Introduction:

Irene: Good afternoon, my name is Irene Barberena and I’m a third year law student at the University of Pennsylvania Law School. Today is Friday November 10th, 2000. It is about 2 o’clock in the afternoon. Today I’m going to interview Judith Bernstein-Baker, the first and now former public service director here at Penn. And currently, the executive director at HIAS, a nonprofit agency that provides social and legal services to immigrants and refugees. Ms. Bernstein-Baker, thank you for agreeing to do this interview. Now we’re going to get started with some questions on your childhood.

Ms. Bernstein-Baker: Where am I looking?…ok.

Childhood:

Irene: Ms. Bernstein-Baker, when and where were you born?

Ms. Bernstein-Baker: I was born in New York City, in 1945, in an area known as um, Footside, or Sunnyside. Another name some people use to give this area is “Greenwich Village on Maternity Leave”. Because many people moved there from Manhattan after they had children who were progressive thinkers, free thinkers or artists or political activists, so it was a wonderful neighborhood.

Irene: Were you raised there?

Ms. Bernstein-Baker: I was raised in the Borough of Queens, New York my whole life. I spent 6 years in that particular neighborhood, and then in various other neighborhood in Queens, and I eventually spent my formative teenage years in an area called Long Island City, which is, wasn’t far away.

Irene: Do you have any siblings?

Ms. Bernstein-Baker: I do, I have one brother.

Irene: Where were your parents born?
Ms. Bernstein-Baker: My mother was born in Poland, and she came to the United States when she was about 12 years old and my father was born in the United States in Bridgeport, Connecticut, to an immigrant, born to an immigrant family. So both my parents are Eastern European immigrants.

Irene: And I’m sure that’s influenced, your uh, your, your taking a position at HIAS.

Ms. Bernstein-Baker: Definitely.

Irene: What did you parents do at the time?

Ms. Bernstein-Baker: My mother um, was a dressmaker, she worked in a factory, she was a garment worker. She also was a union organizer for several years and remained active in the union – Local 22, of the International Ladies Garment Workers Union, which is now called UNITE, which had many Eastern European workers in it from the turn of the century and later on, more the 1920s up through the 60s, uh…and uh, she stayed at home for several years as was the practice back then, and then returned to the factory and remained a shop steward active in the lowly levels of the union. And my father was a translator, and an editor, and an aspiring writer who was not able to publish too many works. He spoke about 7 languages and was very involved in the struggle for democracy and very much against, uh, fascism during the war and because of his linguistic abilities and his contacts, knew many anti-fascist leaders. So our house was always constantly filled with very interesting people from both sides of the family.

Irene: And how did your parents’ experiences influence you as a child?

Ms. Bernstein-Baker: Well, uh, both my parents are progressive thinkers. Um, my father was a great humanist, and he taught us as children, that uh, money was not the end-all be-all of life. That our values of caring for other people, of supporting the people who didn’t have as much as we did, although we didn’t have very much, uh, was really more important than money. And my mother supported him in this viewpoint and actually, she supported us economically as well. In those years, a lot of women didn’t work, uh and so my mother was a bit of a trailblazer in the sense that she went and maintained her job uh, after, uh, we were certain age she returned to work to help support the family. My father worked for himself for many years, um, translating, uh and, he made a very modest living so we really needed my mother’s income, uh, for the family’s…survival.
Irene: Were you involved in any, uh, public service as a child?

Ms. Bernstein-Baker: I think I’ve always been a little involved in public service in different aspects. I guess the first thing I ever did publicly was, uh, when one of my neighbors’ sons got polio. Those years was, uh, we were just developing the Salk vaccine so there was a lot of polio around. And I felt very bad for him. And we were all very modest income in that area so I decided to sell my toys so I could get money to give him a gift. And I put all my used toys outside and I had several takers and I did manage to make about $5.00 and buy him a gift, which was very appreciated by his family.

Irene: And what did your parents think about that?

Ms. Bernstein-Baker: They, they thought it was very nice of me. They thought it was a little odd that I would sell so many toys, but they were very supportive, they were proud of me.

Irene: Outside of public service, were you involved in any other extracurricular activities during school or...?

Ms. Bernstein-Baker: Well, during high school, I was editor of my high school paper, and actually I was involved, uh, in that period, the beginnings of, kind of, an anti-war movement were beginning then. It was a very difficult time, the 50s, because there was a great fear over the nation on many levels. One was a great fear of communism. And we were, uh, trained to, uh, take shelter under our desks, uh, in preparation for possible nuclear attack. Uh, so there was a, there was a very chilling atmosphere in the country at that time. It was a period of McCarthyism where people were afraid to speak out, uh, and tell their views, and this affected my family greatly. Uh, I um, I believe my first action in high school, uh was that um, I refused to take cover under the desk, because as I explained, I was a very precocious young woman, and as I explained to my teachers that it wouldn’t make any difference – I would still be dead and I didn’t want to participate in what I thought was a fraud, a lie. So I refused to take cover. There were about 3 or 4 of us in the school who did this protest, and we were fortunate because the teachers actually supported us, and so they allowed us to sit in the hall in a special area while the others took cover. And they respected us because in our school, it was a working class school and really only 60 of us out of a class of 300 went on to college. And the 4 of us who refused to take cover, we were among the 60, so we were kind of the intellectuals of the school and in a way, we were pampered. So, I refused to take cover and uh, few months later, we decided, the high school
students decided we would have a very big show, uh, of refusing to take cover by going down to city hall and we would all refuse to take cover at one time, and I must have been 14 or 15 at the time. And we did. And the police attempted to, uh, get us off the street, including arresting some people because it was considered very, uh, unpatriotic and also not done, uh, according to the rules. So it was a very anxiety-producing event, uh but I managed, uh to um, leave it peacefully, and that was, I guess I guess I would say that was my first public protest.

Irene: Have you been involved in any other protests since then?

Ms. Bernstein-Baker: Oh yes, and all through high school, we, we were following the developing civil rights movement. And uh, very exciting times in New York, uh, at that time, uh, the students in the South, predominantly the African-American students were bravely desegregating, um, lunch counters by sitting in lunch counters. At that time, you know, they had segregated lunch counters and African-American students couldn’t sit at the white lunch counters, and we would watch this on television, and we would see things, kids being beaten up our age, or a little older, and we decided we had to do something in the North to show our solidarity, to show our support. So every Saturday morning, a number of us would gather in front of Woolworths, uh, which was a big, uh, variety store, called the Five and Dime Store. And we would picket Woolworths because we would be asking Woolworths in the North to pressure their branch offices in the South to desegregate their facilities. And in the beginning, there were maybe 20, 30 students who would show up from across the city of New York, but by the year’s end, we would have 3, 400 people a week coming down to, uh, picket, and it was as much a social occasion as a protest. We’d, we’d meet students our own age from various parts of the city, we’d learn different songs, and different chants and um, eventually of course, the desegregation law fells, and uh, now we have a situation where we, there is uh, no more *de jure* segregation in public accommodations.

College:

Irene: Do you continue these types of activities in college? I see that you went to the State University of New York at Binghamton.

Ms. Bernstein-Baker: Yes, um, of course I did. Once you realize in those years, not as many people went to college. Those of us who were fortunate to go, and in those years, when you went to a State college, if you were a city kid like myself that was kind of like, uh, really going to California was a big deal, for a lower
middle class person to leave New York City cause a lot of my friends ended up going to City College. That’s what people did who didn’t have a lot of money. But I was fortunate, I got some scholarships, and I was able to go to the state school, and although the school was in an isolate, fairly isolated part of New York State, or wouldn’t say isolated, but there were not huge cities in upstate New York, Binghamton, New York, we had a very activist student body, mainly drawn from New York City, many students were from New York City. And we did things to support the Civil Rights movement and later got very involved in the anti-war movement against the Vietnam War. I, uh, I guess I was considered one of the campus leaders of both efforts.

Irene: Describe your most vivid memory during these times in college.

Ms. Bernstein-Baker: I have two very vivid and uh, memories of, in terms of the protest activities if that’s what you’re referring to. The first is, um, when a local department store announced that they would give a dollar to the first 100 people who showed up as a promotion to their new store opening. And of course, back then, 100 dollars was a lot of money, probably more than a 1000 dollars today and we wanted to raise money for the Civil Rights movement and for the students in the South who were going on freedom rides where they would force the desegregation of the buses and the bus stations. So we decided um, we would organize 100 students to show up first, then we’d get 100 dollars that we could then send to the South. The only problem was that it was about −5 below zero, it was in January and um, we were very cold and we had to show at about 5AM in the morning because we had to be first. And we did, we showed up, and we froze, but we did whatever we could to keep warm. Now that created a little tension with the people in the town because they felt we were kind of, uh, commandeering all the money and they were very resentful. And uh, the store developed a very creative solution. They gave our group a donation of 100 dollars and then they let people, the rest of the people, line up and um go through the first-come first-serve procedure that they had originally announced. So the first lesson I learned was, if you persevere and you’re on the moral high ground, um, you can change a policy or a program and you can benefit the people you’re helping to benefit, so that was a very important lesson, but uh, I remember that because of the weather – it was very cold. And uh, we would do things like that, as young people.

The second thing I remember, that was very important, was, when we had to make a decision as a student group about our position on the draft. Now at that time, there was a certain exemption for students and many of the college presidents wanted to maintain this exemption, otherwise they wouldn’t have a student body.
And they felt that if students attended college, it’s in our national defense interest to have them finish, so they wanted to maintain this special exemption for students. This created a moral dilemma for us as students because are we going to be putting ourselves in a privileged position and a special position by fighting for this exemption or should we rather take the position that this is a bad war, or this war shouldn’t be fought in the way it’s being fought and, nobody should have to serve. In other words, should we ally ourselves with the working class and the under and unemployed people who were forced to join the army because there were not many jobs back then. And uh, we took the position that, uh we would oppose, uh sending people to the war, no matter who they were, that we did not want any special privileges, uh for college students, which was against our own interests in a way, and of course it didn’t affect me directly because I’m, I was a woman and they weren’t drafting women, and they still don’t’ draft women. But I remember we decided to take this position during parents’ day and a lot of parents were visiting the university and uh, we decided to schedule an outdoor discussion and of course, parents were very nervous because they didn’t want their kids to go into the army. The president of the university was scheduled to speak with me on the podium, and the president talked about the importance of the student exemption to try to allay some of the parents’ anxiety and fears and to also try to urge them to lobby for this special exemption. And then I got up on the podium, and I had to disagree respectfully with that position. And of course again, it was a hard position to take, cause the students did not, many of the students felt that it was the wrong position from their own self-interested point of view, but in the long run, I think it was the right position, principle position. Uh, so that, I remember, that, that rally very vividly, and I remember how embarrassed the president was that I didn’t kind of didn’t go along with the program, but I also remember the strength I got from the reception I did get from the students who really understood why we had to take that position, although it was one that, in the short term, isolated some of us from the other students who thought we should be more pro-student and just fight for their special draft exemption.

Irene: Have you ever encountered any similar kind of opposition in your public, uh, interest community?

Ms. Bernstein-Baker: Well, um, I think it’s always difficult to take a position that may, you may think in the short term doesn’t really benefit you, but it’s done in the greater good. And life is full of choices, and I feel you often are called upon to take these kind of positions in your work, in the way you live your life, in your career choice. Uh, so I’m trying, I’d like to be specific...um...well, I, this is not
controversial to me, but I can see how it is controversial with other people. Very recently, uh, the governor of Pennsylvania announced that homeowners would all get $100 rebate because we had a budget surplus. Well, I could use the money, as well as the next person. But, I felt that there should be more money going to the schools, the Philadelphia schools, um, need, uh, need funds from Harrisburg. So I joined with several other people to return my 100 dollars and ask them to donate it, you know, donate it back to the schools. Uh, but that was an easy decision in the sense because while I needed the money, I wasn’t starving, I think it would have been much harder if I were destitute. So I, I think we’re confronted with these decisions all the time, not just about money, uh, but about uh, where you live, what benefits you, uh, short-term and long-term.

Graduate School/Social Work Experience:

_Irene:_ This very firm commitment to public service is reflected in your diverse social work experience. Um, I know that according to your C-V, you, uh, after college you worked for the Company of Young Canadians and the Department of Welfare in Rochester before going on to get your Master of Social Work at Penn. Can you tell me a little about these experiences and what role they had, uh, in your pursuit of a Masters in Social Work?

_Ms. Bernstein-Baker:_ Well, I come, I have many relatives in my family who are social workers, not immediate relatives, and I guess ever since I sold my toys, uh there’s been an aspect in me of wanting to help people. Uh, so going to social work school I guess was a culmination of that. Uh, when I worked in Canada, I worked largely with the immigrant community and I felt I needed a lot more training on developing organizations, on intervening with people in crisis and I felt I needed some more reflection and study in that area, and so I was fortunate to be able to attend the University of Pennsylvania School of Social Work and in those years, the coming near the end of the Cold War where we had money so we wouldn’t fall behind our main opponent, the former Soviet Union. There were actually grants and scholarships available so the University of Pennsylvania was very generous to me and applied for grant from the Office of Mental Health. So I actually was able to attend graduate school without me paying any tuition. And that was sort of a wonderful situation in which I, uh, could take advantage of both my prior experience of working in-field and also of the education that the School of Social Work gave to me.

Uh, I think social work is about social change, whether it’s social change working with an individual, or social change working with a group, or social
change working with uh, on a national level, with policy, so it, it seemed to be a very logical step for me to, to study in that area after all my experiences.

**Law School/Law Clerk:**

**Irene:** After getting your Masters at Penn, you spent the next 8 years doing social work before deciding to go to law school. When did you make the decision to go to law school and what motivated that decision?

**Ms. Bernstein-Baker:** Well, I was always the kind of social worker who was an advocate. I always tried to learn the rules and then see how the rules could be expanded if they weren’t fair, or even changed. Uh, and, uh for example, uh when I was a caseworker at the welfare department in Monroe County, which is in Rochester, I had big responsibility. I had to give out money. I had to go visit people and I had to decide whether or not they got money and I had to decide if they were having relationships with men that would prevent them from getting money. It was an awesome responsibility. And I read the rules very carefully to find out what I could do and what I can, could not do. And I noticed, that among my clients, that’s what we called people we worked with, the people who were a little economically better off, seemed to do better with their children. They seemed to be motivated to better themselves. So whenever an opportunity arose for me to use the rules to get somebody more resources, I did. So I learned the rules on getting furniture for people. And I learned that, uh, a very often unused rule was that if you, you know, moved into a new apartment or you had an emergency, you could apply for furniture money and you could get furniture money. And I had several clients I was able to get furniture money for, uh, to help them, and in fact I was called into my supervisor’s office and I was accused of being the caseworker that gave away the most furniture money. But I also explained to this very supervisor that my caseload had more clients attending community college and getting training than most of the other caseloads and I really have to attribute this to the fact that we developed a relationship where I encouraged them to better themselves and they understood that I would do whatever I could, uh, to bring them the resources they needed to do this. So I always was an advocate even if I had an individual caseload, and I always liked to study the rules, so I knew what was possible.

And, when I, uh, moved to Philadelphia, I, uh, designed a placement for myself in Social Work School uh, in community legal services, because I was always fascinated by the relationship between law and social work. And, I designed a placement so that I would work with tenants who were having problems being evicted and at that time, when I was in the School of Social Work, uh, there
was a great tenant movement in Philadelphia and lots of organizing going on at big buildings. And I became a liaiison between these tenant groups and community legal services. So I became even more interested with how you use the law with groups and how you train, uh, individuals who are trying to better their conditions, uh, in how to use the law. So after I finished Social Work, I obtained a job in community legal services and it was a very fluid organization at the time and I found I was doing casework and I was, uh, doing organizing and I also found that uh, somebody would be out of the office and they’d want me to represent somebody at a fair-housing hearing, kind of like that, uh, type of advocacy. So I became so involved with lawyers through my work at community legal services I realized that uh, I could do this, I could also be a lawyer. Uh, and so that’s what got me interested in uh, going back to law school after having my social work degree for several years.

Irene: Well, why did you decide to learn these skills at Temple Law School?

Ms. Bernstein-Baker: Well, I went back to law school when I was older. I was about 39 years old. I had 2 young children at the time. And my husband is a public defender. Was, is a public defender. So we had a very modest income. And I decided that Temple would be the kind of place that we could afford. And also at that time, there were very few, if any older women, especially women with children at, uh, schools like Penn or the other elite schools. So I felt I would be more comfortable at Temple. Uh, and uh, I was able to finish Temple and not have too much of a loan burden. That was a very important thing back then as it is even more so now, because I knew I wanted to do some sort of public interest law and I could not graduate with a very heavy loan burden. They didn’t have loan forgiveness back then. So I had to go to the, a place that was affordable that uh, taught me the skills I need to know so I chose Temple.

Irene: Do you think your orientation toward public service and public interest law was reinforced at Temple Law School?

Ms. Bernstein-Baker: Yes, uh, I don’t know if it was reinforced by the formal curriculum at the time, but I engaged in a lot of extracurricular activities that enforced, uh, reinforced my orientation. Uh, at that time, we had a food stamp clinic, which we ran as a model, uh, well the Penn food stamp clinic was our model, and there was a lot of cross-fertilization between the Temple students and the Penn students and I was very active in the formation of that clinic and the running of that clinic and uh, several other activities. Uh, so I, I would say a lot of my extracurricular activities were as formative as my um, curricular activities.
Irene: After graduating from law school, you accepted a clerkship for the Honorable Berel Caesar, who has since passed away. In describing the great influence Judge Caesar had on your career, you were quoted in the Legal Intelligencer as saying that he “showed [you] that every case is a story in search of justice, and that the judging process was a blend of understanding the law, the facts of the case and the social issues.” Do you confront every case that reaches your desk as a story in search of justice and do you think that judges you have confronted in your practice share Judge Caesar’s view of the judging process?

Ms. Bernstein-Baker: I don’t think every judge shares that view. I think he was uh, very special in that regard. Especially because I think he…it, it’s always a balance uh, between the law and the facts and social policy on how you come down on a case. I don’t know that all judges have the balance that he had. Some judges uh, as you know from your own studies here at law school, uh, take the strict constructionist view, which is to say uh, uh, they, they’re wordsmiths. They look at the words and they don’t necessarily look at the larger public policies or social values behind the words. And then there are others that emphasize um, the facts, or emphasize the social policy concerns. And it uh, and so, I think there are very different approaches, uh to interpreting the law and applying the law among judges and among lawyers.

But I think Judge Caesar had a very good balance. Not necessarily would be my balance. But it was a balance I deeply respected. For example, we had a case, my first case with the judge of a woman who did not speak English. She was injured in a hospital accident when an orderly uh, ran a uh, one of these carts into her. There was no question that there was liability in that case. The issue is whether there were any damages to her. This was a woman who, was forced to return to work, uh within weeks of the accident because her husband was dying of cancer. And, as I read the transcript, I realized that she did not understand a lot of the questions and that there was a lot being lost in the translation. And I really don’t think she conveyed to the jury why she returned to work. So the jury made an odd finding. They found liability, but they found there were no damages awarded to her. And because of this, um, I was concerned. And uh, this was the first opinion I had to write for the judge. And I wrote two opinions. I wrote one opinion that I felt reflected what was going on and social justice concerns that she didn’t convey why she had returned to work and that maybe the jury uh, thought that she wasn’t that injured and didn’t get an entire picture because of the interpreting issue. However, I could find very little case law, because it was a jury verdict and you don’t overturn a jury verdict very easily. And then I wrote a second opinion that was much more consistent with the case law and um, did not overturn the jury’s verdict. And I gave him both opinions and I said, this one, the
first one, the one that didn’t have so much...I found one case to support it...didn’t have a lot of case law to support it, but to me was the more just opinion. And the second one he wouldn’t be overturned on. And it was, you know, then he decided. And uh, what he did was uh, tremendous learning experience for me. He called both, these were all in post-trial motion so he called both attorneys in who had argued the case, the attorney for the hospital and the attorney for this Italian client. And he said, “You know, my clerk found this one case which intrigues me and I, I’m thinking of agreeing to uh, a new trial on this matter. What do you think of this, defense counsel?” And I was surprised that the defense counsel said, “Your honor, we’ll settle the case today. We’ll give her X amount of dollars.” And um, the case was settled and the client got some money, without any litigation. And I don’t know if to this day, if the judge would actually have ruled for a new trial, but he used it to try to get the just result and that had a big impression on me. And it was the just result because, what I heard afterwards is the defense attorney walked up to me and he said, “You know, I’m so glad you found that case. I felt so guilty about this case cause even though I represent the hospital, I did poll the jury after the verdict and one of the members of the jury said they gave their decision that she wasn’t entitled to any money because they were convinced she got worker’s compensation, which she really didn’t. I’m not even sure she got worker’s compensation, number 1, but number 2, under our law, worker’s compensation uh, is not to be considered in a judgment for damages in a per-, in an injury case. It’s a, it’s a matter of public policy. And he had an ethical dilemma because he had heard that’s why the jury deliberated the way it did and he knew that was wrong, but he was the only one who knew that and he didn’t feel he could share it with anybody. He had to protect his client’s interests. So we gave him an easy ethical out by, by taking the high road, the just road and it, it worked to everybody’s benefit – his conscience and the poor lady who’s injured.

**Director of Public Service Program at Penn/Views on Mandatory Pro Bono in Law School:**

*Irene:* After working for Judge Caesar for 2 years, you worked for the Support Center for Child Advocates for 2 years before accepting the position as Director of the University of Pennsylvania’s Public Service Program in March of 1990. How did you first learn of this position and why were you interested in it?

*Ms. Bernstein-Baker:* I learned of the position actually informally, from friends. They said, “You know, I think this would be a good position for you. You seemed to have been involved for a long time in public service, you know a lot of people.” And while I was at the support center, a big part of my job was to train and recruit
pro bono attorneys and through my work and support at the support center, I was connected to a vast network of pro bono organizations and law firms um, who did pro bono work, uh so when the official job announcement was made, I applied and um, I had a real feel for how I could create the program, which again was sort of a natural evolution from all these past years of experience in Philadelphia. By that time, I’ve lived in Philadelphia, you know, 20 odd years and I, I knew the public interest law um, community both from my work in community legal services as a non-lawyer and my later work in uh, in the support center and all the activities I was engaged in.

Irene: Did you ever have this vision um, utilizing law students to help the public interest community, did you ever share or have this vision before you, or were in this position. Did that ever come to your mind before?

Ms. Bernstein-Baker: Well, I, I always felt very strongly that law students should do public interest and pro bono in, in some way for credit or not credit, whatever motto worked, because it was such a rich experience for me when I was a law student. So I, I, I felt that it was both a learning experience for the student uh, as well as a much needed resource. But I didn’t really have a vision of an exact program of how it would look. I just had an instinct that if you created interesting opportunities um, the students would take it and run with it just as we did, just as I did when I was a student. Remember, I went to school late in life, law school, and so I wasn’t so far out of law school when this job opportunity came along even though I had been in the public interest legal community for many years, it was not as a...as an attorney.

Irene: Do you see any differences in the public interest community uh, in law schools today from the type of public interest communities that you were a part of, when you were in law school?

Ms. Bernstein-Baker: Well, I think there’s more institutional support, much more institutional support for public interest and public service in law schools. But unfortunately, there’s also a lot, a lot more barriers as well, uh, especially for those seeking a full-time career. Uh, the funding cuts for legal services, the struggles non-profit organizations uh, undergo, the loan burden, these have all, these are all greater in some ways than 20, 30 years ago. So, while I, I see a lot of institutional support in the legal esta...in the academic establishment, we haven’t really been able to build that kind of infrastructure outside of academia for full-time or substantial uh, public interest and pro bono work. And I, I also see this, it, it goes in cycles. So now uh, for example, many big firms to compete with other big firms
and get the best students have to pay very big salaries. Because they have to pay very big salaries, they have to do a lot of billable hours. Because they have to do a lot of billable hours, there’s less time to do pro bono. So there are many, many large economic forces at work here that uh, despite our best intentions can undercut even the uh, most ambitious uh, public interest or pro bono uh, program in the law school.

Irene: As Director of the Mandatory Service Program at Penn, did you personally feel at the time that pro bono work should be required at law schools? Do you still feel the same way?

Ms. Bernstein-Baker: I feel that some things should be required, I don’t think it should necessarily has to be this model, the model – Penn, which is that uh, you do a certain number of hours and you go through a, an organized placement process. I think there are many models of how this can occur including clinical education, uh, and externships, uh, I’d include those as very valid experiences. So uh, but I do feel yes, there should be some required effort on the part of students to do some public service. I think uh, we are, lawyers are a profession, we regulate ourselves, we license ourselves. There’s a lot of unmet legal need and we, we have to whenever we can, fulfill our responsibility personally to, to meeting those needs. Um, and I think the law schools are good training ground to instill that ethic in, in new lawyers. And it’s also a time when you can instill that ethic – when you don’t have the billable hour pressure, you do have other pressures, but I don’t think law students realize what a wonderful time law school is until they get out and they have to uh, you know, work many, many hours a week. So it’s a good time to do it.

Irene: Do you think lawyers, should also uh, be required to do some pro bono work in their practice?

Ms. Bernstein-Baker: Required?

Irene: Do you think it should be mandatory?

Ms. Bernstein-Baker: I would like to see a system where lawyers who can afford to, or above a certain income level, if they can’t, if they don’t do pro bono, they donate the equivalent of several hours of funds to a public interest organization. Um, I would like to see a greater emphasis on pro bono and public interest and I would like to see that built into the firm’s evaluation system of someone and their training. Uh, I, I would stop short at this point of requiring it even though I feel so
strongly about it myself, I don’t see how anybody couldn’t do it. But there may be instances, hardship instances, uh just like we have a hardship exemption of the public service program where a young attorney is starting out and, and they just don’t have the time to do pro bono, they, they really, you know, many solo practitioners, just they don’t have an income. On the other hand, you find a lot of solo practitioners take pro bono cases, great experience, great training. So, uh, but I do stop short of, of a requirement, uh, but I think at least with the bigger firms or the people with resources, there should be a very strong culture and maybe even a requirement uh, for the people with more resources.

_Irene:_ Going back to March 1990, when you first took the position as Director of Penn’s Public Service Program, how much latitude were you given in implementing the program?

_Ms. Bernstein-Baker:_ Well, I, latitude isn’t even the word because nobody knew what we were implementing. I said, I was, I was given huge latitude. Um, we, we, we um, the committee that initiated the requirement though was very thoughtful and uh, we, we did have guidelines uh, to work with, so uh, we had 70 hours of work and there was already a definition of what that work should be. Um, and uh, but within those guidelines, um I was free to do whatever I thought the program required.

_Irene:_ Did you feel a lot of pressure to make it work?

_Ms. Bernstein-Baker:_ Well you always want to do a good job and I, I thought this was such a unique program uh, that it was important that it work, so I guess yeah, I did feel some, I did feel pressure to make it work.

_Irene:_ Did you ever give yourself any room for failure or...?

_Ms. Bernstein-Baker:_ I rarely, I rarely give myself room for failure. It’s uh, it’s uh, I, I don’t usually take on a task if I don’t think it can happen. So I guess my room for failure comes before I commit to doing something and this, this seemed like a very viable program.

_Irene:_ Did the law school give you any uh, any room, uh in case it didn’t work out, they did have any other options uh, were they sure this was going to work?

_Ms. Bernstein-Baker:_ No, they were not sure, at all. And the first few years, I was in 4 different offices, including a closet and sharing an office in the library. Uh,
yeah, there wasn’t a lot of thought about you know, a full-fledged program in those early years. Um, but and I believe after the 2nd year or the 3rd year, we, it built into the requirement, was an evaluation piece. And so the program was evaluated uh, by the faculty and fortunately, by that time, it was successful, largely due to the students’ efforts, their own efforts um, and their own enthusiasm. Uh so, so at that point, I think uh, that was a turning point when the program became more institutionalized and we got, we got a better office and we finally got a, the public service program is in a wonderful office now, probably one of the nicest in the law schools.

_Irene:_ You said the students were very enthusiastic and uh, helpful in uh, contributing to the success of the program. Did you ever find any or feel any resistance from the law school community or the public interest community here in Philadelphia?

_Ms. Bernstein-Baker:_ Yeah, I think there were instances of resistance from, from all quarters, uh, especially with such a new and broad program. Um, there were uh, supervisors uh, people in the public interest community that felt that they didn’t want to or couldn’t invest the time in supervising students, because uh, it, on sort of a cost-benefit analysis they weren’t getting enough out of students and sometimes placements didn’t work and sometimes supervisors and students didn’t mesh and there were personally and other clashes. So uh, so that, that was a problem. Um, secondly, there were some students who had very strong feelings that this shouldn’t be required, uh, and that we’ve always had several students in every year who had very strong feelings about that. Um, but it uh, it was a graduation requirement like some of the other courses and so, uh once that was made very clear to students, uh they went along with them and some of the students who were the most, uh, resentful actually ended up having wonderful public service experiences once they got over uh, their resentment. Um, maybe their heart and their head weren’t connected, I guess they intellectually felt that this wasn’t right. It was illogical to require pro bono. But then when they got engaged in it, they realized it was a good experience. I’m thinking of one student in particular who was very much opposed to the program, and we had lots of trouble finding him the right placement. And I remember after he graduated, two years after he graduated, he called me and he was now working as an attorney general somewhere in the public sector and he wanted to know if he could, uh how to start a street law program and whether he could use law students.
Irene: Did you think it would be especially challenging...challenging implementing this program at Penn Law where most graduates uh, go directly to big corporate law firms?

Ms. Bernstein-Baker: You know I didn’t really know that much about Penn Law when I came. So maybe if I knew it back then, maybe if I knew back, maybe if I knew uh, Penn better before I took the job, I would’ve been uh, very challenged. Uh, but everything was so new and I was you know, learning the culture of the law school, I really didn’t really didn’t think much about it, I, I felt like, uh, this was an important thing to do. I felt that we could create very interesting experiences for students, so um, I actually didn’t think that would be much of a challenge, um, because I think law students on the whole, do want some sort of hands-on experience or an experience uh, where they feel they’re um, not just focused inwardly, not just focused on themselves. And uh, so I wasn’t too worried about that. It was definitely a different culture though I, as I said, I, I went to a law school where there were lots of people of many different ages and backgrounds, which was the Temple motto, now, Penn’s becoming that, but back when I first started here, that was not uh, what Penn looked like.

Irene: So what do you think was the biggest obstacle in uh, building the program?

Ms. Bernstein-Baker: The biggest obstacle was and probably still is, um, is finding, um quality experiences for students within the timeframe outlines of the program and um, developing and maintaining a relationship with the many, many – for want of a better word – field supervisors uh, in, in, in the program so that that they would uh, you know, keep returning and keep wanting to sponsor students. Uh, the one development in the program that I encourage but also there was a dialectic there, I, I encouraged it and then I, and then the students encouraged me to encourage was the whole growth of some of the student projects or the more organized big projects. When I, when I first started I didn’t know if we we’d have a lot of the big projects like the food stamp clinic or CASAC which developed uh, while we doing, in the beginning of the public service program which is the Custody and Support Advice Clinic which today performs a great great service in the Philadelphia community, uh, and the work with the homeless. And of course this has its ebbs and flows and its not always an even development but um the idea of developing projects and helping students become leaders in those projects was really not on the front burners of what I thought should happen but when I saw how successful they were and how meaningful those experineices were to the students then that became a whole new dimension of the program.
Irene: What has been the most rewarding part about putting together this program almost by yourself at Penn?

Ms. Bernstein-Baker: Well, it’s very rewarding that it’s institutionalized here at Penn and that now its doing even more things and uh sponsoring more conferences and more opportunities for the practicing bar and the academic community and the student community to relate to each other but you know I guess on a very simple level the most rewarding is when I see some of the students who are now practitioners run up to me and want to tell me about their latest pro bono case or want to tell me about their lives and what they’re doing and, or have a question about an area of law and want to discuss it uh that it was memorable for some of the students. Now it’s not gonna be memorable for every student and I understand that. And the other thing is now I’m a supervisor in the program and I get to supervise the students and that’s a very rewarding experience uh to see it from the other end and to see both the limitations with respect to the time limits that they have to spend but the potential. Uh and you know I’ve had one student say to me recently that, when she, she’s had many offers from many major firms and she’s decided that she’s only going to go to a firm where she’s going to be able to do pro bono work, particularly in immigration, and you know that that’s very rewarding.

Irene: Do you think Penn’s public service program has influenced other law schools to follow suit?

Ms. Bernstein-Baker: I definitely think its has influenced other law schools although they may not have adopted this model. We were called and consulted by many law schools who were trying to begin a variety of initiatives and I think uh even locally the Temple program, they have a new public service department or program and a lot, some of it, is modeled after the Penn program. But even nationally we had a great influence on uh making public interest and pro bono uh an option for schools and uh you know I don’t know the lay of the land now because I’ve been away for almost three years so I don’t know all the varieties of the programs that have been developed but I will say that I recently got a call from a somebody in uh Virginia law school and I remember there was a public service coordinator in that law school who I uh was a colleague and we talked and this student remembered was referred to me by that colleague so there’s still a lot of networking going on and a lot of efforts at this. I uh I mean the biggest question of course is the resource question for law schools.
Irene: While some schools have followed in uh in this model instituting public service programs why might some schools or why actually why are many schools reluctant to institute this type of program into their curriculum?

Ms. Bernstein-Baker: Well I think there are a number of reasons. For one thing some schools uh are going the route of more of a clinical extending their clinical programs because one of the advantages of a clinical program is that the supervisors are academics and um are always available and that the learning of the student uh comes first. Whereas in a public service program the learning is the performance of public service and meeting an unmet need so they’re really different emphasis. And a lot of the supervision is not intense. It’s here’s three issues can you research these issues. So there’s a reluctance I think from a supervisory point of view. The second is a resource question. I think a public service program does call for some resources and some schools are reluctant to put the resources into that area and you know everybody’s always struggling with resources and their priorities uh so. And the third is the vision of the practice of law and what’s important. Uh you know the the as I said one of the models is the clinical models but the real compelling force behind the clinical model is one of education, is to teach by doing, the practical experience of lawyering now in you also do good in a clinical model and in for many students that’s a transformative experience, representing someone in a clinical setting and it really prepares them and turns them on to either pro bono or a career in public interest. But the main mission in clinical education is one of student learning. Um so sometimes there’s a tension and this is a fascinating topic that I don’t have time to deal with but there’s a tension between focusing on student learning and focusing on meeting an unmet community need. For example, in the public service program um if there’s a need for a student to do child custody work because there’s not enough lawyers to do child custody cases I would emphasize that in the program and I would create a lot of placements and the student would have the experience of doing child custody work but only child custody work because it wasn’t just about their learning although that was something they did. It was about providing a service and being a responsible as a professional to meet unmet needs. But if I was a clinician I might say you know I think it would be better academically if a child if a student had a custody case and an unemployment case and went into this court and into that court so they’re different philosophies and orientations even though the outcomes are very similar in other words in clinical education or externships those who finish them maybe just or even more motivated to do public service and pro bono that somebody who has a more limited public service experience but the um underlying educational goals and the values driving those programs are very different. Having said that clinical education, which I think is, I’m a real fan of clinical legal
education and externships, is a program that some law schools use, very costly. So I don’t think pro bono public service is at all an alternative to clinical legal education. It’s really a different model with both different educational and professional values. Uh, but it really a big program really exposes students more students to public service opportunities even though they may be shorter term and not as intense in terms of learning. Ah I mean in the wider screen you know wider scheme of things our profession is prey to many forces, economic forces, you want to educate students so that eventually they are employable. And its prey to the resources of a law school and it’s pretty to larger societal forces that tomorrow could end a whole practice of law. As one of my friends said I don’t know if we’re going to have employment discrimination law if certain people get into power and there’s a certain administration. So law is very subject to to larger forces so it may be that some law school are reluctant because they’re pressured by any one of these larger forces to conform their curriculum uh accordingly.

_Irene:_ You described a little while ago that tension between student learning and actually being responsible uh profession professional. Do you think it’s important to the clients that the students’ hearts be in their work or do you think

_Ms. Bernstein-Baker:_ I think it’s important to represent your client zealously, to uncover the uh unique issues that may be affecting your client, to want to go that extra mile, but I don’t think it’s necessary. I think we learn in our profession what our professional responsibility is and it is to represent our client competently and with zeal uh within the bounds of the law. So I would say if somebody represents somebody competently their heart doesn’t have to be in it although I would hope that their heart would be in it.

_Irene:_ Colleagues of yours have called you a true superwoman, an amazing person, and an important role model. After spending 8 years at Penn Law and putting together a hugely successful program, one that has recently won a national award, do you feel that you’ve left behind a legacy here at the law school?

_Ms. Bernstein-Baker:_ I hope I’ve left a small legacy. In addition to leaving a legacy in the law school I have two kids. I hope they’re a legacy. But I hope I’ve left a legacy and it’s a very nice thing to leave a legacy in such good hands because I feel the program is going along very successfully under the current Director, Susan Feathers and the Program Director, Pam Mertstock Wolfe and I still have many contacts with them and its really a pleasure so I think I’ve left a small legacy and that’s always nice. I think the most important part of practicing law is to leave some legacy or to impact someone in a real significant way because it impacts you.
and I have been so lucky to leave this program in such good hands and now in my current work to be able to win cases so people get political asylum and begin new lives or they bring their family members over or they finalize their status so they can work legally and not be terrified that they’ll be shipped back to a country engaged in a civil war. Uh to me that is a very very special honor. It really is an honor to to work with either a program that’s successful or clients whose dreams are realized because you really gain more than what you leave behind or the impact. It’s really your gain. Uh that’s the only way I can explain it. In In our life, we really don’t have much of an opportunity to see that kind of impact or kind of change. We really don’t. And when we’re able to do it at whatever level it really is an honor and it’s really not just you. It’s It’s you in relationship to a program or a person. It’s really a dialectical and a dynamic relationship so it’s never just one person. So I was you know I was lucky here at Penn, yes I left a legacy, but what we had a Dean that supported the program, we had faculty members that supported it and we had a student body that if they didn’t support it you could work with them.

_Irene_: Well you’re your commitment to public service is definitively impressive and you’ve left very big shoes to fill here at the Public Service Program. It was a definitely a pleasure interviewing you. Thanks.

_Ms. Bernstein-Baker_: Thank you.