TRANSCRIPT OF THE INTERVIEW WITH ALAN M. LERNER

SRINIVASAN: My name is Lake Srinivasan and I am currently a third year law student at the University of Pennsylvania. Today is February 2, 2000, and I am going to interview Professor Alan Lerner in his office at the University of Pennsylvania Law School. Prof. Lerner, thank you for agreeing to take part in the Oral Legal History Seminar, and let’s get started.

LERNER: You’re quite welcome.

SRINIVASAN: Prof. Lerner, can you tell me when and where you were born?

LERNER: I was born in Philadelphia on January 24th, 1942.

SRINIVASAN: Where were your parents born?

LERNER: My mother was born in upstate New York. My father was born in Philadelphia.

SRINIVASAN: Did you enjoy growing up in Philadelphia?

LERNER: Yes. I had a good time, a good childhood.
SRINIVASAN: Do you have any siblings and were you close to them?

LERNER: Yes, I have an older brother, Ben Lerner, who is a judge in the Court of Common Pleas here in Philadelphia. And I have a younger brother who lives in New Jersey. We were real close growing up. My older brother, who is just about a year older than I am, and I were very close. I was less close with my younger brother who is three years younger.

SRINIVASAN: Were you known as the ABC boys?

LERNER: You've obviously investigated this case carefully. Yes, we were.

SRINIVASAN: What were some of your interests or hobbies as a child?

LERNER: Actually, on a scale of one to ten, all ten would be sports. My favorite sport was always baseball.

SRINIVASAN: Did you hope to play baseball professionally when you were a child?
LERNER: Yes I did. I was your average American kid. I expected and hoped to play professional sports, and baseball was it.

SRINIVASAN: Where did you go to high school?

LERNER: I went to Central High School in Philadelphia.

SRINIVASAN: Did you work your way through high school?

LERNER: I did not work when I was in school. I worked in the summers. The first summer I worked delivering groceries. My father had done that. Then I worked in day camps as a life guard in some of the city public pools.

SRINIVASAN: What is your fondest memory of high school?

LERNER: That's a tough question. There are a number of them. I remember certain classes that I liked. I was very excited when I made the varsity baseball team. I guess I was excited when I was elected class officer. I was very active in the school activities for my class and for the student association. Certainly being accepted into college would have to be way up on the list too.
SRINIVASAN: Did you think about attending Ivy League universities and possibly becoming a lawyer when you were in high school?

LERNER: When I was in high school I did not think about being a lawyer. As far as where I would attend college, I really didn't have very much in the way of a view of the horizon and the options. I thought about Penn, and I thought about Temple because they were here and because people from my high school, most of them, went to Penn or Temple or some other pretty good school. I knew at the time that I couldn't afford to go any vast distance. I had visions at some point of attending Reed College in Oregon, but that was just financially totally out of the question so I didn't even bother applying.

SRINIVASAN: Were you aware of events such as Brown v. Board of Education, and do you recall when you first became aware of the Civil Rights Movement?

LERNER: Brown was in May of 1954. I graduated in January of 1959, so I was probably in high school at the time. I do have some recollection, although vague, of discussions of it, and I have some recollection of discussions of the integration of Central High School in Little Rock. They were in the news and
they were issues that I recall, although I don’t recall them with great specificity and particularity.

SRINIVASAN: Do you remember who you discussed that with? Friends or family?

LERNER: Probably friends. We probably did talk about it at home. We had dinner as a family most nights and we always talked about things that were going on, other than the fact that I wasn’t doing my homework, which I was supposed to do. But we did talk about things of interest like that.

SRINIVASAN: You were in college when John Kennedy was elected president in 1960. Were you politically active at that time? Did you relate to President Kennedy because of his youth?

LERNER: I was not very politically active at all. I was not old enough to vote at the time he was elected, but I did follow the election, and I liked him. He was charismatic. He seemed very bright. He seemed to be talking about the right kinds of social issues, political issues. I was clearly hostile to Richard Nixon, so it wasn’t at all difficult to align myself with John Kennedy.
SRINIVASAN: Where were you when President Kennedy was assassinated and how much of an impact did the assassination have on your college life?

LENER: I was in Room 100 with Professor Howard Lesnick’s Labor Law class. It was a class I liked very much. He was a wonderful teacher and labor law was a course I was really interested in as a career matter. I was a second year student. Frank Wright, a third year student, came into the back of the room and announced that President Kennedy had been shot in Dallas. There was absolute silence in the room. Professor Lesnick eventually, after some period of time, without any sound in the room, closed his book and said, “All right. Everyone is excused. Let’s go.” He walked into the aisle and out into what was then sort of a courtyard where the Tannenbaum Building is now. Room 100 exited out to that area. It was a profound experience for me and for, I think, the law school community and others in it. I remember a group of us, about ten students, went to Principal Bender’s office, which was in what is now Silverman Hall, and listened on the radio to the news broadcast after that. There was a great deal of crying, and it was a very emotional experience.
SRINIVASAN: Did you experience any particular discrimination as a result of being Jewish in Philadelphia when you were growing up?

LERNER: I recall only one or two things. There was some conflict among kids when I was a preteen and a teenager. The neighborhood that I lived in was mixed. It was Jewish and Catholic. I recall on a couple of occasions being involved in fistfights. Nobody had weapons in those days. And there were more than just a couple of occasions where we’d be involved in fights. I would, my brothers would, be involved in fights. It wasn’t every day, it wasn’t every week, but there were times when that happened. The other occasion that I remember was when I was in high school. I was on the baseball team and the baseball team bus was going someplace, a game or practice or something. The coach of the baseball team sat down next to me and we got into some conversation, and he said to me, “I like you, Alan. I know you’re Jewish but you don’t act Jewish.” I was just shocked. I didn’t know what to say. I didn’t know what to do. I was so shocked by that I did not tell my parents or anyone that story until many, many, many years later.
SRINIVASAN: Now let’s shift to your college years. I know that you said you considered Penn and Temple as options. Were there other schools you applied to?

LERNER: I know I considered Reed College, as I mentioned, and Brandeis. I know I went to visit Brandeis, but in fact, my parents had told me that I couldn’t wait to start college. I graduated from high school in January. You could do that in school then. Some colleges would only admit students in September. Some would admit them either semester. Penn and Temple would admit students either semester. My parents told me I had to start right away. They didn’t want me, in their words, “wasting six months” and so I did not apply to anywhere other than Penn and Temple because the other schools I was interested in had only September admissions.

SRINIVASAN: Why were you interested in the college in Oregon?

LERNER: It was a small, liberal arts college. It had, as I recall, a reputation of being a politically active, a liberal kind of place from what I’d heard or read, and it was very little. We had a college advising office when I was in high school. They had brochures and things like that on colleges. The gentleman faculty member who was in charge of that was a lovely, friendly, warm person but he had fairly narrow access
to information, and there were no computers or webs then. So he had some information, and we got to talking from time to time, and based upon the things that I said I was interested in, he had identified it. So I read some brochures about it. And it was far away, it was on the West Coast. I’d never been to the West Coast. I’d never been on an airplane, so it was an exciting thought, but it wasn’t to be.

SRINIVASAN: What prompted you to study business at Wharton?

LERNER: I had a 12th grade social science course in high school, a course which was an introduction to economics. I had a wonderful teacher, Adolph Kaplan. I loved the subject, I loved the class, I loved him, and I really thought I’d be interested in a career in economics. He supported that, encouraged that, and he urged me to apply to the Wharton School because he said that was the best education I could get in economics. And I did.

SRINIVASAN: What activities were you involved in at Wharton?

LERNER: I was on the freshman baseball team, and I was on the varsity for three years after that. I joined a fraternity while I was here and was active in that. Then I worked also
while I was in school. That was pretty much it. I also joined the Prelaw Club at some point.

**SRINIVASAN:** How did you like your fraternity experience?

**LENDER:** My fraternity experience was valuable to me. It also had its downside. The value to me was that I started off college living at home and commuting. So for the first two semesters I commuted, and I commuted during the spring semester. But being connected with a fraternity, for example, when there were baseball games that were late – particularly away games – I could stay over in the fraternity house. It also gave me sort of a base and a group of friends to connect with. In that sense it was really a valuable social center, that kind of thing. I was always troubled by the exclusion of people, which I thought was hurtful to them and which I felt some pain about. The only sort of difficulties or conflicts I got into at the fraternity were over things like excluding people. I found conversations that took place during the rushing period when the people of the fraternity would discuss whether to accept somebody or reject somebody to be very uncomfortable and from time to time spoke out either in support of somebody or against the kind of conversations that they were having. Also, when I actually became the pledge master in my last year, I changed the pledging process so we
wouldn’t engage in hazing and hitting and things like that. I
didn’t want that to be the case, so we didn’t do it.

SRINIVASAN: Have they gone back?

LERNER: I don’t know. I haven’t had any contact with the
fraternity since I left school.

SRINIVASAN: What is your fondest memory of your time in college?

LERNER: I enjoyed college. I think one of my fondest memories
was actually starting in college, in coming down here to
campus. They’d just taken the trolleys off, but Woodland
Avenue was still there. I just thought that was the greatest
thing since sliced bread. Other than that, I liked the
activities. I liked playing ball, I liked my courses. I
liked going to the fraternity house. I liked the overall
notion of really establishing my own life in a way that was
separate from my parents and my family. In terms of courses,
I took a number of courses in history and labor-related
matters. I really enjoyed those. I took a Shakespeare course
with a wonderful professor whose name I don’t recall, and it
was just a great course. I would say that the courses I took
in labor and labor economics, and that course in Shakespeare,
were my favorite academic experiences. And I remember playing
baseball. I remember flying in an airplane for the first time. I remember on that trip we flew to Brown, to Providence and after the game went by train from Providence to Boston because we were supposed to play Harvard the next day. The bus took us to a hotel. We checked into the hotel. We were given money to go out and get dinner. I thought I had died and ended up in the major leagues. It was beyond my wildest imagination. At the time my older brother Ben was in school at Brandeis. It turned out the game with Harvard was rained out and he met me in Cambridge and we had lunch together. It was just an altogether great experience. Not significant in the greater scheme of things, but the whole experience of the weekend was really neat for me. I remember several of the base hits also. There weren't that many that I could forget a lot of them.

SRINIVASAN: Did you start considering career options when you were in college?

LERNER: Oh yes, sure.

SRINIVASAN: What options did you consider?

LERNER: Actually, I started off intending to major in economics and go to economics graduate school. Around about the
beginning of my senior year, the end of my junior year, I decided that instead of that I ought to do something where I could succeed or at least make a living, and economics was not the thing for me. I, along with a small group of other economics majors, was invited to take first level graduate course with Dr. Lawrence Klein. I, of course, jumped at the opportunity. But it was so far beyond me. It was mostly mathematical economics. What was then called econometrics is what is now basically what economics is. I didn’t have anything like the math background to keep up. I passed the course but it was clear to me that all the success I’d had, all the As in economics were not going to continue beyond that. I was sort of thinking about what else there was. I don’t remember why law occurred to me. I guess my interest in government and history and in social issues and public issues are what moved in that direction.

**SRINIVASAN:** What other law schools besides Penn did you consider attending?

**LERNER:** I only applied to Penn, Harvard and Michigan. When I got accepted to Penn I went through the application to Michigan, and I wasn’t accepted to Harvard.
SRINIVASAN: Do you recall what the admissions process was like at Penn when you were applying?

LERNER: I filled out an application and took the LSATs. I think that was it. I don’t recall anything more than that.

SRINIVASAN: What do you remember about your first year in law school?

LERNER: I remember my first class in Agency with Professor Leech, which was wonderful. I remember a lot about the classes and the professors. We had a new professor, Professor Amsterdam, for Criminal Law because Professor Schwartz, who was “the name” in the area was on leave. Our section, Section B - my brother was in Section A - had Professor Amsterdam. There was a lot of grudging because we were all expecting to have Professor Louis Schwartz who was a big deal and we had this sort of new person who had never taught before. But it was clear the first day that he was really a special guy. His class was wonderful. I had Professor Wrights for Contracts. I really enjoyed coming to class and I enjoyed the discussion. I also remember distinctly getting caught by Professor Morris doing a public imitation of him to my great embarrassment but lived to tell the tale.
SRINIVASAN: How many students were in your class, in your section?

LERNER: I’m going to say about 90. The first year classrooms didn’t have any temporary seating at the time. In fact, the building in which the first year class was located was opened the fall that I started here in 1962. All those seats were filled and you sort of knew that was the size of the class. The size of the class was around 180 I think when we started.

SRINIVASAN: Please describe the physical structure of the building.

LERNER: Well, the building that we’re in now, then called Louis Hall, was here. It had faculty offices, the Law Review office, the Moot Court Board office, some secretarial space. The Biddle Law Library occupied everything from this second floor up with reading rooms on each side. They were large reading rooms surrounded by shelves with porters and so forth. The little building, Roberts now, had just opened. It is basically a U shaped building around a courtyard. The fountain, which no longer works, which is opposite what’s called the goat - the goat was a donation from Professor Morris who was a scholar in Chinese Studies and Chinese thought and legal philosophy. The fountain, which is just
outside in the courtyard in that area, was donated in honor of then Dean Fordham’s late wife. That’s the Rebecca Norwood Fordham fountain. Then, as I said, opposite that end, on the Western side, were I think two dormitory buildings for law students.

SRINIVASAN: Did you start law school the same year that your brother, Ben Lerner, did?

LERNER: Yes. He had graduated high school a year before I did, also in mid-year. He had waited nine months to start college. My parents didn’t go for that. They thought he was wasting his time sitting around reading books, not doing anything. So that is one of the reasons they wanted me to start college right away. When I went to college, I went to summer school and accelerated, went through college in three and a half years because I knew I wanted to go to graduate school and the graduate schools only admitted people in September. I guess I believed it was a horse race, you had to get through everything. So I did.

SRINIVASAN: When you first entered law school, what areas of law did you intend to concentrate on?
LERNER: The only areas of law that I ever had any interest in were criminal law on the defense side and labor law. I obviously took more courses, but that’s what I was interested in.

SRINIVASAN: What is the most meaningful difference in being a student at Penn Law in 1965 and being at student at Penn Law in 2000?

LERNER: I can limit that to one thing, and also remember that my perspective in 2000 is not as a law student, although I obviously have a lot of contact with law students. There are several things that occur to me right off the bat. One is the makeup of the class. In my class of 180 or whatever the number was, I think there were six women. There were no minorities. There was one minority student in the class ahead of me. So that is altogether different. The classes are bigger now. I think on the average there are 240 students. They were 180 then and that was enough to fill the two first year classrooms. The third thing is the economics are altogether different. People who graduated in my class and went to the biggest firms might have made $7500 a year. But in those days nobody left law school $20,000, forget $100,000 in debt. The economics have changed the situation enormously. Another thing that occurs to me was that it was the 1960s and
in 1965 the Civil Rights Movement was in full swing. I went to a civil rights job when I left law school. The war in Vietnam was heating up. The War on Poverty was important and Johnson had introduced legislation regarding that. It was a time when even the students who were going to Wall Street and big firms elsewhere were aware of, and had to be thinking about, what was going on around them in society. There weren’t nearly as many student organizations. Now each ethnic group in the law school has enough people to have an organization. There was one civil rights group that had been formed and I was involved with that. There was a club called the Law Wives Club. That tells you something about the makeup of the class and the attitudes that were prevalent. Another thing is a significant number of the faculty, particularly the younger faculty, were more involved with things going on in politics and government and the legal profession. They were both very involved in civil rights and civil liberties issues. The school and the faculty are both bigger now. There is a lot more focus on people who are simply involved in legal theory here. One of the people in the faculty named James Paul helped to founded the first law school in Ethiopia. Two of my classmates went and taught there in the Peace Corp. There was a lot more involvement in the community, I thought, at the faculty level.
SRINIVASAN: How would you compare the study of business at Wharton with the study of law at Penn?

LERNER: There are three things that occur to me. One is I think that the intellectual level of the student body generally, and of the discussion generally, in the law school was higher than it was at Wharton when I was there. The methods used were very, very different. At Wharton there was some lecture, there were readings from text books, that sort of thing. But in law school we used the case method, Langdale’s Case Method, and the analysis of an individual case was just something you didn’t do at Wharton. Now I understand that the system has changed some, but the method of teaching and learning, and the Socratic dialogue were just not present there. The other thing is that, and maybe it was because it was the 1960s and maybe not, but I don’t recall any discussion except in classes like labor economics of social issues or public policy issues in connection with discussion of what the courses were. In law school where there was Criminal Law or Torts, or Real Estate transactions, there were a number of cases where issues of public policy and social welfare and equality and justice were part of the discussion. That was really different.

SRINIVASAN: Did you see the study of law as a way to concentrate on more socially oriented issues?
LERNER: It certainly went hand in hand with me. My interest in social political issues and my interest in law certainly dovetailed and related and supported each other.

SRINIVASAN: Was there interest among the students and professors of the law school in the Civil Rights Act of 1964?

LERNER: Sure, very much so. There was an organization here called the Law Students Civil Rights Research Council. It was an organization of students who did civil rights work as volunteers. Professor Amsterdam worked very closely with the NAACP Legal Defense Fund and the American Civil Liberties Union. Professor Bender also did work of that nature. Dean Fordham was very active in trying to move the American Bar Association, as he had been, without success I might say, in Virginia to be involved and supportive. So there was an atmosphere in the school that was supportive of that and there were students who were interested in it.

SRINIVASAN: Was your brother also interested in socially oriented issues?

LERNER: Yes he was.
SRINIVASAN: I know you spent one summer in Mississippi. Can you talk to us more about that?

LERNER: Well, for me that was really, I would think, a life changing and directing experience. In my second year, a fellow named Colin Slater who was a law student came to the campus here. He’d taken a year off from school and was traveling around trying to organize this organization. He talked about civil rights, talked about his experience in Selma in 1963 and the people he had worked with in the South. He formed an organization and part of the program that the organization was going to have was to sponsor internships for law students to go and work in the South doing civil rights work during the summers. I applied for one of those and was selected and was sent off with one of my classmates, Charles Wall. We left right around Memorial Day. Penn Law School ended a little earlier than some, so we were the first law students in the program to arrive in Mississippi. It was really an eye opening experience. In 1964, in the summer, wherever you went in Mississippi there were signs for white or colored or “white only” and nothing for colored. Pretty much everything except the civil rights movement was totally segregated. You’d drive down the roads on the way to Mississippi and Alabama and you’d see signs that said, “Impeach L. Warren.” There were signs for the Ku Klux Klan or
the White Citizen’s Council on billboards. It was accepted communication, if you will. The first night that I was there Charlie and I slept on the floor of an apartment that was rented to workers, students who were there either as volunteers or on subsistence kind of pay from SNC or CORE or the NAACP or Southern Christian Leadership Conference or a group of organizations which had all gotten together in a singular organization called the Council of Federated Organizations in Mississippi. After a couple of nights like that they found me a family to live with, Mr. and Mrs. Wates. They hadn’t started developing a law office. Some space had been rented upstairs in a building where the Mississippi Free Press was housed. At the time there was an expectation that there’d be many, many lawyers and volunteers from the North and the West coming into the South through several organizations. The National Lawyers Guild was one. The Lawyers Committee for Civil Rights Under Law was one, and the Lawyers Constitutional Defense Committee was another. They all solicited their members and others to go and spend a week or two or three or four in Mississippi. The Law Students Civil Rights Research Council hired law students to go and work with them. In addition to that, the law students also lived and worked out in the communities, in Hattiesburg, in Dicksburg, in Louisville, all over the state. In part because I was the first law student there, I was involved in setting
up and organizing the whole thing and arranging for housing. I ended up being assigned to be in Jackson with a number of students and be, essentially, the coordinator of all the students in Mississippi. For example, in order to get them money to live on, the New York office, the national office of our organization, would send me money. I opened up a bank account in Jackson, and then I would send checks to these people on the Jackson bank account so they wouldn’t be getting money from any New York civil rights organization because they wouldn’t have been able to cash those checks in a lot of places in Mississippi. I traveled around the state, in addition, doing research in the law library that we created or in the state law library in Jackson. I traveled around the state with lawyers and visited the law students around the state to see how life was out there in the boondocks. It was a really tremendous experience. I was staying in some place in Harmony, Mississippi, going to a church mass meeting, talking to people about voting, about demonstrations, about various things that they might be able to do and not do. One of the first nights I was there I went with a lawyer, Bruce Walters, who had come from New Orleans, because there had been a demonstration in Canton, Mississippi just North of Jackson in which a number of people had been severely beaten and taken into custody. One of the people who had been beaten severely and taken into custody, apparently unconscious, was a child of
about 12 years old. His mother or somebody had called Bruce, who was a National Lawyers Guild lawyer. He had driven up from New Orleans. He and I went to Canton and found our way to the jail and knocked on the door. Folks from the other side asked us what he wanted. It was late and dark. Bruce identified himself as a lawyer representing this child’s family and said that he wanted to speak to his client, to the child. The voice from inside, the sheriff, we learned later, said, “Get the f--- out of here. This is my f---ing jail and if you want to talk to anybody you get a court order.” And that was it. We had to go to federal court to get a writ so that Bruce Walters could go see this 12 year old child who had been beaten unconscious and put in jail for walking down the street to protest the fact that blacks couldn’t vote. It was sort of an eye opening experience. There were a dozen fire bombings during that summer. There were three civil rights workers murdered. It was a big experience, a big experience for me.

SRINIVASAN: You lived with an African American family when you were in Mississippi?

LERNER: Yes.

SRINIVASAN: What were some of the concerns involved?
LERNER: The biggest concern that I had and that was impressed on me was to try to avoid having police find out where I was living. So when I went home from the office I would never get driven to their home. When I went home from the COFO office I would never walk the main streets there. What I would do is I would go to the COFO office, which was not far from where they lived, go out the back door and go through a cemetery that opened out. I went through the cemetery and it took me across the street from their house. Then I'd look around until there was no traffic and I'd go across and go into the house. I don't know how successful that was, but there are a number of cases where people who took in not only law students but lawyers got death threats, had their house shot into, had their house fire bombed, that kind of thing. So that was the most important concern. Also, we were told not to travel out of the city of Jackson alone. We always had to go with two people.

SRINIVASAN: What did you like the least about law school?

LERNER: The exams! They were no fun. I think also that once I had a taste of it, I liked least that all of the courses were sort of the same style. There were no clinics. There was no experiential learning. I remember the fall that I came back
from Mississippi and it was my last year at law school. We were in Federal Courts class. Of course I did very, very well in it, and I felt frustrated because it was all taught on a very theoretical level. Federal Courts is a pretty theoretical course and I had just had a two month course in real life about what the courts do and don’t do and how in different sections of the country people treat the law and the courts and the Constitution very differently. I found being in the course, in some ways, to be very frustrating. And being in the other courses was also frustrating. I wanted, by that time, to get out and get into doing something that was meaningful to me. I found the third year pretty frustrating. In fact, once I got the offer to come and work for the civil rights organization and accepted it, I started going to New York where their office was every couple of weeks because I really didn’t want to be here any more. I wanted to be there.

SRINIVASAN: Was law school what you expected it to be?

LERNER: I think I would say yes with two things in mind. One is I’ve never been the kind of person that sort of creates very, very detailed expectations about things that I don’t know about. I was a member of the Pre-law Society Club and the Pre-law Honor Society at Wharton when I was there. Some of the programs that we did involved reading cases and doing case
analysis. Professor Kemp and Professor Jay Gallagher, both of whom were lawyers, were teaching it. I was delighted to be doing that sort of thing. So I had had at least that kind of exposure to that process so that the classroom process was something that I had thought about and expected. Other than that I don’t recall having particular expectations.

SRINIVASAN: What was your favorite class in law school and why?

LERNER: Well, I would have to say that would be a close question. First year was clearly Criminal Law with Professor Amsterdam. That was easy. I liked Constitutional Law a lot. I took Advanced Criminal Procedure with Professor Amsterdam. That was a great class. Labor Law and the Labor Law Seminar that I took with Professor Lesnick were wonderful. Actually, during the seminar, one of my classmates and I drove to Washington to hear the Supreme Court argue a case that we were discussing. As much as I was frustrated by Federal Courts, the law of Federal Courts as it related to civil rights issues was very much in development and in flux. There were a number of cases involving civil rights issues that were in the lower courts and I had worked on some of them. I worked on some because I was a research assistant for Professor Amsterdam for a while on his civil rights work. So the Federal Courts course, despite my frustration with it, was very interesting
because it was at the same time very real and very live for me
because it seemed to me to be an area that was going to
determine where civil rights was going to go and whether
people involved in civil rights were going to get protections
from the law or not.

SRINIVASAN: I have a year book from 1965, the year that you
graduated from law school. Have you seen this recently?

LERNER: I looked at it last May for a program that I was on. I
recognize some of these people.

SRINIVASAN: Do any of them particularly stand out?

LERNER: I see myself. I see my brother Ben there. We actually
lived together for two years while we were in law school
before I got married. On the same page with our pictures is a
picture of a fellow named Fred Lovitch, who is a very close
friend. When we finished law school Fred was one of the
people who went into the Peace Corp to Ethiopia to teach in a
law school. Also on the page is Al Lingelbach, who was a
friend during law school. We sat next to each other through
all of first year. The other people, just in the pages you’ve
opened, are people that I knew that I had more or less contact
with. I actually sat between Peter Latham and Al Lingelbach
in my first year class so I got to know them and became friendly with them.

SRINIVASAN: Let me just hold up the book for a minute.

LERNER: Actually, one of the other things that you didn’t show me from this book is there’s a class picture of our first year class, each section separately, and it does reveal that there were, I think, five or six women only, no minorities. With one exception, all of the males were wearing jackets and ties. That’s another difference now. You can tell when it’s interviewing season here on campus, recruiting season here at the law school, because everybody is in suits. You can tell when it ends because then nobody’s in a suit.

SRINIVASAN: I know you’ve said how much you liked Professor Amsterdam’s Criminal Law class and you did some research for him as well. Did you have a particularly meaningful relationship with any of your other professors?

LERNER: Certainly not anything like the relationship with him because as his research assistant I saw him all the time. In addition to that, when I was in Mississippi he was there frequently. I worked with him there. When I finished law school and went to work for the Law Students Council in New
York, I worked with him on a variety of projects there. Over the years I’ve maintained a relationship with him. As I said, I took two courses with Professor Lesnick and developed some relationship with him. We have a pretty close relationship now, but that developed primarily after law school.

SRINIVASAN: You mentioned that there were six women in your class and no minorities. Had Penn, at some point during your law school career, made a commitment to increase the minority and female population at the law school?

LERNER: I did not know of any such commitment, although I find it difficult to imagine, with Dean Fordham in charge of the law school, and with people like Amsterdam and Bender and Paul and Henkin and John Honnold, Paul Bruden that there wasn’t some discussion about it. Of course, I didn’t attend faculty meetings, and I wasn’t on the faculty listserv, which didn’t exist, so I didn’t know.

SRINIVASAN: Have you kept in touch with Professor Amsterdam over the years?

LERNER: Yes. He teaches at NYU Law School and is still very active in capital punishment defense throughout the country. He still does a great deal of work in that area.
SRINIVASAN: Going back to Mississippi for a minute, what happened to that 12 year old child?

LERNER: I don’t remember other than that he was eventually released.

SRINIVASAN: Now let’s shift to your years as a law clerk. After you graduated from Penn Law School you said that you worked for a year. Can you tell us more about what you did?

LERNER: Sure. The organization that I mentioned, The Law Students Civil Rights Research Council, was started by law students. It was designed so that each year there would be a new director and that director would serve for a year, go on and someone else would do it. The first director was this fellow Howard Slater that I mentioned, and then a fellow named Steve Adler during my last year of law school. Then they asked me if I would be interested in taking over. I was on the board during my last year of law school and they asked me if I’d consider the job. I said I would and I went up and talked to the board members, and I was offered the job. So I moved to New York. In sort of the broadest strokes, the role of the director was to raise money for the budget, organize and coordinate the programs. During the year there were two
principle programs. During the school year the Law Students Council solicited research problems from lawyers who did civil rights work. It was primarily designed, originally, to solicit from lawyers in the South of whom there were pitifully few who would do civil rights work, but who didn’t have resources to do a lot of research and so forth. They’d send the problems, the questions to us, and we would send them out to law students in law schools around the country. So after a couple of years, in addition to that, the students in schools who had gone and worked in those various communities had contacts of their own and developed their own programs and connections. There was less of that work to do, that is parceling out research problems through the national office. So one of the things that I did was to travel around the country to law schools where there were people that wanted to have Law Students Civil Rights Research Council type of organizations and talk to them and help them form organizations, to support those already in existence, to go to local potential foundations and so forth to talk about the organization and its program, encourage them to support the activities at their local law school. Then the Poverty Program had come into being and one of the founders of our organization, a fellow named Richard Granit, a Columbia graduate, was working in the Office of Economic Opportunity, directly with Ed Kahn who was the head of the program. They
had decided as part of the program to fund the creation of legal services organizations around the country. Before that time legal aid was provided in the few places where it existed, mostly in large cities, by a single organization that had one office, a couple of people, and really did virtually nothing in most of those organizations in the way of law. The whole idea of legal services as we knew it before Congress began butchering it was really developed in the first half of the 1960s. Ed Sparer, who was later a professor here and for whom the Sparer Conference and Sparer Fellowships are named, was one of the early people involved in that in New York, in an organization called Mobilization for Youth. We had students from our organization in Mobilization for Youth all the time. My predecessor went to work on the staff there at Mobilization. So the idea that was floated, and I guess it was Richard Granit's idea originally, was that all these legal services organizations modeled after Mobilization for Youth or something like that would need to get lawyers, lots of lawyers, because they were going to be funded by the federal government all over the country. What we wanted to do was we wanted to get people into those organizations who had some demonstrated understanding or commitment of civil rights, of poverty law and of what the goals were of these new kinds of legal services providers for the poor. Who better to do that than the Law Students Civil Rights Research Council. So we
negotiated a contract with the Office of Economic Opportunity, which required us to contact every law school in the United States to tell them about the program, send them information about the program, and offer to send somebody from our organization to their law school to talk about the new legal services, to interview people, to recruit people, take applications, send them back to the national office of the Office of Economic Opportunity. We would then disperse these resumes and interview reports to legal services offices all over the country as they got funded so they could have a pool of talent of people who were really interesting to draw from. That is what we did. One of my very, very close friends, a fellow who had spent the summer when I was in Mississippi in Louisville, Tennessee, an NYU student, came and he ran that program together with me. And we did it - we contacted every law school and some of us probably visited half the law schools in the United States to talk about legal services and to recruit and interview people. That was a big job during the school year, particularly the last spring semester when I was in that job. Then we had to coordinate with lawyers organizations like the National Lawyers Guild, Lawyers Constitutional Defense Committee, Lawyers Committee for Civil Rights. We did a lot of work with the NAACP Legal Defense Fund. We also had to coordinate the recruiting of students to work in our summer program for the summer of 1966 and then
plan the annual end of the year conference at the end of the summer. That’s what I did, and it was a very, very exciting and wonderful experience for me.

**SRINIVASAN:** You worked for a Judge Higgenbothom. How did that come about?

**LEARNER:** When I was with the Law Students Council, the office that we had was an office that we rented from the American Civil Liberties Union in their suite, right down the hall from the offices of the General Council. When I was there, there was a new lawyer, Eleanor Holmes Norton. Ms. Norton had clerked for Judge Higgenbothom. She was a Yale Law graduate. She had clerked for Judge Higgenbothom the year before she came to work for the ACLU. We worked in close proximity. We spent a lot of time talking together. She at some point asked me what I was going to do when the year was up because she knew it was a one year job. I said, “I don’t know, clerk for some judge someplace? Get a job. I don’t know what I’ll do.” She said, “Well, you’re from Philadelphia. You must go and clerk for Judge Higgenbothom. You certainly should apply.” So I did. I applied, had an interview and he offered me the job, and that was it.
SRINIVASAN: Was there any one case in particular that you remember working on as a clerk?

LERNER: There were a couple. One was a habeas corpus case for a state prisoner. He had been arrested by the Philadelphia police. He was a drug addict, and they got him to confess by keeping him. During that time he was in withdrawal and quite sick and they told him that they could get him medication if he would confess. That was one. The judge granted the petition in that case. Another case was one in which the judge and I disagreed on, hotly and briefly. It was over a young man who had refused induction into the military. This was 1967, 1968. It was clear to me that the individual was a conscientious objector in any reasonable definition of that term, but had never, because he didn’t know about it, gone through the hoops, made the applications, and done what he could do. But when it came time to be inducted, his moral beliefs prevented him from doing that. I urged the judge to put him on probation and permit him to do equivalent of conscientious objection alternative service rather than go to jail, and the judge sentenced him to jail. I was very, very upset about that. But he was the judge and I wasn’t, so he got to decide that.

The other case that I remember very vividly was a rather lengthy multiple death, personal injury case in which the
plaintiffs were represented by James E. Beasely, who is now a very senior lawyer. He’s probably in his 70s, and he is one of the most successful plaintiffs personal injury lawyers and an extraordinarily good lawyer. I sat in that case and watched that trial for six weeks. Aside from just watching how a case got presented to a jury and how evidence got presented by lawyers and what arguments were made a so forth, the great experience for me was that Judge Higgenbothom was experienced as a litigator as well. Almost every day we would discuss the case before and after the court, and we’d talk about what evidence was in and what this lawyer had done, what that lawyer hadn’t done. Sometimes he would say, “Now you keep an eye on Mr. Harvey today,” who was one of the defense lawyers, and he was a wonderful lawyer. “He won’t say much but we’ll talk about how effective his few words were at the end.” It was just a wonderful experience for me. I really learned an enormous amount. Again, I said there was no clinical program in law school, so nobody learned about how to try cases. I saw cases tried when I was in Mississippi because I was in court a lot. But there was too much worrying about the substance and about the people to worry about anything related to technique and strategy and tactics and that sort of thing. So when I had that opportunity with Judge Higgenbothom, and he was at heart a teacher, I really
benefited from it and learned a lot. So I remember those experiences a lot.

SRINIVASAN: Did you maintain a relationship with Judge Higgenbothom after you left your clerkship?

LERNER: Yes I did. I spoke with him from time to time, had lunch with him from time to time down in his chambers. He appointed me once or twice to cases where people needed appointed counsel. They were not cases that I was going to make any money on because I was working in a law firm then and getting appointments was not something that the firm was really excited about me doing. There was a kind of loosely organized group of law clerks and research assistants that grew over the years to a fairly large group, and I was always involved with them and went to dinners we had for the judge and other kinds of social events. I also asked his advice and counsel when I considered leaving the full-time practice and to seek a teaching position. He was very helpful, took some time and talked about what kinds of things I needed to consider.

SRINIVASAN: Why did you decide to practice law in Philadelphia?
LERNER: Well, I was clerk for Judge Higgenbothom in Philadelphia. I was from Philadelphia. My family was here. My older brother Ben had come back to Philadelphia and was practicing here. Having clerked for two years in the Federal District Court, I knew all the players. I knew the judges in the federal court, I knew the lawyers who tried cases in the federal court. My then wife's family was also from Philadelphia. It just seemed like the thing to do. Once I came back and was clerking for Judge Higgenbothom, I didn't consider leaving and going to any of the other cities that I'd been in.

SRINIVASAN: And in 1968 you started working for Cohen, Shapiro in Philadelphia. When you first started to practice law, what kinds of matters did you handle?

LERNER: When I first started I was in their Corporate and Securities department. I hadn't planned to go to work for a law firm. I had a job lined up with Community Legal Services in Philadelphia, which is where I was going to go. Then as a result of some personal family health issues and some financial questions at Community Legal Services, they weren't so sure about the job and paying me. So I found myself, in the late spring of 1968, having to consider a job in a law firm, which I'd never done. I'd never interviewed. It wasn't
something I was really thinking about. Judge Higgenbothom, again, was really very, very helpful with that. I ended up at Cohen, Shapiro, but they were looking for somebody to do corporate and securities work there. Their practice was growing rapidly. They were a small firm of about 20 or so lawyers, so they hadn't done the kind of regular interviewing that even then larger law firms did, and they found themselves in need of somebody. I came with a pretty good recommendation from Judge Higgenbothom, so I started doing proxy statements and things like that, which was fairly strange. Then they offered to train me. I started working in that area, but I was also involved in doing pro bono cases right from the beginning because the firm as a whole and the leaders of the firm, were very supportive of community. Indeed, one of the reasons Judge Higgenbothom recommended that I apply to that firm was that his knowledge of and relationship with Silvan Cohen and the other leaders of the firm were such that he told me that he thought a person with my inclinations could make a career at a law firm like that. So they let me do pro bono work right from the beginning. I remember getting involved with Professor Rudofsky who was not a professor then. My brother Ben and some other prominent criminal defense lawyers in Philadelphia were representing some members of the Black Panther party in a variety of things. They were involved with the police in Philadelphia. So I did a variety of those kinds
of pro bono things from the earliest time I was with Cohen, Shapiro.

SRINIVASAN: Do you remember the first time you appeared in court, and how would you compare the preparation for litigation that you received at Penn Law with the preparation that today's Penn Law student receives?

LERNER: The first case that I tried was in the Bronx County Landlord Tenant Court. Actually, Ed Sparrer asked me to represent a couple in that case. The people were active in the Tenants Rights Organization and probably because of that the landlord sought to evict them. They were trying to organize tenants in their building. It was a very bizarre experience. I had to find my way to the Bronx County Landlord Tenant Court from where I lived in Manhattan. I managed that. It was an enormous courtroom just filled with people. Taped or tacked to the door was a piece of paper that read from the top of the door down almost to the floor, just listing cases one after the other that were on the list for that day. I would say there must have been more than 50. My case was the only case in which there was private counsel for the tenant. All the landlords were represented. The cases were divided up between no more than half a dozen landlord lawyers. Some of the tenants who were welfare recipients but in private housing
were represented by Legal Aid in New York. But for the most part, the tenants were unrepresented and I was the only "private" counsel. The case was put on the list last so I could sit around and wait all day. It got called early, around noon or early in the afternoon. I hadn't eaten because I knew, I was so anxious, that if I'd eaten I probably would have thrown up instead of being able to try the case.

Training or preparation to do litigation here at Penn in those days was close to zero. The only courses that one had were all taught in the same kind of Socratic method. Professor Levin, a wonderful teacher, tried to make some sort of simulation engagement in the Evidence Course. Then there's a course called Trial of an Issue of Fact. It was a one credit course and it was given at night in Room 100. It was filled with people. The students didn't do very much participation. Mostly somebody would demonstrate something and some judge would come in and there'd be some discussion of it. There was hardly any experiential opportunity at all.

Going back to my first courtroom experience, I was so nervous that I was unable to coordinate standing up and sitting down. So I would be sitting here at the table, somebody would say something and I would decide there was an objection I should make that I remembered from Professor Levin's class. I would say, "Objection." The judge would say, "What's your basis?" And I would start reciting and he'd
go like this, telling me that I should stand up when I address the court. So I would stand up and I’d say why I had an objection. He’d ask the other lawyer what he thought, and then he’d rule. I remained standing. So when we went back to the other lawyer questioning he’d say, “Psst, you can sit down now.” At some point not too far into the trial, the husband sitting next to me and the wife sitting on the first row, we had two witnesses, there were a couple of other spectators, some lawyers or others who had stayed around to watch this spectacle of an actual private lawyer defending an actual case with a trial. It was the only case that actually went to trial that morning of all the cases on the list. Eventually the judge said to me, “Counselor, if you’ll feel better, why don’t you just stand up through the whole proceeding. You’ll be more comfortable.” And this was as embarrassing as having trouble getting up and down. Also, after each witness and after each direct examination and cross examination, the judge would recess the case, we’d go into chambers, and he’d tell me how I ought to have my client settle, because if they didn’t settle and he found for the landlord, he was going to give them no more than 30 days to get out of that apartment. The judge also didn’t think they could do so well finding another place in 30 days. Whereas, if we made an agreement, he thought for sure the landlord would agree to 90 days and they’d be much better off. Well, my clients were not about to
settle. So each time I'd have to say no, "No, judge, we're not settling." Then we went back to the trial. Eventually the case was over and the judge found in our favor because there really wasn't any evidence.

In fact, I learned something that I'll never forget because I saw it in action. The lawyer on the other side asked a question that he didn't know the answer to and the wrong answer hurt him. He asked it of the third party witness, the people that lived next door to our client. He got blown away by it, the details aren't important. I learned better than I could ever have learned except perhaps if it happened to me personally about not doing that. The judge found in our favor. When he was doing that he also shook his finger in the direction of my clients and told them he didn't want any more noise out of them, and the next time they got back here it wouldn't be so easy for them. That was it. My clients were just overwhelmed, just so pleased and so appreciative. It was a wonderful experience for me. Fortunately it was not video taped and so it's not going to be held against me unless I talk about it and answer questions like this about it. After the case was over I went outside and threw up.

SRINIVASAN: What do you remember about the unrest in the cities and the assassinations of Martin Luther King, Jr. and Robert Kennedy?
LERNER: I remember how depressing both of those events were, and how my politics and views at the time were that I didn't see any reason why people shouldn't have riots in the city. Things were just terrible and they weren't getting better. Establishment was mostly about the business of trying to see how to put a lid on it and keep things under control and make as little change as possible. The police in Philadelphia were aggressively involved in arresting and persecuting and beating up on minorities and anti-war people and anybody who got out of line. We had a very, very difficulty, nasty, troublesome police department here in Philadelphia at the time.

I remember two events that involved me personally. One was in September or October of 1968 when I'd just started practice. I hadn't been through the process of getting admitted. I passed the bar exam and had been admitted to practice in New York when I went there, but I hadn't been admitted to practice in Philadelphia. It wasn't really urgent, but I had a pro bono case that I was doing. At the time there was a well-known judge in Philadelphia, now deceased, who liked to do all the swearing ins. They were done in groups at the time. You'd get sworn in, go down to court and be in a big group of people, have a big ceremony. But I hadn't done that for some reason. I don't remember why. Now it's time for me to try a case. So I called the clerk's
office and they said, "You have to call Judge Weinraut and he'll arrange to swear you in because he does that." My brother, who was already admitted, was going to move my admission. I had all the certifications. Judge Weinraut had said he'd see us right after he came back from lunch, before court started for him in the afternoon. That would allow me to get sworn in and then go to the courtroom where I was going to try this case. My brother did the introduction, moved my admission, and one of the things he said in the course of moving my admission was that I'd clerked for the Honorable Higgenbothom in the Federal Court. The judge, after he swore me in and welcomed me to the bar, told me I had a fine record, I'd gone to a fine law school, and then said, "And I know Leon Higgenbothom." He didn't say "Judge Higgenbothom" he said "I know Leon Higgenbothom." He said, "He's a fine guy, he's a good judge, but we disagree about a lot of things." He said, "You've been on this bench as long as I have and you see them come and go, come in and go out, all these crimes, all these criminals, you get to realize there really is something different between them and us." I turned around and walked out, as did my brother. It was shocking enough that he believed that as a judge. He's supposed to administer justice equally. It was doubly shocking that he would say it to anybody in 1968. And it was unbelievable that he would say it to me, a newly minted lawyer, beginning practice who'd just
clerked for Judge Higgenbothom. It was astounding! So I remember that.

The other thing I remember about that year was during that summer while I was still clerking for Judge Higgenbothom, a group of business and other political leaders in Philadelphia had gotten together and decided that they really had to do something. Stuart Rouch from the PSFS, Mr. Bond from Wannamakers, political leaders, even industrialists, bankers, the whole nine yards, and a number of judges. They invited Judge Higgenbothom to participate, and they had meetings in the boardroom of the PSFS building at 12th and Market. Judge Higgenbothom invited me to come to the meetings with him. The first thing I remember is being in the room. I'd never been in a room like that. The board room was like something out of the movies. The table was bigger than a basketball court and it had windows all around and a patio, and you could see it was the tallest building other than city hall. You could see across the Atlantic Ocean from their windows. And the people in the room were people whose names I might have read of in the newspaper once or twice, but no one that I ever got close to. I was sitting behind them, against the wall, and they were sitting around the table having these discussions and talking about what to do and about the schools and about jobs and about the police and things like that. I was really thinking "Wow, there's something really going on here in this
room" and because I clerked for Judge Higgenbothom I could be hear and see it, and yes, this was really needed. I mean, all of these people controlled all this money and all these jobs, and everything that went on in the establishment. I was naïve. Things were either establishment or not. They were getting together and there were some people who were really going to see that they moved in the right direction. That seemed to be good. At one point there was a recess and I was standing next to the judge, who was a very big man, and he was looking out the window. I said to him essentially, "Up here on the 33rd floor it doesn't look so bad." We were looking North, towards North Philadelphia. It didn't look so bad. "Maybe that's the problem, people up here on the 33rd floor are always looking out." He said to me, "You know, if you could see down there on the streets you'd see that not only are there lots of lawyers and judges and bankers and business people up here, but there are lots of lawyers and bankers and business leaders and judges potentially inside all those black kids down there. If we up here don't do something about that, then we're never going to know and they're never going to know about all the lawyers and bankers and judges and business leaders that we don't have." It was something that has stayed with me since then.
SRINIVASAN: You eventually chaired Cohen, Shapiro's Ethics Committee. How did that come about and what did it entail?

LERNER: I don't remember how it came about except that somebody on the Executive Committee asked me if I would do that. I don't remember whether they had had the Committee before or not. So I'm sorry, I can't answer that question. But I did. The idea was that there would be a committee and we would review the firm's policies and practices to see that we didn't have any policy or practices in place that would sort of help us violate the rules, but rather they'd be in place to help us obey the rules. In addition, we would also be available as consultants. If someone had an ethics problem and they wanted to consult with somebody they'd come to our committee. We'd talk it through with them and make a recommendation about what they should do. It would provide a couple of things. One, it would provide some insulation between the lawyer and the client because somebody else in the firm would say, 'Here's what to do.' The other thing is it would involve the lawyers working with clients in the process of thinking through things in a way that is required by the rules of professional conduct. That's what we did. We met every couple of weeks, but we also would field questions whenever they came up. It got so that there were lawyers from time to time who really wanted to say no to clients and wanted to use us as sort of
insulation, so that we would tell them, "Geez, you really can't do that" and they wouldn't have to say no to a client that they had perhaps a very, very close relationship with.

SRINIVASAN: You specialized in labor and employment matters at Cohen and Shapiro. Can you tell us about some of the more interesting cases that you handled?

LERNER: The first case that I ever handled of that nature was a very interesting case. It was a case against a large company, a group of sheet metal contractors and the sheet metal workers union. It was the first employment related case that I'd gotten involved with after I came with the firm because, as I mentioned, I started doing corporate and securities work and when that was not successful or happy for me, I moved into litigation. A gentleman by the name of Ned Wolfe, who was then the Executive Director of the Philadelphia chapter of the Lawyers Committee for Civil Rights and the Law, which has evolved into what is now the Public Interest Law Center of Philadelphia, came to me. I had met Ned when I was in law school working for Professor Amsterdam. He and Amsterdam were good friends. He was representing some people involved in some demonstration and he needed some help handling this case. Professor Amsterdam had asked me if I'd be willing to work with him, and I did. There was a big incident in Chester,
Pennsylvania. There were a lot of protest marches when I was in law school over segregation of the schools. A lot of people got arrested and beaten up. It was pretty vile, very much like the South. Very much like my experience. Professor Amsterdam organized and led a group of students who’d gotten involved representing the demonstrators there, and I was very much involved in it. I think Ned Wolfe did some work on that case too, so I’d known him from law school. Ned, unfortunately, was quite ill and died shortly thereafter of cancer. He’d started this case. It had been dismissed to the District Court. He had taken it to the Court of Appeals and it had been reversed and sent back for trial. It was one of the earliest employment discrimination cases under Title VII, and it was the first one in the Philadelphia area against a construction trade union. Construction trade unions in those days were clearly segregated. There were no blacks in the Bricklayers Union, there were no blacks in the Plumbers Union and the Sheet Metal Workers and all those others. These fellows had come to Ned and he was representing them, but his illness was advancing and he couldn’t do it, and he asked me if I would take over this case. So I asked the firm, and they said yes. So I began representing this class. It was a big case and eventually the case settled with a number of changes made in the way they handled their apprenticeship program, in the way they handled their referral hall, in the way that the
employers related to the referral hall. We created some goals for minority hiring and so forth. So that was an important case for me in practice.

I did a lot of work representing people who were opposed to the war. There were a lot of those that were very significant for me, though not in the labor area. And then over the years I handled a number of cases representing employers in employment cases, as well as individuals. I represented a TV station here. I represented an airline in a case. They all had some particular wrinkle in them, whether it's a factual wrinkle or some legal wrinkle. The case that I handled for one of the airlines was a foreign airline that went to the Court of Appeals two or three times, it had certiorari petitions involving the relationship of Title VII to certain treaties that the United States had with the country involved in this case. So there were lots of interesting legal matters. I think I tried the first age discrimination case that was tried to a jury in the Eastern District of Pennsylvania.

I also tried one of the first really significant cases of a union member successfully suing his trade union here in Philadelphia because it excluded him from the political process and prevented him from getting work. I unsuccessfully tried a case involving a foreign student who'd come here, had a nervous breakdown and skyjacked an airplane. It was a very strange and unpleasant incident, and it was a very difficult case for me because the client, the young man, was clearly psychotic all the
time I was trying to represent him. It was almost impossible to communicate with him. He was from Ethiopia. His family was there and he was here, and it was really hard getting the case together.

There were two cases that got the most attention and were probably two of my most difficult cases. One was an antitrust and securities case that I worked on for a client of ours in New York where I ended up spending basically all of the spring of 1978 in New York and not getting to see my wife and child because they were here.

And then the last case that I tried just before I came to teach was a sexual harassment case. I represented a former associate in one of the major law firms in town against a senior partner. It was a very well-known, high profile case against the senior partner and the law firm. That was an extraordinary experience because it was supposed to be tried earlier in the year. I was supposed to be spending the summer between when I left practice and came to teach in Europe with my wife and daughter. My wife had business and my daughter, who was 16 or so, went so she could travel with my wife, and I was going to join them there. But the case was moved back, so they were there and I was here. In addition to that, during that time, my mother was quite ill with cancer and eventually actually died during the course of the trial. So it was a horrible experience, but there was a very, very gratifying result in the case.
SRINIVASAN: Now, let's shift to your years as a professor. When did you first know that you had an interest in teaching law?

LERNER: I'm going to answer it this way: I did some teaching of a kind when I was in practice. Three kinds. One is that I got involved sometime in the mid-1970s in teaching for the National Institute for Trial Advocacy. I did trial advocacy training programs for them regionally and in the national program. I eventually created a program like that in our law firm and then worked with others who did similar training programs in other law firms. I did a lot of that. I really enjoyed working with and training associates when I was the Chair of the Labor Department at Cohen, Shapiro.

One semester I taught at Temple when the person who normally taught it was on leave or something. I participated in continuing legal education programs and in Bar Association programs. I was active in the American Bar Association's Labor and Employment Law Section, and I really enjoyed doing that work. I understood doing the intellectual work, I understood doing the teaching part of it. But for a variety of reasons of a personal nature, it didn't click in my head that if I enjoyed teaching so much maybe I should be a teacher. I guess sometime around 1990, 1991 I finally said,
“Yeah, I really enjoy that. That’s what I like most about this practice”.

And in addition to that, what I didn’t like about practice, for the most part, were two things. One is that it was so litigious. It was all about fighting in litigation. In the labor employment area it’s serious fighting. There are lots of personal, emotional issues, reputational issues that really get involved and make it very difficult to resolve those amicably. The other thing was that frequently I’d be involved in a case and some issue would kind of tweak my interest, but it didn’t matter because if it wasn’t an issue that was key to the case, I couldn’t spend any time worrying about it. I had to get my client as efficiently as I could from point A to point B. And then there were other clients who wanted the same. So I didn’t get a chance to do any of that. A couple of times I tried doing some research projects because I was interested, and the press of cases and the press of the business of the law firm, running the department, doing other things, would just get in the way and I couldn’t do it. I finally got all those things together and said, “Gee, I like to teach and it’s what I like most. It gives me an opportunity to be less involved with the Third World War and guerilla combat, and more opportunity to do research and think about things that are really interesting to me.” So I called and had lunch with Professor Lesnick and talked to him. I
called Professor Amsterdam and talked to him. I talked to Professor Burbank here over lunch because I knew him. And then I started thinking about how to approach the question of making a move.

SRINIVASAN: What was the first class you taught at Penn?

LERNER: The first class I taught was a Civil Practice Clinic. That's all I taught the first semester.

SRINIVASAN: What did you learn about teaching during your first year as a full-time professor?

LERNER: I learned lots of things. One of the things I'd say is that no matter how well I knew the material, the subject matter, the issues that I wanted to teach, that was only a part of teaching and getting it across to students so that students would learn it. The students learning and my teaching had to be connected up and it was my responsibility to figure out how to do that. I was really lucky because Professor Frenkel, who is the director of the clinical program, and the other people on the faculty were experienced and helpful and supportive. So I learned about connecting things up. I learned about the kinds of examples that could be useful. I hopefully learned about focusing points I would
make in contexts that help them become clear to students. I learned better how to listen to students and their questions and concerns. When I did other kinds of things it was mostly my talking, lecturing about something, commenting or critiquing somebody’s performance, but not the kind of interactive learning that you do in law school class.

SRINIVASAN: How has the clinical program changed over time since you’ve been here at Penn Law?

LERNER: Well, the faculty has changed due to the unfortunate circumstance that some people on the clinical faculty don’t have renewable contracts and have to leave. So people who were really good teachers have had to leave and we have new people. They’re really good, but the personalities have changed and therefore the teaching styles have changed. The supervision styles have also changed. That’s one thing that’s changed.

The program has changed because we have new courses. We now have an Advanced Civil Practice Clinic which didn’t exist when I came. We now have Professor Rulli teaching Legislative Clinic which didn’t exist before. So we have more offerings. The Mediation Clinic has expanded.

When I came there was a part-time lawyer/teacher who taught the Small Business Clinic. Then we hired Professor Wender as
a full-time member of the faculty. So for 4½ years we had a full-time, regular person teaching that course. Of course, it did really well. The student interest grew. And then she left because her contract wasn’t renewed. She went back into practice and we now have someone teaching it part-time and student interest is falling.

We also got into teaching other, not purely clinical courses. We all created the Public Interest Lawyering Course, which we taught together last fall. I’ve gotten, since I came here, to do two other kinds of teaching. That is, Professor Stern and I created a course which is sort of a hybrid standard and clinical course called Law and Monitoring in the Workplace, which is taught around a series of problems and simulations in which the students in the class take roles of lawyers having to solve problems, not just figure out what the rule of law is. There’s a lot of work done with simulations and role plays, things that I learned about as a clinical teacher. And then this semester, I’m teaching Employment Discrimination as a regular classroom course.

**Srinivasan:** What aspects of the clinical program are you most proud of?

**Lerner:** I think two things. First, the relationships and the teaching that goes on between the faculty and the students is
a tremendously valuable experience. I certainly wish that I'd had the opportunity when I was in law school to take clinical courses. I think it prepares students to be lawyers better than any other course, in the real experiences they have in law school, and also to be reflective about themselves in their role as lawyers, to think about things like professionalism and ethics. And to think about themselves as human beings relating to clients and other people all the time. That aspect of a live clinic, it seems to me, is absolutely the greatest contribution that we can make to our students and to others that they may come in contact with, whether they're clients or other lawyers. That seems to me the thing that is most value that we give here. And along with that we provide legal services for people who would not otherwise have it. We are the lawyer of last resort for almost everybody who picks up the phone and calls us or comes through the door. And while a lot of cases that we've handled are run of the mill, we've done some significant legal development in cases, and we've helped people and we've really changed people's lives here. It doesn't happen every day. It may not happen every semester. But I know - and everyone of us on the faculty here now and before - can identify some case where the students here in this clinic really helped changed somebody's life.
SRINIVASAN: How would you describe your teaching style and who or what do you think has influenced your teaching style the most?

LERNER: I would say that's a question you ought to ask the buyers. I'm only the seller on that one. I try to listen well. I try to prepare well. I try to keep the progress focused. I try to respond to students. I hope I'm not the only one who knows about it. I try to be more relaxed, less formal. I'm not sure that's an answer to your question. I try to be engaged with the students and to invite them and to encourage them to engage with me and to engage with the material, not only the surface of the material but what's underlying it, particularly where there are questions of professionalism involved.

My influences are the people that I had as professors that I thought was good such as Professors Levin, Amsterdam, Lesnick, Honnold and Leeds. I think that Amsterdam and Levin and Lesnick were the people who probably had the most influence on me as teachers. But I think I've learned from everybody I've watched, from people I've worked with, from Professor Frenkel, from people I've worked with even in continuing education.

SRINIVASAN: What advice would you give to a law student today?
LERNER: I generally say that I'm not too enthused about the role of advise giver. What I really try to help law students do is to think about themselves and what they think is important to them in their lives, not only now as law students but as lawyers, as members of their community, as members of their family, and to think about how they can create lives for themselves that satisfy their needs as professionals, as individuals, as members of their family and community, and that they can be contributing participants in their families, in their communities, in the legal profession. And I certainly do put forward my ideas about justice and about equality and about the responsibility of lawyers. I guess if I had to squeeze it down into something like advice, I would say, try to keep all those things in the forefront of your mind and in focus and in balance and not just lose yourself in the kind of life that a law practice can, and so often does generate, where you work from midnight to midnight, and all you think about is winning your case or closing the deal, and the rest of being a human being and a person and a member of a family and a member of a community and a member of a profession get lost.

SRINIVASAN: What do you consider to be your most significant contribution to the Penn Law Community?
LERNER: You know what? I never thought about that question. That's a tough question. I don't know how to answer that question. I think that I do a good job as a teacher, which is, for me, the role of a supervisor, of a coach, of a mentor, of a sounding board. Since I think that the business of this institution is primarily the business of educating the students here to be lawyers, members of the community, leaders, human beings, adults, that whatever I can contribute in that regard, I think, is the most important contribution I can make.

SRINIVASAN: What do you consider to be the most significant article that you've published to date?

LERNER: It's a tough question. When you say significant article, is that one that's been read by the most people or the one that is most novel? It's hard to say. I published one long review article. I just published this video and manual on interviewing. And when I was in practice I had two short articles, not scholarly articles, in the Law Alumni Journal. One was about lifestyle and part-time work for lawyers, which I think was important because when I look back - not that anyone every read it - but it was important because it says something about lawyers and their entitlement to be human beings, and the fact that just because law firms are in
the business to make money and have lots of people and men who work there for 1000s of hours a year, it doesn’t mean that that’s necessary, either for the firm to be successful, and certainly not for the individual to be successful. So I think that was important.

I like the piece that I did on avoiding sexual harassment in the workplace. In fact, I wrote it and published right before the Supreme Court decided the Elif and Farrager cases which essentially say that that’s what employers ought to be doing. I’d been coaching and consulting law firms, not only the one that I was in but others, and encouraging that kind of process and behavior for a number of years. So in that regard it is something that I was a little bit ahead of the Supreme Court. I like that.

SRINIVASAN: What do you consider to be your greatest accomplishment in life thus far, and what can we look for in the future from Alan Lerner?

LERNER: I think my kids are doing fine and they think that they are doing fine and have a very optimistic view of themselves and their lives, and a very positive view of their role as adults in their community and in their families. I think that’s a big thing. I think the fact that I have a wonderful relationship with my wife and with the people that I work with
here in the clinic, and with students. I also enjoy my life, and I think that I make a contribution, whether to it’s this institution or the students or the community. They’re important things to me. Hard to say anything more about that.

And in terms of what to look forward to? Let’s not put any pressure on me here.

**SRINIVASAN:** Professional baseball, perhaps?

**LERNER:** Well, I go to professional baseball games as frequently as I can, but I sit in the stands where it’s safe. I would hope that I can do more of the same. I have some ideas about law school teaching, particularly about teaching professionalism, professional responsibility, I’d like to do some work on. Someday I’d like to perhaps have happy grandchildren.

**SRINIVASAN:** What are those ideas about professional responsibility?

**LERNER:** I’ll just give you a little short statement because it’s something I’ve just sort of stepped into lightly and just started researching. I think that if we look at the way law school is taught generally, the Socratic method, we’re talking about theory and doctrinal rule orientation, the answers are
all theoretical or rule oriented and adversarial or advocacy oriented. They’re the two pillars on which legal education is built: what is the theory, what is the rule, what is the argument you can make to get what your client wants? If you look at those things and then you look separately at what professional responsibility entail, which I think includes two things that are crucial. One is normative thinking. What’s the right thing to do? What’s the right thing to do for me as a person? And a step beyond that is problem solving because I do have responsibility as a lawyer to represent my client. But sometimes if I really look at the normative questions, there are things that my client wants me to do that might be lawful, might be “ethical”, not violate a rule, but are uncomfortable for me. So problem solving, then, becomes an important thing. Well if you look at cognitive psychology and the way the brain works, and the way people learn and use learning, the way we teach in law school, I think, has a tendency to get them away from, not to, normative thinking and problem solving. I think that’s going to lead to less ethical, less responsible behavior rather than more.

SRINIVASAN: Thank you, Professor Lerner.

LERNER: You’re welcome.