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Interview with

Edgar S. Cahn

Conducted by Alan Houseman

July 3, 2002

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Georgetown University Law Center
National Equal Justice Library Oral History Project
Interview with Edgar Cahn (**EC**)
By Alan Houseman (**AH**)
July 3, 2002

Alan Houseman: This will be an interview with Edgar Cahn. My name is Alan Houseman. I am director of the Center for Law and Social Policy. I've been involved in legal services for the poor, civil legal services, since 1966, and have worked in many capacities on that, including running a statewide legal services program, a Reginald Heber Smith Fellow, Director of the Research Institute at the Legal Services Corporation, and since 1982, General Counsel for the legal services community through my current organization. Today, we are going to be interviewing really one of the true founders of the Federal Legal Services Program, Edgar Cahn. As you'll hear in this interview, Edgar was the first theorist to lay out a vision of a federal legal services program, a vision that has in many ways forced the creation of the program and led to its continuing existence. Edgar was involved with his wife, Jean, in the early days of this program, and perhaps these two, more than any other people, were the people that led to the Federal Legal Services Program. So, we look forward to the interview with Edgar.

Edgar, let's begin by covering your early background leading up to your initial involvement in all of this -- all of this meaning the federal legal services effort. Where did you grow up; where did you go to college and law school; how did you meet your wife Jean…

Edgar Cahn.: Well, I have to fess up to having a legal philosopher as a father, who taught me that he didn't know what justice meant. He thought it was too abstract, but that he thought we were all born with an innate capacity to respond to injustice. And by successive responses to injustice were sort of backed toward an ever receding ideal and that – and I grew up

with that as sort of what was on the table. I met my wife first by a kind of Cyrano de Bergerac correspondence. I was dating her roommate. She was at Northwestern, I was at Swarthmore. I could never understand why the dates were so dull but the letters were so brilliant, until I found out later on that she was writing the responses, and she transferred to Swarthmore. We got engaged.

She was a black woman, the daughter of a very prominent physician in Baltimore who had been one of the leaders of civil rights movement in the NAACP there. And we were engaged throughout Swarthmore, and then I went ahead to graduate school in English literature. We had been in a lot of controversy in college and I was hopeful that – or was aware that that amount of controversy can both numb you and you can become pretty dehumanized.

So I went into literature, only to find out that, when I graduated with a Ph.D., they told me that, although I was first in my class and a Fulbright Scholar, the only job they would be willing to recommend me for was teaching composition at a coast guard academy off Rhode Island. And I said, "Well, that wasn't exactly what I had in mind." I had been putting Jean through law school first. She, I think, was the first pregnant, black, Jewish woman they had seen at Yale, **[laughter]** and it was a huge betting pool on when she would give birth, but which I was barred from entering obviously. But she went through first, and then I followed her, so we had an overlap. And my work on legal services actually began as a result of an internship during the summer in HEW with Wilbur Cohen and David Hackett and Robert Kennedy. And that's where the formal story begins. Getting involved in controversy seems to have a more ancient **[laughter]** lineage.

A.H.: So what did you do with Wilbur Cohen, who is an old, old friend of mine?

E.C.: Well, I went down after the first year of law school for a summer internship, the way law students do. And the very first day they didn't quite know what to do with me, but they said there's some kind of a meeting going on that the attorney general has convened over what was then was the housing; it wasn't HUD yet. Robert Weaver was there and some other people. And they said that Robert Kennedy was trying to put together a strategy and a pool of resources to address delinquency. Lloyd Ohlin had been brought in, who was sort of a new theorist in dealing with delinquency, and did I want to go, and could I, will I go and take notes? And they were sort of forming an informal working group.

So I went and took notes, and it was clear that they were, amongst other things, trying to hunt throughout the federal government for wherever there was money that they could tap into. And there was a guy at the table there named Paul Ylvisaker from Ford Foundation. Paul had been my teacher of political science and Jean's teacher of political science at Swarthmore, and so it was sort of like an old reunion. And what happened after that was basically, I was assigned to be the staff member for the summer of that group. Later on during that summer, people like Richard Boone were brought in and other folks who became significant in the war on poverty.

But, what was new there was a shift from a look at delinquency as if it were a mental aberration or an individual problem, to looking at what was sort of called a sort of culture of delinquency and looking at all the dynamics in impoverished and disadvantaged communities that create a peer group that makes certain kinds of behavior approved by peers. And the job they assigned me was literally to go from department to department finding out where the money was. And that later became the Catalog of Federal Programs. But the first draft of it was a detective job.

A.H.: Well that's quite interesting. Let's return back to law school. Did you do any work in law school besides a summer internship that related to the federal legal services developments we're about to get into?

E.C.: Well, when I returned to law school, it was clear that the planning to begin to address community-based sources of delinquency had become a major concern both of Robert Kennedy but also of the Ford Foundation. And Paul Ylvisaker decided that the Ford Foundation should invest in the Gray Area Programs, which would be massive, sort of multidisciplinary, multi-service, multifaceted programs in major cities around the country to an attempt to deal, by a massive infusion of funds, with the causes of deteriorated neighborhoods. His focus wasn't delinquency. And I would be called back and forth frankly to go write speeches for Robert Kennedy or for -- actually for Lyndon Johnson. And they assumed that, because I was a Ph.D. in literature, that I could write, and it so happened writing speeches came easily, so it was fun.

But then New Haven was tapped by the Ford Foundation as a city to create one of the first Gray Area Programs. And Jean, by then, had graduated law school and was associate counsel of the Redevelopment Agency, which Mayor Richard Lee, who was a very progressive and nationally esteemed mayor; that was sort of his brain trust for really changing the city and redeveloping it, and that was at the sort of frontier of redevelopment law in terms of how do you use eminent domain to take property that may not be that substandard because you really want to create a comprehensive plan. And I remember one of the first memos Jean had to write was, how you could declare an apple orchard substandard, you know.

So these were days when law was being used as a means of social development, at the same time, obviously, that the civil rights movement was going on full tilt in the ‘60s, in the early ‘60s. And she was asked to draw up the corporate papers for what was called Community

Progress, Inc., which would be the nonprofit, quasi-public corporation that would receive the funds and that would undertake to develop different neighborhoods. And I had done work prior to law school for Joe Goldsmith on a book that dealt with criminal law and social science.

A.H.: Joe is a professor of law, right?

E.C.: He was a professor of law. And so I was introduced to a whole multidisciplinary approach to law, just by going through his case book, which was not like any case book anybody had seen before. And we were asked to host a meeting. Well, Paul Ylvisaker and a team from Ford, plus a team from the feds, came down to come to the city.

And then we talked about, and then they arranged to meet at our house, partly 'cause Jean was drafting the corporate papers, partly 'cause we knew the city, and partly because I was there, and as Bobby Kennedy's spokesperson in that dialogue. And Bob Dahl was there and others were there, who were sort of experts on New Haven. And there was long talk about, well, once they had this corporation, whom should they choose? And that was the evening when they chose Mitch Sviridoff to be the director of CPI, and so we were heavily involved.

And then Jean and I were asked to help Joe Goldsmith draft a piece that dealt with if there were going to be all these services provided in a disadvantaged community, what about legal services? And so, we drafted in that the first proposal for what was going to be a neighborhood-based law office, not separate from but rather integrated into, what was a multi-service center in Dixwell and in one other community. Dixwell was the black neighborhood in New Haven. And so there was going to be some social workers and some advocates and some organizers, and lo and behold, there was going to be a lawyer there.

And Jean at that point volunteered to leave her post with the city and to be that -- to be one of the two first lawyers in that office. So that started us finding out what we were getting into. And we didn't know what we were getting into.

A.H.: Frank Dineen was the other one, was he?

E.C.: Frank Dineen was the other one. And she got into trouble very fast. She was busy suing Grace New Haven Hospital for keeping dead babies 'cause the parents couldn't pay the bills. She was suing the Welfare Department. She was suing the police department. And the mayor said, "Hey, this is my money, and you are suing me or you're suing my agencies."

Mayor Lee took it very personally. Sviridoff was sort of in the middle. And there was the time when Jean brought a woman who was desperate, who was, I think, an immigrant from Eastern Europe, and was threatening to commit suicide, and Sviridoff said, "You can't represent anybody anymore. This program's getting too controversial." So she had to bring the person on welfare, and "Well, then she can commit suicide in your office, not mine."

So, even before a major controversy arose over a rape case, which made it incredibly hot to handle, it was very clear that this was a controversial program. And the local bar association -- the lawyers started to attack it, as you know, this was not legal aid like anything they had seen before. And so they were starting to attack this program as somehow not appropriate to fund lawyers, frankly to raise hell in various kinds of ways about the way the city was doing business. And so the program was under attack. And because of my father's connections, I was able to ask Justice Goldberg to come down and give a speech about what equal justice really meant. I ghosted that speech and a series of other speeches down the line. So Justice Goldberg tried to cool out the bar, and for a while it worked, until this rape case came along. And Jean was not in a public defender office, but the public defender asked her, would she would help.

This was a case where a resident, a black resident, was accused of raping a white nurse. And the defendant was himself kind of a mental case. So we actually had to use Joe Goldstein and Jay Katz because the questioning had to be done under hypnosis. Needless to say, that wasn't exactly your standard legal practice in New Haven, in order just to get him to talk. But, as she got involved in that case, here was a black, woman lawyer defending a black defendant charged with raping a white nurse. And she had gathered evidence from various bars saying how the two of them had been together for years, and how this was, you know. Jean didn't know what had triggered the accusation of rape, but it was clear that this was an ongoing relationship, and she had another reason for making the accusation – anyway.

That became headline stuff, and a call came from the mayor's office saying, "You're going to close down that program," and Mike Sviridoff said, "Okay," and he notified Jean of that. But then the mayor got two calls, one from Robert Kennedy and one from Paul Ylvisaker saying, "We really respect your right to run this program and run your city your way, but don't expect any federal money and don't expect any Ford money," and all of a sudden the program somehow became instantaneously reopened. But it was clear that New Haven was getting hotter and hotter for us in terms of Jean's ability to represent groups because she was not only representing individuals, she was dealing with groups of parents and groups of residents. At that point, I was in my senior year of law school.

A.H.: This was in January, February, March '63, right?

E.C.: That's correct. Yeah. And so I was writing my senior paper in law school about this notion of neighborhood law offices and what they did and how they got into trouble. And we asked Dean Rostow at the time if he would give us a small fellowship during the summer to really begin reflecting on that. Because when these controversies start, they feel like personality

conflicts. It sounds like merely a personality conflict between Sviridoff and Jean or between the mayor and you know. But it began to look to us as if maybe there was something more fundamental about this controversy that there were built into it thematic oppositions that needed analysis. And this was obviously significantly before the war on poverty had been declared or Kennedy had been assassinated. So we began looking at that. That's the summer, and understanding that, when you set up a comprehensive service program, the one thing that you forget sometimes is the perspective of the people whom you're supposed to be helping, their sense of urgency, their priorities, their need, and their criticisms.

And as we began to get clearer on the fact that a critical perspective had been lost in much the same way that it was lost in redevelopment law, where there'd been all kinds of legal guarantees about participation of the poor, that Jean had seen that, and I had seen that. The whole question of what participation meant and what the right to be represented meant, was then, both because of her – the redevelopment agency and because of what we were seeing in this program, we began to be aware that we were looking at things that had bigger implications than simply, could you represent a defendant who was black; could you represent a mother who was criticizing the mayor? And that became what we started looking at.

A.H.: Now, was this set of reflections -- Did this lead to the article that everybody when they think of you immediately thinks of? Or were there intervening events before you really got into drafting the war on poverty, a civilian perspective, or was this sort of – Was that the same article, or are we talking about other reflections, or…?

E.C.: No. This was sort of the very first draft of that article, and at that point, it was simply focused on the proposal or on the idea of a neighborhood law office and what the idea could contribute. And we came to Washington, D.C. I came in the Office of Legal Counsel as

special counsel to the attorney general. Jean subsequently got a job as the first black woman on an African – in the State Department an African desk, and all that took time.

But we kept working on this article, and trying to say, "What's a framework within which we can put this; how do we articulate this tension between advocacy and this social service perspective?" 'Cause we were obviously in favor of human services and in favor of things that helped people, but it was clear that there was something that was missing.

And it was after, then Johnson declared the war on poverty, and that became a phrase that all of a sudden created a metaphor and a framework for saying, "Well, when you put together a massive, quasi-military, human service operation, there are limitations built into that operation." And we began to analyze. But even before then, there had been meetings to discuss the idea, the earlier drafts of it were circulated; Xerox was sort of scarce then. But Len Duhl and Toni Chayes had access to a Xerox machine. And so, there were all kinds of sort of underground copies of these ideas, because, in effect, we were saying that we need to give people the ability to object, to dissent, to criticize, to raise hell. And interestingly enough, psychiatrists thought that had important mental health and community mental health implications, so. And NIMH became one of our chief advocates in those early days. And – and as you know, Jack Murphy worked with us very closely because of my connections with HEW and Wilbur Cohen. And we worked to put together a plan, a conference on legal --

A.H.: Wait, wait. Let's slow down for just a second.

E.C.: Okay.

A.H.: Let's go back for a second to the article.

E.C.: Mm-hmm.

A.H.: And what was the thesis in the article that you've described a little bit. But can you describe a little bit more about what your thesis was in the article itself? This was ultimately published in the Yale Law Journal Review and became really one of the prominent visionary pieces, I think. And maybe still one of the prominent visionary pieces of legal services, but what was your thesis exactly? You described a little bit about it, but let's pick up on it a little bit more.

E.C.: Well, as the thesis got clearer in the analysis, we began understanding that there were dimensions in efforts to help people that had consequences that were self-destructive. One was that professionals themselves tend to relegate people to a subordinate role whether they intend to or not, and that can create dependencies. And so the question became, how did you begin to give some form of parity to the perspective of the person being helped? They needed the help, but the question was did they have to surrender their autonomy and their ability to do certain things? The second piece really went to what happens when you put together a conglomerate of agencies that operates as a sort of human service cartel that says, "We're going to all protect each other, and we're all going to make sure that we proceed in a logical form. And we're not going to really take too kindly to criticism because we're all working as hard as we can. We don't have enough money. We're underpaid. We don't want any attacks on our credibility, and we particularly don't want them coming from the people we're helping."

And then there would be political dimensions to that and funding dimensions to that because this was the mayor's baby. And particularly around election time, you don't want a bunch of people saying that the good you've done is flawed in any way. So we looked at that, and we said, "We need a voice. We need some way to amplify the voices of those who are powerless and who are disenfranchised." And we knew that lawyers were not the only advocates. But we also had seen in that context teachers who tried to advocate get silenced or fired; social workers

who tried to advocate get silenced, even ministers who had tried to advocate. And we thought, "Well, the one thing that's very clear in terms of our traditions is that the lawyer's job is to advocate." That advocacy has constitutional protection as a form of free speech. And we used that as the frame to say, "Couldn't we create a neighborhood law office that could act as a vehicle to amplify those voices?" Because it wouldn't be the lawyer's voice. It would be the client's voice, but it would be the lawyer using a constitutionally protected role.

And then we looked at two kinds of problems. What kinds of functions would the lawyer perform? In what ways could law help? And second, what kinds of cases would you take? Because we knew even early on that we'd be flooded with, as legal aid was flooded with, a mass of cases. And how would you make those decisions; and who would make them; and what the criteria would be. And as we were working through the details of that, Gary Bellow came to our door. And he had read the earlier drafts. He said, "I want to talk to you about this." And we said, "We're not sure we want to talk to anybody about it because we've had some weird experiences around people deciding that they would take a draft of it and submit it to a foundation for funding, and we don't even have money to get it typed." And Dan Freed at the Justice Department had told him about it, and so he said, "All right." But a "No" did not stop Gary then, and it didn't take long before we just warmed up to him. And we asked him if he would -- that his experience would help give us additional insight into the kinds of cases, the kinds of functions, the kinds of issues. And so we sat down around the table many nights trying to think through what an institution that hadn't been born would look like: What kinds of decisions it would have to make about cases it would take. What kinds of functions it would play. Would it get involved in criminal law or just in civil law? Would it get involved in test case? Would it be a corporate lawyer, so to speak, for groups of poor people who wanted to incorporate in tenants

associations? And we benefited enormously from his insights, his experience, and just sort of the brainstorming that went back and forth. And I asked him actually, officially to be a coauthor of that piece, and he declined. But I want to be on record as acknowledging a debt to him and to the joy of those sessions too.

A.H.: Let me just go back a second about Gary. Ford Foundation and the Justice Department funded three programs in the early sixties. One was New Haven, and you've described a little bit about that. And I think it had some other permutations after. And they also funded MFY in Ed Sparer's program, which is another great giant in the legal aid world, who's been dead for a number of years in MFY. And they funded through Gary and some activities. Gary was in United Planning Organization in DC, and there are a number of permutations to that. But –

E.C.: Mm-hmm.

A.H.: So Gary had been actually functioning, besides being in the public defender service in DC, he had actually been functioning in some sense in a civil legal aid program of some sort and -- prior to your engagement with him, I think. I may be wrong, or is that wrong?

E.C.: No. When we met him, he was still an investigator for public defender.

A.H.: For PD, I see.

E.C.: Because he got in so much trouble in college with parking tickets that the bar wouldn't let him in. So his involvement in civil aid actually started after we got together, yeah.

A.H.: After. Okay.

E.C.: And then we obviously schemed and planned and plotted --

A.H.: Right.

E.C.: -- as he dealt with the battles he had to deal with here.

A.H.: When was the article actually published? I can't recall that. I shouldn't have --

E.C.: I think it was published in mid '64.

A.H.: Right. So I want to talk a little bit about Ed Sparer in a second, but in the article you lay out, I think, a number of functions that neighborhood law offices ought to do. Could you just review some of those that you recall?

E.C.: Well, some of them were functions that lawyers always perform, which are simply the assertion of rights and the creation of both contractual relationships, including associations, if you view a corporate charter as a form of contract. And we said it was clear that there were issues where people's rights were being trampled. And Elizabeth Wickenden's work was known to us in the way in which both welfare law and landlords and consumers were being -- their rights were being invaded. That was pretty clean. There were other areas where – which it wasn't so clear, where the whole question of administrative practice was very low visibility, and Reich's piece, the whole concept of the New Property was surfacing. And it wasn't clear whether you had an entitlement or you didn't have an entitlement and what that meant and what your procedural rights were. But we were clear that there was an area sort of technically, that might not yet be law, but that was on its way to becoming possible law, possibly procedural right, possibly substantive rights, but that the clarification and the articulation of those grievances as possibly giving rise to legal claims and legally enforceable demands was a second area. And then we were clear that there was an area that nobody thought of as law, but where simply the lawyers' prestige, the profession's concern about deprivations, which get normally labeled social problems, but that the imprimatur of law and the involvement of law would give added legitimacy because we saw a path in civil rights that emerged from grievances. Black people knew that they were being, you know, stepped on, long before it took the form of an articulated

grievance, let alone a cognizable right. And we understood that process. And we understood that lawyers would play a role in that. But we also knew that that takes thinking. And that's why we suggested that this original neighborhood law office be linked to a law school. Maybe that's because of Yale's penchant for looking at these kinds of problems. But we really felt that there was an opportunity to hook a think tank, so to speak, to the service function. And we understood that the service function involved very tricky questions, because when lawyers represent people, they are choosing whom to represent, and implicitly they can be choosing who are your indigenous leaders; who are your spokespersons who are listened to. So that we understood that we were at the crossroads between democratic process and legal process and that the political process and the legal process connected. And we learned that a lot of different ways, but we learned it.

A.H.: What's quite interesting from a historical perspective, from 1964 on, the kinds of issues you talk about, that you address in this article, the kinds of conflicts that you first faced in New Haven, that these were recurring themes throughout the history of federally funded legal services. They're still themes today.

E.C.: Yeah. I was surprised looking at the piece before I came here how current **[laughter]** a lot of that feels.

A.H.: Well, but it's true. And some of your ideas of a think tank associated with the program maybe got translated in different ways than you had in mind --

E.C.: Mm-hmm.

A.H.: -- but became some of the early national support centers and state support centers.

E.C.: Yeah, and it's clear that their developmental function, in terms of refining concepts, and articulating them was critical to the --

A.H.: So it was an article that really laid out a vision -- that's why I used that word earlier, that's carried on throughout our tradition and history and a vision that really didn't get fundamentally undone until 1996. And in many respects still exists, but as a federal funded entity didn't get undone until 1996 in any way. And still exists because virtually all of the kinds of components that you talk about in the article for what a neighborhood law office should be are in fact in existence today.

E.C.: One place or another they are. Yeah.

A.H.: Right. So, anyway, not to take us too far afield here. Why don't we return to your work at the Justice Department, Jean's work at the State Department, and sort of tell the story of, any way you want, how this all came together to finally end up being OEO Federally Funded Legal Services. It's a long story, but let's start with you two, and your respective positions, and the people you were interacting with.

E.C.: Well, the first piece was simply getting the piece published. It was all done on our own time. It was done; it had nothing to do with work. I wasn't using internal information from Justice Department assignments. But I was told we would have to get clearance. And Jean then was over at State, and I was at Justice. And I was told, because of President Kennedy's assassination, that this looked like an attack coming from Kennedy's shop on Johnson, and there was no way they were going to clear it. And that tug of war went on, you know, I muttered things like "the first amendment," and that wasn't getting me anywhere. And we had some major, very comical scenes, including one where Jean literally passed out at my boss' house after saying, "We'll see who has the power," and then she went clunk, and he had to put us up for the night. And so that battle went on. And then what happened was Abe Chayes, who was Jean's boss at the State Department, and who was -- it's not legal counsel, I forget what the name of the

head of the legal department there is **[edit: "Legal Advisor"]** -- sent a copy to Adam Yarmolinsky and said, "You got to read this." And --

A.H.: And was Adam in government?

E.C.: And Adam was in government. He was on loan then from the Pentagon to Sargent Shriver. And he was really running at that point the task force in the war on poverty, before there was legislation, but he was putting it all together. And he read it and said -- called me up and said, "I'd like to talk to you," and "Sargent Shriver wants to talk to you," and he gave it to Sargent Shriver. And Sargent Shriver was asking me, you know, they wanted to recruit me; would I come on over there and help? And I said, "Well, right now you're suppressing a piece of -- I have some views. If I'm valuable, then I'll come over, but on one condition." And they said, "What's that?" I said, "Only if you'll make this an official publication of the OEO or of the war on poverty so that the perspective of a voice for the poor has as much legitimacy as all the other things you're talking about." At Justice, I was also part of the drafting effort that went into the original OEO legislation. And Dick Boone, Norb Schlei and others were putting in this piece on the participation of the poor as a fundamental element of community action programs and the way in which the quote 'war on poverty' was supposed to move forward with that empowerment perspective. So I was wearing both those hats and then I went over to the task force. That was sort of a chaotic place, but it was where the action was in Washington in those days, in terms of everybody wanted to be part of that and wanted to be involved. And Adam Yarmolinsky asked me if I would sort of function as his assistant. And since I had known and done this investigation as to where the money was, I would give him a critique of, say, the Bureau of Apprentice Training or what the Bureau of Indian Affairs was doing. And then they would bring in the cabinet member or the appointee, and I would feed the questions, and then he would smash down

on the questions I had lobbed and so we were very much a team in those days. And then my father died in August of that year, and when I came back, he was gone. He had been sort of a sacrificial lamb to get the bill passed. And Shriver then asked me, would I be his personal special assistant. And I didn't know what that meant, but I said, "I do have one agenda." And by that time, I had been asked to write Robert Kennedy's sort of farewell speech at Justice. And they wanted me to write what it had been like to be Attorney General. And I said, “I can't write that speech because I don't know what it's like to be Attorney General.” He said, “Well, what would you write the speech on?” And I said, “I think you ought to call for equal justice.” And I said, “You know, I think if there's any parting note that you can leave that would make a difference -- ” He said, “Well.” And Katzenbach said to me, “Well, he's going to give it at University of Chicago. That's my school, and I want it to be a good speech.” I said "Well, I'll do the best I can." And I wrote that speech for him. I mean I had written a number, so it wasn't the first time I had written a speech for him, but it was critiqued by the whole assistant attorney general, deputy attorney general level. And then Katzenbach asked me if I would write a speech for him for this upcoming HEW conference that Jack Murphy had been putting together. And by that time – he didn't know it – but I was already detailed over to the task force on the war on poverty. So I was sort of this schizophrenic person and laid out a whole theory of how the business of justice was too important to be left to lawyers, which got him, as he told me later and as others told me, in a lot of trouble with the organized bar for daring to --

A.H.: Katzenbach?

E.C.: Katzenbach did.

A.H.: Right.

E.C.: Yeah. So, and then I wrote for Shriver the speech in Chicago where he talked about opening these sort of one-stop, human service shopping centers which would include legal services. And that apparently, the word I got back was the bar had this image of the poor tossing lawyers in shopping carts and rolling them around. And they did not take particularly kindly to that image. And that was when Lowell Beck and Don Channel sort of sought me out, and said, "We've been finding out who's behind -- "

A.H.: One second. Lowell Beck was the head of the Washington office? Head of the – he was the ABA.

E.C.: He and Don Channel were the head of the Washington office of the American Bar Association.

A.H.: Right.

E.C.: And I didn't know. I mean, I learned later that there'd been some investigations trying to find out where this all was coming from because there were speeches that just kept coming up, whether it was Goldberg's speeches, or Katzenbach's, or Shriver's; they were beginning to understand that some themes were coming out of Washington that were new. And so, they asked if I could meet with them. And we had a quiet lunch, and I made clear that I thought that OEO, what was becoming OEO, the Office of Economic Opportunity, was prepared to commit some money to it. I said, "It's going to be difficult because Arthur Goldberg personally went to see Lyndon Johnson to ask that legal services be written into the war on poverty, and Lyndon Johnson had said, 'Hell no'." So we had some homework to do. But I said, "I'm working very closely with the community action folks, particularly with Richard Boone, whom I had known from the Kennedy days." And I said, "I think we will be funding legal

services." And they said, "Well, we want to talk to you about that. We have some problems with that."

A.H.: This is the ABA folks?

E.C.: Yeah.

A.H.: Lowell Beck and others?

E.C.: Yeah. So at that point, since I was Shriver's, pretty much, only speech writer and was involved in all of the top-level meetings we had, I knew that we had created within the agency an awareness that this was an important move to go. And I have a list of all the things, a memo to Jack Conway laying out all of the different kinds of things that we had been doing because we had NIMH. We had HEW. We had the law schools. We had a seminar in Middlebury College. The Stern Foundation had funded a group. The Ford Foundation had put some money into a small working group that went around so I'd been doing a kind --NIMH? joined, and then Jean, and then Gary Bellows and Abe Chayes. Sort of been a wandering, troublemaking team, sort of snooping around and saying wherever we could find a place where we could sort of put in a word, we said, "We need to go beyond legal aid." And at that point, because I was sort of an internal part of all the internal decisions, people began to assume that there was somehow this huge grassroots movement out there demanding legal services for the poor and demanding that as part of the war on poverty. And then all of a sudden comes some of the attacks on this idea. The article was reprinted and widely distributed and that heated things up a lot because it came, I insisted, with OEO on the front page. And so it got sort of mass circulation, and the New York bar association published -- republished parts of it in its journal. So it had wide currency at the time, beyond what the Law Journal could produce.

A.H.: You mentioned a second ago the HEW conference in November of 1964. Could you describe the sort of the build up to that conference and talk a little bit about the conference itself, which it was coming out of some of this work that you were doing?

E.C.: Well Jack Murphy.

A.H.: And who was Jack Murphy?

E.C.: Well, he was subsequently a professor at Georgetown. I'm not sure how he got the opportunity he did, but he did a really creative entrepreneurial job of convincing folks there at HEW that they just had to have a conference on legal services for the poor, that for HEW not to do that was some -- and there had been, and this was in part due to Elizabeth Wickenden's work, in part due to what Ed Sparer had been doing at Mobilization for Youth. There was – and part I guess Reich's work on the New Property. It was clear that there was beginning to be a sort of ferment around the rights of the poor. And he convinced them pretty much, insofar as I know independently, that they just had to sponsor this. And so there was going to be this national conference on legal services at the same time that the planning for the war on poverty was going down a separate route. It may have been, in part, an interdepartmental rivalry piece, where we can't let them steal all the glory for the war on poverty; after all, HEW owns the poor, so to speak. So there was some of those politics going on. But they invited, and I don't have all the speakers in my mind. But they invited just an awesome array of the leading thinkers at the time about the rights of the poor. And they invited Nicholas Katzenbach to be the keynote speaker. I think that the pieces that were assembled there and written there are again some of the classics that people still go to. But my job was to write Katzenbach's speech, and I got in double heavy trouble because -- and I guess this is sort of part of the record, but not only did he get criticized for -- we were then in heavy negotiations with the American Bar Association about whether or

not they would endorse it. And Jean was working feverishly to put together a committee. We were working. We had met with, and that's another piece of this.

A.H.: Yeah.

E.C.: We were negotiating that, and here I come out with a statement that says, "The business of justice is too important to leave to lawyers." And Jean pled with me to leave that sentence out, and I said, "No. I'm not going to leave it out because I believe in the -- And if Katzenbach believes it, he'll say it. And if he doesn't believe it, he won't say it, but I'm not taking it out." I got into other trouble because I gave this story of this sort of lay advocate who had represented this woman, who fire had burned down her house. So she was denied welfare, her welfare check was cut off because she was living in uninhabitable housing, and they wouldn't give her the money either to move or to continue. But I didn't know, until an FBI search, that the advocate had been Benny Parrish, who's a card-carrying member of the Communist Party, which sort of got me in a little bit of hot water for finding that particular story and highlighting it in that particular speech, when I'm writing for the Attorney General of the United States. But life was full of those kinds of adventures at the time. And he gave, I think, a speech that spoke to really enduring truths about the need for the assertion of rights, and that it doesn't always take a lawyer, but that the denial of rights is a fundamental defect if we let it pass.

A.H.: The Katzenbach speech really made a fundamental point about that something new was needed in the legal aid world. Like he uses those terms actually**,** if I recall the speech. That something new was needed, that the old legal aid wouldn't do it and among other points that was in the speech. I mean it's really a phenomenal speech, which we ought to send around again to everybody. But I had an inkling you had something to do with it. But that speech made, besides

whatever trouble, it made some fundamental points about where we needed to go in thinking about legal services for the poor.

E.C.: Well, there were some critical bar politics that we had gotten educated to partly by Abe, but more by Soia Mentschikoff who sort of came in as our mentor because we were new to this whole scene.

I was maybe a year out of law school; Jean was maybe a couple of years out of law school. And we didn't know that world. And young lawyers then didn't join the ABA. That wasn't fashionable, you know, but what became very clear as we moved forward was that there was an ongoing battle for that money that was lining up between the old, the legal aid agencies align pretty much under NLADA at the time and Junius Allison --

A.H.: -- who was the executive director.

E.C.: -- who was the executive director and had been for ages. But there were competing folks within the organized bar and standing committees. NLADA was viewed as sort of a child of the ABA or a cousin or a stepchild, but there were people in the ABA who really had had a lifetime of commitment to legal aid. I'm thinking specifically of John Cummiskey and Bill McCalpin, but others too. So you had a power play going on that we didn't understand until we got taught about it, between the ABA Standing Committee and the legal aid agency. And the legal aid agencies lined up with NLADA. And I was lobbied and offered a fair number of incentives to make sure that legal aid got the monopoly lock. And I said, "No." I said, "We have to --" and in negotiations that subsequently took place, first, with McCalpin and Cummiskey, and then subsequently, with Lewis Powell. They were clear that they would welcome new and innovative approaches, and that they were prepared to stand behind that. And in part, that was

frankly the bar saying, “We're not going to give that power over to the old line legal aid agencies. We as the organized bar want to be exercising that power.”

A.H.: Let me go back to the HEW conference for a second. Earl tells the story in *Justice and Reform* that initially, nobody from either the ABA or NLADA had been invited. And then, ultimately, Junius Allison and Bill McCalpin were selected by Lewis Powell to be the ABA representative came. And they came away with very different views of what should happen, some of which you just mentioned, which was that Junius thought this was a thing to be worried about and feared, and Bill thought this was an opportunity to develop a more effective program. Is that what your memory was of this or of the HEW conference, and they’re -- were done?

E.C.: Sorry, come back.

A.H.: The different perceptions that people had coming out of that conference, at least according to Earl, which was that Junius Allison was executive director of NLADA, reached the conclusion that they needed to resist the effort of federal funding for legal services in being part of the war on poverty, and that Bill McCalpin from the ABA, he was a private lawyer in Saint Louis, Lewis Powell was presently ABA's, at the time, representative to this conference, that he had a much different view. And that he viewed that the ABA should move forward and try to get involved with this and try to have some role in structuring what the new federal program should be but not to resist it. I wondered, just before we turned to all of what happened after the conference, what your recollections of those perceptions were. Was that correct? Then I want to turn our attention and let you talk about everything that led up to the ABA's support of OEO's services, and then we'll turn back to some other things.

E.C.: When Junius talked to me, it was about could legal aid get some money? So I was not aware at the time of his opposition. I think his opposition crystallized after it became clear

that the bar was going to get more heavily involved, that there were going to be new vehicles for the use of law on behalf of poor people, that legal aid itself was viewed as almost old-fashioned and not very effective. And it was only then that the other criticisms and concerns found a voice through him. Those were concerns about the independence of legal counsel, about whether or not there'd be political interference, what this implied about the code and the canon of ethics, and so forth. But all of those surfaced, I think, after the fact. There were concerns that had to be dealt with, but they were concerns, from my perspective then, that were simply being used to protect monopoly turf from competition from the bar itself. And so my perception was, oh, so what's new? **[Laughter]** And I was young; Jean was young. We really didn't understand fully what the forces were that we were contending with. All we knew was that the kinds of concerns we articulated went beyond traditional legal aid, legal representation, as we knew it. And that the next job got to be, how do you protect independent advocacy? We knew from New Haven days that local bars would attack it. We knew that as soon as the article came out because, from Tennessee and some other places, we were called every name under the sun: communist, socialist, whatever.

A.H.: Unethical?

E.C.: Oh, yeah. That goes without saying. And we knew that, or we learned later, but when Lewis Powell sent John Cummiskey and Lowell Beck, and Don Channel said, "Will you meet with two emissaries of Lewis Powell?" And we said, "Of course." We were told that they had been sent basically to kill it. Now that Bill McCalpin may have felt privately differently, or they may not have been that – they were clearly not that wedded to that position as the negotiations went on. But we knew when we walked in there that we thought it was critically important to get ABA support. And we had been flailed publicly in saying this. Saying, "this

program isn't going to survive, if it doesn't have the support of the organized bar." That was our assessment from the New Haven experience, frankly.

A.H.: Now, the meeting you're talking about, just as I understand it, was the weekend after Christmas on December 28th. And you were there and Bill McCalpin and John Cummiskey, who was a lawyer from Grand Rapids and was a chairman of the standing committee of legal aid of indigent defendants of the American Bar Association and the key committee within the bar that still today works on legal services. And Lowell Beck was the Washington representative of the ABA. And that's the meeting we're talking about, I think. And you described a little bit, but what really happened at that meeting, and how important was that meeting? What were your views after the meeting, and how do you think that meeting shaped things?

E.C.: Well, I think it shaped things for the next decade or more. We went in there --

A.H.: We, as you and Jean?

E.C.: Jean and I went in there, and I can't say we went in there with a mandate. We went in there making it up as we went along, understanding that bar support was critical and understanding from Soia Mentschikoff and Abe Chayes that it was going to be rough. But we had going for us this sort of political tension within the bar that might work in favor of us in terms of the bar seeing where there might be both movement and a chance to play a significant role in national policy, and that was obviously powerful. We went in there not knowing, I mean, all we could say was whether you like it or not, the government has the authority to spend money the way it wishes to, and you ain't going to stop it. We had, I remember, because we had sort of talked about this beforehand, we had the example of the American Medical Association, which had successfully stopped, I guess, Medicaid, but now was having to spend millions of dollars on

a PR campaign to show that they really cared about health and people and to clean up the profession's reputation. And we sure didn't hesitate to use that and say, "Well, you know, how much is the ABA prepared to spend on saying that it's opposed to equal justice for poor people and to defend that position or just clean up its act?" We had the figures that only about five million dollars had been spent each year, gathered privately, and we knew that we could go to eighteen or twenty million in the first year. But then, they had Lewis Powell, and they said, "Well, you know, we work for --we're the close associates with the president of the ABA, and we're here, you know, on his behalf." And we said, "Well, go back and ask him whether he wants to go down in history as the man who stopped equal justice or the man who brought us closer to that constitutional ideal because we think that's what's at stake." And so it was a sort of high stake poker game. We had cards in the sense that we could threaten that the money was going to go out anyway. We knew that if the bar opposed it heavily, the chances of it becoming a major thrust of OEO weren't going to be good. We weren't that stupid. And we understood that if we could get the bar support, we'd be surprising everybody in the agency, 'cause nobody thought we had a snowball's chance in hell of coming away with any kind of an endorsement or any kind of support. And we must have been in that Mayflower Room about ten hours. And somewhere around early afternoon, we got to talking about what the real concerns were. And the real concerns were ones of protecting the integrity of the profession: its ability to advocate with vigor, its ability to perform in accordance with the code of professional responsibility, some around money. And Jean had a concern frankly about the National Bar Association because she viewed the ABA as a segregated operation that was basically lily white that didn't give the NBA the time of day. And so she had a civil rights piece there. And so, once we sort of got clear that we all cared about equal justice and those two, there was no, you know, we could spend the rest

of the day, they could spend recounting what they had done. And they had done more obviously than we had done, in terms of a lifetime of commitment.

We then said, “All right, well, how are we going to protect it?” And we agreed that the only way to protect it would be to lay the groundwork for what they, at that point, sort of called the co-dominion or co-sovereignty. They wanted an equal part in a role in overseeing the policy that was pursued in order to protect the program. We then had to come back and say, “You know, there's this little legal requirement called ‘participation of the poor.’” And so we had to negotiate about whether they could countenance the notion that clients and poor people could actually sit on the board of such an organization and what that would mean. Then we had to talk about things like solicitation and barratry and whether or not advertising the availability of free legal services. And so we had to begin negotiating on whether the ABA would undertake a review and a revision of its code in light of whatever needs legitimately came out of the program. And then we had to begin sorting out what the politics and scenario would be about official endorsement and what we wanted. And we said, “We don't want just a support of equal justice. We want and need the American Bar Association to explicitly embrace innovative means of delivery.” Because we knew that we faced the legal aid problem. We also knew we were playing to their agenda, too, but we wanted that in the resolution. We then had to decide. And the papers disappeared. But we literally had a list of ten things that we both initialed.

A.H.: This was at this December meeting?

E.C.: This was the Mayflower, yeah. And what we then agreed was that we could not be visible in New Orleans at the upcoming meeting, partly because that would make things difficult, partly ‘cause Jean was black, but also because my family was from New Orleans. And the guy who was sort of the dictator of Plaquemine County -- My father's last words to me before he died

were, “Don't go to New Orleans. They're waiting for -- they’re waiting to kill you.” So that I had a whole other New Orleans piece playing out there ‘cause the family was southern and from New Orleans. And so, we then had to agree on how we could communicate with each other, and what kinds of news releases we could issue, that would signal – what signals we would give in the news releases and the public statements made that would trigger the next agreed-upon response.

A.H.: Let me go back just a second, before we get to the actual meeting. There were, at least according to Earl Johnson, let me just say for a second who Earl Johnson was. Earl Johnson was a lawyer that became the first deputy director of OEO Legal Services under Clint Bamberger, who was the first director and then became the second director of OEO legal services and then went on to teach at University of Southern California Law School and now is a justice in the appellate, intermediate appellate, level in California and is still, as is Bill McCalpin and you and others, very active in legal aid for the poor, in fact is a key player in the Equal Justice Library. But Earl recounts that, after the December 28 meeting, in January of ‘65 there was negotiations with Bert Early, who was the executive director of the ABA, I think that was his title, and that the ABA demanded something about participating in some kind of a national group and that led to the initial notions of a national advisory council. Is that what you recall, or you may have a different sense of timing, or I may have gotten the facts wrong here?

E.C.: That agreement was reached was one of the items that there would be a joint advisory.

A.H.: And that was in the December meeting.

E.C.: That was in the December meeting, and that Jean would take responsibility as in effect, she was the director of this program before it was a program. That her responsibility would be to create a meeting that got the ABA in, but that got all critical players in, and she

insisted that the National Bar Association be there. She also insisted that the Department of Justice be there and that some other key folks be there. And I don't have the list of names who was there, but there was going to be a working group as the preparatory piece. And we wanted to make sure that that group, which might not be politically acceptable down the line, would include crazies like Elizabeth Wickenden and Gary Bellow and Herb Sturz and other folks who were – whom we knew would stand up for what we considered to be a vibrant vision of what we wanted to see happen.

A.H.: You mentioned Elizabeth Wickenden earlier, Wickie as some of us knew her as. Describe who she was.

E.C.: She was a wonderful, absolutely feisty social worker who was convinced that welfare should be an entitlement. And she really sort of almost birthed that whole field of law. And she wrote exposé after exposé in professional journals about the kinds of decisions that caseworkers were making that were destroying the lives of the people they were supposed to be helping. I mean, she was an incredible gadfly: she knew all the rules; she knew all the regulations; she also knew that they weren't being enforced, either they were dead wrong, or they weren't being enforced. And she documented those extensively. And so that this was, and sort of her cause was really creating that as a body of law, but also understanding, and we didn't have a whole lot to do with her, but understanding that we were allies because laws without lawyers are not necessarily, she knew, in that world, we were going to be ignored.

A.H.: Well let's return to the ABA. Just one factual matter to put on the record so everybody's clear that's listening to this. Lewis Powell was the president of the ABA at the time. He was a lawyer from Richmond, Virginia. He later became a U.S. Supreme Court justice. Most people probably know that, but just so we're all clear, a southern lawyer.

E.C.: And he called in some favors. He said -- we got a call in Canada (we were launching legal services there), he says, "I need you," speaking to Jean, "I need you as a black woman to speak up for me." When she gave testimony, it literally silenced Senator Birch Bayh and others. If she will say this about you, we don't have any more qualms, and all the other civil rights groups said the same thing. But we had an ongoing relationship with Lewis Powell really to her death. And he wrote her off and on over the years.

A.H.: That's fascinating. I didn't realize that.

E.C.: And he didn't believe in clinical legal education, but he was a big contributor to the Antioch Law School.

A.H.: Oh, that's interesting.

E.C.: There's a whole set of other stories. **[Laughter]**

A.H.: A whole 'nother story that. We'll do that next time. We'll do Antioch and your founding of it and all of that. Well, back to the midwinter meeting of the ABA. What actually happened at that meeting, and describe sort of, -- we were building up to that and I interrupted to clarify a few things. You were building up, and you sort of stayed behind the scenes, but what was your recollection of what happened?

E.C.: Yeah, I was. Jean was carrying most of the staff weight. Proposals were coming in. Sometimes it was just our article with a budget attached. Sometimes it was pros. The grantsmanship world was not advanced at that point. But she was going through lists and lists of names with both Soia and Abe, finding out who key people had to be in the ABA. And she was dealing primarily, not so much with Bert Early, whom we really – she flew – when I flew with Shriver to St. Louis, I was supposed to be going with her to a top-level meeting in Chicago with the leadership of the bar. And she said she sat there with a whole table all surrounded by white

men looking at her like she didn't belong on this planet. I mean her reaction to that, apart from cussing me out for not being there, was, it was one of the most chilling experiences she's ever had, and she had never felt that degree of either animosity or opposition. We knew, though, that we had to, she went there because as a matter of sort of fundamental politics you go there as matter of courtesy to speak to the leadership and whoever they produced.

A.H.: Right.

E.C.: And we knew that Lewis Powell wasn't sure he had the votes. That he was then facing opposition that then legal aid had come out invoking all of its reasons for saying, "The government should keep its hands off the legal profession. The legal profession stands for everything good in this nation." And he also knew he had the southern delegations to deal with. He wasn't sure he had the votes in New Orleans. We knew and he knew he didn't want us around. And originally I think Bill McCalpin had agreed to make the resolution from the floor. And Lewis Powell, without announcing it, had them schedule, is what John Cummiskey told me, had them schedule another meeting across town for both the practicing bar section where he felt most of the opposition was and for legal aid. And so then he had the house of – House of Delegates…?

A.H.: House of delegates, yeah.

E.C.: He had the House of Delegates in session. He had maneuvered that the people who would oppose it were across town. And then, for reasons I'm not clear, Bill McCalpin sort of choked up, and Cummiskey got up and actually made it, introduced the resolution. Powell got his votes. We then, by agreement -- I forget who the Post reporter was, but we got then the press release from the ABA that this had been announced. That press release had been prepared, you know, before. We had our response prepared, affirming specifically the willingness to use other than legal aid agencies. And that went off. And Shriver couldn't believe it when we brought in

the Post, “All right, now the answer that you agreed to give, now we can release it.” And he immediately gave -- nobody believed up until we came that we'd actually be able to pull this off, so that's this. And I just know Jean was forever on the phone around the clock on that one because it was a matter of courting everyone: whether it was Jerry Shestack or Bernie Segal or, I mean, all the folks whom we could work on, we worked on, and that’s -

A.H.: You just mentioned two names there, that are famous people in some ways: Jerry Shestack was a private lawyer in Philadelphia, who later became president of the ABA much later, and --

E.C.: Bernie Siegel.

A.H.: -- Bernie Siegel was from Philadelphia who was president of the ABA shortly thereafter or was it before?

E.C.: No, before, yeah, and we knew who was coming up.

A.H.: Right.

E.C.: Jean had really had help sort of casing the joint as to where the power alignments were. And she really had it refined, she had it refined fairly well.

A.H.: Right. In fact people were rounded up. Ed Kuhn who was going to be the predecessor to Lewis Powell, who was from Tennessee, and then Bill Gossett from Detroit, who I think was the predecessor to Ed Kuhn was rounded up.

E.C.: Yeah.

A.H.: Gossett became a very strong supporter of legal services for the poor. I worked with him in the early seventies on a variety of things.

E.C.: Okay.

A.H.: When I was still in Detroit but doing things.

E.C.: And a lot of that was due to --

A.H.: Just to name a few other names.

E.C.: Yeah, and a lot of that was due to John Cummiskey, who had been the advisor to, I think, about eight or ten ABA presidents before this event, so that he was viewed as sort of Mr. Legal Aid in the state of Michigan. When all the proposals came in from Michigan, we used to joke about it as, "This is the Cummiskey memorial." **[Laughter]**

A.H.: Well, John's still around.

E.C.: He's still very much around, and still quite --

A.H.: And very active.

E.C.: And thank goodness still fighting some of the fights, yeah.

A.H.: Well, the ABA endorsed us, but, meanwhile at OEO, I think it would be helpful to talk a little bit about what Jean was going through inside the agency. And struggles that were going on inside over bureaucratic control over legal services: where this would be; would it be an independent part of the agency; would it be under the community action program, who would control the legal services program within the bureaucracy? Jean certainly was in the middle of those. You might want to talk a little bit about that.

E.C.: She was in the middle of that battle, which started frankly as to how you could make legal services a part of the war on poverty, given what we knew about what Lyndon Johnson had said. And Dick Boone and I then drafted field instructions to CAP (Community Action Program) agencies listing -- and all we did was innocently list a variety of uses that they might wish to include in their applications. And one of those just happened to be legal services. And then we knew that to get those out to everybody we could to begin getting a flood of applications in. So Jean had boxes and boxes of applications, but at the same time, there was

both a bureaucratic battle going on within OEO. There was tension between the folks in the community action agency who didn't want legal services. It looked like legal services was not going to be a docile player, that it was going to insist on certain kinds of protection, certain kinds of independence. Jean has experienced in New Haven the whole question of how can you hold a confidential interview with the teachers, the social workers, and everybody else, and all the clients around listening to your personal problems. And Gary Bellow then had had very similar issues and had similar problems here in Washington. So we were clear just in terms – just what the requirements would be to protect lawyer-client relationships that there would be a problem. The whole question of what suits you would bring, whether you could bring any against the government, whether you could bring something called 'civil rights suits' surfaced early on. I remember Willard Wirtz (Secretary of Labor) calling Sargent Shriver and saying, "Your lawyers are suing me about some legal issues with Chavez and what was going on in California." So that everybody became quickly aware of that. In addition, Jean was wanting more staff or needing more staff given the number of applications. Abe Chayes' mother, Kitty Chayes, was working there, and she was a stalwart. So there were about two or three folks just slogging through.

And there was this list of commitments that Shriver had made. One, to convene this – but the first one was to convene this working group, and the second was to ensure earmarks and money, and I don't remember right now what the others were. But what was getting clearer and clearer to Jean was that, internally, the program was being stymied, that it was being stymied within community action, and the key promise that in fact was the central quid pro quo for the endorsement was that there would be a working group convened, with the bar represented that that would include the NBA, the National Bar Association, but would also include the Department of Justice and other key governmental attorneys. And she had worked very hard to

put that working group together. And they came together as a first step, and when Shriver walked in and saw Ramsey Clark and he saw the folks who were gathered around the table, he was -- and Soia Mentschikoff was there -- and I got somewhere in those memos I've got the list of folks who were there. He understood that was looking at a sort of power – at a core of power within the legal profession that he didn't control. And that also he didn't feel it was appropriate at the time to let somebody as sort of young and green as Jean be the person who is heading it up, even though she had put it together. So there was both a personal piece there. He walked out there saying, "I've got to find me somebody to head this," and Jean heard that and other people did and that set some -- but then, the other thing was there was a promise, that out of that group and the group called for the formal creation of a national advisory group, which was bitterly opposed by the community action agency, which understood that once you created something like that, it would have independent power to lobby to protect the program. And it would be a force within community action that, ultimately, as we know, would lead to separation for community action. And so all of that was going on simultaneously. At the same time that some grants were being processed, some money was trickling out. And everybody understood that this had the potential to become a major source of funds that would go to community-based, public interest, legal advocates, a variety of kinds of organizations. There would be a whole battle between the Harlem lawyers with Adam Clayton Powell sitting in a key committee in Congress and New York Legal Aid. And so all of this was heating up simultaneously. And so, at that point, everything bogged down.

A.H.: You're talking about the winter of '65, right?

E.C.: Yeah. And at that point, there started to be active talk within the bar about rescinding the resolution that all of the folks who said, "No," and said, "Don't do it. And don't

let the government get its hands on legal assistance." And gradually the support within the ABA was eroding and that was going to be coming to a head at the Fontainebleau in Miami.

A.H.: What was there? What was going on there?

E.C.: That was where the ABA's annual meeting was going to take place. At the same time, the folks in community action had put a hold on payment to Jean who was technically on loan from the State Department. And so then she said, "You know, you were supposed to pay me as a consultant." So there was a whole battle going on, personally, about her status and about the files and about all the work that she had done at the same time that she felt that promises she had made with authorization to Cummiskey and McCalpin were being broken.

And those promises had become much more explicit as a result of this very high-powered working group that had been combined. So that became a major internal battle, and then there were many other internal battles that followed that. She was then basically told, "Go away. You're here as a consultant. Yes, you were heading the program, but you are not the head of the program now, and you are just a consultant. Good-bye." And I had to make a personal decision, frankly, as to whether to stay or go, understanding that everything we had worked to create was at that point in very real jeopardy. She was then asked to give a speech to the Young Lawyers Division of the ABA.

A.H.: And she was still at OEO?

E.C.: She had then left. But she was the first time a black person had ever talked, had ever given the plenary speech there [at the Young Lawyers Division of the ABA]. And she recited all the promises that were being broken. Lewis Powell then called me in and said, "You fly back to Shriver. You write the speech overnight. He's coming and he's going to give a speech, and either he reaffirms his commitments in front of a plenary session in the American Bar

Association, or this resolution is going to be rescinded." So that's why I was asking about that speech earlier on, yeah. And Lewis Powell then – Jean sort of in a leopard suit bikini walked across the whole beach, and Lewis Powell embraced her firmly and said, "We're going to make sure those promises are kept. I can't necessarily protect you, but believe me those promises are going to be kept, and we'll fight for them." So it was a very special bunch of moments there.

A.H.: Where did Jean go, by the way?

E.C.: Jean went into private practice, and she did a couple of things. One, she represented Alan Clayton Powell in this fight all the way up to the Supreme Court to get put back in. Second, she spent a lot of time on the Navajo reservation, going chapter to chapter and organizing DNA, the Navajo Legal Service Program, as a real grassroots-grounded membership organization. Then she worked a lot in Harlem with the Harlem Association to begin strengthening that program. So that was what she did after she left OEO.

A.H.: Right. And you were still at OEO?

E.C.: Yeah, being roasted at home regularly. And on public stages being called – She would call me a bureaucrat, and I would try and defend staying with an agency that wasn't – that was at least beginning to honor its promises and was convening the national committee - but -- those were not happy times for our marriage, I'll say that.

A.H.: Yes. That would have been tough. **[Cahn laughs]** In the summer at the ABA's midwinter, I mean, annual meeting, and the speech we talked about Shriver gave – Earl describes it as Shriver sort of apologizing for not getting the legal services thing off the ground quicker, not finding a director, and…?

E.C.: Yeah, he framed it as a matter of unfortunate delay. It was not framed as, "I'm going back, and I wish I had never done this." He understood that he had to reaffirm those and that he had to put the best gloss on it he could, and I worked with him to make sure that he did.

A.H.: Right. After that, maybe, I don't know how much you were involved with this, but could you give us a little bit of background about the struggle to find a Director of Legal Services and the ultimate appointment of Clint Bamberger to that position?

E.C.: Well, for obvious reasons, I know nothing about that process.

A.H.: Right.

E.C.: **[Laughter]** I stayed as far away from the selection of a person to succeed in Jean's role as I could.

A.H.: I assumed that, but I just didn't know what you knew or didn't know here.

E.C.: Zero.

A.H.: Okay. Did you have a relationship with Clint after he became the director of OEO Legal Services?

E.C.: I came to have, over the years, a very good relationship with Clint, but initially, I felt banished from that whole scene because I felt I had stood up. I was there to protect the program, but that I could not be involved in the program. So that for a period of years, particularly as Earl was moving into what some of his new initiatives around law reform and so forth, I had some concerns. My job was just to protect the program from Shriver's office and to make sure that – and indirectly to deal with some of the battles going on between Ted Berry and Community Action Program and Legal Services. And there I could jump in and play a significant role, but I could not get involved at all, I felt, in terms of the internal workings. That was just painful, but that was the case.

A.H.: Was Jean still on the National Advisory Council?

E.C.: Jean was. Shriver, sort of as a consolation to me, and also because it was clearly owed, wrote her a very gracious and warm letter and appointed her. And she remained; as long as there was an Advisory Committee, she was on it. And she and John Cummiskey jointly headed the fight on regionalization that they fought and worked with Terry Lenzner and all those battles that you know so well.

A.H.: Right. How long did you stay at OEO working for Shriver?

E.C.: I stayed there until I think – my recollection is around '67. I stayed there about three years. And then as the Vietnam War got hotter, and as Model Cities was proposed in effect to placate the mayors and to reduce the role of community action. I left to set up the Citizen's Advocate Center as a watchdog on government to try and keep government a little bit more honest and dealt with hunger and dealt with hunger and with Native Americans. That was sort of my two -- But the first issue out involved Child Development Group in Mississippi and Marian Wright Edelman and that whole battle. And so coming right out of that agency, I was tossed in the middle of what I felt was a very critical battle around the rights of grantees and whether or not Senator Stennis could kill a vibrant program and how to protect things that were good and real from happening that were happening.

A.H.: I'm not sure everybody's aware of what that was. First of all, Marian Edelman – Marian Wright Edelman, now is of course the president of the Children's Defense Fund, but, at the time, she was a lawyer in Mississippi working for the NAACP Legal Defense Fund, I believe. She's black. She went to Yale too. Now, did she overlap with you guys much?

E.C.: My official job at Yale was to tutor her when she came back – when she and Eleanor Holmes Norton came back from the sit-ins, so that they didn't get in academic troubles. We have a – **[laughter]**

A.H.: I was going to say, there were three very prominent black women that came out of that era.

E.C.: And Pauli Murray came out and was in Yale at that time too.

A.H.: **[Inaudible]** I didn't know that. I mean, I know Eleanor. Obviously, Eleanor Norton, who is now in Congress from DC. And chair, of the EEOC during the Clinton Administration and has been a Georgetown law professor and a variety of other things, and of course Marian, your wife, so that was a fascinating

E.C.: That was an extraordinary – yeah, quite a group.

A.H.: Of people. Well, let me end up, I think, this segment of it – of our interview – with a couple of sort of broader questions, and you may want to add some things, but, in hindsight, what do you think OEO did correctly in establishing the program? What did they do wrong? What should they have done differently, if you were sort of looking back today?

E.C.: Back in those days, legal service lawyers didn't have any problems finding vibrant group clients. You had the civil rights movement; you had the welfare rights movement; you had the housing rights. You had all kinds of groups. So that, in effect, the ability of a lawyer to -- in representing even individuals -- but to represent issues that would have widespread fallout, and where the lawyer wasn't necessarily making up the issue or saying, "This is what I think the law needs to be," but where there was a client constituency that was ready to really use the law, we assumed that somehow that would always be the case. Didn't understand or couldn't have foreseen how those groups would gradually be eradicated and how community action agency

itself, in building a whole, if you would, a minority bureaucracy, meant that the movement dimension of those groups could be co-opted, and the leadership could be drawn in, in ways that were both empowering and disempowering.

I think that one of the problems that we have now as a result is the relationship between legal service attorneys and the client community is a matter of individuals walking in the door. And individuals who walk in the door have acute problems, emergency problems, but they aren't necessarily handled in a way. I mean, you had a revolution in substantive law across a whole bunch of fields, in part because at the time you had the Reggie program, but you also had – you had a whole crest of – you had the Baby Boom beginning to hit the legal world – When you create two thousand new jobs in law, in a field of law called 'poverty law,' you get the cream. We got editors from Harvard and Yale and all the top schools. You got talent that thought of law as a vehicle and tool for social change coming out of the Civil Rights Movement and those things, and a judiciary that was at least somewhat responsive to that. I don't think we foresaw what would happen if legal services ceased to be fashionable enough to draw the best brains. If the client community itself would cease to have the internal sort of organizational vibrance that it did. I don't think we foresaw, those were times of relative abundance, and I don't think we foresaw what would happen if people were demanding a fairer share of the goods and services and power of this nation at a time when this country felt more insecure about global competition, and began viewing everything as a matter of parsing out scarcity, rather than a matter of dealing with injustice.

And when I mean, those were times when people talked about the 'leisure revolution' and about how were we going to deal with the abundance of time and resources that we have. And I think that as Vietnam ate up those resources, as inflation took place, as competition for the

budget consumed it, people's hostility toward those claims would grow, and we didn't – no, I don't think we fully anticipated that. I think that the one mistake we made, as you know, is that we relegated maximum, feasible participation to a few people sitting on the board in a few paraprofessional positions. And, as you know, I'm now clear that unless we can realign the relationship with clients so they become co-producers of justice in a very explicit way, and can be valued and recognized as partners, I think that we lose the support. When in '96, as you mentioned, the program was in deep trouble, and was fundamentally crippled in certain ways, we had helped, I would say, easily a hundred million families. I didn't see those families out there. I saw the bar fighting to save the program. I saw the legal service attorneys doing their best job, but we did not align ourselves with a potential constituency in a way that I think is critical to the long-term survival of the program. I think we're now groping, as you know, for ways to do that, but I think that's the only real mistake we made.

A.H.: Looking back at this early history now -- and obviously we've left out this huge amount of time between 1967 and today, and we need to cover that, but looking back now, you've made some of these points. But, what do you – looking back now and looking at what you see now, and picking up on your last point, how would you today restructure the program? What would you do today to bring more of the maximum feasible participation of the poor into this program? I'm picking up on your comment that that may have been something that we didn't pick up on early enough. That sort of knowing a little bit about the program today, and what would you do if you were God and placed in charge? I know it's sort of an odd question but just reflecting on this for a second.

E.C.: Well, I think a couple of different things.

A.H.: You've written some things about this, by the way.

E.C.: Yeah, it's not a new question.

A.H.: Right.

E.C.: The answer I've given in the writings has been to say, “We ought to charge for legal services in community service hours that I call ‘Time Dollars’.” And we ought to ask, and we ought to set up Client Councils. The lawyers don't want to supervise how the clients pay back, but we have, for instance, lawyers in Silver Springs now who charge retainers in ‘Time Dollars’ to laborers whom they represent. And those laborers are then part of a Laborers Association, that, one, help with babysitting and other things, but they also help by picketing and demonstrating in front of the homes and offices of those employers who rip off people's wages.

I’m negotiating an arrangement with Holland & Knight where a whole community group paid for legal services, $230,000 worth of legal services, with hours put in both cleaning up a neighborhood, raising hell to get decent street lighting, and Holland & Knight gave the legal services of closing crack houses, which was obviously going to require some pretty high-powered lawyering and did some other things about getting the neighborhood school off the closing list. I think we needed to send a message of reciprocity that “we need what you can do in your world. We can't create justice ourselves, but we can create a less unjust world only with your help.” And I think the failure to structure the relationships in a way that built in reciprocity was key. I also would have hooked up more closely with the law schools and with young lawyers. And I would have gone for a much grander residency program, almost modeled after medical, as a way of saying, “Your entry into the profession and your ownership of a license that gives you access to the courts. You ought to pay for that by a form of public service; that's not simply a private license to exact maximum profit from people's needs.” And so I think I would have also asked myself how to realign myself with the law schools.

A.H.: Well, that's an interesting point, particularly given your history at Antioch Law School. And historically, there's been a reluctance, certainly since the Legal Services Corporation's been in existence, to either fund or to formally in any way hook up with either clinical legal education or law schools in general. I'm not sure there's more to say about that, but you didn't mention that initially when we started, but was that a failing from the beginning in some sense?

E.C.: Well, you may recall that –

A.H.: Although we didn't have much going at the time.

E.C.: -- that I talked about some kind of a university affiliation.

A.H.: Right.

E.C.: And I think we need some kind of in-depth think tank capacity, and law graduates who still think they can make a difference in the world chewing on the really tough problems and a vehicle to keep that bloodstream moving through. That's just sort of a gut level sense of – when the Reggie program got killed, we lost some of that, but we lost some of it more because of – actually you know the law schools didn't like those centers. They pushed them away. We should have fought around the intellectual significance of what was being done, the policy significance, as a fundamental statement to legal education, that, "Either you're going to be part of the problem and all of your consultant fees and money are going to come from corporations and all your law review pieces will be in effect subsidies for corporate lawyers, or you're going to be part of a commitment to equal justice if you hold yourself out to be what you are." And I think we should have done that.

A.H.: That's interesting. There's one other small thing I'd like to ask you about, and if we have any other time, we'll cover a couple of other small points. 1968 or '69, you wrote an article

with Jean in the Notre Dame Law Review about neighborhood tribunals and neighborhood justice centers. It was – as I recall the article – I haven't looked at it recently -- but it was an article that had a really different vision of justice, at the grassroots level. Was there any connection? First, probably, you ought to describe – better than I just did – what your thesis was, but was there any connection in your mind between the civilian, this sort of OEO legal services program and the thinking that you were doing in that article. So I guess we have to start with that article.

E.C.: Yeah. The article was a direct reaction to what we saw the Legal Service Program evolving into. And we said Legal Service Program, basically we use an economic model and says, this is simply the retail outlet in these neighborhoods for something called 'law and remedy' and instead of looking at the retail outlets and how we want to fix those up, maybe we ought to look at the product, and maybe we ought to look at the process for producing it, and maybe we ought to look at what the consumer gets. And so we took a consumer's perspective on how efficient or inefficient that process was, how exclusive it was, how high risk it was, and whether the profit was anything you could depend on. And we came to the conclusion, that was at the time of Watts roughly, that the welfare regulations stacked at least six foot high and would regulate whether, if you were unemployed as a male, how often you could get a new razor blade. And we thought you could litigate every semicolon, you know, in all six feet, and you still wouldn't get to justice, and we needed new ways to think about justice, and we needed to find new dispute mechanisms where we also needed to find ways in which people could advocate and get remedy, without necessarily going to a process that we liken to, well, do you , you know, you won't get the transistor radios with glass blowers; maybe we need the law equivalent of whatever

we thought was a system capable of producing a mass product for mass consumption in a democratic society. And that was the thesis, and I'm still of that mind.

A.H.: Right. Well, this has been quite fascinating. As we end this up, do you have any reflections, besides those we've just talked about near the end here, about your early work in OEO legal services, you and Jean's early work in OEO legal services? We ought to at least do – why don't we at least ought to cover the fact that you've done a few other things in your life. So, first question was, any other reflections on legal services, and then let's do a couple of minutes just running through the rest of your and Jean's history so we capture it here at least at the end of this.

E.C.: I think that you know we felt that legal education needed to equip people in ways that we were not equipped at Yale. We came out incompetent. And we came out I think -- the institution itself did imbue or seemed to support some sense of public interest, not explicitly, but if you look at the folks who came out in Charles Halperin and other folks at the time, there was an ethos. But I think legal education ought to be as much about imparting values as it is about imparting legal analysis methodology. I think I feel that the new technology of telecommunications and computers. I think much of what lawyers do now can be embedded in algorithms and that people, that this, that what lawyers are really going to have to be paid for is the use of judgment and discretion, advice and counsel. And that we need to rethink the whole structure of the delivery of legal services because right now we're padding together things that only lawyers can do with things that anybody can do, and we're using it and we're exacting a monopoly profit and creating scarcity. I think that if lawyers and legal service lawyers are prepared to say, "Maybe this is a world of abundance where what's, in short, what seems to be most needed is love, caring, decency, food, building materials, and clothing. This is not about

scarcity, and maybe we better figure out a new way to define clients not as people without, but rather as people who can give love, caring, learning, helping, sharing, and maybe we've got to figure out a way this society can begin to value that instead of writing people off and throwing them away."

A.H.: Thanks. This has been terrific Edgar, and it has been really wonderful to engage with you again. And maybe we can do more of this and capture some of the rest of your life in another interview.

E.C.: There are a lot of other pieces, but this has been a joy.