Interview Transcript: Clinton Bamberger  
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Lieberman: Good afternoon I am Erik Lieberman a second year student at the University of Pennsylvania Law School and today we are joined by Clinton Bamberger, the former dean of the Columbus School of Law at Catholic University, the former assistant attorney general of the State of Maryland and the first director of the Legal Services Program at the Office of Economic Opportunity. Mr Bamberger became an honorary fellow of the University of Pennsylvania in 1981. Thanks for joining us today.

Bamberger: I should've worn a blue shirt...right. Oh it is blue!

Lieberman: When and where were you born?

Bamberger: In Baltimore in, would you believe it 1926!

Lieberman: What were your parents occupations?

Bamberger: Good lord the last time I was asked this was when I had some credit card transaction, they always want to know my mother's maiden name. My father was an accountant but he really got his college degree and his accounting degree after I was born. My mother finished secondary school, she didn't go to college. Her father was an immigrant from Sicily, if you would believe it, if this was in color it would be hard to believe. My paternal grandfather was a German grocer, a stoic German grocer.

Lieberman: Do you have any siblings?

Bamberger: Yes, two, both younger, sister and brother.

Lieberman: What career paths did they pursue?

Bamberger: Well my sister was a teacher and a preschool proprietor I guess you'd say. My brother was in a Jesuit seminary but he's about 6'8" and weighs about 350 pounds and I think they thought it was going to cost too much to clothe him and I think he also began to understand the vows of poverty chastity and obedience so he left before he was ordained and he lives in Phoenixville Pennsylvania and he's in sales.

Lieberman: Was the Bamberger household a strict household growing up?

Bamberger: Well, when I think of all the things I got away with I'd say no, no I don't think so.

Lieberman: Was the importance of education and scholarship emphasized by your parents, was reading or music encouraged at home?
Bamberger: Well, yes, I mean my mother being of Italian ancestry played the Metropolitan Opera every Saturday. But not... I think my true answer to your question is not to a great degree although I do remember that my father and mother I think were conscious of sort of their social status, that they weren’t quite... mind you this was in the 30's and the 40's when there was a great deal of pressure to be a white Anglo Saxon and I can remember for instance, my father bought some course on pronunciation and I remember learning to say “forred” you didn’t say “forehead”, you said “forred” which seemed to me strange, but I do remember my father and mother sort of being concerned with that. And reading yes, I mean particularly I had an eccentric grandmother who would go to secondhand bookstores and bring me books she’d bought for ten cents.

Lieberman: Was your family politically active?

Bamberger: No...no.

Lieberman: Were you conscious of political issues at a young age?

Bamberger: Well I was conscious of them but probably in sort of negative ways, I mean...I was thinking this is more psychoanalysis than I’ve had for a very long time! See I come out of German and Italian Roman Catholic stock and in that era, the Thirties, Forties, Fifties that was pretty conservative because they were essentially an immigrant population excluded from a lot of jobs and from education. When I went to law school Catholics didn’t apply to Ivy schools because you knew they had quotas, I think they admitted a few more Catholics than Jews so we always felt a little better about that! But they had pretty strict quotas. I remember that my grandfather used to listen to Father Coughlin, now that doesn’t mean anything to you but Father Coughlin was a very right wing Roman Catholic priest in Detroit, I think in Detroit, who had a large national radio audience and he was very conservative, I think he was pro-Nazi, I think he was anti-Semitic but I can remember my grandfather, the stoic German grocer who I probably never heard say ten words in his life listening to Father Coughlin every Sunday afternoon. I don’t remember my parents being...now they all voted Democratic, they were all Roosevelt Democrats, there was no inter-marriage with Republicans, we didn’t tolerate that. But they were essentially conservative, Baltimore was a very segregated town. Baltimore was a town segregated in all kinds of ways, not just Jews and Blacks but Germans and Czechs and Eastern Europeans lived in one part of the city and Mediterranean people lived in another part of the city and Jews lived in another part of the city and blacks lived in another part of the city. So I grew up in a very segregated society. I grew up and went to a church, a Roman Catholic church where the last three pews, this is into the Fifties, on the right had little signs on them that said colored. And there was a swimming pool and this was a neighborhood that was immediately adjacent to a Jewish neighborhood, this swimming pool, not a public but a private for profit, had a sign that said approved gentiles only. Now mind you that didn’t allow all gentiles in just approved gentiles in. But the only gentiles they approved were any gentile they just disapproved any non-gentile and they didn’t even think about blacks then....one didn’t even think about that.

Lieberman: So you became aware of social injustice in America at a fairly young age?

Bamberger: I think so, yes. Well I became much more aware of it I think when I was in
college that was just before the Second World War, actually it was right after the war. There was a beginning then of a social conscience about racial issues and particularly in some parts of the Roman Catholic community, the church was always had strong social gospels that they’ve kept secret until some time in the 40's or the 50's.

Lieberman: How did the Great Depression affect your family?

Bamberger: Well I don’t remember much except that I remember money was very tight in our family. I remember for instance you had to take ten cents to school to get Jill a half pint or a pint of milk and I remember that my parents were sort of concerned about whether they had the dime every day. And I guess it was kind of a looming dire possibility so you know you always sort of conscious that might happen but not much more than that.

Lieberman: Where did you attend high school?

Bamberger: I’m a product of Jesuit education, I went to a Jesuit high school in Baltimore and I went to a Jesuit College in Baltimore after the war and I went to a Jesuit Law School in Washington.

Lieberman: Did you have any favorite subjects in high school?

Bamberger: Lunch...No I was a very good student the first year and not after that which was a very bad pattern because then you always got chastised more severely because “You can do better, why don’t you.” It’s so much better to start off weak and then keep getting stronger, I started off strong and then got weaker. And mind you this was a time I started high school... doctor do I get a box of Kleenex while I’m sitting here for this? In the Forties and the war was coming and I wasn’t that much interested in staying in school as I was in going off to the war.

Lieberman: So did you work during high school?

Bamberger: Well I worked from the time I was ten in my grandfather’s grocery store delivering groceries. I know the back doors of every fine residence in downtown Baltimore because his store was in the middle of the city at a time when that was where the business leaders of the city lived in the downtown and they all had tradesman’s entrances, and I know where they all are.

Lieberman: How did the Second World War affect your high school and college experience?

Bamberger: Well what I remember are terrible prejudices, and I really do mean prejudices against both Germans and Japanese and although they were doing evil things the sort of tales that you were told at least with respect to the Japanese I think but maybe not so but the tales that you were told I think were worse than the realities as bad as the reality was and I remember once we had a teacher of Greek who was part Oriental and part European and we treated him miserably we... I associated with the worst people in school I guess but we treated him...mocked him as being Japanese. Unless you lived through those days you don’t know how bad they were in the
First World War in Baltimore, Baltimore had a large German immigrant population and so there was a street in the middle of downtown called German street and in the First World War that name was changed to Redwood street and German language wasn’t taught in schools then so I mean unless you sort of lived through those wars you don’t realize how the kind of public manifestations of hatred that existed in the cities. I was only in the Second World War for a year because I enlisted in the Air Corps and suddenly they found out as the war was winding down they didn’t need any more pilots, I enlisted to be a pilot, a navigator or a bombardier and they decided they didn’t need them... after the war ended we were not yet eligible for discharge cause we hadn’t been in long enough, we hadn’t been in combat, we hadn’t been overseas. They discharged us with the intention of drafting us back in, but if you discharge 30,000 people, most of whom came from literate families, the political pressure was such that you’re never going to draft them back and so we weren’t.

Lieberman: You attended Loyola College in Baltimore, graduating in 1949. What colleges did you consider and why did you ultimately select Loyola?

Bamberger: I think I considered Georgetown but on the day that the principal of the school was going to recommend me for Georgetown I hooked school... the first day of school I ever hooked in my life! I used to have to walk or hitchhike to school and I went by a wonderful lake and it was a spring day and I couldn’t resist. When I got on the bridge over the lake I took my clothes off and dove in the water and stayed there. I came home my mother said how was school? I said it was it really good today, I really enjoyed it. Well what did you do today? Well we had this subject and.... Did you? And then she told me the principal had gone to look for me to talk to me about filling out this recommendation for Georgetown and he couldn’t find me so he called my mother. So I started Loyola and then I had actually enlisted but they weren’t calling us up for a while and I was just up there for eight or nine months at Loyola and then when I came back from the war I just decided I wanted to stay home although I hadn’t really been out of the United States and there wasn’t a sort of culture or tradition in my family of going away to college and there wasn’t a tradition... I mean I don’t think I ever heard anybody in my family talking about Ivy League, I thought that was some softball league or something. So there wasn’t a culture of that, the culture was “get a college education” and my father had gone to Loyola, this Jesuit school and it was also culture then in the Roman Catholic church then that these schools that weren’t Catholic were these beds of atheism. You’d lose your faith and virginity, not necessarily in that order but both pretty quickly. You are talking about an immigrant population who were mostly Irish, at least on the East Coast and in Baltimore many were Irish, and led by Irish who had a great ghetto mentality and you had schools that counted the number of Catholics they had. When I went to the law firm first they thought they were hiring their first Jew which they didn’t really want to do and when they decided I wasn’t a Jew they hired me. And they told me... and now I must tell you at this point one I’m not under oath and secondly one of the things that happens to you as you go through life is I sometimes remember things I should’ve when something happened and then I remember I think I said them and then I remember I said them, so I don’t exactly know what the truth is about all these little things, but my story about that is that shortly after I was at the firm somehow this subject came up, there were no Jews at the firm no women, we were all white males. ...and somebody said you should be perfectly comfortable there are two other Catholics here, so they were counting them!
Lieberman: You attended Georgetown University Law Center, graduating in 1951. Why did you decide to attend law school?

Bamberger: Do I have to tell the truth? Well because I knew didn’t want to sell... business didn’t appeal to me, I didn’t know much about it, but it just didn’t appeal to me and law appealed to me because it was sort of nonrestrictive, sort of inclusive. I knew one lawyer who was a class-mate of my father’s I didn’t know him very well, I think he had an individual practice but I didn’t really know much about the law. I went to law school for the same reason that most law students who will tell the truth went... because they didn’t know exactly what they wanted to do or they didn’t get in to medical school.

Lieberman: Did you consider any other schools?

Bamberger: I considered medical school and I didn’t get in to medical school.

Lieberman: Did you enter law school with intentions of practicing public interest law?

Bamberger: What was that? There wasn’t anything called public interest law in 1949, absolutely nothing, the word didn’t even exist. You can read an article in the Yale Law Review written in I think the late sixties that defines what public interest lawyering is because it wasn’t a word. No, it was far from my mind. I think somewhere in the back of my mind I had some notions of being active in the community and that was something that I think lawyers did, so that was somewhere in the back of the mind. But the real reason I went to law school is that I had been to enough family Sunday dinners where maiden aunts and other people wanted to know what I was going to do and I found that when I said I was going to medical school they really like that, that was approved so that ended the conversation, they didn’t keep pestering me. And when I didn’t get in to medical school and I said law school I got the same response, they thought that was good. It was like sort of what the Jewish mother said, “which do you want to be, a lawyer or a doctor?” So both of them satisfied people and it avoided, I had the great GI bill so my tuition was paid for and I got fifty dollars a month which would support me.

Lieberman: Were there any areas of law that particularly interested you in law school?

Bamberger: Well there must have been some. I suppose it sort of depended on the teachers, I think constitutional law. This was also a time at law schools when all the young teachers, so many of them, had been killed in the war and many of the people who were teaching had graduated from Harvard the year before and it was also a time when you went to law school in two years. You went all year if you were a veteran, if you were in the war, you almost didn’t have classes because people were graduating every other week almost at least every semester people were graduating. But I guess for some reason property interested me I sort of took all the property courses, this was also a time when I don’t think there were any electives, any so it’s kind of difficult to get very interested in something you’re told you must do. But there were electives and advanced electives and I took all the way up to property three. I can’t understand that but I did.
Lieberman: When did you decide to clerk after graduating?

Bamberger: Because it seemed to me a way that I could learn about what the opportunities were. An opportunity to observe lawyers. I thought it was a good way to get a job. Mind you there weren’t many clerks then. This was only the third year that where I clerked which was the Court of Appeals of Maryland, the highest state court. It was only the second or the third year that they had ever had clerks and I happened to know a fellow who had graduated from Georgetown the year before who was a clerk. I clerked for two judges, one of whom wrote most of his opinions by copying Corpus Juris Secundum so we didn’t do very much work for him. The other one was a really very bright, brilliant lawyer and he was a good mentor and it was a way in which you could get a job. I clerked the Court of Appeals was in Annapolis and we lived in Baltimore and there was another clerk a fellow who graduated from Harvard named Herbert Scharf who was a clerk with me and lived in Baltimore too and what we would do every day is we’d call the lawyers who had the first case to argue the next morning and say we needed a ride from Baltimore to Annapolis. Well as I say clerks were a new institution so they didn’t know quite what we were but they thought they better be nice to us cause at least some of them thought we wrote the opinions. So these guys would say, “certainly, where can I pick you up,” we’d say “no, no, no, you tell us where you’re going, we’ll be there.” I mean they would bend over backwards to pick us up and then we’d talk to the lawyers who had the last case and ask for a ride home and Herbert and I both kept a copy of all these names, our job was just for nine months and then when our clerkship was ending we wrote to all of them and asked for jobs. This was before law schools were placement agencies. I mean law schools were not primarily employment agencies in those days.

Lieberman: The firms didn’t come on campus to recruit?

Bamberger: No, no.

Lieberman: Not like today?

Bamberger: No, I mean we could wear dungarees all year.

Lieberman: Did you work on any decisions during your clerkship that you were particularly proud of or that impacted you in a profound way?

Bamberger: The latter part of it I don’t think so. No I mean again clerking was a different sort of a job then. The judge would ask me some particular question and to keep me busy when he went off and wrote the opinion. No, I still have all those memos which I wouldn’t dare show anybody but I do have them. No, I don’t remember.

Lieberman: But you felt the experience contributed positively to your career?

Bamberger: Well, I think I, yes, I learned, at least by osmosis, yes, I think so, it helped me get a job, cause I finally got a job at Piper & Marbury because a lawyer named, Dorsey Watkins had
given me a ride down or back and I wrote to him and he remembered my name and had me come see the firm.

**Lieberman:** Did the experience nurture an interest in public service?

**Bamberger:** Did what?

**Lieberman:** Did the clerkship experience nurture an interest in public service for you?

**Bamberger:** No, no.

**Lieberman:** In 1952 you got married to your wife Katherine, how did you two meet?

**Bamberger:** Good Lord, doctor, are you from the law school or the school of psychiatry? I was at Georgetown Law School, I was, believe it or not, a prefect, I was a house father in the undergraduate dormitory at a time when, you won’t believe this, undergraduates were required to be in their rooms at 7 P.M., 9 P.M. and in bed at 11 P.M. with their lights out. Can you believe that? Can you believe that? This is 1949, 1950 and I got room and board for checking them, making sure they were in their room and making sure they had their lights out at 11 o’clock and so anyway, there’s a catholic girls college on the other side of town, called Trinity College which is a good school, there’s good bright people, and also have some wealthy Irish girls, you know, sons of Irish contractors or something and there was a young lady that I won’t name, that was very wealthy and I dated her and one day she asked me if I’d go out on a date with her, I think I had finished law school, I was back in Baltimore. She said could I get her a blind date, I did. She said he has to be tall. I did. The person that my friend had a blind date with was, Katherine Kelehar and that’s who I married. This isn’t very serious, I mean, I can’t imagine that this is, you can always cut things off of this tape, can’t you. Alright, just a funny story. I had a friend named, Gene Fitzgerald, who was a law student and a prefect with me and he and I use to ride back and forth. Georgetown law school is in downtown Washington; the university is out on the fringes of downtown. And everyday, Gene and I would come back from the school and go to, we had a mailbox for the students and we’d go get our mail and Gene would say, Hey, look I got an invitation here, you know that girl, Katherine Kelehar, she’s asked me to come over to the hotdog fry, or something. A week later, I say, Hey Gene, I got a letter from Katherine Kelehar, she asked me to come to the sock hop, or something. Katherine was chasing both of us. And the pressure got so intense that Gene went off to the Jesuit seminary. And then Katherine and I got engaged and within weeks after that, Fitzgerald came out of the seminary. I always accused Katherine that she drove him in and that when he thought it was safe, he came back out. Cut that out of the tape, or I’ll be in serious trouble at home.

**Lieberman:** In 1952 You also joined the law firm of Piper Marbury, what attracted you to this firm?

**Bamberger:** The job. I was looking for a job in Baltimore, in private practice, it was then the largest firm in Baltimore, two firms and seven lawyers each had merged and one of the partners had given me a ride and I wrote to him and got a job.
**Lieberman:** What were your tasks as an associate?

**Bamberger:** I mean this is a world you have no idea what it was like, ok? I mean, this is a law firm that didn't have carpets on the..... it was a leading firm in Baltimore and the floors were not carpeted. They were linoleum, and this was a leading firm. The head lawyer, William Marbury, was a great lawyer. He had been general counsel to OSS, during the Second World War, as a young forty-year old lawyer. He later, I mean, subsequently he became the, one of the Harvard members of the Harvard Corporation, I mean the five who run the institution. He had connections, he was the lawyer in Baltimore for any kind of sort of major commercial work. But there were no dictating machines, there were no Xeroxes. In my first office they had the ninth floor in the building and when I came they didn't have space so they leased a little suite of three offices on the floor below and they had wonderful golden oak furniture, I don't see any here. Two of the offices in that suite were filled with old golden oak furniture that they weren't going to throw away cause they might need it and I was in the third office. Now, you guys wouldn't even accept a job with anybody like that now. Right?

**Lieberman:** Probably.

**Bamberger:** Yea, so what were my tasks? Well, there were, I don't know, maybe ten partners and four associates and you were just live meat. Any partner that...... you didn't specialize, whatever some partner who had some particular piece of work and needed some help on, you did, and mostly you did, obviously you did research. I remember one of my jobs was, I straightened out the library. They had a library, must have had, maybe a thousand volumes in them but when the two firms merged they just threw all the books in a room and I had to get in my Teutonic sense of order, I put them all on the shelves in the right order. That was expected of an associate. Now you guys wouldn't do that, a paralegal wouldn't even do it now. So you did all kinds of things. We did cases before the workers' compensation commission. We did subrogation cases for insurance companies where you were claiming $135.00, which was kind of good because those of the things you got to do. You got to do everything.

**Lieberman:** Do you have any partners that serve as mentors for you?

**Bamberger:** Yes, at least, at least I can remember two particularly. I can tell you one time, that William Marbury mentored me and I can take you back. I think they just torn the building down but if it was still standing I could probably show you the bloodstain. He had a case called, Miller and Company vs. the State of Maryland, that involves a very important case, this was in the Supreme Court. It involved the question, this is when sales taxes were beginning to be enacted so this is in the fifties. The question was, whether Maryland could collect the tax on a sale made in Delaware. Because lots of people, to avoid the Maryland tax, would run over to Delaware and buy the living room suite and so this was an important case, it was going to the Supreme Court. There was one little issue in it, if I remember it, was that the way they got jurisdiction over this Delaware Company was to seize one of its trucks when it came into the state and I think the question that was raised was whether, if the judgment exceeded the value of the truck, I don't remember it well, it had something to do with whether or not, how the size of the judgment would affect their ability to sell the truck or something like that. So I went to the bar library, cause we
didn’t have big firm libraries then, we didn’t have those, there was no Lexis and no Westlaw, did you know that?

Lieberman: I didn’t know that. (sarcastically)

Bamberger: Well, it didn’t exist. I researched this question all the way back to the English Common Law precedence and I wrote this, maybe five page memorandum, and Marbury now had asked me to sort of write that piece in the brief. No, I don’t know if he said that, No, I think he just said he wants some research on this question. I came back and I gave it to him. He said fine, I’ll look at it, I’ll give you a call, that’s all, goodbye. And he read it and called me back in the office and said to me, Clinton, that’s a very nice law review piece, but it’s not an argument, and I bled. But that taught me from that moment on when I look at any part of a brief that I wrote I didn’t look for scholarship first, I looked for advocacy first. So that was a piece of mentoring. And another mentoring thing was, there was another lawyer who did a lot of trial work, and he was very good at it. One thing I remember about him is that he would have a case, and so he go in the little firm’s library, he might remember some case and he’d pull that book of the shelf, he would Shepardize it or try to see whether it had been adopted in other states, he sought of take that case and carry that book with him. And he might not even know what the case was, but he carried the book with him. That’s was enough. He then would make his argument and keep referring to the book, even though it might not have anything to do with his argument. And I always remembered that. I never tried a case when I didn’t always carry a law book with me. Sometimes I hadn’t opened it at all but I’d put little pieces of paper in it and it would make the other side very nervous cause they’d look at the volume and it wasn’t one that they recognized as having any cases in it that had anything to do with the case that was being argued. And then they’d see I had these little paper marks in it, and they thought, oh my God, you know, we’ve missed something. But he taught me something. I was like, alright. One day he said to me, he said, Clinton, I’ve got a........ we were doing a lot of defense.......... insurance defense work for the Travelers Insurance Company, and he said, I’ve got a conflict, I’ve got to be somewhere and there’s this jury case to be tried, a woman fell getting off a bus or something. That’s what it was I think. And he said, I want you to try it. I said, Jessie, I...... this was in the Court of General Jurisdiction, the jury court. I said Jessie, I never tried a case in that court, in fact I don’t think I ever sat in that court during a trial. I said, only place I’ve tried cases is the people’s court which is a court of limited jurisdiction, no jury. Oh well, he said, don’t worry just you know, the same kind of arguments you’re making to the people, the judges down at district court, you just got twelve of them to argue to. And so we went over to do the case and he said, I’ll go over with you, I’ll introduce to....... There was a judge named Watkins, who was a very strict man, and Jessie said, I’ll introduce you to him. So we went in chambers before, Jessie said, Your Honor this is Clinton Bamberger, an associate in our firm, and he’s going to try this case; Oh, very good Mr. Bamberger, very nice to have you in court; and Jessie said, Your Honor, and the judge went on to say, Mr. Bamberger, I’m sure that you have sat at trials with Mr. Slingliff, with Mr. Watkins and with Mr. Evans, the litigation partners, and I thought I don’t want this guy to think that I know what I’m doing here, so I said, no Your Honor, I said, I’ve never been in a jury court before. At which he proceeded to dress down Jessie, give Jessie hell and feel sorry for me. So it all worked out all right.
Lieberman: First of all, did the notion of pro bono work exist?

Bamberger: What does that mean? No. There wasn’t any term for it. But everybody did it. What it was called was, the guys that didn’t pay. Clients who didn’t pay. And it was also...... there was a sense of pro bono, yes. And certainly, at Piper and Marbury, there was a sense of pro bono. It had different definitions for different people. For some people it meant helping out your cook’s son who had been arrested for throwing snowballs. For others, it meant, and it also was a time of course, there were no staff public defenders, so that you were given criminal assignments. If you look........ I remember there was a case called, Betts vs. Brady. Do you know Betts vs. Brady? Oh, now I have something to say about Penn. Betts vs. Brady preceded Gideon. Have you had constitutional law, criminal law.

Lieberman: I might’ve been exposed.....

Bamberger: I want to ask you a few questions, alright. Anyway, Betts vs. Brady is a case that preceded Gideon. Betts vs. Brady in effect, said under the Constitution you’re entitled to counsel in a criminal case depending upon the complexity of the matter, depending upon whether you really need a lawyer to do it and Betts vs. Brady came out of Maryland and was argued in the court of appeals of Maryland by two lawyers from Piper and Marbury, when the chief judge called, the court called them, and said would you come argue this case. So there was that kind of pro bono. I did, I guess I had sort of become involved in some community things and in......mind you now, this is coming into the age of the civil rights revolution, and I don’t remember how, but I use to always have something that wasn’t billable time but I didn’t know what billable time was then. This also sir, is before there was computers, and in fact, we didn’t keep time. We billed the client for what we did not how long it took us to do it. And it was..... and while I was at the firm, I was at the firm for seventeen years. While I was there we began to keep time. So I didn’t, you know, I didn’t, at the end of the day I couldn’t tell you how much time I spent on pro bono.

Lieberman: In 1958, you represented the Smoot Sand and Gravel Company in Bostich v. Smoot involving a dispute over the removal of substrate from the Potomac River, during the pendency of that action, Smoot actively and successfully urged upon the general assembly of Maryland, the adoption of its statute, which limited the granted rights to riparian owners of lands. Do you view such activities as non-ethical means of bypassing the judicial system?

Bamberger: Boy, you found my Achilles heel. The answer to your question is no, I don’t. I’m not sure I thought about that before. I don’t....... yes, Smoot was a raptor. He had made a fortune, taking sand and gravel out of the bottom of the Potomac River. To build all the buildings in Washington.......the Potomac River is different that I think every other river in the United States in that the dividing line between the states, Virginia is to the south of the river, Maryland is to the north, the dividing line of the states is not the thread that is the middle of the river but is the low water mark on the Virginia side. And so, Smoot would buy, he’d buy the riparian rights from a Maryland owner or he’d buy, you know, a three foot strip of land and then he owned all the bottom and that question was challenged when a number of very wealthy people who had built homes, very expensive homes, and I actually think one of them was one of the lawyers with the firm that were representing them, had built very wealthy homes right next to
Mount Vernon. And they...... and so Smoot this great raptor would move his terribly noisy
dredges into the river right under these guys’ homes, these beautiful homes and views that they
had. And so they hired Ginsberg, Leventhal, and somebody, a very powerful Washington firm,
Harold Leventhal was the treasurer for the Democratic National Committee for the party and later
became a........ he was a brilliant lawyer, and later became a excellent judge, a renowned judge
on the DC circuit and they brought this case. And in the course of that case, they introduced the
legislation. I’ll tell you the ticklest thing about that. I was at the firm working as an associate
with a good lawyer, named Evans, on trying this case and then before it had gone to the court of
appeals and while it was still in the district court, maybe hadn’t gone to court yet at all, I went to
be an assistant attorney general. Now the assistant attorney general’s office was not more than eight lawyers and all of the major
firms, sort of, the people that are considered up and coming associates, and I’m talking about
four firms, would be asked by the attorney general to come there and work for two years. It was
great experience for a young lawyer and the firms were very pleased to have you do it because if
you went there and were counsel for the insurance commissioner when you came back to the firm
you certainly could be helpful to the firm’s insurance company clients. So it benefitted the firm
too. And I went off to do that. You could continue a private practice while you were in the
attorney general’s office, you didn’t have to give up all your practice. And so I continued to be
working on this case. And Smoot, had for a long time, retained as his counsel, a southern
Maryland lawyer, who owned a lot of land there....... no he wasn’t a lawyer, his wife was a
lawyer, a southern Maryland legislator, who was the president of the state senate and Smoot had
him on a retainer. I think which worked out probably, to about $1,000.00 an hour, which was a
lot of money, the amount of retainer that he got and the amount of little bit of work that he ever
did, probably meant that he was being paid about $1,000.00 a hour. And he was a good guy and
a perfectly honest guy. And I went...... and this legislation was introduced, I think he introduced
it. It might have been part of his retainer duties. I don’t remember what the legislation did but I
know that it would win the case for us. I’m not sure I think that’s wrong. That’s an interesting
question. I’m not sure I’ve thought about it before, I’m not sure it’s wrong. If a matter is in a
court that foreclosures you from taking the problem to the legislative body and asking them to
address it.

**Bamberger:** What do you think about that?

**Lieberman:** I don’t think it’s necessary wrong either.

**Bamberger:** Ok. All right. How’d you do on professional ethics?

**Lieberman:** Professional responsibility?

**Bamberger:** Yea.

**Lieberman:** I’m in it right now.

**Bamberger:** But how are you doing?
Lieberman: I’m doing alright.

Bamberger: Ok, alright, I’ll take your answer. And I went to see Louie to talk about something and somehow I mentioned that bill. I don’t remember why or how. But he got very disturbed because he thought that I was offering him...... the context of the conversation was such that he could have thought that I somehow was offering him something in exchange for him to really support that bill hard and as I say, he’s now deceased, he was an absolutely honest man and he got very angry at me because he misunderstood me and I had explained that to him. But then in the course of that, I don’t know if you’ve researched..... did you know there was a hearing, I was questioned about that, called as a witness. Well, the Ginsburg, Leventhal and something firm had associated themselves with a lawyer in Baltimore named Lawrence Weisman, who I would not recommend to you as a mentor, and I will tell you, Weisman subsequently left Baltimore and worked with Roy Cohn who was on Senator McCarthy’s staff and who was a lawyer who also would not recommend as a mentor in New York. And Weisman was to say, the best very aggressive and so they filed some kind of a motion in a district court claiming that I had somehow done something absolutely unethical and so wrong that it not only disqualified me from practicing law but that it also meant that Smoot should would get judgment on the case. I don’t remember what the theory was. And the firm, again, to sort of tell you how firms worked then, I mean, once you went to a firm you were expected to become a partner, you were part of that family, and so the firm hired a lawyer to represent me, cause they called me as a witness and the inquiry was whether I had violated the cannons of ethics or some other professional standard and my testimony was taken by this guy, Larry Weisman and you’re bored and that’s the end of it. Alright, Ok. That’s all, that’s it.

Lieberman: Oh no, you can go on.

Bamberger: No. That’s all, that’s all, it’s just an interesting part of, no no, I mean it was a mistake of mine to ever...... the mistake was to continue to be an assistant attorney general and involved in that case at a time when it was being considered by the legislature, that was a mistake. Whatever I said to Louie, to this..... senate at that time, that he misunderstood, that was a mistake. But the one lesson to learn out of it is, is the culture of firms then, was such that the firm had no hesitation, I mean nobody quizzed me at the firm, I told them what happened and they hired a very good lawyer, one of.....kind of the best lawyer in Baltimore, who wasn’t in our firm to represent me and I became partner after that so I was only an associate.

Lieberman: Did the nature of your work change at Piper Marbury following your tenure as attorney general?

Bamberger: No, because everybody was a journalist. It just changed because I had sort of evolved into being a trial lawyer.

Lieberman: In 1963, you mentioned you’ve done some representation on the Blackburn case. It involved Earl Leroy Blackburn, where he was convicted with another man, Frederick Medford, a first jury murder and a fatal shooting of a gas station attendant.

Bamberger: Terrible thing. He made the guy kneel down and beg for his life and then shot him.
Lieberman: During the course of the robbery?

Bamberger: The last time I knew Blackburn he was out of jail and out working as a barber. I always thought, my God, suppose I was getting a shave and looked up and saw Earl there.

Lieberman: Mr. Blackburn was sentenced to death. The circumstances under which Mr. Blackburn was questioned were a point of contention. Mr. Blackburn stated that he requested assistance of counsel and was repeatedly denied. He also claimed that his confession was coerced through misinformation regarding the felony murder doctrine. The Maryland Court of Appeals confirmed the conviction yet six years later the conviction was overturned by the U.S. District Court, the District of Maryland. Do you feel such abuses by law enforcement authorities happen more often then or today?

Bamberger: I don’t have any idea. I don’t know. I really don’t know. I really don’t know. I mean there’s too many factors you have to think about. I think we’ve become much more conscious of the racial divide, the racial disparities in criminal justice. I don’t know. I think…… No, I don’t know. Let me say, I originally represented Blackburn, I don’t know, I think I represented him because that was before we had a salaried public defender and I think some judge called me up and said would I represent him. I think I…… I did not represent him at the trial. I never represented a defendant in a capital trial, only on appeals, once I did but I disqualified myself once I was appointed. I think Blackburn, some judge called me and asked me if I would represent him after the decision in the Court of Appeals in Maryland and I was working on it but then I went to work for war on poverty and another person of the firm I think maybe, Larry Scriggans, took it over.

Lieberman: What is your opinion of the death penalty?

Bamberger: I absolutely oppose.

Lieberman: In 1965, you became the first director for legal services program.

Bamberger: Can I talk to you about a more importantly death penalty case?

Lieberman: Certainly.

Bamberger: Alright. See you going to get long responses sometimes even if you don’t ask the question. Alright. The legal case I’m proudest of is the Brady case. That’s Brady v. Maryland. The case that holds that the prosecution is required to make available to the defense any evidence that they have even exculpatory. And there’s actually a book about it by a man named William Hammer. It’s called something about, there’s death somehow in the title. That was a case again where a man had been convicted of murder, of a felony murder. Brady and a man named Boblit, ambushed a friend of an older man that they knew on his way home to work and while he was driving up a wooded road and he was killed. I don’t know who killed him and I don’t think they do. One of them did but I don’t think they know which one. Brady had been represented at trial by a paid attorney that the family scraped together money to hire. Brady came from a white
sharecropper family from southern Maryland. Southern Maryland is slightly south of Oxford Mississippi. And so, his family had no money and this lawyer went to sleep at times during the trial. At that point I have to say... you know we read... one of the things that bothers me now is that we read about defense lawyers in capital cases going to sleep. And sometimes, not always, the verdict is reversed because of that. But what I don’t hear is what happens to the lawyer. Does any bar association then call the lawyer up and take away his license for that kind of conduct, there may be some but I don’t... there’s not enough of them that you hear about it; your generation address ought to address that question. Anyway, I agreed to... do you want to hear about this case?

Lieberman: Absolutely.

Bamberger: Ok. So I was asked, how’d I get the Brady case? I had a teacher in college, a man born of a Jew who became a Jesuit. If you don’t think that’s a mixed up guy. But he was a wonderful man, he was the chaplain at the jail and he never met a guilty man. So, his name was Meyer Toby, he’s deceased now. And, Toby would always call me up and say I just met so and so, it’s a terrible tragedy. He’s here and he didn’t have anything to do with it. Of course, I’d go talk to the guy and find out he had a lot to do with it. So he asked me if I’d come talk to Brady, it’s actually, I think the week in which Brady was to be executed. And so, I went to talk to him. Then said, I would look at the record and see what I could find. So I got the record and I think from the attorney general’s office. Now that I’ve mentioned the attorney general, can I tell you something else. Say to me at some point, the attorney general’s flash candor and then I’ll remember what it was, ok? So I read the record, you know, the more I think of the record that this man had gone to sleep during the trial because judges’ clerks don’t want to write that down it would upset the judge, and I couldn’t find anything in the record that seemed to me would justify a challenge to the conviction. He had been convicted, it had been appealed to the court of appeals and they had affirmed it. So he was to be executed. But what I did find was that there were five statements by the co-accused... they were tried separately and there were five statements to the police and he withdrew it when the defense objected it and said well, he didn’t sign that, it can’t be admitted, cause it could be admitted, I mean the fact that he didn’t sign it prove the circumstance which was made, it’d be admitted. And the prosecution didn’t press on admitting it. And I thought, well at this point, I’m looking for straws, I’m just looking for tiny straws. And putting together the circumstances that these confessions or statements had progressively implicated the co-defendant or the co-accused and that the prosecution didn’t press to admit this when the judge first said he thought maybe it shouldn’t be admitted, I tried to get a hold of it, I couldn’t get it so I got my friend, Father Toby to talk to somebody he knew in the state’s attorney office down there in the county and get it; he got it. And I read it and in that statement this guy, the co-accused, admitted that he killed the man. Brady and he... Brady had impregnated Boblit’s sister and Boblit said to Brady, What are you going to do... you got my sister pregnant now, what are you going to do for that child? You just going to run away? And Brady said, no, no, that child’s not going to have the kind of life I had, just having nothing, I’m going to get some money, and I’ll take care of your sister and the child. And they then sat down and decided that they would go rob a bank. And they decided they’d get a car by... this elderly man had befriended Brady and he lived back in the woods and he went to work everyday and he came home in the middle of the night, and they decided they would ambush him, tie him up, put him in
the back of the car, go over and rob the bank when it opened in the morning, drive back and put
this guy where they knew there was an empty house, a farm house down in Southern Maryland.
They’d put him in the house and then they’d take off for the south and call the police and tell them
they ought to go let this guy out of the house. But somehow when they stopped the car and
elderly man got out and they told him to…… and they started to tie him up, somebody, one of the
two of them, garroted him, killed him. And they then never went over to rob the bank, but they
just started driving south. I mean you really ought to read the book because Brady went on
somehow got to Cuba and met a cab driver and said to the cab…… this is when the Fidel Castro
was in the hills, and Brady said, I’d like to go to see Castro, and the cab driver said, ok, you meet
me such, such a place, I’ll take you up there, and so, that was like…… he was to meet the cab
driver that night or the next day, and then Brady’s conscience really hurt him. Brady had never
been arrested before in his life. Never been arrested. So he went and turned…… he went to the
Embassy and he said, I murdered…… I was involved with a murder of a man in Maryland and
the Embassy said, well come back at 4 o’clock this afternoon there’d be somebody here to talk to
you about it or something and meanwhile the embassy tried to find out about it the police hadn’t
yet found the body of the victim so they didn’t know anything about it. So Brady went back to
the embassy still wanting to turned himself in but they wouldn’t take him. Eventually, he told
them where the car was or where the body was, and they did arrest him and he came back to trial.
But that’s the only piece I found, the only hope I found, this statement. So I went to the attorney,
who was, sort of the old, old line criminal defense attorney in the county seat in a town south of
Baltimore and I said to him, I said, George, do you remember that the prosecutor gave you some
statements that the co-defendant made? Yea. How many did he give you? I don’t know. Well,
George, you got your file? No, I don’t think I have my file anymore. Well, George, did he give
four? Oh, yea, he must have given me four. Did he give you five? Well, I don’t know, I don’t
know. I don’t think so. I said, well you know there’s a fifth statement that helps Brady, that
implicates Boblit. Oh no, he didn’t give me that. I have no idea whether that was true or not. I
have no idea whether that was true or not. And I have to say to you also that as I think back on
it, that, that’s the answer I wanted from the defense attorney. And I may well have said to him
something like, well George, you know there’s a fifth statement that implicates Boblit and
exonerates Brady, he didn’t give you that did he? I don’t remember how I put the question. But
it’s one of the things you got to be careful about as a lawyer when you are discussing a case with
a witness; or what we use to call horse shedding a witness, have you ever heard that term? In the
old days…… can we got till tomorrow to do this or we got to finish today. In the old days, the
next to every county court house were horse sheds because you came to the county courthouse in
your buggy and you had to put your horse somewhere. And so you meet the witness in the horse
shed and talk to him about the case. You won’t find anything in professional ethics about your
conduct when you’re horse shedding a witness. It does talk about your conduct when you’re
preparing a witness, but that’s different than horse shedding. Anyway, that’s something you have
to be wary of. I knew the answer I wanted Wilford to give me and the question that I don’t
remember, maybe conveniently, don’t remember now, is how I put the question to him. So on the
basis of that we had a procedure just enacted in Maryland then called, post-conviction, where you
went back to the trial court and claimed an error. After all the appeals had been exhausted and
was sort of a substitute for habeas and you went back…… and so I went to the trial court and the
trial judge…… and the only point I raised was, that the defense attorney said to the state’s
prosecutor, please give me all of the statements that the co-accused made; and if the prosecutor
only gave him four of them and not the fifth one. The counsel... Brady’s counsel at trial, got on the stand and of course, said that, and I don’t know if it was the truth or not, because he was not... he was getting elderly probably younger than I am now but his memory wasn’t very good and he didn’t keep his files and as I told you I think he had narcolepsy, he slept, actually would fall asleep and the clerks would wake him up, the court clerks would wake him up. Then the prosecutor went on the stand, who was a... to my memory, a good guy, a decent prosecutor, but he said, and he said, he gave them all to the counsel, he said he gave all five of them to them. He didn’t have any receipt for them, it was just his memory. The trial judge didn’t believe him and believed the defense counsel and that’s always sort of convinced me that that was probably the truth. Because here was the trial judge who had this state’s attorney before him everyday and must have known him very well and also had this defense counsel before him and knew him well. And the trial judge chose, in a direct contradiction, chose to believe... and a direct contradiction in a case that challenges the trial judge’s decision and punishment, the trial judge chose to believe the defense counsel’s story and decide that challenged this judge and then the case went to the... so then the state of course, appealed it to the court of appeals of Maryland and I went there to argue it and I had a pretty good case. This really deprived Brady of constitutional rights although there wasn’t any case squarely on point as I remember but there was certainly something close. There wasn’t anything from the Supreme Court, that clearly helped, and at the end of my argument... I argued for... I was the appellee, I guess, yes, cause the state must have appealed. At the end of all the arguments, the chief judge of the court said to me, but Mr. Bamberger, if we agree with you that... and the finding of fact that this statement was not given, what do you want us to do?, because this only goes to the punishment not the guilt. Even if the co-accused is the man who did the murder, your client was participating in a felony robbery and is guilty of first-degree murder. So this question only goes to punishment, not the guilt. Well, stupidly, I hadn’t thought about that question and it may also surprise you... this was a time when nobody mooted the case with me at the firm before I went to argue in the court of appeals. I wrote the brief, I don’t think anybody else read the brief, and I went to argue the case without..... I mean, maybe over lunch I talked to somebody at the firm about it but we didn’t moot cases, appellant arguments, I suppose we should have. The question hadn’t been asked, I hadn’t thought about it before but I thought, well, I don’t know the answer but I’m not going to give up anything. I not going to say...... so I said, I think it, Your Honor, the relief I want, it seems to me it goes to the heart of the verdict of guilt and that the whole thing should be reversed. Well the court of appeals didn’t agree with that and what they did luckily, for me and my client, they ordered a trial on punishment only, a retrial on punishment only. Now, Maryland had no bifurcated trials; you try the case, and at the end, the jury decided in a first-degree murder case, they decided not guilty, guilty, or guilty without capital punishment. And the judge then imposed the sentence of either capital punishment or something less. But there were no bifurcated trials it was all one trial. So I, felt that’s pretty good, we’ll go back and have that trial and then one day I was talking to one of the other lawyers in the firm about the case this was about five, maybe a week before the time to apply for cert expired, and he was much smarter than me and he said, you know, I think you got a federal constitutional question there and you ask the Supreme Court for cert. So I had never done anything in the Supreme Court except that failed paragraph for Marbury for that magnificent of law review article that he didn’t think would fit in the brief. I remember that we put together a petition for cert and ran, drove them over to the court and he drove and I got out of the car and ran up there just as the guard was closing the
doors for the day. And got the cert petition filed on time. And low and behold, the court granted
cert. And I’d never been in the Supreme Court before in my life. So I then wrote the brief, and
filed the brief, the state filed their brief and I went over to argue the case. I went over the day
before just to see which door you went in, where the court was as opposed to the men’s room and
also I had to know where the men’s room was too. That’s what I wanted to know, where the
men’s room was, and where I would sit in the courtroom, those was the two things I had to learn.
Then I went over to argue it and Father Toby and my wife went with me again, if you believe this,
obody in the firm ever talked to me about the case and I guess this kind of gets to the pro bono
thing. The people knew I was doing the case and they knew I won in court of appeals, they knew
I filed the cert, but nobody talked to me about the case; we never mooted it, nobody looked at my
brief, maybe one of my contemporaries looked at my brief and I went over and argued it and I
have the tape of that argument and nobody will ever hear it, nobody. I mean it is shockingly
terrible.

Lieberman: Were you intimidated?

Bamberger: I was scared terribly. Sure.

Lieberman: Who was the most intimidating justice?

Bamberger: Well, I don’t know if I was intimidated by the judge. Actually, I wasn’t smart
enough to be intimidated. I really wasn’t. I was very nervous, but once I got up to argue, I was
at ease. I had worked very hard on thinking about what I was going to say and making a kind of
a outline of it; I had a loose-leaf book where I had the outline but also had all the backup stuff, so
I felt pretty good about it. If you listen to the argument, it’s pretty apparent after awhile, that I
didn’t have the ear of the court. I was getting questions and I responded to them as well as I
could, with hindsight, it wasn’t very good but the best appellant arguments I’ve ever made have
been have been in the shower the day after the argument in court. I mean, I’ve always thought
what I had to do was sort of somehow arrange things so that I would take the shower just before
I went to court and I think that I’ve been there and I’ve gotten rid of all that anxiety and tension
about making the argument so that my mind got clear enough to really think about the substance.
But what I do remember, intimidation, what I remember is, when I was getting to what I thought
was the crux of my argument, Justice Douglas had been writing a letter and he picked up, put the
letter in the envelope and picked it up and stuck out his huge tongue and ran it across the
envelope and here I hear, Your Honor, do you know I’m saying the most important part of this
argument? So that was a little unnerving. The other parts that were sort of unnerving, is you
know, they have these very strict time limits and of course, I had to be there at 10 o’clock in the
morning and then they didn’t get to us and then they say, well, now you go have lunch. Can you
imagine having lunch when you’re getting ready to make your first appearance at the Supreme
Court. But I actually did have some lunch. And then, when they got to the end of the day, my
opponent, the assistant attorney general, who was arguing the case, didn’t quite finish his
argument, we had to come back the next day, so you had to go home and try to sleep. And of
course, think of all the things I should have said, but in rebuttal I wouldn’t be able to say. So that
was all pretty kind of scary. And Douglas wrote the opinion. Now the important thing....

another…… I shouldn’t say important, I don’t know it’s important enough; interesting thing is, I
lost in the Supreme Court. What I was asking the Supreme Court to do was to send this case back to Maryland and tell them that they had to try it on both issues, punishment and guilt. And the Supreme Court, in an opinion, that I don’t fully understand, said because of some Maryland Rules of Evidence and because of the Maryland Rules of Procedure...... you see Maryland...... in Maryland has, I think then, only in Indiana, juries in criminal cases were judges of both the fact and the law. Exactly why that produced this result, I don’t know. But they said, we’ll send it back to the state and said you got to try him on, they affirmed court of appeals of Maryland said you got to try him on punishment only. The prosecutors didn’t know how to do that. It never been done. In all other trials, you know, you try all the facts, everything. And on the basis of that the judge or the jury decide whether the person is guilty and what the punishment ought to be. So the state didn’t know how to...... you know, what are the issues then in a trial that supposed to only concern itself with punishment. Of course, I would have argued it if they had gone ahead with the trial but they had to do......... had to try him for the crime too even though the court of appeals didn’t say that because that would only be the way they could give him the trial he’s entitled to that every other defendant had in Maryland. So the state didn’t know how to try it. So Brady was in jail and waiting, I got him off the death row and into the general population by arguing with the warden that he wasn’t under a sentence of death anymore; that had clearly been set aside. And so he went into the general population and after he had been there, I guess, fourteen years, he and I decided that the state probably couldn’t find the witnesses anymore. And so, we asked for a new trial...... and asked for the trial. The state’s attorney knew he couldn’t try it and so then we said well why don’t you...... the governor could commute his sentence to life and he did. And Brady, I think had to serve two more years, was eligible for parole and he was paroled. And I still talk to him from time to time. But the lessons, there are a lot of lessons in that case, one of which is......... here I lost the case. See the Supreme Court.......it’s apparent to me now, that the Supreme Court wanted to announce this rule. They must have been seeing enough petitions for cert or cases coming before them in which the state had been withholding evidence and exculpatory evidence particularly. And so they wanted a vehicle to announce that rule. And they took this case and decided against the appeal, affirmed the court below, but announced that rule and that rule I think, you know, changed criminal jurisprudence in this country considerably. So you don’t always win by winning.

Lieberman: In 1969, you became the first director of the Legal Services Program within the Office of Economic Opportunity; the first program of the federal government to provide financial support for legal services to the poor. I know Ronald Reagan and Nixon didn’t like the program.

Bamberger: Who are they?

Lieberman: What challenges did you face pioneering such a program? And was there much resistance?

Bamberger: Yea, the resistance was the challenge. The resistance came from the state and local bar associations. The resistance came, to some extent, from ethnic bar associations. All of which, I think, were unduly concerned that they would lose business. Many of their members of ethnic bars and the local bars, county bars, they represented poor people. Some of them did it because they thought that was their obligation as a lawyer. Some of them did it in the hopes that when the
person left the office they’d be hit by an automobile. I mean it was a way of building up your business by being open to help people. They were concerned they’d lose their business. I think we convinced them sufficiently that if the tenant has a lawyer, the landlord’s gonna want a lawyer, so they would benefit from it. They came around to support it but if you look at some of....... I mean I think of........ there was......... I faced severe opposition from a leader of the Tennessee Bar Association, I think it was Tennessee. The president of the Tennessee State Bar, and he wrote an article; it’s in the bar publication, bar journal of the Tennessee Bar in which begins Et Tu Brute. And he accused me of efforts to socialize the legal profession. I went to a meeting of.... I was just there about a year and I spent most of that year, selling the program. I was hired basically, not because I knew much about legal aid, because I didn’t; there was some other great people, like Ed Sparer and others here at this facility, who should have been hired. I was hired because I buttoned my collars down and my ties have stripes and therefore I was not threatening to the establishment bar. And the other obstacle..... I spent a lot of time going around and speaking at local bar associations and I remember for instance, once I went to speak to the Virginia state bar, I walked in there was a big poster that had me pictured as an octopus. I can’t remember now what it said below it but it said octopus or something. And there were confrontations. I remember going to a meeting of the...... one of our tenets as a part of the economic opportunity act was that these new legal aid, legal service/legal services offices, had to be governed by boards that included clients. It was the maxim of, anyway, that the people served had to be represented making the policy. And I remember going to a meeting of the Association of American law schools, the dean of a law school in New Orleans, walking down the aisle aggressively and saying to me, do you mean to tell me that poor people are going to tell lawyers what to do. And the only thing I could do was to say, yes. And so there was that opposition. There weren’t many existing...... other opposition, interestingly, came from the existing legal aid society. There’s a history of this written by a man named, now a judge, Earl Johnson, called, Justice and Reform, which is a history of the early years of the legal services program. He was my deputy and then became the director after I left. And he recalls, shortly after we were there, the national legal aid and defender association, which was the trade association, if you will, of legal aid societies had their annual meeting in Scottsdale Arizona. There weren’t many legal aids societies then. And they called us out there and attacked us. They asked me to give a talk and I gave a talk and then a great lawyer from Covington and Burling, who was very much on our side in the thing, was with us and we went to lunch together and planned how to respond to the attack that came right after lunch from the president of the legal aid society. I mean, look here in Philadelphia, the Philadelphia Legal Aid Society did not accept OEO money. Community Legal Services was created as a new entity to receive legal services money. So opposition came from lots of places; it’s a pretty good book to read.

**Lieberman:** In 1966, you ran for the Maryland attorney general position.

**Bamberger:** I don’t remember that.

**Lieberman:** What motivated you to run; who was your opponent, and what were the seminal issues?

**Bamberger:** I lost. I don’t remember. What motivated me to run? There was the beginning or
regrouping of the liberal Democratic party in Maryland. Joseph Tidings had recently been elected as a senator. He had actually called me just before I went to OEO and asked me to run for governor. I can remember I was walking out of the office to go take a deposition; the woman at the switchboard said to me, Senator Tidings is calling you. I said ok, I'll take it, I took it. He said, can you come over here, I want to talk to you about running for governor of Maryland. I said, Joe, you've lost your mind. I can't do that, goodbye. I gotta go take a deposition. I really thought he'd really lost his mind. I mean, the idea of my doing that was crazy. Sort of the brains behind his campaign came to me one day and said, we'd like to talk to you about running for attorney general. Seriously, I thought, I've never done that, never run for political office, I'd like to try that. That would be, seems to me, a good experience and a good thing to do. And so I decided to do it. And our issue was, this is also a very interesting time, because Nixon, no, Johnson was president but Agnew was the Republican candidate for governor and our Sickles, our candidate was...... we had a three way Democratic primary. We had a liberal Democrat, Sickles, the guy that I ran with, another guy who was an establishment lawyer, who was a sort of......no, he was of the Democratic machines candidate, the guy who was the Secretary of State of Maryland, and been I think, the attorney general, he was the machine's candidate. And then we had an Irish contractor, who had run fourteen times for office in Maryland and never won, I'd put won in quotes. Because actually sometimes he had gotten more popular vote than any other candidate but at that time we had county and you had to win a majority of counties and he might have, sort of like the Gore/Bush thing, he had the majority throughout the state but he didn't have any majority county. So he had actually won sometime but not won. He was the conservative guy. He wasn't very bright beyond knowing how to buy road contracts and build roads and so his platform was your home is your castle. Now what your home is your castle meant was, keep those colored people out. That was a code word. So like when he went into...... Montgomery County is the bedroom county for Washington and Maryland and it is a very liberal county and a very affluent and very educated county. When I went there...... when he went there to campaign, people would ask him what his position was on the war in Vietnam. I mean when I went there to campaign for attorney general they asked you questions like that. Now, his response was, if they said to him, what you think about the Vietnam War, he said, your home is your castle. And he won the primary. And all the liberals then voted for Agnew, and you know what happened then. So it was an interesting campaign. I might as well change the history a little bit. I should put this on the historical record. When the campaign started, I was certainly seated fourth along four attorney general candidates. I finished second but I found out there weren't any prize for second so it didn't matter. It was a great experience. It was also, you know, a life transforming experience. I learned a lot about myself and it was very good. And I went back to the firm. Law firms then, were fraternal organizations that you joined and stayed in. They weren't lateral moves. People didn't have portables, can you imagine that? You know what portables are, don't you? Don't they have portables anymore? Portables are your clients you take with you and you see advertisements about, wanted litigation partner with substantial portables. At that time you went to a law firm and it was like a marriage. You didn't leave unless you caught in bed with the wrong partner's wife or you were drinking too much. It literally was like marriage. But here I had gone off to do this thing with OEO, I didn't have a leave of absence from the firm, the firm didn't know about giving people leaves of absence. What they said to me is...... first of all, some of the partners were certainly concerned that I was going off to this socialist endeavor of the war on poverty. I mean it was not something that was high on their agenda. And so what they did,
they said to me, you know, we expect you to come back and if you do, we expect to have, welcome you back but we don’t want you to feel obligated, which I think also meant, we don’t want to feel obligated so they didn’t give me a leave of absence. I came back and they said fine. But right after I came back, I ran for attorney general, before I came back to the firm. I left OEO and ran for attorney general. And then so that indicated some instability on my part. And then after I’d been at the firm a little while, I now like to talk about the more important political campaign when I won. I ran for delegate to a Maryland constitution convention and I won. Let's get that on the record, alright. And that made me very unstable. Here's a guy who left, taking three excursions out of the firm in effect and although I expected to stay there but I didn’t. By then a couple of years later, a guy I knew vaguely, because I hired him to do some work for me when I was at OEO, who was a member of the facility at Catholic University. The Catholic University had a search team that was chaired by Justice Brennan, on which Bob Drynan, later Congressman Drynan, Father Drynan, was a member of it and Drynan and I had been law school classmates and one of the clerical functions that continues to exercise and I say this facetiously, is to meddle in other people's business, so he’s always sort of would come up to me and say, what are you doing, well you ought not to be doing that, you ought go do this. And he was on this committee and decided that I should be the Dean at Catholic University. And again, much like, the attorney general thing, I thought, well you know, I’ve never done that, I’ve always taught part-time when I was practicing, and I thought that might be interesting so I went off to do that.

Lieberman: Did you find teaching and academic administration more rewarding than private practice?

Bamberger: Yes.

Lieberman: Did you establish a clinical program at Catholic University?

Bamberger: Yes. One of the first ones. See cause I always thought ……. sorry you should, maybe you should just instruct the witness to give you yes or no answers.

Lieberman: No, no.

Bamberger: When I was at Piper and Marbury, I did a lot of work with Blue Cross in Maryland, which was then a non-profit and with the John Hopkins Hospital. And so I met a lot of doctors who were teacher practitioners and I thought, what a good life, wouldn’t that be nice, if in the law, you could actively engage in practice and at the same time be engaged in teaching and research. So the idea of….. that attracted me to legal education and then it was a wonderful time to go there. I went there in 1969. The young people that were coming to law school were the….. had been college students in the sixties, they were social activists. It was a time when the first women and the first blacks came to law school and here I was at a law school in the District of Columbia that had no place to go but up. The District of Columbia was the best place to have a law school or any kind of student endeavor that were interested in social action. And I thought….. so in thinking about what the role of, what they’re now called of, what are they called, faith served communities. But then they were called, what a church related institution could do about the law. I thought the two great problems in America that faith communities
went on to address, were race and poverty. And part of that was my own experiences in the civil rights revolution and in the world of poverty and clinical education tied into my interest in the relation between practice and teaching. And about that time, Ford Foundation funded a thing called Klepper, and which Ed Sparer, Howard Lesnick, was involved and we got a grant to have a clinic at the law school.

**Lieberman**: What communities did the clinic initially serve?

**Bamberger**: Well, Catholic University is located in the midst of a middle income to quickly changing poor population in northeast Baltimore, northeast Washington and we.....I got a grant from the local foundation to buy a building about five blocks from the law school in a terribly depressed neighborhood. And I used the money to buy the building because I wanted to give some assurance of continuity. And I know that faith based communities are very reluctant to ever give up real estate. And so, I thought if they had the building, and that... and saw it was located in a very depressed mostly African American, entirely I guess, African American neighborhood, five blocks from the school.

**Lieberman**: Did the students receive credits for their clinical activities?

**Bamberger**: Oh yes, oh yes.

**Lieberman**: And were they obligated to participate in clinical activities or was it a volunteer program?

**Bamberger**: Optional, optional.

**Lieberman**: Do you believe in mandatory clinical education for law students?

**Bamberger**: I think experiential education ought to be a part of every law student’s experience. Now that experiential education is a broader term than clinic. But you know you’ve got to spend the rest of ......you’re not going to spend the rest of your life attending lectures and learning how to be a lawyer, you’re going to spend the rest of your life trying to learn how to lawyer from your own experience. And you ought to learn how to do that; you ought to learn how to understand your experiences, you ought to understand how to reflect on them and learn from them.

**Lieberman**: Do you think law schools on a nationwide basis are emphasizing clinical education enough today?

**Bamberger**: No.

**Lieberman**: How do you think clinical education contributes to a law student’s academic experience?

**Bamberger**: Well, I think it does a couple of things. One, I think it is a way in which a student can learn whether she really wants to be a practicing lawyer or she wants to do other kinds of,
other skills that she learns, use other skills that she learns in law school. I think that, look we don’t have… this country is a diverse…….country of diversity, we don’t have a national religion, we don’t have a national ethnicity, the thing that binds us together is law. And increasingly, we are excluding people from the law. Eighty percent of the poor who need a lawyer can’t get one and a percentage nearly that big, I don’t have to remember what it is, of middle income and working people who need lawyers can’t get them. Do you know that the United States is the….provides the least resources for legal aid to the poor of any country in the world. Do I have to repeat that. You understand you’re at…..you thought we were high, didn’t you, you thought we probably we did a good job in this country. Did you?

Lieberman: Right.

Bamberger: Well, if you measure it, and in my brief case somewhere, I can give you a chart, if you measure it by percentage of gross national product, if you measure it by dollars per tax payer, if you measure it by dollars per poor person, we are way at the bottom of the list of western democracies of Canada, the UK, France, England, France, Germany, I said England, the Netherlands, Italy, we’re at the bottom of the heap. It’s disgraceful.

Lieberman: Do you think law schools perpetuate this problem and in a speech that you gave to the 1981 graduating class at Penn, you said, law schools make us insecure in the ordinary law, law for ordinary people, after three years of learning that there are no right answers, we are not confident about advising troubled and dependent clients. Would you advocate law schools do to instill such confidence in students?

Bamberger: I don’t even remember saying that but it sounds pretty good. Somebody the other day, I was being introduced somewhere, this nice person said, and Clinton Bamberger said, and read a speech I’d given at a commencement at Catholic University and I went up to her afterward, I said, I never said any such thing. I said, that was really good, where did you get it? Well, she said, I’ll get you the speech. She did. So law schools have little or no interest. I mean here, you’re a law student and you didn’t know how many in the population in this country are denied access to the law. Because nobody talked to you about that in law school. I just come from a conference in Boston, as part of an initiative by the association of American Law Schools to try to involve law schools with public interest law, with legal services program. For the first time, in its history, the Association of American Law Schools, which is the higher, well the trade association of law schools, has elected a clinician as its president. A very wonderful guy, named Elliott Milstein, from American University and he…….when he was chosen as president elect, he set out on an initiative to create relationships between law schools and public interest lawyers, and they have been holding these colloquia around the country. I’ve only been to one, the one that I just came from in Boston. What upset me about it is, that most of the faculty members there were clinicians; they were not standup faculty, as we call them, as I call them, except the only other ones there were some people who came to law school facilities from legal services and retained some interest in it and most of them came in to speak on a panel and then went home; they didn’t stay for the rest of the day for the dialog with the legal services lawyers and the clinicians there and I think the fault lies, you now got me on a hobby horse alright, I’ve been on a number of hobby horses, but this is the biggest one. Legal education and legal practice are completely
divorced from each other. I think the reason for that is historical, now mind you look, I have no footnotes to back this up, I’m not a scholar ok, so I can’t...somebody else can tell you this is all baloney, but what it will called, is anecdotal and anti-intellectual, that’s what it will be called, ok, so I accept those terms. But legal education wasn’t originally a member of the academy. Legal education, most law schools, I think probably until the early part of the last century, were independent institutions. Many of them were run in the major cities by YMCAs or Knights of Columbus as ways for immigrants to move into the profession. It’s interesting, I was looking before we came up here, down where the goat is, there’s a wall about the history of this law school and you’ll see that at some point when this law school decided that it would become a real law school, the thing it said was, our teachers must be full time. No practice. There’s a letter on the law there and I wish sometime maybe you’d copy it for me and send it to me in which the newly elected Dean says to this newly appointed faculty member who’s coming from practice, he says to him, do you understand your office will be at the law school. You may if you wish, have some consultations in the library but your office is in the law school. And part of the reason for that, I think, is that universities were dominated and governed by arts and science faculty people basically and they saw law schools, they called them trade schools and that offended the sensibilities of law teachers and law teachers then had to get away from the trade and become pure scholars. I think that’s a great loss. How is it in a country, in a country built on law, in a country in which....and what I said about law being kind of the substitute for our national religion or our natural ethnicity, I didn’t say that, I think John Sexton, the great dean of NYU, is the person I stole that from. But in a country where that is the truth, we are a nation of law, if you look, you won’t find many law review articles, addressing the issue of why eighty percent of the poor can’t have the assistance of the law or why a majority of middle income people can’t have the help of the law. That isn’t a subject for them to talk about. Now clinicians began to address that and as I said up at this conference, in my smart-alecky way, in this conference in Boston, I said you know I had some hope that clinicians would kind of build again this gap between law and practice. But then I began to read articles like Clinic Law Review that had in their titles words like, lacunae and paradigm, and I know they’ve been captured too by the academy and that the text didn’t matter anymore as much as the footnotes. So I think it’s a great....Langdell is another reason for that and I think I read this by Derrick Bock, the former Dean at Harvard wrote. Christopher Columbus Langdell said was that, law is a science, everything you have to learn is in the books. That’s absolutely nonsense, absolute nonsense. The law isn’t all in the books. The laws is in the practice, the law is in relations to people, the institutions to government. Amen. Sorry.

Lieberman: Along these lines, in 1986, you wrote an article published in the Rutgers Law Journal entitled Debilitating conformity of the local law schools, whereby you stated, national law schools don’t do much critical analysis of the law because they have a stake in not doing it. The law as it is supports the interests of the clients and the graduates they serve. Critical analysis of the law to learn why the law is what it is, what the forces are that made it what it is, who and what sustains it and what the results are for society if no change and change would threaten the interest of the elite class served by the national law schools. How can we get national law schools to do more critical analysis?

Bamberger: I wrote that? I do remember writing the piece but you might be the only person
who ever read it. I don’t know the answer to that question because I’ll tell you, some very good people have criticized it, I just told you to…… I mean Bock, if you look at Bock’s article. I don’t know, I don’t know how you do it. I think we ought to begin to talk about it. Some of the discussions at this conference, addressed that issue. Another thing, that I again steal this from Sexton. Sexton was a theologian before he became a lawyer and a dean. And Sexton said that, he took some of the lesson from the positive side of original sin and that law schools in the words of Martin Luther King, ought to sin boldly and what we need is some national law school and Penn is a good candidate because of its background. When Ed Sparer was here, this law school was very involved in the practice. Ed taught from the practice. Ed taught from the lessons he learned in the practice. I’m sure that there’s some others who do. But essentially, law schools have been captured by corporations and major law firms and that’s who you cater to. Before there was US News and World Report, the quality of law schools was measured by the number of people placed in the major corporate law firms. Law Deans got together, they didn’t talk about their course content or contributions to social justice; they talked about how many people they placed at Cravath. That’s anecdotal and anti-intellectual. Ok. Sorry. That’s enough.