



Consortium for the National Equal Justice Library
Oral History Collection
Interview with

William Hornsby

Conducted by Alan Houseman May 1, 2016

Alan Houseman: This is an oral history of William Hornsby, who is staff counsel at the American Bar Association. The interviewer is Alan Houseman and this is being conducted on Thursday, May 12, 2016 at the Palmer House Hotel in Chicago, Illinois. Will, give us a little background about where you grew up, where you went to college and law school, and then a brief overview of your career. Then we're going to come back and talk about this in more depth.

Will Hornsby: Sure. Growing up was pretty unremarkable. I grew up in a small town about 100 miles west of Chicago called Rochelle. Coincidentally, that's where Jeanne Charn grew up. Unbeknownst to us at the time we lived about two blocks away from each other. Jeanne went on to the Bellow-Sacks Project and Harvard and I went on to the ABA. We connected and learned about 12 years ago for the first time that we were neighbors growing up.

AH: Oddly enough the next oral history interview following this one is Jeanne Charn.

WH: Great. Then I went to the University of Illinois as an undergrad and majored in sociology. As my parents accurately pointed out, how do you make a living as a sociologist? I never figured that out. So I then went to grad school at Southern Illinois in criminal justice. I worked for an organization called the National District Attorneys Association, which was my first exposure to association work. I worked there for about three years under a grant project as part of the Nixon Safe Streets initiative to develop standards for prosecutors. Then I went to law school at DePaul. After law school, the day I was sworn in, I opened my practice, a solo practice in downtown Chicago. It was, in retrospect, both a ridiculous thing to do and also a format of great insight that I think has served me well throughout my work at the ABA.

AH: And then when did you start at the ABA?

WH: Actually, I started in the ABA in 1988, eight years after I opened my practice. I had a nice client base of working class people. But my costs escalated. My malpractice insurance, my rent, all of my costs went up and my clients didn't have enough for their fees to go up. So I made a shift and actually answered a classified ad in a newspaper, when they used to have classified ads in newspapers, for a position at the ABA. I started in the Center for Professional Responsibility with a project that was designed to illustrate what was then the relatively new model rules and to focus on learning techniques. We created videos and that sort of thing to help people understand what their ethics responsibilities were.

AH: And when did you become active in the section on delivery of legal services?

WH: In 1990, after a year and a half in the Center for Professional Responsibility. I assumed a position as staff counsel in the Division for Legal Services. At that time I staffed three entities. One was the Standing Committee on Delivery of Legal Services, which has been the one constant through my 28 year career

there. I also staffed something that was called the Commission on Lawyer Advertising. The commission focused on policy issues that had to do with the ramifications of the Bates decision where states could no longer prohibit lawyers from advertising. We dealt with some very controversial policy issues there. It helped me have a really good framework for the development of policy and for understanding state bar approaches and supreme court approaches to those sorts of things. And I also staffed a committee on lawyer specialization.

AH: Let's talk a little bit about the committee on delivery and what it does and some of the accomplishments that this had since you've been in staff counsel.

WH: The Standing Committee on Delivery of Legal Services is only a nine member committee. Those members are appointed by the president of the ABA. They have three year term limits so there's constant turnover. We have had a great influx of people with insights who have brought those insights to the work of the committee. Forrest Mosten has brought the issue of unbundling to the committee. Bonnie Hough is a member and has worked on self-help centers. Luz Herrera has advanced community law firms and nonprofit firms. So a lot of people have come in and contributed.

WH: When I started in 1990, obviously before the Internet, one of the chairs of the committee in the 1980s, before I started, was Van O'Steen, who calls himself the "et al" in Bates versus Arizona State Bar. Van was one of the alpha advertisers and very innovative. He said to the committee, in Arizona, we have a lot of people doing self-help. It seems to be increasing and there are resources, document preparers, who are providing assistance primarily in domestic relations issues to people who are interested in self-representing. So the committee did research on that and it measured the incidence of self-help. We measured between 1980 and 1985. What we found was that the incidence of self-help went from 12% to 24%, which is very modest by today's standards for domestic relations but a significant growth, obviously, over a relatively short period of time.

WH: Excuse me, you said a national study or a state study?

WH: This was Maricopa County, this was Phoenix, Arizona. They did the study through examination of court records to make those determinations. Then when I started there was a research project to look at the extent to which self-help people were serving themselves or being harmed. Were they getting the outcomes they were looking for or were they getting something less than that based on the advocacy? What we found was people who self-represented were relatively satisfied with their outcomes. We did court intercepts and we asked people right after their hearings and determinations, "Would you do it the same?" Seventy-two percent of self-help people said they'd do it the same and 79% of represented people said they'd do it the same. So the natural selection was a pretty good one.

WH: Based on this research, Maricopa County originated the first self-help center. So all these concepts of self-representation and unbundling and self-help resources are intertwined here. One of the things that Maricopa County did in the alpha self-help center was create a list of lawyers who were willing to represent self-represented people on an unbundled basis. They were literally notebooks poised on the desk because, again, this was pre-Internet. They took their library and cut it in half. One half retained the library functions and the other half became this self-help center where people could come in. There are now over 500 similar facilities around the country.

AH: When you use the term unbundling, explain what that means.

WH: Forrest Mosten, we call him Woody, is the one who originated the term unbundling. He illustrated it by writing the functions of a legal matter on popsicle sticks. So you would have counseling, you would have negotiation, you would have discovery, you would have advocacy. He took all of these popsicle sticks and he'd tie them with knotted yard into a bundle and he said, "This is what we typically offer our clients, take it or leave it. We will provide you with representation in your matter, including all of these things". And then he unties the popsicle sticks and he makes two piles and he says, "Unbundling is when the client and lawyer agree, at the initiation of the representation, that the client will do these functions and the lawyer will do these functions". And that was the origination of it as a conceptual matter.

AH: Let's stay on this for a second. You've done quite a considerable amount of work on unbundling, both in Ethics 2000 I think it was called and the new rule and I know that you've done some studies. So why don't you talk a little bit about how unbundling has progressed and some of the work that you've done at the ABA in the delivery committee.

WH: Sure. Woody was a member of the committee in the mid-1990s so we started encouraging lawyers to experiment with this concept. The feedback that we got was, from the lawyers, from the practitioners, "We're not comfortable that this is ethical". So we recognized that there was a need to create some definition that would create certainty for lawyers to do that. This breaks down into both ethics rules and rules of civil procedure. The first thing the ABA did was, as part of Ethics 2000, it adopted a rule in 2002 that's Model Rule 1.2c. It's a very simple and elegant rule, although it can be very complex in its administration. That rule says that a lawyer may limit the scope of representation -- that's the ethics phrase for unbundling -- so long as the client gives informed consent and it's reasonable under the circumstances. So what we're telling lawyers there is, if your client can't read English maybe it's not reasonable for them to do a relatively complex matter, right? If they don't have resources that help them, if they're a high school dropout, then you have to consider that. You also have to consider the complexity of the issue itself. A simple, uncontested divorce is something more people are able to do parts of than a custody dispute. So that's become the ethics standard. Almost every state has now adopted that standard. I think that that's an exceptionally good direction for lawyers.

WH: Then we have the issues that have to do with the procedure. For document preparation, do lawyers have to indicate that they did the document preparation? Do they have to identify themselves by name? Different states have issued different rules on that sort of thing. Then the thing that's the most challenging for unbundled representation is when a lawyer accepts unbundling for a litigation matter. How do we know that that ends? When does the lawyer's responsibility end? So a handful of states have adopted rules that expedite withdrawal and don't give discretion to the judge for that. If this aspect of the litigation is complete then the lawyer gives notice to the client, gives notice to opposing counsel, subject to any objections. Then the lawyer is automatically released from the case.

WH: That's one of the things we continue to work on. I call these unbundling enabling measures. We've collected them from around the states that have implemented them. We encourage the states who have not implemented them to consider them and to make decisions about providing that clarity that the lawyers need to accept those cases. We are seeing an uptick of lawyers who provide unbundling. Some of them don't call it that. They are not necessarily familiar with the term, although new lawyers seem to be familiar with it. It seems to be something that's incorporated into the law school curriculum as part of professional responsibility. Newly admitted lawyers are coming out with an understanding of it and an interest in experimenting in it. We're seeing that in legal incubators where that's part of the practice that they're considering.

WH: We're finding that it is something that's becoming more well-embraced by the legal community. There's a survey that indicates that, over the last three years, 37% of the lawyers who responded to this survey from around the country indicated that they do provide unbundling. But that's a percentage that's a total cross-cut of all practices. What we find is that, of law firms of more than 100 lawyers, none of them indicate that they provide unbundling. So it's concentrated in the smaller firms. It's concentrated in personal legal services. So it's definitely more than 37%, although this research doesn't allow us to exactly peg it. That's one of the things on our plate right now, to learn more about where we stand with lawyers who are providing it and the breadth of it.

AH: When is the survey done?

WH: The survey's done annually, it's part of the Legal Technology Resource Center survey at the ABA.

AH: You've done some other studies of unbundling, at least that I'm aware of and probably done some I'm not aware of. Talk a little about some of the other studies.

WH: The most interesting one that I've been involved with measures consumers' perspectives on unbundling. We did a multi-part survey about how people find lawyers. This was a national telephone interview survey done by Harris Interactive. The surveying was done in 2010, the report is dated 2011. The first

thing we thought, going into the survey, is that people wouldn't know the term unbundling. So the telephone interviewer read a little statement and it said something to the effect of, "Unbundling is an alternative way of getting legal services. It is an agreement between you and the lawyer where you do some of the work, the lawyer does other parts of the work. It may be less expensive for you but it will take more of your time". Then we asked them, on a four-point scale how familiar are you with unbundling?

WH: Now, this is one of the jokes I like to include in presentations on this. I thought since we just told them what unbundling was then an appreciable number of people would say yeah I'm familiar with it because you just told me. But what we found was 70% said that they were not at all familiar with unbundling and only 11% said they were somewhat or very familiar with it. So it's obviously something that's not on the radar screen of the consumers. Then we asked them, "Would it be important to you, if you were hiring a lawyer, that the lawyer you were considering offered unbundled services". Two-thirds said yes, that would be important to me. The demographic breakdown was totally intuitive. Younger people, people of lower income, women, were more likely to embrace the concept than older, richer, people. That was one of the most interesting pieces of research. It shows so clearly that people are unfamiliar with this but once they become familiar with it they have an interest in it. So there's a demand there.

AH: Right. Back to the delivery committee for a second, have there been other initiatives of the committee that grow access to justice that we should hear about?

WH: Yeah, sure. I mean you invited me to tell more about the committee. I should've started with its mission. The mission of the committee is to expand access to lawyers and legal services for people of moderate income who have a little too much to qualify for legal aid or pro bono services but not enough to afford full traditional representation. So that's our demographic. What that means is that we focus on market-based solutions. How do we create services that are more efficient? How do we create services that are more accessible and more affordable?

WH: One of the things that we've worked with over a long period of time, going back to the 1990s again, is technology as a resource to have greater efficiencies. Nobody thinks of technology as a panacea but we break up the parts of it. One of the things that we're interested in is online document preparation. Of course in the late 1990s the explosion of the Internet completely changed the dynamics of delivery systems. But what we're seeing are things like A2J that originated in Kent Law School and is now part of the Cali Catalog of Innovations. It is a document preparation methodology that's being used by legal aid very effectively. So the question is, how do we bring that to the marketplace? How do we get practitioners to do that?

AH: Can you explain a little bit about what A2J is?

WH: A2J stands for Access to Justice. It is a platform where what you see on the computer screen is an avatar. When you type in your information you become an avatar, so there's two of you on a pathway. Their avatar will ask you questions. You answer those questions in text, typically, although it can be audio. Every time you're asked and you answer a question you move a little bit further down this pathway and there's the courthouse in the background. By the time that they've collected all the information that they need you're on the steps of the courthouse. This program has received all of the information that's necessary for the forms that need to be filed for whatever the matter is. So it's really very appealing as an interactive basis. It's simple to use. It has some circuit breakers where if you have questions they'll have a resource and they have definitions and that sort of thing. So it's a marvelous mechanism that's being used hundreds of thousands of times a year, almost exclusively in legal aid. The question is, how do we move that into the marketplace? How do we get practitioners to use that? That's one of the things that we're exploring now. So, technology is an initiative that we have had an interest in and the committee has advanced in these various ways.

WH: One of the most recent parts of what we've been working on is legal incubators. This started in Chicago with one of our committee members, Fred Rooney, who was at Cooney [law firm]. He set up the alpha incubator in 2007. Let me say that the incubator movement is very organic. There's no template and therefore no two are identical, and some are quite disparate from others. The idea is you take not law students but newly admitted lawyers. The incubators are typically law school based, although not necessarily. Some of them are bar based, some of them are collaborations, and some of them even have legal aid as a player, such as Orange County Legal Aid. The original concept and the one that we tend to foster is one where these new lawyers have a commitment to social justice and want to deliver that through a marketplace mechanism, either through a solo practice or a nonprofit or a small law firm. It started with one in 2007. Right now there's about 60. Half a dozen or so are in other countries. Fred has been an extraordinary evangelist. What we've done at the ABA, which I think is one of the things the ABA does best, is collect the resources from around the country. We've enabled these people to network. We've created a listserv for legal incubator administrators. We have a profile of the different programs. We have a collection of articles and research and so forth. We're expanding on this to include materials that can be shared by people in this community -- common forms, the agreements that the programs have with the people, with the participating lawyers.

WH: It's interesting because there's a couple of different models. But the most common model is one where the incubator is an umbrella that helps these new lawyers identify opportunities for substantive development, typically through pro bono, where they can learn their craft. It includes practice management issues so they're fully familiar with trust accounts and malpractice and billing processes. Incidentally, many of them are pursuing alternatives to the billable hour, which we think is a wonderful thing. Then client development. If you think about a lawyer coming out of law school like I did and opening the office right away, the first thing I wanted to do was get clients but in the incubator that's

typically the last thing that they do. They make sure you know what you're doing, they make sure you are able to manage what you're doing, and then it's the process of getting a client.

WH: So over a 12 to 24 month period -- most of them are around 18 months -- these new lawyers develop their own skill sets, advance their own interests. At the end of that process, they port out their own caseload because they're each a law firm and they take those clients with them.

AH: Are there other innovative ideas that the committee has focused on?

WH: Yeah, let me give you an example of something we recycled from 60 years ago. Louis M. Brown was Forrest Mosten's mentor and we have an award named after him. He was a very inventive guy between the 1950s and 1970s, a prolific author who focused on moderate income at a time when nobody else was talking about moderate income. One of Lou's concepts was the legal checkup and it was a little bit modeled after the medical checkup. When a lawyer had completed a matter for a client the lawyer would sit down -- of course everything then was pen and paper -- and go through a form and determine whether or not there were other unmet legal needs. Then the lawyer would schedule a year out. The lawyer would never close a file. He would schedule a checkup for a year from now or at a critical juncture, when a child turned 21 or something like that. Then the lawyer would have an appointment with the client and they'd go through and see where they stood. It was all part of his notion of preventive law.

WH: So we're experimenting with that concept in an electronic context. Can we create legal checkups that will help people understand that they have a problem that has a legal solution? That's the key phrase, that they have a problem that has a legal solution. Give them resources to act on that, whether it be an individual practitioner, whether it be nonprofits, whether it be legal aid and pro bono, whatever set of resources may be of assistance. We're in the process of doing some fundraising to get these. They would be done electronically using branching logic so it would be a minimal set of things to go through. If you answer no then you would skip down to the seventh thing and not have to go through the intermediate parts, that sort of thing. So it would be expeditious. Our vision is that this would be administered through law libraries, through social service agencies, through faith based communities. It would be wide scale, not just something that lawyers would do to generate more work for themselves. This would be a real social service function.

WH: The reason why we rotated back to this idea is research that was done by the American Bar Foundation by Rebecca Sandefur. Becky is a sociologist at the University of Illinois. She oversaw this research that examined what people did when they identified problems that would have a legal solution. In that research they sat down with people, had extensive conversations, and they never said that this was about legal matters. That was never part of the conversation. But the researchers wanted to explore what problems people had that may have legal solutions. What they found was almost half of the people took care of it

themselves. It was through self-help. Another portion of people ignored their problem and about 16% of the people turned to a formal resource like the courts. Of that 16%, about half turned to lawyers. So of the total, less than 10% of the people with a problem that had a legal solution turned to a lawyer.

- WH: We think that we're beyond that period of time where finding a lawyer is a challenge because there are so many resources out there, especially on the Internet, that help people find a lawyer. But the question is, how do we make people understand that they have a problem that has a legal solution and that a lawyer is a resource to help them solve that problem? The medical-legal partnership is a prime example. People come into a medical facility with a respiratory infection. It turns out it's the product of toxic mold in the apartment. They bring in the lawyer. The lawyer has a conversation with the landlord, who gets get rid of the toxic mold. They've solved the health problem. So that's the kind of thing that we're enthusiastic about -- legal checkups. My immediate future is to develop those.
- AH: Before we get into a couple of other things, are there any other innovations that the committee has done that we should know about?
- WH: Those are the big ones. We've worked with self-help. Part of this process that I was just explaining involves doing better pipelines. So Bonnie Hough led research on self-help centers. One of the things we learned from that is there's a lot of people in the courts, a lot of people in self-help, who are not getting people to the lawyers in the marketplace, even though they don't qualify for legal aid. So we want to exploit these pipelines. We gave the Brown Award two years ago to this small nonprofit in Minneapolis called Access for All. It's a two-member nonprofit organization that works with United Way 2-1-1 to train their operators to recognize when callers have problems that have legal solutions and help them make the placements. In one year they made 30,000 placements. They work with social service agencies and that sort of thing. So creating these better pipelines is a significant focus on what we're doing right now.
- WH: About three years ago we had a project that was designed to identify innovations and we have a website where we list out about 40 things. Some of them are just wild ideas that may never happen but if they did they'd be great. Some of them are very small and narrow matters. One of the wild ideas is, technology is based on uniformity. So if you have uniform forms in a state you can have one technology program that addresses the ability to complete those forms. Is a divorce in Texas different than a divorce in Vermont? Or California or Wisconsin? Why don't we have something like the uniform commission on state laws that's the uniform commission on state forms? If we have one form, maybe only 20 states would sign up for it or enact the provisions to adopt it. But that means you can have one technological program instead of 20 that will address that one form. So that's the kind of wide-eyed thinking that we have set out there and maybe we need to work with the National Center for State Courts about that and other organizations, bring in the conference of Chief Justices and say this is

one of the ways you can advance 100% access and pursue things along those routes.

AH: Alright. I'm gonna ask a little bit about some other things that you've done but let me start with the Commission for the Future of Legal Services and describe what this commission is and doing and some of the things you may think come out of it.

WH: William Hubbard, as part of his presidential initiative, created the Commission for the Future of Legal Services. William is a very progressive thinker and a very strong advocate of technology and very interested in Clayton Christensen's concepts of disruptive technology. Some people would suggest Uber as disruptive to the cab company. I think the driverless car is far more disruptive. So how are these things changing? William convened a summit during his presidential year at Stanford in 2015 and brought in people from different industries. He brought in Richard Burton, who founded Expedia. Burton said, "When I called my travel agent and I wanted to book a flight, I could hear them typing and I knew they were looking at selections. I wanted to just reach through the phone and pull that monitor so I could see it". So that's what he created.

WH: The commission has had a series of fact finding methodologies. They have had hearings at the ABA annual and mid-year meetings over the last two years. They have issued a series of comment papers, some of which have been received much better than others. They are exploring expanding the supply side by having licensed limited legal technicians, such as the Washington state model. They have advanced the concept of legal checkups and have developed a series of best practices for the creation of legal checkups. They have pursued online dispute resolution and are trying to fund a court model that will embrace an online dispute resolution mechanism. They are advancing the concept of a legal platform where consumers can come and discover the resources that will help them through a technological interface.

WH: And they've done some controversial things. They've issued an issues paper on alternative business structure, which got quite a lot of feedback, most of which was not very favorable, and they will take that into consideration. Right now the commission is crafting a report to the ABA Board of Governors. This commission will sunset as presidential commissions do. This is its second year and it is very likely to sunset. However, one of their recommendations is for the ABA to establish a center for innovation and bring in people who are creative thinkers to be resident fellows to share ideas with one another and to figure out how to better create access and to have a very intensive view of that and to become more involved with the state futures committees that are exploring different alternatives to expanding affordable access and expanding access across the board. It's certainly not all moderate income, there's a good deal that has to do with low income as well. Whether or not, and the extent to which, such a center becomes staffed or funded is a decision of the ABA Board of Governors. Those determinations will be made over the next couple of months

and we'll know the extent to which the ABA is dedicating itself to exploring the phenomena of the future.

AH: Are there other things you've done in your career, other work or short-term positions or other things that we should know about in this oral history?

WH: When Jim Silkenat was president of the ABA, before William Hubbard, his initiative focused on bringing together the resources of newly admitted lawyers who were struggling to find a place in the market in order to better match them with the opportunities to provide moderate income solutions, and also low income. As part of that, Terry Brooks and I served as staff counsel to the Legal Access Job Corps Task Force. And the task force has created a really nice website. One of the things we did was to create a video called Be the Change, which is a PowerPoint on steroids. It's very fast paced. It's almost all graphics and texts and about four minutes long. It demonstrates some of the things that have been taking place among the stakeholders and challenges other people, other institutions, other stakeholders to get involved with creating better access and when possible doing so through the resources of relatively new lawyers. It explores incubators, it explores fellowships, different things that law schools are doing, different things that bars are doing, different things that courts are doing. It's very fast paced and has been very well received.

WH: We also have a website that collects resources. One set of the resources on that website are rural initiatives. There is not a lot of conversation about this. But what we're finding is that lawyers go to the big city and they love it no matter where they're from. Like me. I'm from a town of 7,000 people and I moved to Chicago and never moved away. We see that frequently with lawyers who want to stay in an urban environment. There's a community in South Dakota where the nearest lawyer is 120 miles away. There are other communities where the rural practitioners are retiring at a great pace. There's an aging of the profession overall and it's much accentuated in the rural population.

WH: So there are law schools and bar associations who are implementing programs where they have, I'm not sure what you call it, programs where law students work for rural practitioners over the summer with an eye toward assuming those practices in the near future, moving out to these small communities and becoming residents there and becoming integrated into the community and serving those populations. So when we talk about underserved populations it's not just low economic demographics, it can be the cleaners in the town of 7,000, 5,000 people. It can be the school board that can't get a lawyer because there's nobody around for 50, 70 miles. So there's lots of opportunities in underserved populations. There's a certain amount of bar activity. This project, the Legal Access Job Corps Task Force, collected that information. We maintain that on our website and it's the kind of thing that helps expand access in a way that a lot of the people aren't thinking about.

AH: You've done all these things, the delivery committee and commissions. In your view, not in the ABA view but your personal view, where do you think the access to justice movement should go?

WH: By the way, did I mention that nothing I say should be deemed the policies of the ABA or any of its constituent entities? I need my own disclaimer on this too. Where do we go? I think the under considered aspect of what we need to do involves simplification. I see that there are some programs at the Equal Justice Conference and there have been some conversations about this. But one-to-one representation is a system that we have to seriously examine. We have to process map the court system. We have to look for ways that people can be dealt with more effectively than, for example, where somebody is being evicted and it's going to take a certain amount of time for a lawyer, even on an unbundled basis, even on a pro bono basis, to provide the representation that's needed to be effective to implement the rule of law.

WH: One of the people in the conversation at the Self-Represented Litigants Network program yesterday said that in one state for an uncontested divorce you need 27 forms. That should never be necessary. So how do we make that three forms and how do we make two of those forms subject to the uniform commission on state forms? We have to look for simplification within the system, we have to look for ways to change that one-to-one model so that it is economically viable for people to pursue their rights and to protect their interests through the courts. That's how we advance the rule of law.

AH: Thank you very much Will.

WH: Thank you for having me.

AH: This has been terrific, thank you.

WH: Great.