. In 2007 I had a conversation with our mutual friend, Mark Greenberg. He wanted to get connected to a law school for the next chapter of his life and so I had in the back of

my head for a long time to have some kind of a poverty center here, and I never had the precise idea of how to do it.

So we founded it with Mark as the executive director, which of course was a tremendous asset for the world and for Georgetown Law Center and were able to get funding quite easily because Mark is Mark. Essentially the way we approached the work was a series of meetings on an issue, some quite small, but leading to larger conferences and then to publications that we then disseminated as widely as we could.

Mark went into the Obama administration, which was again good for the country and good for Mark but not good for me, so we had to reboot.

**AH:** What's the name of the entity?

**PE:** The entity is the Georgetown Center on Poverty and Inequality, and the director is Rebecca Epstein. Her work has evolved into work on marginalized girls, and then more recently, we added a grant jointly with Center on Law and Social Policy (CLASP), which you ran of course, the Center for American Progress, and the Center on Budget and Policy Priorities. For that, I hired Indivar Dutta-Gupta, Indi, to run that project.

And so we're working on deep poverty and across a number of topics now, so it has become a fairly substantial activity, about a half a million dollars in resources every year.

**AH:** Before turning to legal services, you had played, and we mentioned it, a number of roles in antipoverty. How would you describe -- well, why don't we just talk a little bit about your antipoverty work over the years that I think fairly could be characterized as antipoverty, besides your teaching.

**PE:** Yes. It is jobs that I've had and things that I've done that were outside of that. Of course it begins for me when I went to work for Robert Kennedy, and I have to say I was -- well, I was only a couple years out of law school -- but I can safely say I didn't know much about anything, let alone poverty. But Robert Kennedy cared very, very deeply about poverty and race in our country and I worked for him. So I got a wonderful education from him -- the way he saw things, the way he learned about things was not only reading in books but going and talking to people, listening to people, seeing the problems, using all of his senses to get the fullness of the picture.

So I was involved in the Economic Opportunity Act itself, the War on Poverty, not with the original enactment, which was in 1964, but in all of the reauthorizations starting in 1965 when I started working for Kennedy. He was elected in 1964 as the United States Senator from New York.

And then we got involved in so many directions -- for example, with Cesar Chavez and the whole question of organizing farm workers in California and also Texas. Most spectacularly, we found hunger in epic proportions in Mississippi, children who were really extremely malnourished, really in a near starvation state. Every one of those experiences would get me more on my plate. I would learn about it, and then work with the Senator on efforts of change. For example, I got very involved about the whole question of cash assistance, welfare.

Kennedy made a speech in 1967 that I wrote that we didn't think of as particularly significant but it received a front page story about welfare, and so Robert Kennedy added another subject to the list. We worked on a major piece of legislation about aid for dependent children, cash assistance particularly for mothers and children. By the time he died, I had learned a

tremendous amount in a very short period of time and became deeply committed to continuing to work on those things. And of course along the way, I met my wife, Marian, which was on that trip to Mississippi where we saw those awful conditions. And she was, as you know, a civil rights lawyer in Mississippi.

There's no question that I drew from my growing immersion, and it deepened further with Marian and our mutual interests. After we lost Robert Kennedy, she and I in many ways were in it together, not working together professionally, but with our own activities.

When I worked at the University of Massachusetts, as a vice president, I was vice president for policy and it was really, in many ways, a job where I could write my own ticket. And so I thought of things to add to my plate. I worked on getting the university to have courses in the prisons, and I pushed the new medical school in Worcester, Massachusetts to get the docs who were teaching there to extend care to residents of what were then called schools for the mentally retarded -- and to get the first African-American students into the new medical school where they had not accepted any before that. That's not a poverty issue but poverty and race are so connected. And then of course the work as the commissioner of youth corrections in New York state, that's all about poverty.

So one thing just happened, one after another. So many things about all of our lives are things we didn't particularly plan. The Center for Community Change is another example. I went on that board in about 1980 and I had always had some connection because the original founders -- Jack Conway, Leonard Lesser and others at the Center for Community Change. They were all deeply connected to Robert Kennedy and really had, in their own way, founded CCC as a memorial to Robert Kennedy. So I had another connection to Kennedy.

All of those intertwined. When I began teaching, I started writing, going on more boards, being active in the community. My good friend Rod Boggs, who ran the Washington's Lawyers' Committee for Civil Rights is another example. We both had our kids in public school and we weren't satisfied with the appropriations that were coming from the mayor and the city council – especially for poor kids. So we created an organization called Parents United for Public School Funding and we ran a campaign that stopped the mayor's proposed cuts.

I've always had this mix of being involved in terms of my direct work one way or another, and then ramify in my extracurricular life. And then of course we'll get to this, but I was so pleased in about 2004 to be asked to chair the Access to Justice Commission which was being founded here in the District. I will stop on that.

**AH:** Yeah. Just before we get to that, you were also at HHS in a senior position or several that had a direct relationship to antipoverty.

**PE:** Oh, thank you, for reminding me. I wondered why I left that out. I was trying to be succinct.

President Clinton got elected but we had a long previous relationship with him and with Hillary Clinton and Donna Shalala as the Secretary of HHS. She worked for me in the Arthur Goldberg gubernatorial campaign in 1970, right after she'd gotten her Ph.D. She used to enjoy as secretary saying she worked for me and now I worked for her, which frankly I did not appreciate.

I was counselor to the secretary, which was kind of like what I described about the University of Massachusetts. I was able to make up my own agenda in large measure. So there were various things that I did there that related to poverty. After that I was assistant secretary for planning and evaluation. Of course, that's heavily about poverty. And I did, just to have it on

the record, I did resign from that position in protest over President Clinton signing the welfare law in 1996.

**AE:** Right. Well, now let's turn to civil legal aid. What's been your involvement before the Access to Justice Commission? Then let's talk about the beginnings of the Access to Justice Commission.

**PE:** My relationship to legal services over the years was not extensive. When I worked for Senator Kennedy, I was very interested in the War on Poverty generally, the Economic Opportunity Act generally, but I wasn't particularly involved in legal services. In our office, we cared about all of it, community health centers, legal services, Head Start, VISTA, what have you. So my relationship to legal services was tangential although I was interested enough to make an effort to get to run the Legal Services Corporation when President Clinton was president.

One thing I did do about legal services when Clinton was president was during the first year. Hillary had been the chair of the board of the Legal Services Corporation under Carter, so she was devoted to legal services. Here is what happened. OMB had to put the budget together quickly because Clinton had just a few weeks after he became president and nobody paid attention to the fact that she had this long-standing relationship. The legal services appropriation had been cut substantially during the Reagan and Bush period, and one would have expected that someone who had been the chair would ask for more money, and they hadn't. The OMB people had flat funded the proposal at \$325 million as I recall. So I called up Chris Edley, who was the PAD, the Principle Associate Director of Office of Management and Budget, and said, "You're in charge of this and I think you made a mistake." He said, "What's that?" I told him and he said,

"Oh, my gosh." So he found \$75 million within the funds he controlled. I don't know where he took the money from. It was not new money. It was reprogramming. So there was a \$400 million appropriation as a consequence of that. I am very proud of that. But otherwise, while I cared a lot and had some knowledge, I didn't really get deeply immersed until the Access to Justice Commission opportunity came along.

**AE:** So describe how the Access to Justice Commission began and your involvement with it from the beginning.

**PE:** Some background: In about 2001, the state chief justices decided to encourage each state to create an Access to Justice Commission. It would essentially be a cheerleader and to some extent an advocate and coordinator, varying from one state to another. About two dozen states had them when D.C. decided to have one. They took about two years to agree to do it. There was a lot of back and forth between the D.C. bar, the judges, and the providers. There was a lot of skepticism about the need for another entity. We have committees. We have all these things. Why do we need another -- what are we going to add to it? Maybe they're going to get in our way.

They finally got through all that, and those were fair questions to ask. That was when I came into it. Among the people who were doing the planning were Judge Inez Smith Reid, who had gone to law school with my wife, and had been my counsel at the New York State Division for Youth. She had been my general counsel there before she became a judge. So we knew each other very well, because she had worked for me. The second key player was Patty Mullahy Fugere, a dear friend and an alumna of Georgetown Law and of course the great anti homelessness advocate in our city. I don't know who said it first and who said it second, but

people from two different constituencies agreed that they wanted somebody who was not affiliated with any of the interested groups. So they called me and asked if I would do it and I said yes.

**AE:** Describe a little bit about what the commission has done, that's one thing, and the second thing is the success you've had in getting money out of the city council for civil legal aid itself.

**PE:** The chief judge at the time, Annice Wagner, appointed the members. There were 15 or 16 of us to start with, chosen from a number of nominees from the D.C. bar, the D.C. bar foundation, the providers, the judges and a couple of wildcards.

So we convened and we looked at each other: what will we do? Silence. Maybe not unusual but I was mortified. Finally, people got to talking. One thing that happened was that Robert Wilkins, who's now a judge of our Federal Court of Appeals here said, "Let's do a needs study," and my stomach sank. You know, we're going to do a needs study and then it will take us a year and a half to get that done and we won't have done anything. It kind of scared me. So I said, "That's a good idea and we should do that but of course we need to find something to do right away." So there was some more conversation. I have to say I walked out of there feeling like oh, my gosh, what have I gotten myself into?

But then we talked to each other informally. We talked to other people. We got ideas. One thing that became obvious was that there were 43 states that were putting money into legal services in one way or another, either by general appropriation or through court fees and pro hoc vice and things like that. Nobody had ever thought to ask the mayor and the city council here. With all of our lawyers in town, nobody had ever thought to ask the city for money to support legal services.

We started some other things. For example, we started working on a language interpreter bank, not for the court but for someone who comes to the legal aid office. Legal aid has people who speak Spanish in the office, although in smaller offices, they might not even have that. But what if the person speaks Vietnamese? So we were able to create that and there was a whole planning process and need to do that.

A number of things got started. But clearly the thing, which if we could succeed, would be a victory on funding that would justify the existence of the commission, a really big thing. So we started working on that and put together a coalition, and we went to the mayor and his people. The budget was already put together for that year, so they put a million dollars into a secondary fund. If there would be enough money coming in later in the year, they promised a million. Of course, we had asked for three, but that was at least something and people were pleasantly surprised by that. Then we started working the Council, the judiciary committee. Remember, at this point, there's zero from the mayor. There was this \$1,000,000 but that was not in the first version of the budget. It was in that secondary category, so the judiciary committee had to find the money by taking away from something else in order to put in \$3.2 million.

So we worked hard. We had all the ex bar presidents send a joint letter. We got the Roman Catholic diocese involved. We got a number of the board members of the providers to say something to council members. It was quite a thoughtful campaign. In the judiciary committee, the person who pushed it was Kathy Patterson, who was my council member and a pretty good friend. So she was arguing for it. Marion Barry was on the committee and he thought it was a good idea and so they needed only one more vote.

And Phil Mendelson, who became the great supporter of it, was worried about where the money would come from. He wasn't against the idea. He said, "I'm willing to consider it down the road when we see what the money is. But as of today, I don't know where the money would come from so I'm going to vote against it."

Councilmember Catania, who was a Republican turned Independent and smart but kind of cranky, said to Mendelson, "If this is a good idea, we should do it right now and I don't think we should wait." Mendelson said, "No, I just can't do that," and Catania said, "Well, I can." So he supplied the third vote and we got the \$3.2 million. It's a nice little story of legislative annals. The legal community was astonished that we had done that, and we were big heroes. My friend Andy Marks, a great lawyer in town, said to me, "You know what, I was betting against you. We didn't think that you could pull it off."

The money was run through the office of the city's attorney general and then sent to the bar foundation for them to spend. We were just the lobbyists and the bar foundation received the proposals and distributed the money.

We hadn't thought much about it when the city government parked the money in the AG's office. But it became a problem when Mayor Adrian Fenty appointed Peter Nickles to be attorney general. He had the money sitting there and money was tight. So he said, "I've got X amount of money, including this \$3.2 million and I'll just take half of it so I don't have to fire as many lawyers."

As a result, over the course of two years, we had three campaigns to beat him in the city council and hold the money. It only went down to \$2.8 million for a while. Once we got past that, under Vince Gray, they parked the money in a more neutral place and it went up steadily.

Mendelson would find another \$100,000 or another \$200,000 and then finally in the last year of Gray, he added \$500,000, without even being asked, in the budget. And that's where we are today.

**AE:** How much is it today?

**PE:** As of 2014 the total was \$4.2 million, of which the language interpreter bank that I mentioned is about \$200,000 or \$250,000. There's also a loan repayment program for lawyers who work and live in the city who work at legal aid and the legal providers. Then the bar put up some money for the lawyers who live outside the city.

So out of the \$4.2 million, \$3.7 million or \$3.8 million pays for lawyers. About 35 to 40 lawyers are funded with that. Compared to other states, we're well-endowed on the number of lawyers per capita who represent poor people. [Post-interview note from Edelman: As of 2019, the City Council now appropriates \$11 million annually, and the total number of attorneys has grown accordingly.]

Here's another money achievement. We invented something that we call Raising the Bar. It is probably too elaborate to go into all the details. But it's a kind of a friendly competition among the law firms about who can give the most. The complicated part is that we had to do some research and so on to discover what's the level of giving for platinum, gold or silver, X percent. I will tell you, a very small percent gets you platinum. If you give 11 hundredths of one percent of your gross revenues, you're platinum. So if it's \$1 million, then one percent of a million dollars would be \$10,000. So 11 -- a million, 100, yeah, that's \$10,000; that's one percent. So if you have a million dollars, 11 hundredths of one percent would be \$1,100. But if you have \$300 million, then it's \$330,000. We started with signing up people, started at about 23

lawyers. Now we're up to up to nearly 50 firms. Now, many of them are very small because it's a percentage so it's actually quite attractive for small firms. It doesn't produce a lot of money but it makes you have a longer list.

Anyway, with the third year, the amount of money went up to over \$4 million. It's a great talking point because we can say that we have in effect a public-private partnership of public money of \$4 million and private money -- this isn't all the private money, but private money through this initiative is about \$4 million. So it's a nice coincidence. [Post-interview note from Edelman: In 2018, the number of firms is still a little less than 50 but total giving is more than \$6 million.] So we've done well. It's been pretty high visibility within the legal community. We have distinguished people come and speak each year at a celebration of a firm. The first year we had Attorney General Holder and we've continued right along.

We've been doing policy all the way along. We have regular meetings with the chief judge and other leaders of the superior court.

One result related to landlord and tenant court. Tenants could not sue as plaintiffs. They could counterclaim but they could not sue as tenants for conditions in their apartments. If you wanted to sue in superior court, which you could do, it was complex and time consuming. We convinced the court to create a rocket docket conditions court for plaintiffs because the judges wouldn't change the landlord tenant court. The conditions court is going quite well. So someone can go to the conditions court. It has an informal structure and there is also a resource center there so they can get legal advice, and there are some lawyers who are available for complicated cases. But people can navigate and get a court order to get the conditions fixed without subjecting themselves to the risk of eviction. So we did that.

We did a task force about limited scope representation on unbundling with all of the relevant constituents: single practitioners, large firms, the bar's ethics people, and one of the judges. It has now been accepted by the court. We were already doing unbundling in landlord and tenant court, and now it's throughout the courts.

We're now doing a major pro bono partnership between the Access to Justice Commission and the bar with the providers to reach out to the big firms to get them to commit themselves to do a very significant expansion of their representation of people in landlord and tenant court. [Post-interview note from Edelman: Now, in 2019, twenty firms have joined.]

**AE:** From your point of view, as very much involved in the D.C. Access to Justice Commission and the initiatives on civil legal aid, where would you like to see D.C. go on civil legal aid? What is your vision for the future? We'll stick with D.C. for the moment.

**PE:** I think the first thing, and of course you and I have talked about this many times, is we can't solve this without talking about poverty itself. Of course that's national, but within the context of whatever national policy is, there's room for a considerable degree of public policy, civic action, that would make a difference in terms of people's conditions of life.

So I think number one is to get the legal community and everybody else, but to have the legal community be more active than it is on the underlying questions that cause people to have so many legal problems that stem from their low income. So that's number one.

Beyond that, I think it's tough. I certainly appreciate the degree of pro bono, where a lot of the law firms participate and are very proud of themselves. But if you look at the actual possible participation they could be doing a lot more.

It goes with that to look at the the amount of money that these firms are making. They could afford to put a whole lot more money into it. Of course, they don't see it that way. If they get much above five percent of the hours of the firm on pro bono, they start thinking, what a squeeze. And when they start giving a tenth of one percent of their revenues, what a squeeze.

Then there's the question of public money. The short answer, once you get past the large issue of how to reduce poverty in the United States, is that you have to have lawyers. There are other worthwhile things but they have limited effect – resource centers or new semi legal jobs like what they're doing in the State of Washington, or unbundling, or allowing law students to do more stuff in court. Those are basically things that are supplementing lawyers, and in some cases stretching lawyers further. I'm not against any of it. I think it's all worth dealing with. But there are people around the country who talk about these things as though they're the greatest thing since sliced bread and they're not. They don't add up to very much.

The short answer to how do you get a better result for people in court is you've got to have more lawyers. Of course, we should be getting as many things out of court as we can, whether it's mediation, whether it's the development of just other ways to get disputes resolved, but there's a certain proclivity to just deny, to just look the other way to the fact that between the paid lawyers and the pro bono we just have to have more lawyers.

Another challenge is what Martha Bergmark is doing. Can we get broader public understanding? This is a hidden crisis. So can we lift it up better to get people who are outside the legal profession to understand better how this goes? Of course it's not just people who qualify for free services. It's people with incomes way higher than that can't afford lawyers, and

so if you define the problem properly, it's worse than even the people who qualify for free services.

**AE:** Fine. Do you have any final comments about antipoverty work and civil legal aid that you'd like to share?

**PE:** Yes, we need to find ways of lawyering in relation to communities, one way or another, whether it's a kind of community development agenda, whether it's one way or another having a sort of a movement quality to it and representation that gets back to ideas of really being close to the ground and what people either individually, and particularly in groups and organizations can use legal help, whether it's volunteer pro bono or whether it's full time. I think we need to make that more robust.

**AE:** Okay. Thank you a lot. It was great.

**PE:** Thank you. My pleasure. So much fun.