

Meredith Coleman: Hi. I'm Meredith Coleman, and we are in Tanenbaum 215. This is part of the University of Pennsylvania's Law School Oral Legal History project, which includes students Steffen Bressler, Brian Gurtman, Simi Kaplin, Donna Mancusi, Cathryn Myers and Diankha Warren. It is currently 4:45 PM on January 31st, year 2000. We will be interviewing Professor Howard Lesnick. This interview will proceed chronologically, beginning with Professor Lesnick's childhood.

Simi Kaplin: Where were you born?

Howard Lesnick: I was born in New York City.

Simi Kaplin: And when did you move away from there?

Howard Lesnick: I was born in 1931, during the Depression. And we moved away twice because my father was looking for work. When I was three years old, we moved to Patterson, New Jersey for a short time. And then when I was five, we moved to a small town in Pennsylvania where we lived for five years. Then we came back when I was ten, and I stayed there until I went to graduate school.

Simi Kaplin: And where were your parents born?

Howard Lesnick: Also New York.

Simi Kaplin: What were their occupations?

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Howard Lesnick: My father was a small businessman, I guess you'd call him. My mother didn't work until after my father died.

Simi Kaplin: Was your father in a labor union?

Howard Lesnick: I don't think he was ever in a labor union. When I knew him, he was one of three people who owned a small business. So he was management, I guess.

Simi Kaplin: Did you have any siblings?

Howard Lesnick: Yes. I still do. Two brothers. They're both younger than I am.

Simi Kaplin: What were their occupations?

Howard Lesnick: One is a lawyer, and the other is an engineer. They're both still working and active.

Simi Kaplin: One of the them, you mentioned, was a lawyer. Was that decision influenced by you in any way?

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Howard Lesnick: No. We both went in the service when I was in graduate school. When I came out I went to law school, and when he came out, he went to law school. He was a year behind me. But he didn't follow in my footsteps. I don't actually remember how he decided to go to law school.

Simi Kaplin: When you were a younger child, did you have any plans of what you wanted to be when you grew up?

Howard Lesnick: [Laughs] Well, passing through the fireman stage and all that, there was a time when I wanted to be a doctor. That didn't survive 10th grade biology. We dissected a frog.

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I still remember that moment, It wasn't cutting through the outer skin, it was cutting through what was underneath it that determined the course of my scientific career. In college, I wanted to be a history teacher. I changed my mind while I was in the service.

Simi Kaplin: When you were growing up, would you say that religion played a large role in your life?

Howard Lesnick: No. Well, it depends. But we were Jewish. It was during the rise of the Nazi Germany and the coming of the war, and my family was certainly very Jewish-identifying. They were not observant, particularly.

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Even my mother's parents weren't. I know when my father's father came to dinner, my mother always reminded me not to ask for butter. "Where's the butter?" "We don't have butter with steak, dear." You know? But I started going to Hebrew school and then to religious services when I was ten, and I got my father more interested.

Simi Kaplin: Once you were studying history, what types of history were you most interested in?

Howard Lesnick: American history. I took a master's degree, and that was mostly in the Colonial period. I can't remember whether I was particularly interested in the Colonial period or that's just what the person I studied with did.

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But I think it was probably the former as well as the latter. I wrote my master's essay on the fellow who had a newspaper in New York before and during the Revolution. Those were the days when you couldn't bring a pen into the newspaper room or the New York Public Library. You had to take notes in pencil.

Simi Kaplin: Was there anything in particular that caused you to then decide to go into law? Any moment in particular?

Howard Lesnick: [laughs] I didn't have a clue as to what lawyers did. And I don't think I ever thought about that. I was interested in, you know, politics – not as a career, but as a subject. You know, political science and history. And three things happened at once. One was that I went to graduate school. After I finished my master's I went to Cornell in the doctorate program. And I was only there for a couple months, but that was an eye-opener.

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Columbia had some terrific teachers, but it was in sense an extension of high school. You got a book to read each week, and you got an exam every six weeks. I was working full-time and all the classes were in the evening, and you never saw anybody except during your class. And I got my degree, and I left. And at Cornell, in those days, all the graduate students were in one big office, and we each had a desk. And there were guys who had been sitting around seven years reading Hagel and, you know, I was sort of stunned. And you were totally on your own. I got a committee, and one of them asked me what I read, and he reached over and picked a book off a shelf and said, "Here. Read this and come back when you're done and we'll talk about it, and I'll give you something else." And I could have come back the next day or in four months.

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I'd never been put in that situation. It was probably also significant that I knew I was going to get drafted and I wasn't going to stay there for long. I

intended to come back, but then I found jobs in history were awful, and salaries were worse. The hotshot of the department who was getting his degree got a job at \$2,700 in Kansas. And I remember thinking, "The Kansas part was worse than the \$2,700 a year." I met my wife then, and we got married while I was in the army. And the army was just leaning against the truck for two years. And so all of that led me not to want to go back. And law was sort of a default. It wasn't that the things you study in law school or law practice were interesting, I didn't have a clue about that except the sort of things you think about with respect to law in a history or political science undergraduate department.

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Simi Kaplin: While you were at Columbia [Law School], you were the editor in chief of the law review.

Howard Lesnick: Mm-hmm.

Simi Kaplin: Did you get the opportunity to study any of the things that you found interesting about law while you were working?

Howard Lesnick: Oh, yeah. But that had nothing to do with being editor in chief. I was really interested in law just as an intellectual pursuit. It was very focused. It was just the opposite of history, where everything is relevant. Law just hones you in on things. I found it intellectually challenging, but it wasn't hard. It's harder now.

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But it was pretty simple if you could just winnow away things and had a facility with words. I found it interesting. Like my law review note--I stood there in the library at the same stand-up desk for about four weeks, just pulling F. 2d's off the shelf and reading case after case and banging out file cards. I thought that was fun, working out a problem.

Simi Kaplin: Upon graduation from law school, you clerked for [SCOTUS] Justice [John Marshall] Harlan.

Howard Lesnick: First I practiced for a year.

Simi Kaplin: Oh, okay. Then you clerked. Were there any inspirational moments or any cases that really changed the future of where your career would go?

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Howard Lesnick: No. I had been interested in labor law. I had a really good teacher for labor law. The firm I went to had a heavy labor law practice, and I liked it. And it just happened that the court that year had a very heavy labor law docket. It was a very quiet year. It was between two very controversial years. and the year I was there was not that controversial. But I really enjoyed working on those cases, and then when the opportunity to teach came along I decided that that might be more absorbing than practice for reasons I could tell you. Penn asked me if I wanted to come here. And so I did. I taught labor law.

Steffen Bressler: I'm going on with questions about your early years at Penn. You said you were very interested in teaching when you were in college. You wanted to become a history teacher. So it seems to me you were more interested in teaching than in scholarship?

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Howard Lesnick: That's a fair question. I didn't really have a clue about scholarship. And the teaching, to me, was really thinking about the area. I found some of the things I studied in college interesting in reading – especially history. And the same in law. And there was a lot more history in law school than there is now. You know, we spent a year -- six credits, of first-year property. We ended in 1536.

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And I knew that law teachers wrote. And one of the things I liked about the idea of teaching compared to practice is that I could spend a lot of time on a subject because it was absorbing or it seemed worthwhile; whereas in practice, if there's enough involved in the case that the clients want to pay for it, you do a lot of work even though it might be narrow and boring to spend time looking for something that isn't there. And if there's not a lot of money in it and it's a fascinating subject, you don't work on it. And none of that was political. I didn't have any political thoughts about practice and things like that. But what teaching meant was being able to think about and figure out what I was interested in. And I also didn't have...when you say I was drawn more to teaching than scholarship, I didn't have a clue whether I'd like standing in front of a class or what it'd be like. I never thought much about it.

Steffen Bressler: But now looking back, you think it was the right decision to become a teacher? You still...?

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Howard Lesnick: Well sure. I mean, that was 40 years ago. For the most part, I like it a lot. You know, my two favorite days...a lot of teachers say this is the day the students leave and the day they come back.

Steffen Bressler: And now, why did you choose Penn? You studied at Columbia University, you said.

Howard Lesnick: Well it was a different world. Nobody looked for teaching jobs. And very few people went into teaching right out of law school. I was pretty young, not even two years out. Wasn't that young 'cause I had a master's degree and had been in the service. Somebody at Columbia recommended me to the school here, and the dean called me and asked me if I was thinking of teaching. And I don't remember what I said...but anyway. I came here and interviewed, and they offered me a job.

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So I took it. I didn't go looking to other schools or anything like that. And, I mean, I asked one or two people at Columbia what they thought of Penn, and they all said it was a very good place. And the biggest question was whether I'd go back to the firm I was with or whether I come here.

Steffen Bressler: And you said you interviewed. Can you give us some more details about this interview?

Howard Lesnick: Oh yeah. It's very vivid in my mind because it's so dreadful now. And first of all, the dean said, "Come with your wife." So I told her, "You know, he wants you to come too for the weekend." So she said, "What do I want to go for?" 'Cause I didn't think I was going to do it. And so, I called back and said, "Well this isn't a great weekend for her." Technically true, but no weekend would've been great for her 'cause she didn't want to come." So he said, "Oh, it's very important that she come too. So let's make it another weekend." So we were stuck. And we came.

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And it was so different from what happens now. I got here around noon on a Saturday in the afternoon. I was in maybe three or four offices with two people each for a half hour each. And we went out. We stayed at the dean's house. We went to dinner at somebody's house, and some other people came and there were a couple of people at dinner. I learned later that the people at dinner were on the appointments committee, but I didn't

know that then. And then a batch of people came in for evening. And the next morning, the dean took me to somebody else's house out in Radnor. 18th century building – great, old building. And then I went home. So it was great. I got to meet people, and we talked. And I wasn't expected to make a presentation revolutionizing some field of law at the age of 27. And that was it.

Steffen Bressler: Much more personal, then?

Howard Lesnick: Well yeah. I really got to see the people and the places. A much smaller faculty. I mean, I probably met nearly everyone.

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Steffen Bressler: But were the students involved in this process?

Howard Lesnick: That never occurred to anybody in 1959. [Laughs]

Steffen Bressler: And then when you started teaching in your first year, can you tell us a bit about your impressions that you have from teaching? Which courses did you teach? And how do you think your style of teaching changed, or how did you start up and how did you change it? And why did you have to change it?

Howard Lesnick: Hasn't changed a bit in forty years. No. It's hard to remember it in any detail. I remember spending the summer sitting on the porch of this house we rented out in Delaware County reading about labor law. And you know. I mean, it's a funny thing about teaching – especially in law school, you don't have to know anything about the subject to teach it. Right?

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And you certainly don't have to know anything about teaching. In fact, studying teaching is – I had a friend who went to the School of Industrial Labor Relations at Cornell, and she really knew about labor relations stuff. And when she said, "What are you going to teach," I said, "Labor law" – she just spontaneously said, "Oh, but you don't know anything about that . . . Oh, I'm so sorry. I didn't mean that." I said, "No, you're absolutely right." I took a course in it. I worked on some cases in practice and working for Justice Harland.

But it was great. It was interesting. Again, I loved the historical part of it. And it was a good time, because the labor relations law had been amended with great controversy. It was a public issue just a year before...and then,

of course, shortly after I began teaching it was the Presidential campaign where Jack Kennedy was elected President, and the labor board turned over, and there was a whole lot of controversy about a lot of different things. and so it was exciting.

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And I felt a little benign toward my colleagues who taught private law subjects where it was mostly, you know, what happened in the 16th century, or sometimes as recently as 1850 – third-party beneficiary law and stuff like that. 'Cause this was very public stuff, but it was the legal way of thinking about things. And I never thought much about, "What teaching style would I adopt?" You know? I have changed my teaching style over the years. Did you want me to talk about that or should we go chronologically?

Steffen Bressler: Maybe you can say – what was first and maybe later in some other -

Howard Lesnick: Well, it's hard to describe at first. I don't remember in any detail. But, you know, I was interested in the evolution and critique of legal doctrine. And so, I would go over the details of this particular wrinkle and that. I remember once *[laughs]* I also taught conflict of laws.

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And I started using a case book that had just come out. And that too was in ferment in those days. And each year, I would add some recent stuff that I would mimeograph, we call now Xerox materials and including a recent case. And then the supplement of the casebook came out, and that case was in the book. And I assigned it out of the casebook, but I read it out of my own version. And I asked a question of a student who answered, and I said, "Well where do you find that in the opinion?"

And he looked and told me. And I said, "Well what about such-and-so?" And he looked up at me and said, "What?" You know? I said, "Well what about where the court says so-and-so?" And he said, "Where does it say that?" And the editor of the supplement had taken out what I regarded as a really important passage. So it wasn't in that, and I never looked at it, 'cause I had the one...I just assumed it was the same. And that lasted for about seven or eight years where I taught that way. And in seminars too, I'd spend hours going over papers with people on little details.

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Steffen Bressler: Just wanted to show you - Okay. Here. I got the yearbook from 1961.

Howard Lesnick: Oh, my God.

Steffen Bressler: If you can just have a look on it. And maybe there were some colleagues that influenced your teaching in the first years? Maybe you want to mention some students that you remember, maybe some did very well?

[0:23:00]

Howard Lesnick: Well, I mean, here's Dean [Jefferson] Fordham. He didn't influence me in teaching in the traditional way, but he did in very many ways as to what the legal profession was all about and what teaching was about and what the responsibilities of the bar were. It's a great picture of him. *[Laughs]* *[Flipping pages]* Paul Bender and I came together. He was {Supreme Court Justice Felix] Frankfurter's clerk. What is it you want me to do?

Steffen Bressler: Maybe point out some few colleagues that influenced you very much. Or maybe you remember one special person.

Howard Lesnick: Well, people influenced me not in my teaching in the direct sense. But like Caleb Foote was a wonderful person. He's still alive, and he influenced my view of the world. At that stage, I was in what I think was my apologist phase. You know what I mean? Working for the Supreme Court and going so quickly from being in the army to being on the faculty here was sort of a moral hazard.

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And he had a much more jaundiced view of things. He had been in prison as a conscientious objector during the Second World War. He worked with the Japanese in the West Coast and was involved in the internment program. And during the whole Cuban Missile Crisis, for example, he was the only person I remember who was critical of the United States position. Oh, God. Look at these.

Steffen Bressler: That's you.

Howard Lesnick: What? *[Laughs]* Am I here? That's right. That's me. I didn't even recognize me. Yeah. That's me.

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Lou Schwartz was then a senior faculty member. He came to the law school faculty in 1946. He was the first Jewish professor the school ever hired. And there'd been one or two between that time and when Paul and I came in 1960. And he influenced me in some ways. We would talk – mostly argue – about a whole lot of things. But it was very, very helpful to me.

Steffen Bressler: Okay. We go on now. Introducing the next interviews, which are Donna and Brian.

Howard Lesnick: Have you ever seen this? Here's [Curtis] Reitz.

Simi Kaplin: Find Rae [DiBlasi].

Howard Lesnick: What?

Simi Kaplin: Found Rae.

Howard Lesnick: Found Rae. Yeah.

Donna Mancusi: Oh, my...

Howard Lesnick: Let's see. Isn't that incredible? [*Crosstalk*] Are you seeing this?

Simi Kaplin: Yeah.

Brian Gurtman: Yeah. Yeah.

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Donna Mancusi: Who, if anyone, would cite as having the greatest influence on your legal philosophy, and at what stage in your career were you exposed to him or her?

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Howard Lesnick: I have no idea. [*Laughs*] What is my legal philosophy? It was different people at different times. And around the time that we were just talking about – say 1965 or so – it was not any one person. It was the world, really. I mean, on the faculty I guess Tony Amsterdam was – we were both going through things at the same time. But it was mostly what was going on in the country, you know, from 1963 on.

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Which began rather pervasively with the question of the fatuous attitude that most of us had, including myself, that everything was basically fine and all the law needed was the bringing to bear on legal/social problems of high intelligence and integrity and analytic power and we'd all come out with the right answers. And that started disintegrating for me around 1965. But it wasn't any one person at that time.

Donna Mancusi: Okay. So during that same period, in the early '60s, you wrote a number of law review articles and comments that were cited by the United States Supreme Court. Do you remember how you first learned that you had been cited by the court?

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Howard Lesnick: No. Well, yeah. Probably. I mean, those days I read everything they wrote and especially labor law decisions. Nobody gave me advance word, and if you look you noticed in one case I was cited by both the majority and the dissent. So that wasn't – anyway. Yeah. I did. The first couple of articles I wrote – especially two articles on secondary boycotts, which is an incredibly complex and used to be a highly litigated area – the most satisfying response I've gotten to those work is from practicing lawyers, some of whom I didn't know, who would work on a brief and write to me saying they found the article helpful. And later on, a lot of teachers said the same thing. The labor board seem to go on its merry way without the benefit of my solution to all the problems they'd been struggling with.

Donna Mancusi: So did the court's recognition of your work influence your subsequent scholarship?

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Howard Lesnick: No.

Donna Mancusi: Okay. Your early articles, as you said, focused on labor – specifically the primary/secondary dichotomy and the definitions of these terms – played an important role in the adjudication of labor disputes, since only primary strikes were legally sanctioned. What specifically attracted you to this topic?

Howard Lesnick: Well it was controversial. It was complex, and most of the explanations were very conclusory and unhelpful. And there was a lot of litigation

about it. Also, the secondary boycott generally was a major subject of contention in the – I say in the country. I don't mean it was big news, but among people who were interested in labor laws.

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It had a lot to do with the ability of unions to organize, and it had a lot to do with the early history of labor law and of antitrust law. And so it was really interesting. And Congress has this famous statement by Senator Taft who was the major proponent of the bill in the Senate [the Taft-Hartley Act]. He said, "You know, we hear lots of testimony trying to distinguish between good secondary boycotts and bad secondary boycotts. And no one ever told us what the difference was, so we just outlawed them all." But the only thing they never did say was what a secondary boycott was. So that seemed like a natural...to try to figure out as a law teacher and originally, I had in mind an article that would cover three subjects; first article covered the first, and then the second article in 1965 covered the second. I never did do the third.

Donna Mancusi: In your 1967 *Michigan Law Review* article focusing on bargaining and election rights, you supported the minority position which advocated constraining the rights of employers. Do you remember the response of your colleagues to that article?

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Howard Lesnick: Oh, same as always. Almost unanimous indifference. There was one other teacher who taught labor law. I have no idea what he thought. The colleagues I had in the sense you mean it, I think, were other labor law professors at other schools, and I think those articles were very well received. Very few people were writing about that. And I did write about it in a way that was not conclusory and that really tried to make sense of what Congress was trying to do and put my own views in the background. Professor [Clyde] Summers, who's now a colleague, was then at Yale and he published a casebook in which he said something very nice about that article – the first article you mentioned.

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Donna Mancusi: How have labor issues changed both legislatively and in terms of union predominance since you began your career?

Howard Lesnick: Well unions were never predominant. They now have practically disappeared. My views – I don't know. I stopped teaching labor law,

except that I smuggle it into most of what I do teach a little bit...at least ten years ago. And the law has gotten terrible, and the – what do I want to say? The country has gotten terrible. But my ideas *[laughs]* haven't changed. No. I mean, the basic problem is, "What is a wage?" Right? So from one point of view, a wage is a cost, cost of production. And the cheaper wages are, the better off we are, because everything costs less.

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But from another sense, a wage is what puts food on the table and shoes on the kid's feet. So that's a good thing. Right? And that's been the tension all along. There isn't much tension anymore. Right now, the country is pretty much in the first point of view. So, I mean, the law has just gotten ridiculous and I'm not interested in teaching it any more.

Donna Mancusi: You testified before the United States Senate on a number of issues relating to labor and labor unions. How did you become involved in those hearings, and what insight did you gain from your participation?

Howard Lesnick: What insight did I gain? *[Laughs]* I got involved because I was asked to by one person or another, either because of something I'd written or...I'd gradually gotten to know a couple of people who got me asked. The main insight I got is that it's all just a charade.

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For one hearing a young guy came over to me – and he was a staff person for one of the congresswomen, Louise Day Hicks. You remember her. And he said, "Congresswoman Hicks always likes to ask a question, and here it is. She asked me to write a question, and here's the question. This is what she's going to ask you. Doesn't matter what you say, she's not going to say anything after that. She just wants to ask a question." So that's what she did, and that's what I did. And Sam Ervin, who was a senator and who did know something about this stuff, wasn't all that much different. They just asked questions so that they could be in the record as having asked questions. It didn't matter to him what I said. So I don't know if that was a new insight. I mean, I don't know what I thought before.

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Steffen Bressler: How did you come to be a consultant for the US Commission on Civil Rights?

Howard Lesnick: That was a very short-term thing. Somebody wanted a paper written on de jure and de facto segregation. I did that one summer. It was very early. That was one of the lesser involvements on that list there.

Steffen Bressler: You also served as the Reginald Heber Smith Community Lawyer Fellowship Program Director.

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Howard Lesnick: Well, that was a major influence on my life. I mean, the Legal Services Program of the Office of Economic Opportunity – the so-called War on Poverty – started in 1965. They didn't set up, they tried to get the local bar associations to set up, and they'd fund the local programs. And a lot of them were very parochial – very sleepy. I mean, in Philadelphia it was one lawyer in each of 12 offices, which is a nice idea, because they were in the neighborhoods. But what could one lawyer do? Nobody knew quite what the legal problems of poor people were, and everybody thought that it was simple.

So they had the idea of picking a law school to recruit young lawyers coming out of law school and recent graduates who would be much more motivated to think creatively and practice more aggressively than just interview people who came in the door and, you know, get them their refrigerator back or something like that – and to give them a specially designed training program.

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And the Penn faculty was sort of interested in figuring out what we would do with this whole new stuff about poverty law. And so I was attracted to the idea of us making a proposal in which we would do such a program. And they picked us. And so, the first year we were going to place fifty young lawyers. Well, one of them was 57 years old, but most of them were right out of school or a couple of years out of school. We got 600 applications. We had terrific people, and I designed a four-week training program. They all came here for four weeks in the summer, and then they went all around the country to places where they went into the office and basically Washington told them, "Here's a free lawyer if you want them." So they all took them. And they were wonderful people.

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I mean, 1967 was a very exciting year, and they had lots of ideas and lots

of serious thinking about what they would be doing as a lawyer for poor people. So I did that for three years. The next year was 100, and the next year was 250. And that really was a major change – if you want to talk about judicial philosophy – it was more my political philosophy. Plus, everything else that was going on in the world, in the country – but the world. I was about to ask if you remember when De Gaulle went to Germany. You probably don't, but maybe you do.

Steffen Bressler: I was not born.

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Howard Lesnick: You were not born, yes. And 1968 was the watershed year in so many ways. So that had an enormous effect on my priorities and my teaching, and also on the justification for the kind of scholarship I was doing. Basically I was talking to lawyers and judges and board members and things like that about how they should decide cases. Which is what most scholarship was in those days. It's not now, except in a very different sense. Anyway. I'm rambling.

Steffen Bressler: Can you tell us a little bit about the Center for Law and Social Policy?

Howard Lesnick: Oh, the Center for Law and Social Policy is still in existence. It was founded in 1965 as an attempt...and again, it's a good example. It was founded by some people who were not law teachers, but they were interested in legal education and they wanted to have a greater integration of legal education and law practice, and also an orientation toward public interest law. It was what we would now call a public interest law firm in Washington.

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They would take students from about four schools – of which Penn was one, and I was the contact here – and they would spend a semester of law school in Washington working there. Some schools made them write a regular research paper, and others just wanted to make sure that they did research and writing. They would work for these really terrific young lawyers. My connection with them mostly was being the Philadelphia contact, but I spent one summer working there and trying to interest them in doing a project on the legal profession.

Steffen Bressler: What led you to Bryn Mawr College, and what led to your decision to teach social workers about law?

Howard Lesnick: Judge Faith [Judge M. Faith Angell, US Magistrate Judge, Eastern District, Pennsylvania], who taught here part-time for a long time, was the Chair of the Board of Advisors. One of her former law clerks was a former student of mine, and they wanted to come up with a program on law and social policy for social work students where they would get a joint degree.

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And they wouldn't become law students, hopefully, [Laughs] but they would become sophisticated about legal materials and legal thinking, and then they would go into various jobs in the social work field. So I spent three years there helping them design the program and teaching it. And I made up some of the materials for some of the courses. But I stayed here at Penn Law while I was doing that.

Steffen Bressler: Can you think of any noticeable differences between law students and these students at Bryn Mawr?

Howard Lesnick: Oh, yeah. I mean, the virtues and vices are just flipped around. Law students very quickly get into, you know, "What is the issue? Forget about everything else," and social work students is just the opposite. I taught *Morrissey v. Brewer*, which had to do with the 14th Amendment applicability to parole revocation hearings.

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It was a guy whose parole was revoked for some reason. and I didn't even pay attention to what his crime was, what his sentence was, when he was paroled, any of that stuff. The first question I get is, "Why is this guy in prison anyway? And anyway, why is the prison way up there when it should be close where his family can visit?" Well, no law student after the first three weeks of law school would say that. You might think that if that was the way you thought, but you'd know that's irrelevant. Right? You've got to presume that he was rightly convicted, presume he was rightly paroled, presume that he did it. But then the question is what procedures he—well, they don't think that way. They think, they would say, holistically.

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And the other difference is, in the law school everybody's on the dead run. You say hello as you go by. The social work faculty – when you meet them in the hall, they obviously want to stop and talk. And if you go by, they say, "Oh. You seem to be preoccupied. Is something wrong?" And I

had to keep from saying, "Nothing's wrong. You're just keeping me from going where I wanted to be." And it was just a whole different world. And that was good for me too. 'Cause somewhere in between is the right place to be.

Steffen Bressler: Why does the Rockefeller Foundation manage this fellowship?

Howard Lesnick: It was just a fellowship. I mean, like other things. It's not nearly as well-known as the Guggenheim, but I had a – I guess I had a sabbatical, and I applied for a fellowship from the Rockefeller Foundation. And I had an idea of – I started teaching legal profession in 1971. And this was, what, '78, '79? I had an idea for a course, or a book.

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I don't know what it was. I called it the Democratization of Advocacy. It was about a whole lot of changes that were then going on in the rules of professional conduct, we now call it, that I thought all fit together. And I made a proposal, and they gave me a fellowship, and that supported my work.

Steffen Bressler: Okay. Catherine Myers and Simi Kaplin are going to continue the questioning. And Donna Mancusi will be asking questions on behalf of Catherine Myers.

Donna Mancusi: Your articles on how to improve legal education and the image of the profession focus on the need to train lawyers to recognize the value of contributing responsibly to their communities. Do you think this is a fair assessment?

Howard Lesnick: I don't want to be ungracious. I don't remember writing about the image of the profession. Well, seriously I started – in 1978, I went to a two-week workshop run by somebody who became a major influence on my thinking – Jack Himmelstein – for law professors on teaching.

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And it was more on thinking about what's the dynamic of the classroom experience between teacher and student and thinking about what you want to accomplish as a teacher and what you do accomplish and thinking about the difference between the things that are really important to you and the things that you internalize that come from other sources, just from the environment or from colleagues or what gets you approval. And that

gradually made a major change in the way I thought about things. And so, that's why now – I mean, for years now most of the courses I teach are courses I made up. And the way I teach has changed a lot.

And I tried – although I still am in many ways a very traditional teacher, I do a lot of talking, but I try to get the students to think of the course as a course in them, to think about how they think about these things and why and how they want to think about these things, rather than, "Do you agree with this view or that view? Or me or you?" And so, I mean, that's when I stopped calling on people who didn't raise their hand, and I got sick of repeating the question, and finding out the guy who I pointed to in the seating chart had changed his seat that day and there was nobody there,

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and why do I have to be bothered with all of that junk? So as far as changing the profession goes, I think there's an enormous channeling that goes on in law school, but also way before law school and in practice about what you're supposed to think and how you're supposed to conceive your job as a lawyer. And I'd like to get people to free themselves of that to some degree and follow their own priorities, which sometimes will be closer to mine and sometimes won't. But at least it'll be theirs. And I've tried to do that in my own work.

Donna Mancusi: And what do you think is the minimum that a practicing attorney should give back to his or her community?

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Howard Lesnick: Well, give back in lots of ways. First of all, one of the problems is there's too much of a dichotomy between doing public interest work or pro bono work and doing corporate work. And especially in a school like this where, you know, nothing is as good as New York and nothing outside of New York is as good as a big firm. Most lawyers, even today, practice not in public interest law firms and not in 880-lawyer law firms, but in law firms or legal organizations that are, you know, with less than 100 lawyers and representing people rather than enormous organizations, worldwide organizations, that are endlessly divided as far as the labor and responsibility goes – and where you can actually see, you know, this person has a problem and you can help them. So that's a form of giving back. You get paid for that.

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But this notion that you relentlessly try to maximize your output and minimize your turnaround time and increase your productivity...that's just a sickness, I think, that happens to be epidemic now. As far as what I think you're thinking of, a lot of lawyers I know who are very happy lawyers – and most of them work representing large companies--the biggest kick they would get is the few times that they actually help some person in a very small way, usually by using their talents. Not necessarily in litigation, but just for resolving things where they don't charge anything and don't pay anything and the client can't pay anything. So, you know, whether you do 50 hours or 250 hours or 10 hours, it doesn't matter, I think. You just do something that you think is intrinsically valuable.

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Donna Mancusi: So do you think a formal system like Penn's public service requirement could be implemented for practicing attorneys in the same way that the ABA offers its continuing education requirements?

Howard Lesnick: Well [laughs] I never thought of that. The continuing education requirement – which I've taught in, so I make some money on it – is ridiculous. It makes no sense at all. But it would be a lot more sense...if lawyers have to put in twelve hours sitting there, it'd be better if they were putting in twelve hours representing people who can't pay. The question of whether lawyers should be required to do unpaid work is very complicated. I think it's a great idea. And the main idea of our program from my point of view is to teach students by socializing and to think that this is one of their responsibilities. Whether it'll work if it's required or whether they'll do good work or bad work are all complex problems. It wouldn't kill me if it was required. It would be underenforced, so it's not like...and also, you can be on the Board of the Symphony and that counts. So I think it's mostly a nonissue.

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Donna Mancusi: In your 1992 article, "Being a Teacher of Lawyers: Discerning the Theory of My Practice," you wrote, quote: "To draw out of students what is latent inside them, teachers must, I believe, put more of ourselves into our engagement with the subject matter of our teaching." End quote. What are some of the things about yourself that you choose to share with your students, and why are those things important?

Howard Lesnick: Well, that's a hard question. I teach things that I think are important instead of subjects that happen to be litigated. Like, my professional responsibility course doesn't teach most of what people now call the law

of lawyering. That's just an area of economic regulation that is important 'cause, you know, there are disputes about it, and if you're in practice, you've got to deal with it. What I teach is what has to do with I guess what you can call professional identity: what are you doing as a lawyer? What do you think of as good lawyers? To whom or to what are you accountable?

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And those questions are important to me. I try to...I say to the students in the beginning of the term that if you don't agree with my answers to those questions, you should agree that those are questions worth thinking about more than what's the latest wrinkle on motions for disqualification and things like that. That's a sense in which I do that. There's a real problem for all of us in teaching because unlike graduate school, we're not teaching people who are going to become teachers for the most part. We're teaching people who are going to practice law, which is what we decided not to do for the most part. So it's a tricky business putting yourself into it.

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Donna Mancusi: In that same article, you write about the differences in teaching students and practitioners. You go on to say that academics benefit from teaching practitioners and that practitioners benefit from having continued contact with the academy. What do you think an academic has to offer a practitioner in this context?

Howard Lesnick: Practice questions are very fact-specific and very narrow. I don't mean that they're trivial, they may be momentous or not. And that's hard for law students to understand this sometimes; there's so much law, and there's so many open questions. And once you get a specific matter to deal with – even a transaction, certainly a transaction, but a litigation too...it's so specific. And you work on it, and you're, you know, digging deep. You have to start out wide, but you narrow; whereas what we do is the opposite. We try to put these things in some broader context.

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So I think that's one thing that we can do with practitioners, is get them to see how the thing fits in a broader context. If they're interested in it. I mean, if what they're interested in basically is you got some citations or quotations for me, that's a different story.

Donna Mancusi: So do you have a preference? Do you prefer teaching students or practitioners?

Howard Lesnick: Well no. I prefer teaching students. I mean, students are at an age where they're thinking about more things than most practitioners will. Most practitioners want the answer now, because "I got to go to a meeting in 20 minutes."

Donna Mancusi: Okay. Simi will continue with the questions.

Simi Kaplin: You were a professor at the CUNY School of Law at Queens College the year that it was established. What are some of the differences teaching at a new school versus an established school?

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Howard Lesnick: Well, that was a very unusual, new school – which is why I went there. The fellow who became the founding dean was the guy who founded the Center for Law and Social Policy that one of you asked me about some years before. And it was committed to starting over from scratch; which was a very appealing thing to me, because by 1982, which is when it happened, I was very pervasively dissatisfied with legal education. And the thing that keeps it from changing...one thing that keeps it is that, like everything else, it's an established institution. Right? And people have their specialties and their interests. So here we were. I mean, he asked me to go with him and to be responsible for curriculum. For various political reasons, the people who founded – not who founded, but the people who brought about the founding of the school, including the guy who's now Archbishop [Anthony] Bevilacqua (who was then the Bishop of Brooklyn and a lawyer),

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but more specifically the CUNY people wanted to be able to say, "This is going to be a different kind of law school; not just another one." So I, and then some other people started from scratch thinking about, "How would you teach, and what would you teach?" So we put contracts and property together. We put torts and criminal law together. We put constitutional and unconstitutional stuff together. We had a course that is, in a way, my inequality courses, derivative of that. And we put civil procedure and other forms of dispute resolution together. And the main thing we did is, we put what here we would call clinical work and academic work together. So all the students from the second day of law school worked in

a simulation-based lawyering context. And then we put all the courses together.

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Because the simulation was designed and structured to draw on all of the courses. And we had the students write right from the beginning. We had the students interview one another and negotiate with one another. And the original idea was, "We weren't going to give exams." I remember saying to people, "When you want to know if so-and-so's a good lawyer, you don't give them a test. You ask the people that he's worked with." And so, it was meant to put students in that integrated role where the knowledge they needed – they would experience as something they need to do a job rather than something that the professor told them they have to do or they'll get embarrassed in class. And then, we also constantly raised the questions, which are too narrowly expressed in professional responsibility, "What is your obligation to the public interest, and what are you trying to accomplish as a lawyer?"

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And we, we attracted...it was just incredible. The first year, you attract people who are not risk-averse, 'cause they're going to a place with no track record. And it was an incredible group. The median age of the first-year class was 30. And the faculty was also a lot of malcontents.

Simi Kaplin:

Other than the age difference of the students at Penn versus the students at CUNY, how did the students at CUNY compare from a public service standpoint to the students at the University of Pennsylvania – particularly the public service scholars at Penn with whom you've had contact?

Howard Lesnick:

Of which there are a dozen in the whole school. Right? Well, first of all, not all the CUNY students were public service-oriented. The public service scholars are very unusual people and have a really incredible track record in most cases. The biggest difference between the CUNY students and the Penn students is money. I mean, CUNY was free from 1845 to 1961.

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And there was a big wrench when they started charging tuition. I forget what the tuition was at the law school when we started in 1983. Now it's \$28,000 a year or whatever. And the students at CUNY – not all of them, but most of them – did not have a lot of money. A lot of them had

families, a lot of them worked, a lot of them . . . there was one woman whose husband left her the day she started law school, she had four kids, and she disappeared just about the middle of December, and we tried to reach her and found her phone had been disconnected. There was one student who had four kids and a mother-in-law living at home and had two jobs and went to law school. And that affected their outlook toward law, toward justice, toward what they were doing in the world. They were incredibly motivated, most of them. When I came back [to Penn], first thing that hit me was a sign over a table near the Goat for a bar review course that said, "Use credit card or bill your firm."

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One of the problems we had with students passing the bar [at CUNY] was that most of them didn't have credit cards, and they weren't working for firms. So we had to do something different by way of a bar review course. And that's a great story, but I won't...what's next?

Simi Kaplin: We can get it in there.

Howard Lesnick: Well, I mean, the whole consciousness was different. In the second year, the bar review courses came around looking to hire representatives. Right? This was a new school, so nobody knew about it. I still remember one woman in the class. She came and told me, "This guy came over, and he wanted – he made this thing." And I said to him, "Wait a minute. Do I understand what you're saying? You want to pay me to sell your program to my classmates?" And he said, "Yeah." 'Cause, you know, he'd been caught doing something wrong.

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And she said, "Well, they're going to pay more, because I'm making the money. I'm not going to do that." So they formed this group, like, you could call it a union, they didn't. And they all agreed that they would use the same bar review course. And the delegation went to each of the bar review courses and negotiated a lower rate for everybody. But you'd never see that here.

Donna Mancusi: According to the CUNY Law School Website, the motto of the school is, "Law in the service of human needs." Do you feel that during your tenure, the school was able to live up to their motto?"

Howard Lesnick: I remember very distinctly the room we were in when we came up with that motto. It depends what you mean. What it meant was, that was the

way we wanted to think about law when we were designing the curriculum and the classroom environment and everything about it; law not being an end in itself and making the end explicit. It's not very determinist, but it was that.

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As far as accomplishing it, I remember purposely thinking that we should start with as much of a break as we want to because inevitably, all the pressures are going to be to scale back. And that's happened. So it's much – I don't know if you read the UCLA article. It's much less different from other schools than it used to be; both the curriculum, the way people teach, the whole tenure system is much more like other schools. And the student body. But it's still quite different.

Donna Mancusi: During this time, you were also involved for the Center for Law and Human Values. First of all, what is the Center for Law and Human Values? And secondly, how did you balance your duties at the center with your teaching duties at CUNY?

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Howard Lesnick: That wasn't a problem. The Center for Law and Human Values was just a name from a bunch of guys who were trying to figure out what to do about...it was more focused on the individual teacher and the teaching environment and the relation between authority – the teacher as an authority – and the teacher as sort of a stimulator of student self-development and – I don't know what the words are. It was never a law school. We did workshops and conferences mostly for law teachers. But it never really got to be a big thing. So as far as balancing, it was just going to a couple of meetings a year and talking to people on the phone. I think my work at CUNY sort of absorbed that, whatever I was doing. But they were not the same. Some of the same people.

Donna Mancusi: Would you consider being part of a new venture in legal education again?

Howard Lesnick: No.

Donna Mancusi: Why not?

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Howard Lesnick: Well, for two reasons. One is, I'm almost 69 years old. And the other is...one thing I learned is that it isn't just because we got a lot of tenured

professors who have crazy ideas over what they want to do, that legal education is the way it is. There are a lot of other reasons: external constraints from the world, from practice, from the bar, the tenure system, the universities...it just can't be done. And also it's a very explosive environment. I mean, we took 150 students and 10 or 11 law teachers the first year – all of whom were united by their dissatisfaction with the way it was but not much else. So they found themselves dissatisfied with one another very quickly. And with me.

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And I once described what we were doing as building a canoe while you're going down the rapids in it. And it got a little bit tiring after a while. But I don't think it can be done. So the great thing about Penn is that when I came back, my job was to figure out what I wanted to do and do it. And in the '80s and '90s and the aughts, that seems to be enough for me.

Simi Kaplin: Diankha will continue with the questioning and conclude the questioning.

Howard Lesnick: Thank you.

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Diankha Warren: You were at Penn Law, and then you were at CUNY, and then you came back to Penn Law. How are Penn Law students the same in the '90s as they were in the '70s?

Howard Lesnick: I came back in 1988, and they were different then than they were in the '90s. 1988, they were [*hissing sound made*] – you know? I remember one guy worked for a New York firm the second summer. He had a clerkship already. They gave him an offer before he left, and without getting into the details if he took the offer before he left the office they were offering him \$105,000 a year to start the year after his clerkship. He worked that summer on a problem for a partner in a brokerage house they represented trying to reduce his taxes. This guy's personal income for that year was \$36 million. That wasn't going on in the '70s, [*laughs*] and it wasn't going on in the '90s either. It sort of crashed for a lot of people for a while. It seems to have picked up.

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I don't remember the students in the late '70s that well. They were thoughtful. The big change I notice is between the students at the

beginning in the early '70s who were very confident. They were like a caricature of Yale students. I remember a student came over, and literally he said, "You know, my wife and I sat down last night, and we put down a map of the United States. And we thought, 'Where do we want to live?' And we picked out a town." I think they were thinking of Portland, and I had taught there one summer, which is why he came to see me. And then they think about, "What kind of work do I want to do?" And then they'll go and say, "Well, you know, I'd be willing to work for you provided you answer some questions." And by, you know, the mid-'90s that was gone. It was like, "We're all corks on the water, and all we want is to get a job."

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And students would tell me after the summer, "Oh, the people are awful. The work is boring." "What are you going to do next year?" "Oh. If they offer me a job, I'm going to go back." You know? "Why are you going back there?" "Well, what do you mean, 'why?'" The idea that, "Is this something that you want to do?" just didn't seem to enter people's heads 'cause the insecurity was so strong. And I was particularly conscious of that, 'cause the CUNY students – they were really insecure. Not psychologically, but physically. I mean, most of them had no money. They weren't hot stars, you know, classy schools; and yet, they were trying to do something that they thought would get them a toe-hold on the world and also made some sense to them. So that's the biggest change. Now it's gotten a little better, but it's still very different. You understand that I'm generalizing. There are people in every class who were not like it at all.

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But they're just not as self-directed as they were. That's kind of the way students were when I was a law student in the '50s. You hoped you got a job. You hoped you got promoted in your job. You hoped you made money in your job. And that was, you know – that's not exactly *it*, but...and you hoped that other people thought well of you.

Diankha Warren: What are some of the favorite courses you taught since you returned from CUNY to Penn?

Howard Lesnick: As I say, mostly taught courses I made up. I developed that course called Legal Responses to Inequality growing out of what I was doing at...not what I was doing, what other people were doing. My professional responsibility course, which I taught before and then changed in many ways at CUNY, became my individual choice and responsibility course. I got interested in religion and its relation to law through a whole other

channel, and I started teaching a seminar on religious consciousness and law and practice.

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And then I still was sort of nagged by the fact that nothing I was doing was any particular use to the world. So I started doing this little asylum seminar and helping students who were representing people seeking asylum. And I guess those are the courses I've been teaching.

Diankha Warren: You wrote an article titled "The Religious Lawyer [in a Pluralist Society]" that appeared in *Fordham Law Review*. How did those articles come to be?

Howard Lesnick: Well, first I wrote that book [*Listening for God*] and Fordham published it, and so I got to know some of the people there. They have a thing called the Stein Center for Law and Ethics, and at least some of the people there are very interested in the relevance of religion to a lawyer's life. Despite the fact that it's a Jesuit school, there are very few people on the faculty who could care less about religion, but there are a couple. And so they've had a couple of conferences on that.

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And they asked me to do a paper on the religious lawyer in a pluralist society. But I think they asked me because they got to know me through this. And that article fits with my professional responsibility course generally. Because what it's about is how the traditional norms of lawyering tell a lawyer who has a religiously grounded concern about what he or she is doing in a practice setting to put it aside; that that's not the client's problem. And you just forget about it. And I was arguing against that. I was doing it in the context of religion, but not just for people with religiously grounded concerns.

Diankha Warren: In that article, you say that the central notion of service has been corrupted by the legal profession. Can you explain this?

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Howard Lesnick: You got the quotation there? [*laughs*] ...the notion of service has been corrupted by the legal profession? I don't know. Maybe I was talking about the service to clients. In the 19th century lawyers didn't say that you were there to serve the client in the sense that you do whatever your client wants so long as it's not against the law – period. Service meant service for

the public good, service for people in need. And it meant – however you articulated it – it meant something that represented your notion of what was worthwhile; not just, "What is the guy who's paying you want you to do?" And when I say it's been corrupted, I guess it's been translated into simply doing what the client wants. You're there to serve your client. Well that's like...I mean, there's also a religious notion of service. It's not the same as a waiter who waits on tables and says, "May I serve you?"

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Diankha Warren: Who is Tom Shaffer, and how has he influenced your scholarship?

Howard Lesnick: Well he's a law teacher, he was Dean at Notre Dame, and he's written a lot in professional responsibility and a lot in religion and law. And his writing has been challenging to me, and I've learned a lot from it and relied on it a lot. And some of this book is kind of an answer to questions that he posed. He didn't pose them to me, but I took them on. And I've been with him at a lot of conferences and we've read each other's stuff. He was very helpful to me on this.

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Diankha Warren: What do you hope readers will learn from the book *Listening for God*?

Howard Lesnick: I could say I hope they'll learn to listen themselves and see what they hear. I don't know. But that's, I guess, a little flip. An awful lot of people are in this ambivalent position about religion who would be attracted to it, but for some of the repellent things about it and some of its practitioners. What I try to do here is show that there's a way through that. There's a way of letting all that stuff – both the historical and the current stuff – not define religion for you but see whether there's something that makes sense to you.

And this book has sold almost no copies. But the gratifying thing about it is that there are a number of people – some of whom I never met before – who tell me that it really spoke to them. Some of them are Jews who said, "Gee. I never thought of Judaism this way." And some of them are Christians who said, "Yeah. I don't have to keep running away from what I hated as a kid." Et cetera.

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Diankha Warren: Who are Alice, Caleb and Abby, and how have they affected your work?

Howard Lesnick: They're my children. They've affected my work enormously. Well, Alice mostly, because she's 37 or so now and she's been reading what I've written ever since I stopped writing about secondary boycotts. And I've learned a lot from her and vice versa. I've read everything she's written since high school – pretty much everything - and also talked about courses she teaches and things like that. The younger kids are younger. They mostly enrich my life and make me realize what's important.

Diankha Warren: Well, thank you very much for being our narrator.

Howard Lesnick: Thank you.