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Interview with

Jerome Shestack

Conducted by Alan Houseman

August 8, 2002

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Interview with: Jerome Shestack (JS)
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(Transcript note: the spellings of some of the names need to be corrected)

Alan Houseman: Today, August 8, Thursday, 2002, we will be interviewing Jerome Shestack, or Jerry Shestack as I will call him who is one of the early leaders in helping start and create the OEO Legal Services program, the Legal Services Corporation and has been throughout all of his career a leading player in assuring equal justice on the civil side as well as the criminal side as well as a major player in international human rights. Jerry has been president of the American Bar Association and numerous other honors which we'll talk about briefly in his introduction. Jerry would you give us a little background about your early years and our law school experience before we turn to your work that led you to getting involved in civil legal services for the poor.

JS: I'm glad to Alan and especially glad to be interviewed by one of the pioneers and heroes of the legal services movement like yourself. I was born in Atlantic City and both my parents and grandparents were quite poor. My grandfather was a rabbi in Atlantic City and we lived with him. And one of his favorite versus I guess the favorite versus of his from the Bible was justice, justice shalt thou pursue and that was kind of engrained in me as an obligation of every human being. I moved to Philadelphia when I was about 10 and grew up there, went to high school there, went to the University of Pennsylvania as an undergraduate in an accelerated course and then war broke out and I went into the Navy and spent three years on an aircraft carrier. I spent three years because

the last year the war was over but I was too young to get out of it and went through some horrendous experiences. Our carrier was hit by two kamikaze planes and all this went down, I was luckily saved by some article of chance I guess. Then afterwards I went to Harvard Law School as an accelerated program after the war. At that time if you were in the upper ten percent of your class you had choices between law review, board of student advisors and legal aid. I was working my way through law school and I thought that legal aid would be the best thing for me in terms of my time constraints and so I joined the Legal Aid Society which was reserved for honor students and had a terrific experience. I remember in the very first case where I was representing someone I couldn't frame a question properly and after fumbling three times the judge said do you mind if I frame the question for you in a non-leading forum. And then afterwards law school I clerked for the Third Circuit and then went into teaching and I was a teaching fellow at Northwestern Law School and then an associate professor at LSU in Baton Rouge. About that time I went back to Philadelphia and through some accident ran into the city solicitor which is head of the law department, a distinguished lawyer who was later on the court of appeals and we started talking and he asked me if I would come work for the city law department and help codify all its laws and other projects similar to some I had engaged in Louisiana. So I said well how could I do that, my wife said well you can always commute. Actually that is what I did. I commuted one week in Louisiana arranging my courses that way plus the weekend and then one week in Philadelphia. The only salary I took from Philadelphia because I was being paid by LSU was my airfare but the city controller who was a Republican and I must say this is a reform administration the first Democratic administration after 60 years with Joe Clark as the mayor, Richardson Dillworth as

district attorney so the controller who was Republican thought I was double dipping, so he ran a big article saying he was stopping my pay and there was a furor and a lot of people came to my rescue, the Dean of Harvard Law School and Carl Llewellyn was a mentor saying this is the type of young man that should be in the public service and they soon found out that I wasn't double dipping. But that got me in great prominence as a bright young lawyer with columnists writing about and the like. I took a leave of absence from LSU then and spent a full year and finally left and joined the law department and the following year became the first deputy in the department which was a heady experience for someone who was then four or five years out of law school because I argued some 20 cases before the Supreme Court of Pennsylvania, once three in one day. After that I thought of going back to teaching and Llewellyn had arranged for an offer as an associate professor at the University of Chicago and there were other law schools that had offered, I had been teaching at Penn meanwhile as an adjunct professor and by that time my wife liked Philadelphia so I decided to go into practice there and accepted an offer from Schnader, Harris, Siegel and Lewis which is Bernie Siegel's firm later he was on the steering committee of OEO, president of the ABA, a very distinguished lawyer and he became my mentor. In the civil rights movement and I got to legal services, before that when I was teaching at Northwestern Law School I started the first legal aid program at Northwestern for students and I was always interested in legal aid as a result of my early background but I didn't get involved with it until the 1960s. 1963 I was pretty much involved in the civil rights movement. I became the first unpaid executive director of the Lawyers Committee for Civil Rights which John Kennedy formed in 1963 and helped start the Section of Individual Rights of the ABA that got the ABA involved in civil

rights and legal services and I'll come to that later on, and then became chair of the Section of Individual Rights. At that time I became involved in international human rights. I was invited to join the board of the International League for Human Rights which the earliest NGO in this field and I became president of that and served for 20 years. I became involved in 1973 as chair of the Commission on Mental Disability so I got myself involved in that and then in 1978 I became chairman of the Standing Committee on Legal Aid of the ABA. In 1979 President Carter appointed me as United States Ambassador to the Commission for Human Rights. So in between practicing law and all these other things I had a pretty busy time of it and I'll go into more about my involvement in legal aid but I also became a state delegate to the ABA and ran for president once and withdrew when it seemed clear I would lose and I ran a second time and won by the magnificent plurality of one vote. I served as president of the ABA and now I'm back to practicing law as chairman of my firm's litigation department.

AH: What firm are you currently in?

JS: I'm currently at Wolf, Block, Shore . . . Cohen which I joined about 10 years ago.

AH: Let's return back to the early days of OEO Legal Services. What do you recall as your earliest involvement around OEO Legal Services and some of your early contacts you had with Sargent Shriver?

JS: Well there are several. When the OEO poverty program started and legal services was part of it in 1964 as a result of Lyndon Johnson's war against poverty Sargent Shriver, whom I knew from the civil rights movement, I had known his brother-in-law Bobby Kennedy pretty well and had met with him frequently on civil rights

matters, he offered me the directorship of the new Legal Service OEO effort and I thought hard about it but frankly I couldn't afford it at that time, with two young children who had not yet gone through school and I turned it down. Close about that time the steering committee was formed and Gillis Long was the majority whip of the Congress who had been a student of mine at LSU and was a strong supporter of the concept of legal services an important political figure as majority whip, so he recommended me strongly for that committee and I then joined the original committee on legal services and later part of the steering committee which was one aspect of the original committee.

AH: This is the National Advisory Council.

JS: I guess it was called the National Advisory Committee or Council that that time. It had on it people like Soia Mentschikoff, Jean Cahn, John Comiskey, Nick Katzenbach and others.

AH: Gary Bellow I think.

JS: Gary Bellow wasn't on the original one no. The list in that book that I gave you has a list of all the original people. But some really stood out like Jean Cahn who had been one of the pioneers in the field. Her article in the Yale Law Journal together with her husband Edgar Cahn really gave impetus to New Haven legal services organization which was a model in many respects for other programs both legal aid and OEO and she was an important source. Soia Menchacoff was at that time she had taught at Harvard Law School at that time I think she was teaching at Chicago and was one of the powerful intellects involved in it. Nick Katzenbach was at that time was deputy attorney general, I don't think he had become attorney general yet but was a strong supporter of civil rights

and legal services for the poor. The ABA representative on that committee at that time was Orison Martin and he was succeeded by Bernie Siegal.

AH: Some of the early issues that the National Advisory Council faced as OEO was setting up the legal services.

JS: Well there were a lot of issues that they faced. We were often arguing with Sargent Shriver and Ted Barry who was head of the whole Community Action Program, legal services was under the Community Action Program and we were very aggressive and they were often a lot more conservative although Sarge was a great supporter of legal services he had a role to play, he had budgets to allocate and we were fighting on what could we take class actions, nature of the case, the scope of it, how you get established in various cities, how do you an independent budget. And what you pay legal services lawyers for fees, how much an hour. I remember Tony Partridge who was then general counsel of the legal services program coming in and making a whole presentation on what a fair fee should be. It was little enough compared to the standards then and certainly now. But I remember that probably the best pun I ever had was when he was through I said you now heard a Partridge on a fair fee.

AH: Great comment. Do you remember the issue around representation of poor people on boards of local legal aid programs?

JS: The question whether a representative of the indigent community should be on the board and there was a lot of discussion on it. I mean the feeling was well if you are poor doesn't you know what the legal issues are and another view that there should be representation from the client community. The same debate went on in the mental health field as to whether mental health organizations ought to have someone who had suffered

through mental disability and we finally came around to the view that the local groups like community legal services groups in various cities should try to have representation of someone from the poverty community. Philadelphia, for example, started its community legal services program in 1965 was one of the first and was funded by OEO and they did have representatives of the poor on the board who were very productive. I was on the original board, Bill Klaus was the chairman of that and their ideas and contributions were significant.

AH: Do you remember the early discussion about the guidelines of legal services that were being discussed with the National Advisory Council and Clint was trying to promulgate

JS: I remember many discussions of it. The committee was not always on the same track as the lawyers who were involved in preparing them. I don't remember details of it except that at the time all these issues seemed to world shaking a few years later they are accepted and not so world shaking. I remember intense debates without now remembering what the debates were about, it's sort of like some of the resolutions of the ABA which are fought vigorously one way or another and two years later no one quite remembers what the fight was about.

AH: Well one of the issues which came up which went to the whole role of the legal services programs within OEO was around regionalization, I don't know if you recall any of that full discussion.

JS: I really don't recall I mean I recall the fact that was discussed in terms of the structure of the program and the guidelines but I don't remember the details of that now.

AH: Well it's interesting because in Earl's book there is, if I can find it here, a quote from you around this regionalization effort when it was first proposed where you had coined a poem, by the way are you a poet

JS: No but I write parity verse. At one time I was president of the American Poetry Center so that's always been a passion without necessarily a talent.

AH: Let me see if I can find this here. This is taken from the National Advisory Committee meeting September 21, 1967. Clint Bamberger says Jerome Shestack has written a poem, this is you, you said, it should have been read earlier, it's just kind of an introduction to an earlier discussion, the earlier discussion was about the regionalization proposal of a new deputy at OEO brought in essentially by the White House to help Sarge run the agency and they hired a famous consulting firm McKenzie and Company to do a report on OEO organization. And your poem or parity is or whatever you want to call it, A report known as Mr. Kenzie we feel it is extremely flimsy, it threatens service, makes lawyers nervous and throws the staff in a frenzy.

JS: I remember the McKenzie report. I have fun with these parities. The latest one I did in my law firm was a song to the tune of You Must Remember This, from Casablanca it starts out saying you must remember this my time gets billed no matter what and it goes on

AH: That's great. I don't know if you remember some of the early battles in legal services before we get to the Legal Services Corporation issue, the Murphy amendments or any of those things.

JS: I remember that our discussions were very intense. We were often on the opposite site of Sargent Shriver, but eventually we would come around to the viewpoint

of the advisory committee, such matters as paying fees. At that time the lawyers in the OEO program really were not organized and didn't have spokesmen and one of the things we talked a lot about was how they should be treated fairly. They are after all at very low salaries compared to the private bar. Regionalism is one thing you mentioned, guidelines another but without going through the correspondence that I have somewhere about those days I would be hard put to tell you much about the specific issues.

AH: In the end the legal services program did continue to be somewhat independent of the CAP structure and

JS: We were always fighting with Ted Barry about that independence from the Community Action Program. Barry was I think the deputy head of OEO and he always wanted to bring everything under the Community Action Program at least theoretically legal services was under the Community Action Program but we always asserted a great deal of independence on the theory that lawyers have to be independent.

AH: Well let's unless you have other thoughts about those early days which you can certainly talk about, I would like to move toward your role in the early beginnings of the Legal Services Corporation. And you may have some other things to add about the early days of legal services before we get to that.

JS: Well early on and this really got underway in 1965 and there was a big conference that was held in Washington in 1965. You've got to remember what the status was of the organized bar and in particular the American Bar Association. In 1964 the ABA had just barely endorsed civil rights. They were not involved in gender discrimination. They were not involved in legal services to the poor, they had turned down the Human Rights Treaty. The ABA at that time was very conservative and very

much on the right one might say. That all changed in the next 10 years and later on I'll talk about how it changed, but in 1965 or in 1964 the ABA had opposed a Supreme Court case which involved more right for legal services, I forget the name of the case but I could give it to you, and taken a position that it was not very conducive to the legal services. It changed its view in 1965 and passed a resolution to support the OEO. One of the factors in that was Lewis Powell who was then president of the ABA and obviously important later a Justice of the Supreme Court of the United States. John Comiskey, who had been head of one of the ABA committees, was also influential. Bill McCalpin was influential as were others. And so the ABA endorsed the legal services program and not without opposition which I'll mention later on. But there was this big conference in Washington in June and actually hundreds of people attended from all over the cities who were thinking of forming community legal services. I remember Bill Klaus being there from Philadelphia and was about ready to start the community legal services in Philadelphia, one of the first of those organizations. I served on his first board. And the luncheon speeches and major speeches were given one by Nick Katzenbach, one by Arthur Goldberg, a justice of the Supreme Court, which was very inspirational and one by Lewis Powell which was a little bit more restrained as president of the ABA but still endorsed legal services. An that was an important breakthrough because having the organized bar support legal services gave a green light to local bar associations to establish programs and for independent programs to begin such as community legal services. And it also enlisted the ABA on behalf of the funding. At that time OEO was funded only between \$40-\$50 million. As late as sometimes in the 70s its funding was less than \$100 million. It finally went up to a peak of about \$400 million over a period of

time before it got into other battles. But that 1965 was significant. Now our experience with always battling with Barry or others of the bureaucracy led us to think that somehow the OEO legal service program ought to be truly independent. I was one of the leaders of that together with Earl Johnson and Jim Lorenz who I think at that time was in San Francisco.

AH: He was the head of CRLA, California Rural Legal Assistance.

JS: Right and later on I think Gary Bellow got involved in it too. The model that I had proposed was that of the Communications Satellite Act. I had helped write a law review article on that subject and I practiced in the telecommunications field and had worked on a draft of the Communications Satellite Act with Nick Katzenbach so I knew a lot about it and basically the communications satellite program was one where it was funded by Congress but it acted independently which its own board of directors. So I wrote a memo suggesting that which I presented to Congress in 1969. It was not the first idea on that subject but probably the first presented to Congress. The name of it was I think the National Justice Corporation which was the name that Earl Johnson came up with and we did a draft of the first act which was probably pretty simplistic and later on it developed into a much more sophisticated act but that was the start of it in late '68 and early '69 and it had the approval of people like Soia Menchacoff and others on the advisory committee.

AH: That initial idea ultimately grew into the Legal Services Corporation Act which was finally enacted in 1974 after many efforts at trying to

AH: There were a lot of efforts that produced that. Mickey Kantor had a committee called ACT I think and the ABA in 1969 I became chairman of the Section of

Individual Rights which I think really brought the ABA into the 20th century. I started the first ABA Standing Committee, not standing committee, Committee on Legal Services for the Poor and we had all sorts of programs, Bill Klaus was chairman of it and just list of the people who were on that committee in '69, Ramsey Clark, Clinton Bamberger, Earl Johnson, Kenneth Pye, Dean of Duke Law School, Jean Cahn and Maynard Charles, president of the NLADA. So it was quite a committee and we had meetings to analyze the current status of legal services programs and the indifferent approach to legal services in Congress and a lot of other things, it was a very active committee. And we got from the Ford Foundation money to have a study of the value of legal services which I think Charlie Edson was the one who did that and we circulated it in the ABA and enlisted the support of the ABA for the act. The section of Individual Rights also finally led to the ABA endorsing human right treaties to be against gender discrimination, also helping mentally disabled, supporting legal services for the poor and really brought all those things into where they are mainstream endeavors of the ABA today.

AH: Going back to the recommendations which came out with Charlie Edson's report by the ABA, and ultimately there was also a report by the President's Commission President Nixon's Ash Commission that both recommended that the legal service program be taken out of the executive branch and put into some independent kind of structure. And so some of what you did and one of the models was the Community Satellite Corporation. Beginning in 1971 I don't know if you recall the struggles that we went through to try to get LSC act adopted but in '71 a bill was adopted by the Congress and vetoed by the president, in '72 another bill was in the conference committee in the Congress and was ultimately pulled back because of the president's veto and in '73 the

president introduced legislation which became the framework ultimately the enactment in '74. Do you recall the role that you were playing during those years and some of the thoughts you can remember.

JS: '72 was when President Nixon came into office, I think, '68 he came in well even before '68 there had been one of the things OEO did was it had teams going around making appraisals and evaluations of legal services programs around the country. And I did the one with the California Rural Legal Assistance program which I thought was one of the topnotch programs. It helped farmers and immigrants and class actions at that time for enhanced Social Security and welfare benefits and it was very effective. And it won the prize and I remember President Johnson writing a praise of the OEO program at the time of the award to the CRLA. His letter was actually drafted by Harry McFerson who was then his White House aide but I remember going up to the West Wing of the White House and getting the letter so I could be able to read it at the award ceremony to CRLA. Later on the California Rural Legal Assistance services got into real trouble when the Nixon administration came in 1972 and I can come to that but the early efforts to get the act through I think it worked because of the support of various Senators, Senator Mondale for example, was a very strong supporter of Legal Services Act. The ABA governmental office helped do some lobbying for the act

AH: John Tracy who was the head of the

JS: Right and it worked but it couldn't have worked without strong congressmen, I don't remember all of them, I do remember the Pennsylvania Congressmen as a body were all for it and I do remember Mondale and Proxmire as two people who were strong.

And actually on a governmental level Frank Carlucci was a supporter of legal services. He was Secretary of Defense, head of the CIA and had other positions

AH: At one point he was the head of OEO in the early part of the Nixon administration.

JS: Yeah Rumsfeld later became but I always found Carlucci very supportive when we worked with him.

AH: Let's go back a second to some of the do you recall any of the CRLA fights with Governor Reagan before he became president?

JS: I remember the fights actually let me even go back earlier. OEO was the program was not popular with many lawyers because they thought it would take away cases from them. The general practice section of the ABA was very lukewarm and sometimes opposed to it and then there were other groups that were formed that were opposed to it. For example, one of them was called PLEA, Poverty Lawyers for Effective Advocacy and that was a group that was to protect lawyers from attacks by the bar actually. There was an organization I remember in Pittsburgh started that wanted all the legal services money to go the private bar. I have here a proposal by the Wisconsin Bar Association that some large percentage of the OEO money go to the private bar and the ABA opposed that and a motion was defeated. But were constantly meeting objections from lawyers who said they are for legal services for the poor but they are providing it or legal aid organizations are providing it and you are going to take away business from us. Well the guidelines said you couldn't do that, you couldn't take contingent cases and there were other precautions but we still had to fight those off. Now all those lawyers general practice section and others are strong supporters of it. I remember one of the

people who was active in general practice section in its early days was a young graduate was Dennis Archer who is about to become president-elect of the ABA and I remember using him as a vehicle to try to get the general practice section to ease off and come along and he was very successful even then as a young lawyer right out of law school virtually. He was effective as an advocate as he is now of course. But that was a battle we were always fighting with the private bar in the first few years continuously. Oh and there were challenges that surfaced. For example in Philadelphia when they formed the community legal services and its early funding was close to a million dollars from OEO there was a challenge to it by a group of lawyers saying that that was I forget the basis of it that it was illegal, that it was unauthorized practice of law, it was bad, it couldn't be done and they became before Judge Raymond Pace Alexander who is an African American judge, had been in city council and was a very distinguished jurist, one of the leaders of the bar at that time and the judiciary and he asked me to write a memorandum giving the support for the legal services program, sort of an amicus brief. So I wrote this amicus paper, maybe 50-60 pages and then except for about one or two sentences that became his opinion so I was both flattered and unable to claim it as long as he was alive. But he and his wife Sadie Alexander were the first black woman to be a member of the bar in Pennsylvania, were active supporters of it. Those were some of the early battles. At that time, the chancellor of the bar as Arlen Adams and he was a strong supporter of it. But within the Philadelphia bar there are many people who were especially solo and small practitioners who were convinced that the OEO program would take away cases from them.

AH: This kind of experience you just talked about of course occurred all over the country.

JS: It did. I gave you the Philadelphia experience.

AH: Yes rural and urban areas but over time the bar and most of the lawyers become quite supportive.

JS: Judge Alexander's opinion became a model that was quoted often. And the battles were finally won but you still had to go through the battles. There was not a featherbed.

AH: Well do you recall anything else from those early days that we didn't cover in the discussion so far.

JS: I don't recall anything I'm willing to reveal. But seriously I have vast correspondence on it and unfortunately they are dug into some file cabinets that are buried in our office's documentation center and I'm having a hard time retrieving them because they are not correctly labeled. But I'm sure I could recall other instances. I remember the luminous correspondence file upon file and every issue was important, every battle was important. It took a sea change you've got to remember notwithstanding the ABA resolution that Lewis Powell put through a large portion of the bar was not enthusiastic about the legal services program, the federal legal services program. They thought that legal aid was sufficient but that was nonsense. The total amount spent in this country for legal aid in the year before OEO was founded was \$6 million and there OEO started with somewhere between \$40 and \$50 million. Six million dollars is really inadequate and if you go back into history, there were no legal aid services in our early history. It wasn't until about 1878 that the first Legal Aid Society were started New

York, Philadelphia, Boston and the others and they always struggled and they never had enough money and they never could adequately provide the need for legal services that prevailed.

AH: Well we're still struggling for money in legal aid. Let's turn a little bit of attention to when you were chair of the Standing Committee on Legal Aid and Indigent Defendants at some point.

JS: When I chair of the Standing Committee

AH: And what years were those?

JS: From '78 to '81. And I have some material I'll leave available for the files, I don't have it with me right now but I was appointed and the president of the ABA was then Reese Smith from Florida. At that point around that time or earlier when President Reagan this was when Reagan came in

AH: Reagan came in '81.

JS: Well before he came in he had been governor of California and had really attacked the California Rural Legal Assistance Program, and he appointed a three-judge court who were I think members of the Supreme Court of Oregon, three very distinguished judges to analyze it. Some of the people who were opposed to legal services in California were Ed Meese and someone by the name of Onan which I said his efforts were an exercise in Onanism and it didn't go over too well. And I testified in that case and made some pretty derogatory remarks about Meese and Reagan saying that I forget what the phrase was but something comparing them to giving solace to ambulance chasers and then I left quickly after my testimony. It was not a safe venue any more. But in any event

AH: This is all in California.

JS: This is in California and the judges came out with something very favorable to CRLA so that was the background that we had at that time. Now the Standing Committee on Legal Aid had a lot of good ideas. We had a new executive director by the name of Ruth Ann Schmidt who was outstanding. We tried to establish an act which would parallel the Legal Services Act for criminal field and it was introduced by Senator Kennedy and by Congressman, maybe Rodino, I forget his name exactly now

AH: Rodino, from New Jersey, chaired the judiciary committee.

JS: It never got anywhere but we had very active programs in legal aid and we established my committee established the idea for what is now called the Pro Bono Center so we started together with one of the other committees the whole Pro Bono Center and made that a big activity of the ABA, today it's one of its major activities and pro bono is now a matter of an ethical obligation in life. But I worked in that with some of the early pioneers, John Comiskey for example and others and Reese Smith was enormously supportive as president of the ABA at that time or he later became president in '80 or '81. When President Reagan came into office he had the Office of Budget Management which recommended zero funding for legal services.

AH: This is in early '81 just to put a timeframe on it.

JS: Reese and I went down to meet with the Office of Budget Management people and we met with a man by the name of Michael Horowitz at that time and he said that he had once been a liberal and now he's a born again conservative and he was very much opposed to legal services and was why they recommended zero funding for it. So I said why are you so opposed. And he said well I'll give you an example. A landlord wants to

evict someone and the legal services program brought a case saying that he couldn't be evicted without say 90 days notice and he would not have brought that case without legal services lawyers. I said well how did the court rule? He said the court ruled that he was entitled to that notice. So what's your problem that is what the court decided. He said well the court never would have had the issue if it hadn't been for legal services lawyers. That was the kind of attitude he had and you know it was a narrow mean-spirited attitude which I think he has sustained through the rest of his career but we decided we had to do something. So we got 125 bar leaders from all over the country, all the major bar associations to come down to spend two days in Washington lobbying Congress and they went around from congressman to congressman as presidents or executives of the bar and Congress didn't accept the president's recommendation and gave legal services a substantial amount. That saved legal services from extinction and I had the good fortune or misfortune of being chair of SCLAID, Standing Committee on Legal Aid at that time but I remember how important that was and Reese Smith was strongly behind it and one of the champions of legal services at the time and afterwards. Bill McCalpin is another one who became chair of the Legal Services Corporation. One of the things that happened during my term was Hillary Clinton became chair of the Legal Services Corporation

AH: Board, right 1978

JS: And I first introduced her to the ABA, I invited her to a meeting of our committee, she came and was very supportive. She was on a learning curve then but she learned very quickly. Later on she became chair of the ABA Commission on Women and

has always been a great supporter of it but her role as chairman of the board of the Legal Services Corporation at that time, the president was Tom Ehrlich or Bradley.

AH: Tom Ehrlich and then Dan Bradley.

JS: Who were outstanding presidents.

AH: Back in 1981 when Reagan came in Ed Meese was the attorney general if you recall and, no, he was advisor to the president but anyway there was a concerted effort as you describe to totally eliminate

JS: Yeah we faced the demise of legal services at that time. We were rescued by Congress. Later on Congress became the . . .

AH: That's true, Congress only cut the money back from \$321 million to \$241 million but kept the program alive but I just wanted to go back for one second. It's quite clear from my vantage point at the time and I was at the Legal Services Corporation and heavily involved and concerned about the Reagan threat that the ABA's action was critical to the survival of Legal Services Corporation and critical in getting Congress to do what it did.

JS: I think that's right. When you have 125 bar leaders come down and they represent the lawyers of their particular states and cities Congress listens to that. Let me go back, the ABA had been very helpful. George Murphy had an amendment to cripple the legal services program back around 1974 no earlier than that, 1969 and 1970, yeah two amendments and the ABA was instrumental in opposing those amendments. They had been supported by Murphy who was a Senator at that time and by Edith Green and Albert Que. Albert Que was a kind of vicious opponent of legal services and Edith Green was just naïve

AH: He was a representative from Minnesota, a Republican representative who was the ranking minority in the House Judiciary Committee.

JS: And Edith Green who was from Oregon should have not done that but she was naïve.

AH: She was a Democrat.

JS: Yeah but it was defeated and that could have really hurt the legal services program. And

AH: There were two Murphy amendments. One would have prohibited suits against government and the other one would have regionalized legal services, that whole fight that you had been involved with at the National Advisory Council

JS: And I was chair of the Standing Committee I mean of the Section of Individual Rights and Responsibilities and we led the fight against that at that time and that was important. It also solidified the ABA support for legal services and then Edson report came out and the ABA adopted it so gradually more and more resolutions were supportive of various forms of legal services to the point in later years now where they have a real grass roots operation, lobbies Congress, supports funding and acts in many ways it's really the savior of the legal services movement.

AH: One interesting thing about the one hundred and some people that came to Washington is that now every year, as you know, the ABA

JS: ABA day in Washington, they call come and legal services is one of their major items on their agenda and we call it the grass roots campaign which gets not only the leaders to come down but to get bar associations for example in Pennsylvania, local

bars will write to the Senators, they'll write to the mayors, they'll sign petitions, they do a lot of work and its very effective because politicians do listen to constituencies.

AH: When you were president of the ABA let's just cover that for a second and we'll take a break. When you were president of the ABA, we had just finished a battle in legal services with the Congress, the new Congress that came in in '94 and '95 and '96 reduced funding for the program, eliminated some of the funding lines that effectively eliminated national support centers and some other things, you were president in 1998 as I recall

JS: 1997-98.

AH: It was right after that and do you have any thoughts about your role and the role you played as leader of the ABA.

JS: When I was there as president it was different than when I had been chair of the Legal Aid Committee, then Congress supported us and the president was against us. Now the president was for us and Congress was ambivalent. You had the Republican Congress was elected in 1994 and they were generally opposed to much of it. The ABA did a lot of grass roots lobbying in those years. The year I was president we were not facing an attack so we had the normal grass roots, but we didn't have to muster a kind of campaign that we did after my presidency but personally I was always supportive of it. President Clinton was very supportive. I went to White House conferences honoring the past and remembering some of the heroes of the legal services movement and from that viewpoint it was very nice to have someone in the White House who is most sympathetic and of course Hillary Clinton had been indoctrinated in legal services in chairing the board of the LSC so the president's appointments were good and I didn't have any major

crises in the legal services other than our normal lobbying efforts during my term as president.

AH: Okay. [gap] . . . was the Reginald Heber Smith Fellowship Program or Reggies as they are known, which began in 1967 and the first class '67'68 and continued on into the 80s. What do you recall about the first class of the Reggie program and what it was trying to do and who the people were?

JS: I remember the Reggie program very well. First of all the Reggies were the best and the brightest. I mean there were people in the Reggies who clerked for justices on the Supreme Court, for judges on the courts of appeals who were first and second in their class, really topnotch people but they have the drive for public service. There was a time when they weren't beset by huge student loans the way students are today. Today many students who would like to go into public interest can't do so because they face these enormous loans so they have to go into large law firms where they can get the money to pay off their loans. That is something that the current president of the ABA is addressing and needs to cure but at that time we didn't face that problem. I remember having a party at our home for the Reggies and they were so bright, they were indeed as Halverson has said the best and the brightest in the field and they had very good training at Penn. I gave one or two lectures. Ed Spare was I think their main teacher and there were others involved as well. The Dean of the Law School then was I'm not sure I think it may have been Jim Freedman who later became president of Dartmouth or it may have been Lou Pollock who was Dean at Yale and then he came to be Dean at Penn and now is a federal judge. But they were inspirational and unfortunately many people who would like to go into public service can't do it. In my law firm, for example, they have

established a fellowship in my name where someone goes into a public interest firm, does some part-time work for us, spends most of their time with the public interest firm and we pay her or his salary.

AH: That's a terrific model. That actually leads to, you mentioned earlier that when you were chair of the Standing Committee on Legal Aid and Indigent Defendants that you had helped start the Center for Pro Bono at the ABA which has been a major institution in the ABA to push for pro bono.

JS: Let me go back a little bit. In 1969 and 1970 when I chaired the Section of Individual Rights the pro bono efforts of lawyers around the country were minimal. There were maybe three firms that I recall that had pro bono programs. One was Piper Marbury in Baltimore, another was Hogan and Hartson in Washington, another was Schnader, Harris in Philadelphia. And I thought that was a shame. I formed a committee to go around the country and promote pro bono among law firms. We hired Marna Tucker, Marna at that time had been working for OEO and she came over to head this program. The chair of the committee at that time was Warren Christopher, everyone knows he became Secretary of State. Bill Coleman was on it who was later Secretary of Transportation

AH: Very distinguished civil rights lawyer.

JS: And a great lawyer all around and others who were very good on our committee and that really started and they put out publications and material and that really started law firms in pro bono programs all around the country. Marna later became president of the D.C. Bar and a member of the American College of Trial Lawyers and many other distinctions but then she was a very young woman and that was her job,

going from law firm to law firm around the country. Marna's salary was \$20,000 at the time. I remember being in a fight because the ABA wanted to pay her less than men in that position and neither Warren Christopher nor I would accept that.

LH: That was quite a distinguished group. Marna, by the way, did a study for the Legal Services Corporation in 1980 on pro bono that was very influential in getting the corporation much more involved in support of pro bono.

JS: She's is engrained in that field every since her early days in OEO when she was stationed in San Francisco. Then when I became chairman of SCLAID by that time the ABA had a committee dealing with public service or public interest law, maybe not under that name and I was able to gather together a kind of coalition which was called a coalition and suggest the pro bono center and as I said we hired a young woman by the name of Ruth Ann Schmidt who is still involved, she is now with Cy . . . in Chicago but we really got our main aim was to get pro bono services not just by the ABA but encourage law firms, encourage community organizations and the like and now pro bono service is an important thing in most law firms. Recently The American Lawyer did a survey of the top 200 law firms and it listed the pro bono programs. When I was president of the ABA I had six elements of professionalism that I thought every lawyer ought to have. One was ethical responsibility, two was independence, three was civility, four was continued learning, five was pro bono service and six was obligation to the justice system. And Bob Hershong, the current president of the ABA was instrumental in producing Section 6.1 of the Model Codes which makes it virtually a mandatory not quite mandatory but an ethical responsibility. In my law firm pro bono services is mandatory in the litigation department. Every lawyer has to do it and there are evaluated on it. We

have one death penalty case which has taken up three-quarters of the time of an associate plus partners and others and she worked so hard on it she got the largest bonus of any lawyer in the firm of any associate in the firm and she did very little client work, three-quarters of her work was in this death penalty case. There is always a problem. Lawyers are under stress, they like to put things off, they say later I'll be involved in pro bono after I'm successful but in this case the firm it becomes perpetual. Lawyers who don't engage in pro bono early are not likely to engage it in late in their services. I've given commencement speeches with that theme in it, that be careful what you ask for in your youth because in your old age you may get it and if you don't become involved in public service you are not involved in what I consider part of the good life. So today with economic pressures on law firms there may be some decrease but I found from my own survey that there is not a correlation between lesser profits and pro bono. Some of the firms that have increased pro bono have also increased their profits. I think it becomes a matter of attitude on the part of the law firm. If you believe that pro bono service is a decent thing to do, you think it's an obligation of lawyers who get so much as an obligation to give back. If lawyers are to have an important role in society they have to be part of the passions of our times and the needs of our times in which services to the poor is one. And anyway it's fun to be involved in it. So those are some of the reasons I give for it. I lecture a lot about it and many of my bar association speeches when I was president and since had dealt heavily on the need for lawyers to do pro bono service.

AH: How do you see this in the next ten years for example pro bono?

JS: I'm really optimistic. I think corporations are becoming more involved in pro bono. I have urged general counsel in meetings to ask when they do a beauty contest you

know lawyers are competing for a case or for doing client work for them, ask them who is involved in pro bono services and how much they are involved and what their gender ratios are. And that will make a big difference you know, and not only that but ask whether the lawyer who is going to work on your matter is involved in pro bono and that will make a lot of difference and I remember First Union was doing that and other law firms were doing that, I mean other corporations were doing that. If all the general counsel did that I think it would be a great thing and you find an increase in it. But I think law firms are more pro bono minded. I think it's also true of many solo and sole practitioners and I expect an increase in pro bono services. I hope it doesn't mean that because there is an increase there that there will be a decrease in federal funding of legal services organizations. But the fact is state funding in Pennsylvania started out as no funding for legal services, now they is substantially funding and I think that's true in other states. So I think there is a dual factor that pro bono service and the federally or state funded . . . and still the need isn't being met, I mean at least more than 50 percent of the need is still unmet, legal needs are still unmet.

AH: It's interesting your comment about legal services programs and pro bono and funding because I think if you look at funding except maybe at the federal level if you look at overall funding when the large increase in the effort around pro bono began with you and Reese Smith in 1980-81 we began to see increases outside of LSC area in funding and that has gone hand in hand and there has been much more law firm involvement in this since then and funding for the staff program is increased.

JS: Well I'll give you an example, in Philadelphia there is a program called VIP, which is voluntary help for indigent persons and I had a meeting of our firm partners and

associates and they came over and made a presentation of what their needs are and they brought over 17 cases in which they needed help. We handed them out before they left all 17 cases had been assigned. So we've done a number of things like that and other law firms have too. My law firm is far from unique in that regard but we were strongly supportive of pro bono services. A recent interview which I think is coming out in the Metropolitan Legal Times which tries to encourage those that are not involved to become involved.

AH: I want to turn briefly to one other aspect that is something earlier on in the interview you made a brief reference to some of the struggles that you fought at the National Advisory Council. One of those struggles was around the notion that law reform should be a critical part of legal services programs. And more recently in 1996 Congress imposed some restrictions on some aspects of law reform, limiting class actions, severely limiting lobbying, preventing legal services program from claiming or collecting attorneys fees, clearly these were designed to [END OF SIDE ONE OF TAPE]

JS: . . . functions, one function is to provide legal services to the poor. Another was to greater involve the community in legal services for the poor and one was to reform the law, reform it through class action largely because with the class action you can get changes, injunctions and improving consumer matters and housing matters and lots of other matters. And I think some of the earliest victories of the legal services program in California and New York and others was through class action. Congress didn't like it because often the class action would be against a government entity, it could be the welfare system, the Social Security system, the Veterans Administration, HUD or whatever the agency was involved. They said why should we finance suits against

government. Well that's kind of simplistic naïve and if I may say so just kind of a restrictive philosophy that is unbecoming to Congress. Yet they are able to eliminate class actions, service in immigration cases, criminal cases, I think it's a great loss. It may be that in the future Congress which has a more liberal bent some of that can be restored. Now local organizations have been able to say well we're doing class actions on our own and not from federal funding although that's been involved in controversy and then there is the question of whether legally or constitutionally Congress has make that distinction. There is litigation going on by the Brennan Center and others. Seems to me it's very important to have class actions, not the class actions where you get millions of dollars in a security case but which stops some pernicious practice either by the government or by private industry which hurts many people because to do it in an individual case is often just not feasible so I think one of the important elements for OEO at the beginning was reform and that should continue.

AH: Well let me ask maybe as a final question although you may have some other thoughts you want to raise to, two final questions. One is reflect on some of the heroes you think from your long experience in legal services, were the heroes you would sort of mention and you've talked about some of them but I think it would be useful

JS: Well you know the old song Where Have All the Flowers Gone, someone once did another version Where Have All the Heroes Gone and from that tune . . . don't worry they are here send I the clowns don't worry they're here, not clowns but heroes, we've got a lot of them. Clint Bamberger is a hero of mine in the legal services from the very beginning as a first full-time director and it's not been just a part-time job it's part of the passion of his life. You can't come to a major conference without having Clint

Bamberger there with his wry sense of humor, his understatement but his every effective approach. Earl Johnson is another from the very beginning, self-effacing man who became involved, was devoted to it, was innovative, with ideas of the LSC because that was one of his ideas that we worked on together even as a judge of the Superior Court in California he remained actively involved, involved his wife Barbara in it and he's another one. Sargent Shriver of course is in a class of his own. He's a hero on so many fronts, Peace Corps, Ambassador, during the 1972 campaign I was his chief speech writer, he asked me to do that and I traveled around the country with him and sometimes when you travel closely with a campaign you begin to see feet of clay not with Sargent he has remained on a pedestal for as long as I've known him and remains so today. Marna Tucker did a wonderful job in promoting legal services. Lou Pritchard who dealt with the unmet legal needs was another one from California. He's still active today, not from California from Washington. Reese Smith was a tremendous advocate of legal services and so was Bernie Siegal and I must say that virtually every past president of the ABA some more so than others but Jack Curtin was one in particular, Martha Barnett was another president particularly active for legal services, Lee Cooper did a very good job and current president Bob Hirsh Hon as I said was instrumental in having the Model Code include Section 6.1 which virtually makes pro bono service important. I mentioned earlier Raymond Pace Alexander, Cecil Poole who had been in the Ninth Circuit and was the first I think the first black on the Ninth Circuit, was a great supporter of legal services. Soia Menchacoff brought her wit and knowledge, Jean Cahn, I always found very inspiration. We sat next to each other at steering committee meetings and she always had a kind of wry sometimes cynical remark but never really disparaged anything that we

were doing and both her brain power and her enthusiasm and her wisdom helped overcome many crises. I guess I could go on.

AH: You mentioned one earlier Bill Klaus who

JS: Bill Klaus from Philadelphia was the first president of the Community Legal Services Program in Philadelphia. He was a very close friend of Clint Bamberger and mine and in the early days when we had to struggle both in Philadelphia and elsewhere he was an instrumental pioneering figure and I think he got the Van Breezan award and others. He's been recognized from it I don't think he's very active today but he is certainly one of the main figures of the early days. John Comiskey is another and Lewis Powell deserves a great deal of credit. It wasn't easy for a president of the ABA then I would say that most of the members of the House of Delegates probably would have voted against it without Lewis Powell's leadership. He was highly and deservedly respected. There are others, I mentioned Tony Partridge, Don Baker, Wilcox, Katzenbach so where have all the heroes gone, they are there and new ones are arising today.

AH: Well one a sort of a final overarching question. From your vantage point what do you hope to happen on civil legal aid in the future what would you like to see?

JS: Well the ideal would be for me to see the federal government to make some realistic funding, I mean the current levels around the \$300 levels are not realistic funding, I mean it could be doubled and I think you would enlist legal services lawyers around the country to do good work. I think the federal government or the bar or someone has to take care of these tremendous costs, the loan costs that make it impossible for young lawyers to get into the public interest field. I think legal services or pro bono services has to become an ethical obligation for a lawyer, I think it is an ethical

obligation for a lawyer and I expressed some of the reasons for that. I think corporations should keep in mind the pro bono services by the law firms they hire. And I think within the law firm culture they have to get away from solely bottom line and express some of the ideals of our profession which are expressed through pro bono service. Will this all come about: Well let's look at this way. Only about 35 years ago the bar hadn't endorsed legal services, human rights treaties, gender nondiscrimination, civil rights, aid to the mentally disabled and now it's done all that. In the space of 35 years which is a very short space. Let's hope that these ideals I mentioned are realized in the next 35 years.

AH: Well we hope they are. Thank you.

JS: Thank you.