Civil Rights Litigation Clearinghouse: Oral History Project

Interview with Attorney and Professor Paul Reingold
Conducted by Michigan Law 3L Andrew Eslich

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This transcript has been lighted edited, in consultation with Professor Reingold, for clarity; additions and corrections appear in brackets.

[Andrew Eslich] My name is Andrew Eslich and I'm a third year student at the University of Michigan Law School. Today, I'm interviewing Paul Reingold as part of the Civil Rights Litigation Clearinghouse's Oral History Project. This project collects stories and experiences of lawyers who litigated landmark civil rights lawsuits and transformed the practice of civil rights litigation. Today is December 18th, 2024, and this interview is being conducted virtually. I am in Bolivar, Ohio, and Mr. Reingold is in Tucson, Arizona. Mr. Reingold has worked as a legal services attorney, challenging state and federal actions, as well as a law professor. He joined the University of Michigan Law School in 1983. At Michigan Law, he directed the law school's Civil-Criminal Litigation Clinic and … taught several classes. He has also received numerous awards for his excellence in teaching. Mr. Reingold has [helped] transform clinical legal education, having served on the board of directors of the Clinical Law Section of the American Association of Law Schools, as well as being a founding member of the Clinical Law Review. Mr. Reingold's primary interests include civil rights litigation, appellate practice, prisoners' rights, and civil procedure. Thank you, Mr. Reingold, for joining me today.

[Paul Reingold] You're welcome. Glad to be here.

[Andrew Eslich] Of course. So let's get right into it, I guess. So tell me a little bit about your origin story. Where did you grow up and were there any lawyers in your family?

[Paul Reingold] I grew up in Concord, New Hampshire, and there was not a lawyer to be seen in my immediate … or extended family. My grandfather had come over from Russia in his teens, I think as a 15-year-old. He landed in Providence, Rhode Island, and became an itinerant tinker, selling goods door to door. At some point, he got into mattress making, you know, stuffing hay … into cotton [fabric], and gradually moved into the furniture business in New Hampshire. And my father was one of his children. My father took over the family business. He went to

Dartmouth Business School and brought a…modern perspective to [the business]. My oldest brother took over the business, and *his* son took over the business. And so the main corner of Concord, New Hampshire, has had a furniture store on it for, like, 100 years. Maybe not 100, but 80 years, you know, a very long time. I was the youngest of three boys, and we were two years apart, and I had a fairly conventional upbringing in New Hampshire. It's a small state. You get to know a lot of people. I would say the distinctive thing about my education is that I had an older brother who was a very good student, and instead of going to the local high school as my oldest brother had done, my middle brother went to the fancy prep school that happened to be located just outside of Concord. And because he did that, I wound up doing the same thing. And so I … [got] an education…beyond what I might have gotten had I stayed at the local high school. St. Paul's School, at that time, had 100 kids in each class. They came from all over the country and all over the world. I mean, when I was there, … [maybe] a third of President Kennedy's Cabinet had children who were my classmates, so it was an eye-opening and world-extending opportunity for me. During that time, my brother, again, had preceded me as a … temporary page in the United States Senate, and I did the same thing a few years later. Also my senior year at St. Paul's, one of the teachers there organized a [ski] trip … to Austria during spring break. And at the same time – this was an era when students were, "revolting" might be too strong a word, but were looking for change in the institutions where they were being educated. And the class ahead of me had caused so much problem for the school, so many headaches … the previous spring, that in my year the school decided that the people who were about to graduate (and therefore were likely to be the most troublemakers) could take **[0:05:00]** the spring term off if they had a suitable project. When I knew that I was going to Austria to go skiing, [and that] we were going … stop in London on the way home. I sent almost 100 letters to various political agencies and parties in London [looking for a placement]. [I got] probably a 40% response rate, and a 99% negative response rate of the 40%. But the political party that happened to be in power had a member of parliament who took an interest in my letter. [He] said, "Yes, if you're going to pass through London, and you have two months before you have to go back to New Hampshire, come work with us in the political headquarters." The last two months of my senior high school year, I spent on my own as a 17-year-old in London. That was a great experience. [I was] around interesting people. It was for the party that I would not have supported that I was working, but that was okay. It was just a great experience. Having been a Senate page, I'd lived on my own in Washington and gotten to see a lot of eye-opening events, being in the Senate daily. But being on your own in London is a different order of magnitude, or at least it was for me. I'd come out of the [Tube] in the morning and emerge under Big Ben. For lunch, I didn't have much money, …but I would take a sandwich and go over to Westminster Abbey and sit in one of the outdoor terraces. You know, it was a great thing. From St. Paul's, I went on to Amherst College, where I had a fantastic experience. Again, small classes with wonderful teachers. The hard part was to decide what to do afterwards. A lot of my friends were going to law school, a lot were going to graduate school. I was undecided. But late in the day, I thought I would be happier in the long run, not in a purely academic career. I chose law and at that time, law schools were

extremely hard to get into because it was just a rash of people wanting to apply to law school. I had to decide. I got waitlisted at a couple of schools. I didn't get into some of the schools I wanted to get into. I had a dear friend who had gotten into Boston University, and he and I decided we would go together. And that's when I was off to law school. It was that friend whose family probably got me most interested in the law. His father was the Chief Justice of the New Hampshire Supreme Court, and he was someone who had started in a rural practice in northern New Hampshire. They had a little cottage on a lake, and in junior high school, when I got to know this kid, his dad would take us up there, for the weekend or [a few days] in the summer, spring, and fall. And he was just someone I got to know and liked and respected. To give you a sense of his early practice, at the cottage there was a big moose head on the wall on the porch of the cottage. This [was] a really basic cottage, a pump in the kitchen, an outside outhouse. It turned out the moose head was one of his first commissions or payments as a lawyer. Someone needed help and the person didn't have any money, but he had a stuffed moose head, so that was the exchange. The other thing I liked about him was he was a fly fisherman, and I enjoyed watching him fly fish. And so, this man, Justice Frank Kenison, brought two of the best things into my life, the practice of law and fly fishing. That's my basic origin story.

[Andrew Eslich] No, that's fascinating. It's sometimes great how things just serendipitously work out like that and different paths lead you to different routes in life. I wonder if you could tell me more about your time in law school. What was your time in law school like? What did you like about it? What were you involved in? Anything that comes to mind?

[Paul Reingold] Yes. I was one of those students who, I would say, overall, hated law school. And the reason for that is that I was spoiled. I had **[0:10:00]** been at two of the best-resourced and most student-centered kinds of educational institutions that exist in the United States, a prep school with unbelievable wealth and a minuscule student-faculty ratio. Many of the classes were conducted around an oval table where you'd have eight or ten students and a faculty member, and their job was to teach…. It was to be mentors and teachers. When I went to Amherst, that was a school that again, [the faculty] had to … work to get tenure at a school like that. But *teaching* was really important [as well] and the quality of the teaching there was absolutely superb. I had teachers who were world famous in their fields, and yet you could do a class with them [on your own]. … We lived off campus one semester, you could set up a class where the teacher would come to your house or you would go to their house. You'd organize it [and] you'd build a class for yourself and four or five of your friends. It was as intellectually stimulating as life can be. Law school was the opposite, right? Law school was every class where you didn't have any choice about what you were going to study. It was all pre-ordained, in the first year at least, every class was the same. It was 90 to 120 people in a classroom and an intimidating teacher who didn't really know who you were. It was difficult to get to know faculty. At Boston

University, I would say, some of the students were bitter that they weren't in fancier schools. Some of the students were delighted to be where they were. But it wasn't a school where it was easy to get to know people. It was a downtown city school and people came in from other places and then [went] back. I didn't like either the process or particularly the people. And the teachers, I thought, were totally focused on their research. Many of them, not all of them, of course, but many. And the burdens on law faculty at that time were huge. It was not easy to get tenure. I was very unhappy and almost dropped out at the end of the first year. But again, I had an abiding faith that I would enjoy the practice of law, and I thought it suited my personality. In the end that turned out to be true. I'm trying to think what else about law school was so difficult. I mean, when I'd been at St. Paul's, I was very much an outsider. I was one of three local boys. I was the only Jewish kid in my class, it was a Christian school [to] its roots. Growing up in Concord, I was usually the only Jewish kid in my class in elementary school. In fourth grade, I think we did a straw vote when Kennedy was elected. I believe the vote was 29 to one for Nixon, and I was the only Democratic vote in the class. I was used to being an outsider. At BU, I didn't feel like an outsider, but I just wasn't happy. …The other part of legal education that bothered me was that it seem[ed] to me like what I was being taught and what they wanted me to learn were [two different things]. They were not on the same page. I'll give you an example. We learned evidence in a theoretical way. We'd read the rules, but mostly we would read cases, and the cases were hard to parse and were complicated. But when it came time for [the] exam, instead of giving us an exam based on what we had been reading and talking about and … even quizzed on, the exam was a transcript in which we were supposed to make objections citing the rules. My reaction was, if you want us to learn how to make objections, teach us how to recognize objections. Don't give us theory and then just give us an exam that has nothing to do with it. I resented it. **[0:15:00]** I felt that law school was so conventional and so cabined in the way it presented information. Every class was the same, which grew dull over three years. I felt … an educational system, if I'm getting my best grade in the course that I know least, and I'm getting my worst grade in the course that I know best, there is either something very wrong with me or something very wrong with the system. I was not a happy camper and couldn't wait to be done and finished…. But that was my reaction. I think things have changed a lot over the years and we can talk about some of that more later.

[Andrew Eslich] Yeah, absolutely. I think a lot of the challenges that you described still resonate with many people today, foreshadowing a little bit as to your practice in clinical education. What was your clinical education like at Boston University?

[Paul Reingold] Well, at that time, clinics were brand new for the most part, and many schools still didn't have them. And I wasn't connected enough to the school. I had friends who were taking clinics who would say to me, "This will make you feel better and give you a different

perspective on legal education." There were only a few opportunities to do it, and I was remiss in not exploring them and [in] not taking [a clinic]. What I did instead was to retreat into my own world. In the first year of law school, I read about a novel a week. I mean, a good novel a week, not trash to get your mind [off school] or just for entertainment. But it was my way of keeping up part of what I thought of as central to my own being, and that was reading good literature. And it meant I wasn't as prepared as I probably should have been. The other thing that I did that I learned in … law school, had to do with my priorities, and that was this. It turned out that Fenway Park was only about four blocks from my apartment, and [in] my [second] year of law school, …it was the year that the Red Sox had two of the brightest young stars in baseball, Fred Lynn and Jim Rice. They also had Carl Yastrzemski as the old guard, and they made it to the World Series. And that fall of the World Series, my moot court brief was due the [same] night [as the sixth game of] the World Series…. I knew that if I turned on the game, my brief would not get finished in time. It had to be filed by a certain hour.… I didn't watch [or listen to] the game, and it happened to be the game that [Carlton Fisk] hit a home run [in the 12th inning] and … the Red Sox won the game. They didn't ultimately win the Series, but they won the sixth game. …I missed it because I thought that my moot court brief was more important than this baseball game. I swore to myself that I wouldn't let that happen again. [Some] 25 or 30 years later, I was in Cincinnati, Ohio, the night before a Sixth Circuit argument in an important case, and I was preparing for the argument. It happened that the Red Sox were playing the Yankees that night [to decide the] … American League Pennant. …I had a choice between spending another three or four hours preparing for the argument … or watching the game. And I did both, but I watched the game more than I prepared for the argument. The next day in court, at one point one of the judges asked me a question about a case, and I candidly said to the judge, "You know, I'm a Boston Red Sox fan and I don't know the answer to that question, but I can tell you anything you want to know about last night's game." It got a good laugh out of the court. I said to the judge, "If you really need an answer to that question, I'm happy to file a supplemental brief. I can go look it up for you." I won the case in the Sixth Circuit, but … I felt like [that baseball game] was a recompense for my youthful mistake, and that **[0:20:00]** I had my values in the right place 25 years later.

[Andrew Eslich] Oh, absolutely. It's funny how things work out like that and come into perspective later on. But with all that, I'm wondering then. At what point did civil rights litigation then become the focus of your career or what you knew you wanted to get into?

[Paul Reingold] That's a good question. What happened was I had a girlfriend in Boston, and in my third year of law school, she was moving out to Ann Arbor to attend the University of Michigan graduate school. I petitioned Boston University to let me go with her. And they had a rule that said you could only leave for the third year – [BU] would still be granting me the degree

– if you were married, and we weren't prepared to get married. I was bitter about that because I thought they should have let me go. The University of Michigan had said, "Yes, you can come," because they wouldn't be giving me a degree, they'd just be taking my tuition. So we were apart for the year. And then I went out to Michigan and started as a legal services lawyer. It happened that [this] was a time of expansion of legal services. It was just after the [Nixon-Ford] years, I think when there had been a big cutback, and all of a sudden the Democrats were back in power and the budgets were going up. I had looked for a bunch of different jobs in Ann Arbor, but it was the legal services job that most attracted me. I wound up in an office in Ann Arbor that was determined (with the new money) to do more "impact work" as it was called in those days. Instead of doing only individual cases that took more of a "band-aid" approach, the idea was to recognize recurring problems that might be solvable through the courts, filing class actions or bigger cases. So when I got there, they had a new litigation director and a new director, both of whom wanted to expand that side of the practice. Well, it turned out that before I had passed the bar, … I couldn't go to court yet. But they had a class action case that they wanted to file against the [Michigan] Unemployment Insurance Commission. It had to do with late payments by the Commission, where they were buried in deficits and understaffing and they were just way, way behind. And my assignment was to write the motion for class certification. And I did. And [my colleagues] edited it, but they liked it, and I then had passed the bar and the motion for class certification was to be argued in federal district court. And this was going to be my first court appearance of any kind. And all of my colleagues, their first court appearance was a landlord-tenant hearing involving $200 in rent, and mine was going to be a class certification motion before the chief judge of the district. And that's what I did. That was my first court appearance. It was a great court appearance because the judge had a habit of, he was a very smart guy, but he had a habit during oral argument. He'd sit in a big swivel chair and during your argument, he would swivel away from you so that all you could see was the back of his head…. And you're doing your argument, but with no eye contact. But … At some point during the argument, he … asked the one really hard question that we had mooted that I didn't really have a good answer for. Oh, I knew he was listening. But in the end, yes, we won the motion. But that's what turned me on to the possibility of being not just an individual service lawyer, but also what I think of now as a classic impact litigator.

[Andrew Eslich] You know, that makes a lot of sense, how you fell into that role and that became the focus of your legal career. But at the time you mentioned, that was a time when legal services attorneys was a career area that was expanding, as was impact litigation. I'm wondering then what were some of the challenges of doing that type of work when that area of profession was just starting to grow and come about?

[Paul Reingold] I did learn … that you needed teamwork to be an effective civil rights litigator. That was something that the office stressed. I remember early on, I would often get the assignment to … **[0:25:00]** do some research on a prospective possible impact case. Almost invariably the memo I would hand in would be very cautious. It would be like a law student's memo that said, "Well, here are the arguments *for* and here are the arguments *against*." But I was very leery about the arguments for, because often the arguments against seemed to be stronger to me. What I learned from the team was they would get my memo and they would read it and they'd say, "Thank you very much, Paul." My advice would basically be, don't [file the case]. Then they'd say, thank you for your advice, and then they'd file the case, and lo and behold, all of the points [of] law or factual deficiencies that I had seen in the case (that I had really been trained to see in law school), they had learned to override, and appropriately so. Those were issues for the other side to raise! It might mean we might lose, no case is guaranteed. But that taught me something, that you need people around you who view the world differently or have more experience. Sometimes it's people who have more confidence, who are more likely to take a chance. You're learning about … your own strengths and weaknesses when it comes to approaching a piece of litigation. That was enormously useful because what I learned was: I was too cautious, I was too risk averse, and that if you're going to do these things, you've got to make your judgment and then launch with both feet, and your attitude has to be, it's *their* problem, it's not my problem. If [the defense] raises these [points], we'll be ready to meet the objections or the defenses. And if we lose, that goes with the territory. You're not going to win every case. And so that was a big part of it, that you put a team together to do this work, and that you intentionally invite onto the team a mix of people [who] will give you the widest possible perspective and the biggest range of experience. I would say if there's any lesson I learned in doing any serious litigation, it's [with] a team…that has the resources, the skill, the experience, and the variety to do something really well.

[Andrew Eslich] You know, absolutely. I think a lot of times what we learn from an experience is just as important as what we contribute. And that leads me into the next question that I want to ask. So in 1983 then, you joined the University of Michigan Law School faculty as a director of the Civil Criminal Litigation Clinic. I'm wondering, why did you decide to take on a teaching role at the university rather than continue on as a practicing full time attorney in that sense?

[Paul Reingold] Well, I had worked at legal services for five years and the office had expanded quickly, and so I had wound up as the directing attorney in one of the field offices. At the end of five years, my goal was to work either in the US Attorney's office or in the Michigan Legal Services backup center in Detroit. [But] by that time, the funding had switched back [after Reagan was elected]; … there was a loss of funding. I was interviewed for and offered the [Legal Services]job in Detroit, but it was clear that the funding was going to be much more

restricted and the staff would have to be cut, and the board was a mess and the staff were a mess. In the end, I decided not to do it. The U.S. Attorney's office had a hiring freeze. And when I had been working at Legal Services, at that time, the University of Michigan Law School's Clinic shared space with the legal services office. I got to know some of the teachers. There were only a few. But what I realized was, they handled a lot fewer cases than I did at Legal Aid. They were having a lot more fun than I was. They were making more money than I was, and they had one foot in the real world and one foot in academics. It looked awfully attractive to me. I had applied once before and didn't get the job. Then that year, I'd been an assistant city attorney for a year. That was my default fallback and that was a good year. But another opening came up [in the Clinic] and I applied for it. …The director brought me in to say, "We're going **[0:30:00]** to hire you," but [in addition] "I'm leaving to become a U.S. magistrate judge in three months and that means you're going to be the director in three months." And not only did I move into the clinic, but within a year or two, we had, at my urging, moved back into the law school. And that was a sea change because it meant students didn't have to travel across town to come to the clinic and we could begin to build a different kind of practice.

[Andrew Eslich] No, absolutely. That's really fascinating and funny how things worked out for you with the director moving on to the magistrate role. Can you tell me a little bit more about the clinic at the time of the early 1980s, what was it like? What kind of cases were you taking on? And what was your role when starting?

[Paul Reingold] Well, the first thing was, I had to deal with the caseload that I inherited. It was not a caseload that made me happy. There were a lot of family law cases that were endless and not very interesting. Endless because if there were children involved, you have to be the lawyers for the children until they turn 18. There was a lot of "make work." There were other kinds of cases that were more interesting, but that I knew over time, could get a person down. We had a very active landlord-tenant practice, which was great because it means students can get into court really quickly and can first-chair the cases so that the faculty are really in the background. We also did some civil commitment hearings that were wonderful: … [they involve] people who are diagnosed as mentally ill, and if they're a danger to themselves or to others, they can be involuntarily committed into the civil commitment system and they [had] to have a probate court hearing before they could be committed. It was great because we'd send students out to the mental hospital, which in itself was a trip. You get out of the car and there are people above you behind barred windows crying out to you, "Help me, help me." …You'd interview the person on a Friday or a Monday, you'd prepare the case, and you would have a trial, and sometimes a jury trial, on Wednesday morning with a prosecutor on the other side. These were wonderful experiences for the students because all that is just as foreign as it can be. You often have almost no defense to the case. Your client is completely crazy and probably dangerous, right? And yet,

it's the ability to try a case against a good prosecutor with real witnesses. The trials take maybe an hour-and-a-half or 2 hours and the students can do everything. The faculty member need not ever say a word. So there were good parts of the caseload. But my worry was that over time, if all I did for my career was landlord-tenant law and civil commitments and family law cases, that I would be brain dead in a few years. And at that time, there were more and more opportunities … for people to be full members of the law school and clinical law teachers for life, if you wanted to be. And that meant to me that the practice needed to be changed. So we started taking a much wider array of cases. …I already had a fair amount of federal court experience, and the area that I started focusing on was prisoners' rights. That was because most of those cases would be civil rights cases filed under Section 1983 in federal court. This was a population that was huge and that had almost no legal resources. We started communicating with prisoners. We did a class action. My first class action case on behalf of prisoners involved getting back Social Security benefits that had been wrongly taken from them by the state to pay for educational classes. And we won it, but] we probably shouldn't have. I think the state missed a defense that might have been able to prevent us from winning. But we got a judgment that many hundreds of thousands of dollars had to be returned to prisoners, so we had to send a letter into the … prisons, saying, if you're on this list, you may have money coming to you. And all of a sudden our name was in every prison, having just won a case that was returning money to prisoners. Now they had a connection to us and we started getting letters from them. **[0:35:00]** And then we would go through every letter. Students would read them, we'd assess them, we might only explore further five to ten cases a year and we might only take one or two cases a year. But it gave us a fund of really interesting prisoners' rights cases from which to work and it moved us into gradually getting expertise in doing those cases. Those would result in three, four, five day trials, sometimes two week trials in federal district court, again, where the students could do almost everything.

[Andrew Eslich] Wow, that's really incredible. So you were the director of the clinic then from 1983 to 2018, for 35 years. Beyond just the scope of the cases that you took on, how else did you see the clinic change and evolve or clinical education change and evolve during that time?

[Paul Reingold] Well, the biggest thing was, as the clinics began to grow nationally, some schools were in leadership positions making that happen while other schools were extremely resistant. And it happened that Michigan was in the latter camp. We had a conservative dean, who was very, very academically focused. I mean, this is one of the weird things about law school that I had noticed when I was there. That is, that you're training people for a profession and yet unlike virtually every other field, law school, for the faculty, is an intensely *academic* graduate occupation, the teaching is a sideshow. Most of the academic teachers, especially in those days, had spent almost no time in practice. What got them onto the Michigan faculty was

the quality of their academic writing. And for some, I mean, in the worst case, you would actually hear someone say, "Teaching is what I have to do in order to do what I want to do," which is academic research, right? And usually theoretical research…. And so, my own view was that [legal] education needed to change. But I didn't know how to make it change, especially in a place that was resistant to what we were doing. At that time, most of the clinicians could only be hired for two years at a time and then had to move on. You had very young people like me, only five or six years out, not very experienced and not with great training like you might get at a big private law firm, [where] you're … tutored by senior people. And so it was troubling because I didn't know how to build it. What I gradually learned was that I wasn't alone, but at every law school where there were one or two clinicians, they all felt the same way. How do we change this? How do we build upon what we started? And what changed my life was my first attendance at a national clinical conference. At that time, the clinical movement was tiny. There might have been 40 or 50 lawyers at the conference. But once you're together in a room with other people sharing the same experience and you start talking: What makes good pedagogy? How can we change the way law school is taught? How can we teach collaboratively? How can we work together across law schools, both in litigation and in education? All of a sudden, there was a connection everywhere, and one law school group that was ahead would help those who were behind. Over the next 30 years, I'd like to say, at least at Michigan, we "incrementalized" five deans to death. We just never backed off. We were just pushing, pushing, pushing. Over the space of my career, we went from 1.5 clinics staffed by two faculty to, in some years, close to 20 clinics, staffed by 40 … or 50 faculty. And we expanded the range of other people who could teach at the law school. We persuaded the academic faculty that if you bring in people with deep practice experience and call them … by a slightly different name, like **[0:40:00]** professors from practice, you can add (cheaply) six, eight, ten people with terrific experience who will greatly widen the diversity of the kind instruction that can be given at the law school at a relatively modest price. You don't have to give them tenure, but you give them the equivalent. Instead of saying you have to write academically, you say to them, if you want to write … There are other standards that can apply to you. In the clinical case, it might be writing, it might be litigation, it might be a different kind of writing. There's all kinds of things. And so we opened up the arena. We brought in not just fresh blood, but fresh air, and it made it so that what people experience in law school covered a much, much wider dimension. It took a long time at Michigan for the clinicians to be accepted. And I mean it when I say we fought the battle remorselessly and endlessly to gradually build an institution [and] an educational system that in my view was way more enlightened. I think it was great for the school because when you have people sitting in faculty meetings and sitting on committees who don't all look the same, but come from different backgrounds and have different strengths and see the world in different ways, then everything that the school has to do, whether it's on the administrative side, working with students, working with alumni, anything, it's better for everybody and there's no reason why the school should be single-mindedly, theoretically academic and nothing else. It changed the experience of law school for law students. I had, early on, learned that you get a really wide range of people at law

school. At a school like Michigan, almost everybody is coming from having done very well in high school, in an undergraduate school. They get to law school, and like me, some of them are going to be lower in the class or uncomfortable and nervous and scared and not do well in the system that they're facing. There's nothing better than having a clinical experience where you realize, I may not be on law review, but boy, I'm good at *this*. I've found something that I love to do. Or you get someone who's on law review and comes into the clinic and says, well, I'm glad I'm on law review because I'm really at sea here, you know? And I better not be a practicing lawyer. I better go be an academic. Some of my best students were law review students, and some of my worst students were law review students, right? And what I loved about the clinical teaching, was that whoever the students are and whatever their level of confidence, the clinic is world-changing for them. …The students who are at the top of the class know that they can achieve academically, [but] when they walk into the clinic and they're handed a client on the first day and they know that they're going to be in court three days later, they're scared shitless. They just are, you see it. They're sitting there at the podium shaking sometimes. Over the course of 13 weeks, you change all of that, or they change all of that, really. One client, one day at a time, you realize not just that you can do it, but there's a whole different set of challenges in the practice of law, and you have to learn how you respond to those challenges and … adjust the way you think to be able to work with your own clients, opposing counsel, judges, court staff, your own secretaries. The things in the real world that matter. Watching that process was endlessly fascinating for me. I felt blessed. I don't remember how far in it was, but it was probably about seven years in that Michigan did a review of its clinics and decided to finally adopt a permanent track for clinical faculty. I wasn't sure that I wanted to stay, [but] that year **[0:45:00]** [we hosted] the national clinical conference. [At that time] clinics were not … big enough to need … huge conference centers. Now, the clinical law section is the biggest section of the American Association of Law Schools and you need huge conference centers in order to house everybody. But then we had a national conference at the University of Michigan. And one of the keynote speakers was a friend of mine who was teaching at Yale, and he gave a talk on "why I have the best legal job in America." And it was all of the things that I loved about my job. I'm sitting there in the audience going, check, check, check. It was like, I work with some of the smartest people in the land…. I get to pick and choose my own clients without regard to whether they can pay me or not. All of my clients are poor because we don't compete with the private bar, and that means all of them are disadvantaged in some way, and that means they're all interesting to my students and to me in a way that business clients are not. We're almost always on the right side of human rights issues. Check, check, check. What else? I teach collaboratively, unlike the rest of my colleagues who teach alone. We analyze everything that has happened in class right after it's happened and we plan what's going to happen in class before it happens. Check. I can wear blue jeans to work every single day. I can teach in … a T-shirt if I want to. And I have wonderful experiences with students who bring new ideas to me day after day. It was like, check, check, check, check, check. At the end of his lunch talk, I said, "Okay, I'm staying." But I didn't tell the dean that I was staying. When the dean called me in and said, "We're planning this change, but I

want to make sure that you will stay with us during the interim period, even though I can't promise you anything. I want to give you … a two-year offer. And then it might be that you can stay permanently, you know, if you get through the next step and we get to the next step." I think I was the first person to whom he'd ever said, "We want to make you an offer" who didn't say no because they were going to Yale. I said, "No. … Let's keep it one year at a time. That way," I said, "if I'm not happy or if this doesn't go through or I'm not sure, I can [walk]."When I said no to the dean, my own stock went off the charts. From that day on he viewed me as the permanent director of the clinic because I was saying to him, in effect, you need me more than I need you; no one had ever said that to him before, I think. You know, it worked. It worked out just the way I wanted to. And I loved my job. I bounded out of bed in the morning. I was often the first person at the law school and the last person to leave. I loved it.

[Andrew Eslich] No, that's incredible. And, you know, working with students, there's two individuals in that relationship. There's yourself and the students. And I have questions regarding both of those relationships. So you mentioned with students, you know, they get handed a case, and oftentimes they're nervous, they don't know what the next steps are, et cetera. What are some of the lessons that you try to instill in your students, I guess, from day one, when taking on a case and working with clients while still being in law school?

[Paul Reingold] One of the things that always interested me was when you talk to other lawyers or even to my family members, they would say, "Well, how can you trust these important decisions to brand new lawyers?" The clinical model that was being developed looked a lot like the medical [school] model, where interns, or fourth year students, or fellows, or whatever, with a senior doctor come into the examining room to see the patient. And the patient understands [that] the younger person, the newer person, might do a lot of the interview and might ultimately do the procedure that needs to be done. And the patient at some level knows that the younger person isn't going to do it as well as the older person, but they don't really have a choice (or they think they don't have a choice), right? The same was true, in a law school clinic. When lawyers for my family would say, how do you deal with that? There were a couple of good answers. One was, you're at [the students'] elbow all the time. **[0:50:00]** If they're doing a direct examination, you can do a better job. But unless it's harming the client, unless you're leaving something out that's so necessary, you don't intervene. If you do need to intervene, that's what you do. That's how the model works in court. The court rule allows you to do that. In effect, you can have two lawyers where normally the client could only have one. Your client and the public are protected while the student gets the full education. Another surprising benefit is a case that we're going to talk about a little later, and that is that students, because they're ignorant and don't have preconceived notions, tend to be more open and more creative even than a lawyer six, seven years out. And so I will describe later the case where I would not have done what the students did

in the first week of the case. Had I not done it, as I'm confident I would not have done it, the case would have settled and disappeared, and it was a tiny, tiny case. Because the students were there, they did what I would not have done, looked at some law just to educate themselves on the background of the situation and stumbled upon a statute that changed everything. And this became probably the most important case in some respects that I handled in my career because it meant so much to so many people locally. But for the students, it wouldn't have happened. I can say that honestly and comfortably.[From] the first day of class, … the clinic is all about being on your feet. It's doing simulations or real work immediately. Invariably when [students] are interviewing a client, they want the client to feel good about the interview, and so they're always over-promising. They're always with clients [who ask], "Do I have a good case?" They'll always say, the newest lawyers, or the students, will always say, "Well, it's looking strong,." – [but] they don't have a clue. They don't know. On the first day of class, we would get people to stand up and go around the room and everybody would say out loud, "I don't know." To me, the 3.5 most important words a lawyer can understand, any professional can understand, because you don't know and you never know, no matter how long you practice, there's 1,000 things you don't know. So if you get comfortable saying to people, whether it's a judge, opposing counsel, or your own client, "I don't know," you're way ahead and you take all that pressure off of yourself. What you say to the client is, "I don't know, but what I'm good at is finding out. In a week or two as we develop the case, and I learn more, and I check out the law, and I develop the facts, and I learn what the other side has and doesn't have; *then* I'll tell you, honestly, whether I think you've got a case or don't have a case or whether we have a chance of winning or not winning." But the important starting place is. "I don't know." Comfortably – that's [it] to me. Beyond that, it's learning to develop your own style. Everybody has a different personality, everybody has different strengths and weaknesses. In the clinics, we pointedly did not model how to do things because how I do something may not work for you and people have to learn what their strengths and weaknesses are and capitalize on them or get help where help is needed. Those are the kinds of generic lessons – more important than the substantive law or civil procedure, right? It's much more about what makes you successful, and in some respects, it's about what makes you happy. Right?

[Andrew Eslich] Yeah. No, absolutely, that's extremely important. And I'm sure your students learn a lot from you. And I'm wondering now about the flip side of that relationship over your course of, you know, 35 years working with students, what are some of the lessons that you learned from your students during this time?

[Paul Reingold] They were really good at never giving up. You know, if there was more research that needed to be done, they would do it. If there was a witness that needed to be found, they would [search] over and over and over again. Again, especially as you get older and a little more

tired, you know, **[0:55:00]** I would have said, “We’ve done all we can.” [But] they just wouldn’t hear it. I know that in our Innocence Clinic (Michigan has one of the few non DNA Innocence Clinics, in order to win the case, it’s not just that you go out and find that the DNA doesn’t match and your guy gets exonerated), it’s that you’ve got to go out and redo the case, re-research the case from the ground up. Often these are 30-year-old cases and you’re going everywhere you can go to find people who were alive and connected 30 years ago when the crime happened, and they win their cases on exactly that basis. They are unrelenting once they think they have an issue that they can win and that the facts might be there to support the claim. That’s one thing that my students taught me. I also learned from my co-teachers and the students that there’s lots of different ways to skin a cat. My view is in hiring people, I always tried to hire people, if I could, who were smarter and more experienced than I. When I finally got my permanent position [at the Law School], and we were able to expand, I hired three people in one year and two of the three had way more experience, and at least one of them I thought of as a good deal smarter, at least technically in the law, than I was. The third person was a junior person when we needed one, and [who] fit in well. But, you know, I felt like you want as strong a team as you can build. What I learned was that over the years, we would try certain things and you’d say, here’s a good idea, let’s try it, and it didn’t work. When I hired new people, at some point, maybe a year or two, three, four years in, they would say, “I'd like to try X” and I'd think to myself, we tried that five years ago, it didn’t work. We tried that ten years ago and it didn’t work. We tried it (if I’m old enough) 15 years ago and it didn’t work. Instead of saying no, my gut reaction was always to say, “If that’s what you want to try, give it a [go].” The idea was their approach might be just different enough, or times might have changed enough, students might be different. Whatever it is, why shouldn’t they have the same chance that I had to try it, even if it fails? I think that was true with the students too. They often say, “I want to do X on the case” and I would think it doesn’t sound like a good idea to me. But if there’s no harm in it, I’m willing to let them do it. Damned if every now and then they didn’t come up with something that turned a corner in the case or brightened the prospects of a win or resulted in more damages, whatever it was. It comes from being open to otherness or new choices.

[Andrew Eslich] You know, that’s really important. And with your students, you worked on a number of really important cases, and I kind of want to switch gears a little bit and talk more about those cases. So in carrying on the tradition of teaching and instruction, you mentioned a number of cases in preparation for this interview that offer you unique insights on the types of cases that civil rights litigators might encounter. So one of the cases that you mentioned was a case that you characterized as a dead-on winner and that you had a blast doing. And that was Hardin v. Straub. I wondered if you could tell me more about that case. The plaintiff, the facts, any legal issues that were pretty interesting.

[Paul Reingold] Let me tell you about how I learned about it. First of all, this was an early-mid career case, but I already had a reputation because we were doing a lot of prisoners' rights work and we had already taken a case to the U.S. Supreme Court. Not a lot of lawyers at that time, especially in somewhat provincial practices like Ann Arbor, Michigan, had done that. In the private bar there might have been some, but there weren't a lot in the public, the public interest bar. This is what happened. A good friend of mine who's a well-known criminal defense attorney, mostly doing federal cases, but some state cases, goes to visit a client who's in prison in Michigan's Upper Peninsula. If you go up there in the winter, it can be hard getting there, the plane can't land because it's snowing or the plane can land, but you can't rent a car and get to the prison because of the snow over the pass, whatever it is. It's just a pain to get there. But he made the trip. I don't remember what the **[1:00:00]** status of the criminal case was, but he met with the guy, I think, I believe it was the first interview. They spend, whatever, an hour or 90 minutes together talking about the guy's case and the possible defenses. At the end of it, the guy says to him, "I like you and I'm really glad that you are going to work on this case." I don't remember if [my friend] was appointed counsel or if the family had some money and he was paid counsel. But this was not a wealthy client. It was a poor guy in prison. He says to my friend, "I've got a case in the U.S. Supreme Court, and I want you to handle that as well. Would you take that?" And my friend goes, "I'll look at it." The guy writes down a case number or something and gives it to him. He puts it in his wallet or his notebook and comes home. And he doesn't give it another thought for three weeks, because when any prisoner says to you, "I have a case in the U.S. Supreme Court and I want you to handle it," what you know he means is, "I've lost some [case]" either in the Michigan Supreme Court or more likely in the Sixth Circuit U.S. Court of Appeals. "It's a case that I filed pro se." [My friend] knew it was a civil rights action of some kind. And you know what it means [is], "I have filed a cert petition." What it tells you in your bones is there is a one in 100,000th chance that this case is going to be granted cert and that anything is going to happen. [My friend] doesn't even look at it for three weeks. Then the criminal case comes back to his attention because of a court date, he opens the folder or takes out his wallet and pulls out the piece of paper, and goes, "Geez, I forgot to look it up." He looks and to his utter amazement, this is a case in which a pro se cert petition was written by the prisoner and cert *has already been granted*. This is the one in 100,000th case. Well, he calls the clerk of the court in the U.S. Supreme Court, and says, "I interviewed the prisoner. I think this is something I'd like to do. Has anyone been appointed on the case yet?" He's told, "We're glad you called." The Court granted cert four or five weeks ago. We've been looking for someone to do this and so far, haven't found anybody. If you're local and you want to do it, it's yours. So it was his. He called me the next day and he knew that I had worked on a case that went to the Supreme Court and was argued and decided. And we've got another friend who was the legal services director and another very smart, very accomplished lawyer, and we bring him into it and we do the case. Now what does it tell you when the U.S. Supreme Court has granted cert in a prisoners' rights case on a pro se cert petition? I won't ask you actually to answer the question, but for any lawyer with any experience, what it means is, in effect, this is a "clerk's case." What it means is some clerk

looked at this cert petition and said, "Oh, my God, this guy's right." And brought it to the bench, and the full court circulated a memo and said,"This is an issue that needs to be decided and he's right." The main pressure on you [the lawyers] is that somehow you could lose it. Because this is a case that cert has been granted on for you to win, and that's the only reason cert is granted. So as long as you don't blow it in some way and lose, this is a free ride to the U.S. Supreme Court! Let's go back and review the facts. Guy is in prison, and he does something wrong and he's disciplined for it, and I think [he] is placed in "the hole" (as it's called) – in isolation or reduced freedom population, something like that. He's supposed to get a hearing before he is so disciplined. He does not get the hearing, even though he requests the hearing more than once. It's just a glitch. It's a mistake. But the result is, he's been disciplined without the required due process hearing. He wants his record to be cleared and he wants damages because he's not persuaded that he would have been put in the hole if he had a hearing. **[1:05:00]** He files, he waits. It turns out that Michigan, [like] a few states, not many, but some states, have what's called a tolling provision. Now, for almost any kind of civil lawsuit, there are statutes of limitations. If it's a federal cause of action like 42 USC 1983, the Civil Rights Act, that Act does not have its own statute of limitations. So the federal law borrows state statutes of limitation. Michigan's statute is a three-year statute of limitations, and that means he would have had to file his summons and complaint with the court within three years of the event. (That is the denial or at least his admission into "the hole" without a hearing.) But Michigan also had a tolling provision. It was called a "disability" tolling provision. The three disabilities were, if you were a minor, if you were legally insane, or if you were a prisoner. The idea was that if you had any of those disabilities, you weren't in a position on your own to file the claim. And so during the three years, you wouldn't know or might not have the ability to file a claim. And so the disability tolling provision says … you have one year after the disability ends to file the case. His view was, I'm not going to file it while in prison because if I do, they'll retaliate against me and I don't want that hassle. I'm getting out – and [in] not too [long]. He gets out, and he files the case. … He files a pro se complaint. At that time, and I think still today, there was a provision in federal law, I think it was Section 1915 (e) (if memory serves) that said, with a pro se complaint, a federal magistrate judge can review the complaint and if there's no merit to it, it shall be served on opposing counsel. But [defendants' counsel] don't need to write even an answer or a response or anything and the case can be dismissed. And that's what happens. The magistrate's decision [on dismissal, holds] yes, federal law says you have to abide by the state statute of limitations, but only if it's consistent with federal law. The magistrate's view, and ultimately the district court's view is, (a) we're overwhelmed by prisoners' rights cases, and so it's not as if being in prison truly is a disability; and (b), there was [also] an argument [the court] made that the tolling provision didn't matter that much. I don't remember exactly why, but it was an excuse as to why as a matter of federal law, the tolling provision itself shouldn't counteract the statute of limitations itself, the three year limitation. The defendants don't file anything in the case and it is dismissed. I think [the prisoner] even filed a motion for reconsideration, which was also denied. He takes it to the Sixth Circuit, which has a similar screening provision where [the court]

notifies the defendants, the attorney general's office, [that] there's been [an appela], but you don't have to respond yet. We're looking at it. I think [the defendants] file an appearance, but nothing else. [The court] looks at it and [under the] equivalent provision, says, no merit, we're going to dismiss. [The prisoner] seeks rehearing and rehearing en banc. The rehearing is denied by the same process. The rehearing en banc has to be circulated to [every] judge of the Sixth Circuit. Not a single judge says there should be an opinion in this case, and the court peremptorily affirms what the district court has done. Then it gets to the Supreme Court and some clerk reads it and says, this is just wrong. There's other case law out there, other circuits have disagreed (there might have been a slight circuit split), but [the Justices] grant [the cert petition because they want to say, "You not only have to apply the statute of limitations, [but] if there's a tolling provision, you've got to apply that as well." So what [does this mean] for us? What we've got to do is just write a brief and go to Washington and argue it, right? And that's what we did. The legal aid director and I added some factual stuff to the record that otherwise wouldn't have been here. This is what was called in the day a "Brandeis brief." Before Louis Brandeis was on the Court, when he was a lawyer, he would do factual additions to the **[1:10:00]** brief, studies or appendices, and so it became known as a Brandeis brief. What we did is we sent students down to the Federal District Court to look at what actually happened to all those cases that prisoners were inundating the district court with, and what we found was, yes, there were hundreds or thousands of cases being filed, but what actually happened to them? What we learned was that almost all of them get filed because there's a form for the prisoners that allows [them] to file a case. [They] can fill everything out. Here's the plaintiff, here's the defendant, here's what happened, and here's the claim. But once [the form is] filed, almost none of those cases moves forward. I don't remember the number, but it was [like in] 80% of the cases, the inmates never file another document with the court because as soon as there's a response from the state, they don't know how to respond … and they give up. And so yes, it appeared like it was an inundation, but in fact, [very few] of these cases were moving forward because so many of the plaintiffs were inept and uneducated. They couldn't do it. So, yeah, we add that to the record, which is now another reason why the disability is real, right? And so if you want extra factual evidence in the record that the *reason* for the disability tolling still has merit, despite the number [of cases filed], we gave the Court that as well. We write the brief, and we go down to Washington to argue it. We have a great picture, the three of us on the steps of the U.S. Supreme Court, all of us with big smiles on our faces. I always say you can tell the picture was taken on the way *in* rather than on the way *out* because you always come out with doubts. But on the way [in], you're excited and happy. The argument was a great argument by our lawyer – that was short. The [Justices] asked almost no questions and it was clear what they were going to do. After 10 minutes, he said, "I'm done." The state solicitor general argued for the state. … [About] six weeks later, we had a 9-0 opinion, our way. What's not fun about that? The only risk is if you lose, and we just didn't think that could happen. The one other thing I should tell you is in those days, the moot court competition at the law school was always looking for interesting problems. And … that year, they didn't have one at the time that this case was in progress. And in those

days, there was no internet and it was very hard to get the briefs that the parties filed, right? And so we set up this as the problem for the [annual moot] court competition. The interesting thing was, the people who were assigned the prisoners' side of the case were bitter about it because they thought that their position was so weak compared to the state's position. And we told them everyone was forbidden from looking at the real case. We might even have disguised it so that they wouldn't even know that it was [pending]. But that was their reaction. Of course, we knew what was going to happen in the real case, [but] we didn't know it [would] be 9-0, but we knew it was going to be an easy win. And they all got to argue it in the mock situation in law school, brief it and argue it. In the meantime, around the same time, just after I think, the finals of the [moot] court competition, the real case decision came down and it was short and it was unanimous.

[Andrew Eslich] No, that's fascinating, both the story of how you came to that case, its procedural history, and the actual decision itself. And for you, that was a dead-on winner. So I kind of want to take a different look at a different case then. So the next case we're going to talk about is Makowski v. Governor, and this one you described as a seemingly hopeless case that made the law challenging and satisfying, to work on this case. So I was kind of wondering, can you tell me about this case then as a flip side to [Hardin v. Straub]?

[Paul Reingold] Yes. *Makowski* was another one of the very interesting cases that we picked up fairly late in my career. He was somebody who had, let's see where to start, he had been in prison for a murder that was committed where he was not present at the murder and was unaware that the murder was **[1:15:00]** going to be committed, but he had a role in setting up the crime itself. He wound up being convicted of what in Michigan is a version of felony murder on the theory that he should have known that a death could result from the crime. In Michigan, that carries a mandatory life sentence. And he had been in prison for 25 years on a mandatory life sentence and he had appealed the sentence and lost. The underlying facts were fairly basic. He was a young man at the time of the crime, I think 19 and he had a job at a gym. It was one of these gyms that was fairly hard core, a lot of weightlifters doing heavy-duty weightlifting. And so it was very macho and there was a lot of competition among people. I'm tougher than you are. And he had disagreements. He was, at least part of the time, a manager in the gym, and he had disagreements with some of the staff either because he thought they were soft and weak. [W]hatever it was, they argued about things. And he … needed [or] wanted to teach [one of them a lesson]. It was unclear whether his motivation was to get some money. They didn't like the owners either, I think, and it wasn't clear when the motivation was to get some money or was to teach [this] underlying a lesson. But they occasionally got cash payments into the till at the gym and they would then have to take the money to a bank to deposit [it]. And he worked out a scheme with another guy where they'd give the money to the employee whom they didn't like. And the other

guy was unrelated to the gym, and that guy would intercept [the courier] on his way to the bank and would beat him up a little bit and take the money. He was going to humiliate him and it was going to give them … a couple hundred dollars. What Makowski didn't know was that [his accomplice] had a knife with him. And when the employee was accosted by the robber, the employee, although a smaller guy, was tough and began to get the better of the robber. And the robber took out the knife and punched him … with the knife in the side. And bad luck, it nicked his aorta or a valve leading to the heart and the guy bled out and died. [If] Makowski didn't know that the guy was going to be armed, and the only intent was to beat the person up a little bit and humiliate him, I'm not sure if it would be felony murder today. I'm not [even] sure if it was felony murder then. But he got convicted of felony murder, and he lost his appeal. So he's in for life. In prison, he's unlike many other prisoners. He was from an upper-middle-class family. He was reasonably well-educated and he did very well in prison. He had almost no misconducts. He had leadership roles. He did work on behalf of other prisoners, on the warden's forum, stuff like that. 25 years later, he puts in [for] a commutation, which in Michigan is quite hard to get. And at near the very end of the governor's second term, last time, you know, that she can grant commutations, he's one of the people who gets a commutation. And the commutation is signed and sealed, and delivered, and he's told that he's been commuted and that he's about to be released. At that point, the victim'' family, who had very strong, very bitter feelings against him, **[1:20:00]** hired a lawyer immediately who gets in contact with the governor's office over the Christmas holidays. She's going to step down at the end of December and they say they're going to make a stink and the governor begins having second thoughts. And ultimately, even though the commutation has been filed with the Secretary of State, she sends her lawyer over to the Secretary of State to demand its retraction, its return, and they cancel the commutation. Well, one of the lawyers that Makowski's family had worked with and who was working on a second attempt to go back into court on the criminal case to challenge the felony murder, was a former Michigan Supreme Court Justice. His name was Charles Levin and he was retired. I believe it was his brother or cousin who was Carl Levin, a Michigan senator for a very long time. So this is a very well-connected political family. And I don't remember how we were contacted, but I think somebody gave us a call because we had worked on some commutation cases and we had done some research on this issue. I mean, this is one of the good things in the civil rights community, is when you get a reputation for expertise in any area, all of a sudden you're valuable to other people, and you get pulled into good and interesting projects, right? And so, Charles Levin calls, and he was an old man by this time and frail. But he was still sharp and interested. And he got us the file and we looked at everything. We talked [about it]. I talked to some people who [had] worked in the President's office who were in charge of giving commutations back in the day, whoever the President was. And we talked to some lawyers in Michigan, who'd done that [for the governor], but whose heart was in the right place for us. And everyone said, the commutation power, the pardoning power, is unique in that the chief executive can do [anything] without being questioned. If you read the case law, almost every case says the [chief executive has] absolute discretion. There's no role for the courts. But we did some research that made us doubt that that

was true. And doubt that it was true under the circumstances here where it had been officially granted. Yes, that's true about the *granting* of a pardon, but there's nothing in the state Constitution about the *taking back* of a pardon, and it didn't seem to us that the taking back was the same as a grant. It seemed like it was the opposite of a grant, and it didn't give [the governor] authority to do it. And so even though everyone said, "This is hopeless," we took [it] and we filed in the state trial court where he had been convicted, and we lost. We filed an appeal in the Court of Appeals, and we lost. [The courts] said, not only is there absolute [executive] discretion, but it's also a political question. This is something that only the governor can do and the courts and the legislature have no role in undoing [it]. As part of the trial court case, we got discovery and so we were able to depose a bunch of the people who were involved in the decision-making. The governor herself had executive privilege and so we couldn't talk to the governor or the governor's lawyers. But we talked to the parole people and the parole person said, "Geez when the governor called us and said she wanted to retract it, we were all thinking, you can't do that. It's done." And they were worried that they would get sued if they obeyed her. They wanted a letter from the governor that said, "I'm doing this under my executive authority, and you don't have a choice," and stuff like that. But they were sympathetic. It had never happened before. In all recorded history in Michigan, no one had ever undone [an act of executive clemency] unless the facts underlying the executive decision turned out to be false or fraudulent, then there might be a way to do it. But we lost at every step. And then we got to the [Michigan] Supreme Court and by then, Chuck Levin and I were good **[1:25:00]** friends and the clinic worked hard on the case. We wrote a brief that wound up winning the annual prize for Best Brief in the Michigan Supreme Court. We were co-winners that year with a few other briefs, but it's put on by the Cooley Law Review every year and the Court sends over briefs that should be in contention. I argued it. It was my first argument in the Michigan Supreme Court because I mostly was in federal court on the bigger cases. After the argument, I had no idea who was ahead. The [Justices] were tough on both sides. And in the end, there was one person who didn't vote because there was a conflict. But we got a 6-0 decision in our favor. It didn't mean that Makowski was immediately released, but a few years later, when all the litigation was ended, he was able to get out despite having a mandatory life sentence. It was [also] interesting because it's very rare that you get to argue something from … some of the oldest established U.S. law. And the case that was closest to this case turned out to be *Marbury v. Madison*, a case that every law student learns in first year constitutional law. And that's the case where a commission is issued by the President, and the question is, can it be undone by the courts when it's already been signed, sealed, and delivered to the person who gets the commission? And in the end, the U.S. Supreme Court determines that it doesn't have jurisdiction over the case, but it clearly says [that if] it had jurisdiction, that the executive would not be able to withdraw [the commission] once it has been signed, sealed, and delivered. And so the first pages of our brief are all *Marbury v. Madison*. And you don't get to argue *that* very often in an appellate case.

[Andrew Eslich] No, that's really fascinating. You mentioned that a lot of your experience up until this point was in U.S. federal court and this was in Michigan state court making an argument under the Michigan state constitution. I'm wondering, for your legal strategy, did you approach this case differently given that the argument was rooted in the state constitution and if so how?

[Paul Reingold] I would say that, yes and no. I mean, I had done a lot of work in state court and I'd done state court appeals to the Court of Appeals. But when we had impact litigation, as I said at the beginning, almost always, it was in federal court because the bench had more resources. The bench was typically better for us. And it's just sort of happenstance. The Legal Aid Office had some cases that went to the Michigan Supreme Court, but not ones that I was [enough] a part of that I would be the one arguing. There was a lead lawyer. Yeah, there [are] differences – in the trial court, the court didn't address some of the important issues, and wrote an opinion on stuff that hadn't been briefed – and we thought that would help us in the Court of Appeals. But the Court of Appeals didn't have any interest in the case either. They basically said, it's a political question, the governor can do what she wants, and we're not going to touch it. And I think, you know, it was a case we always thought we *should* win, but that doesn't mean you will, especially when it's the governor whom you've sued, and it's the [state] Supreme Court who has to tell her, you can't do this. It's a big deal. No, I mean, basic oral arguments are the same everywhere. There were a few things that I did differently. Usually in an oral argument, you need to get to the heart of the matter as quickly as you can. Whether you have 15 minutes, or 30 minutes, 20 minutes, whatever the time period is, it goes by in a blink and you need to learn how to get the single most important stuff out early and hammer on it and know exactly what you want to cover. Because if you don't, somebody will hijack your argument and you won't get to any of the important things that you need to get to. This was the only case I remember in my career where the court … said, you can speak on **[1:30:00]** your own for the first 3 or 4 minutes without interruption if you choose. Usually, I would never choose that because I want to be interrupted by a question at the earliest possible time because that's going to get me in part to what the court thinks is important, or it's going to get me to answer a question that some doubting Justice has. But this was the first case ever where I said, yes. I did it in part for the reason that I just said. This was the only case I've ever argued that had the controlling precedent to be a case like *Marbury v. Madison*, and it was unique in my experience, and it was spot on. And I just got to say in one fell swoop, this was what the Court was concerned about 200 years ago, and it was saying, we don't have jurisdiction in the case. We all know that. But it went out of its way to say if we *did* have jurisdiction, we get to say what the constitutional law is and it's not the governor who has that power, it's the Court. They had done it in pardon cases and commutation cases a number of times on the federal side, where they had said what … the President did … is contrary to what the Constitution says. There were limitations on the power on the federal side. I wanted the [Court] to hear that loud and clear from the top authority. … I don't know if it helped, but it

gave them a sense of my view of the magnitude of the importance of the case. This is the heart of your job, is to tell the governor, thou shalt not take into your own hands what the Constitution says you can do. It ain't your [job] to do that. It's ours. I think it helped.

[Andrew Eslich] No, definitely seems like it did in that case. Now, you characterize this case as again, seemingly hopeless, but yet really challenging and satisfying to work on. To circle back to that, I was wondering why that characterization for this case?

[Paul Reingold] I think when you're doubted, you also doubt yourself. You know, you say, am I doing it for glory, that sort of thing. And am I not reading the tea leaves carefully? But as I told you at the beginning, I'm always skeptical of my own doubts because early on when I doubted, my partners overrode me and they were right. I also had [Chuck] Levin on my side, which helped. He was a much more formalistic … writer than I was and I had to fight him tooth and nail to get rid of his formal writing and make the style my own. I told him when we started if he was going to do it with me, the Clinic was going to be lead counsel and he was going to be the advisor and the second chair. And he said, yes, which was fine with me because of his [early influence on] me. But I trusted his instincts and he had been a famous dissenter on the Michigan Supreme Court on a number of cases of great importance. (We're doing a case right now in the Michigan Supreme Court that he dissented on. We're trying to get a 1980 case overturned that has been challenged two or three times and lost, that we still think is wrong.) And his view was, I agree with you. He said, I think this goes beyond what the governor can do, and we may not win it, but it's worth a shot. And that helped a lot.

[Andrew Eslich] It seems like [you] learned a lot of important lessons from that case. But [let's] kind of switch gears a little bit to another case that you characterize as an example of how winning a case rarely ends the struggle, but it's just one step in a long march toward justice. That case would be *Does v. Snyder, Does 1*, then *Does II*, then *Does III*. And I was just wondering, talking about the first case, *Does 1*, can you tell me more about that case and what comes to mind for you?

[Paul Reingold] Yes, I can. Since this one is still ongoing, I have to be a little bit more circumspect. And also your introduction to your question reminds me, when I was talking about *Hardin v. Straub* and the win in the [US] Supreme Court that allowed our client to file his case, even though it was after the three years but within the one year extension. I neglected to tell you that, as is often the case with impact litigation, even when you win, the state can make you lose. **[1:35:00]** Indeed, within six months of our victory in that case, Michigan had amended [its]

disability tolling statute to take prisoners out of it. [Our *victory* changed the law for the worse] … for everyone – [removing] the ability to have an extra year to sue if you're a prisoner. That's the life of a civil rights lawyer. You win over here [in the courts] and [they] take it away from you over there [in the legislature]. *Does I* is an interesting case because it was one … I wasn't sure I wanted to be involved [in]. … I shared all of the prejudices that the rest of society shared. … This was a case that got off the ground in 2011. I had experience in federal court litigation. And there was a lawyer on the western side of the state who had finished at New York [University] Law School. [She had nabbed] one of the hard-to-get fellowships [and] was working at Legal Aid for a year…. She had … an interest in re-entry work for prisoners leaving prison. And what she found during that first year was that prisoners who were coming out of prison for sexual crimes were being barred from returning to their homes if there were minor children [there], even if the crime had nothing to do with children, and nothing to do with their [own] children. And she thought that was weird because you want people to be back in a place where they can most easily reintegrate into society after being in prison, and where they have support, all kinds of help, whether it's financial help, a ride here to … a job interview, whatever it is. You want them to be in a position where they're most likely to succeed on parole. And they couldn't. They were also barred from going to religious houses of worship because there might be children there, regardless of whether their crime had anything to do with kids. [These parole restrictions were] automatic, … by default. No person [decided]; it was a computer-generated decision. So she called me one day and said, "This is what's going on. I know you do prisoner work, and these are former prisoners. And it seems like a decent 1983 case to me. But I don't know anything about federal court. Will you [and the Clinic] do it with me?" So we teamed up and challenged the [policy]. In the end, we worked out a settlement that resulted in a dismissal, but the [Corrections Department and Parole Board] agreed to change the defaults, and we were also allowed to monitor [the system] as people came out. If anybody came out and was assigned a restriction like one of these, [and] it seemed inappropriate for their facts, we could go to the parole board and advocate for a change. We had students doing that for [several] years after the end of the case… to make sure that, in fact, [the policy changes were] implemented and [applied] properly. …Once we had done that [case], we [found that we] really enjoyed working together. She was a brilliant young lawyer, … and a good writer, and like all of my partners, … a relentless worker. She said, "The Sex Offenders Registration Act that Michigan has had for … years just got amended in 2011, and it's a thousand times worse than it was before, and it makes no sense. Do you want to challenge … [SORA]?" I thought, is that really what I want to do? [Do] I want to be representing … sex offenders? But I started reading up on it. I looked at the act and I looked at ex post facto law, which I knew some[thing] about. …The more I read, the more I thought this [SORA case] looks interesting. The Clinic agreed to team up with her. By the time we were really going with it, she had moved from legal services to the ACLU and was working in the western Michigan office. Over the course of about 18 months [we put together] a global challenge to the Michigan Sex Offenders Registration Act. … Our students interviewed [some] 50 people before we settled on the first five, and later six, named plaintiffs. We had wonderful named plaintiffs: a person who

was on the registry for life **[1:40:00]** who never committed a sex offense at all. He committed a robbery and during the robbery, he [made] the manager of a McDonald's and the manager's teenage child … move from one place to another. And so he pled guilty to child kidnapping because the minor was moved at gunpoint, and that's a registerable offense. Shouldn't be, but it was. We had [another] named plaintiff who went to an over-18 club [and met] an under-16 girl [who got into the] club with a fake ID. …They had sex. He winds up being charged with sex with a minor. He gets convicted, he's on the registry for life. They later marry and today are still married and have three children together, and he's on the registry for life. Crazy things that point out how insane the registry is, at least for some people. We brought the lawsuit, [then did] an immense amount of discovery. I [believe there were] four published decisions from the district court over the course of the litigation. We [won some significant claims but] lost on the biggest claim, the ex post facto claim, and on some other claims. …[We had] decided not to file [the case] as a class action because … our experience had been, if … a court held a statute unconstitutional, [then] … the state would always fix it. It didn't matter whether it was a class action or not. The [defendants] know they're going to lose the next case if they don't [amend the law], and they might even be personally liable for not changing the law and continuing to enforce it against people [when] they know it's unconstitutional. Eventually the case goes to the Sixth Circuit. We assume we're going to lose on the main challenge, the Ex Post Facto Clause, so we focus on everything else. We draw a very conservative panel and much to our surprise, it becomes evident even at the argument that we're probably going to win the ex post facto claim, which moots out all the rest of the case [if the law cannot be applied retroactively]. The briefing and the compiling of the record in this case was bigger, broader, deeper than anything I'd ever done. We brought in a lot of help. What I learned over the course of it was that everything I thought I knew about sexual offending was based on fear and myths, and if you look at the science, just everything you thought you knew was wrong. Even the U.S. Supreme Court got it wrong. In a U.S. Supreme Court opinion, Justice Kennedy said … that the recidivism rates of sex offenders (registrants) are "frightening and high" – up to 80%. Well, that, it turns out, came from a magazine article that was written by someone who did courses in prisons and the more people were afraid of registrants, the more business he would get. It had nothing to do with reality. In fact, even federal studies have shown that people who commit sex offenses have *lower* recidivism rates than any other category of felons except murderers [whose crimes tend to be] situational. And … almost everybody who's on the registry is on for life, which makes no sense because the vast majority of people on the registry will pose no more risk than males in the general population pose of committing a sex offense, [by ten years post-release], if they get out and don't commit another sexual crime [in that time]. Their risk is no different from yours or mine. And even … the more dangerous and the most dangerous [offenders] after, you know, … 15 years, or 20 years, will reach that same point. And so having 25-year and lifetime registration simply makes no sense. You're not doing anything. By that reasoning, all males should be on the registry, because the risk that they pose is no different than the people on the registry [whose risk declines over time **[1:45:00]** if they do not reoffend sexually]. Much to our surprise, after

winning the case and getting a judgment entered, the state takes the position that the case only applies to the six named plaintiffs, and the [legislature declines] … to change the law. We then have to go back into court … this time getting class certification on behalf of all 45,000 registrants. …We negotiate, we try to get the state to change the law; the [legislature] won't do it. *Does II* is the class action and the only claims we're bringing are the ones that we won [in *Does I*]…. All we're doing is … applying the *Does 1* judgment from the Court of Appeals and the district court to the class and subclasses. We again do more discovery … but [with COVID delays] it takes [several] years to get … a judgment … [holding that SORA] is unconstitutional as applied retroactively, that the vague parts are vague, [etc.] all the things that we had argue[d and won in *Does I*] … now apply to the class. By the time that case is resolved, the Michigan Supreme Court has also ruled … the same thing, that the 2011 [SORA] amendments are punishment [and] can't be applied retroactively. But in the meantime, the legislature … passed [a] new law [SORA 2021] that keeps almost all of the [worst] things about the 2011 amendments, with [just] a few tweaks…. [So now we] have to file [a third case] challenging the new law. And again, massive 18 months of discovery, [and] close to 20 expert reports, [to challenge] a nearly identical law as unconstitutional. We just recently … got a decision from the federal district court, and so we're working on a judgment now. In that case … we won some [claims] and lost some, the state won some and lost some. This too will go back to the Sixth Circuit and ultimately probably there'll be a cert petition filed at some point…. One of the side effects of [*Does I*] was an experience that I had not had before in litigating. And that was on the cert petition that the state took in *Does 1*: one of its arguments was that if Michigan's … SORA … falls, it's so like the federal SORNA, federal Sex Offender Registration and Notification Act, that law would be at risk, too, and therefore the Court should grant cert and reverse the case to protect the federal SORNA [from also being held unconstitutional]. Well, the Supreme Court in that situation can issue a … relatively rare … order, called a CVSG order, "calling for the views of the Solicitor General." And that's where a claim coming out of a court below, even though it doesn't *directly* affect a federal statute, *might* have an effect on federal law. And therefore the Solicitor General ought to have a shot at advising the Court whether or not it should take the case. And we were concerned about this. …We wound up teaming up with the National ACLU, the outgoing legal director who had a long and illustrious Supreme Court practice and appellate career, the incoming litigation director who also had the same experience and was taking over. And they helped us with the documents that you prepare for a CVSG hearing. I had a colleague at the law school who had done one just a year before. He said, it's a very intimidating event because anyone on the government side can come in. You have an Assistant Solicitor General there, usually a senior person; they'll bring in the Justice Department, head of the Civil Division, usually head of the Criminal Division, and any other lawyers who want to attend can; it's [held in] a big conference room with a … table and people can sit all the way around and you get peppered with questions. And then the SG goes and writes a recommendation letter to the [Supreme] Court, which most of the time is followed. **[1:50:00]** So it's a big deal.…On a Monday, [we] flew down to Washington and the hearing with the SG's Office was going to be at 1:00 p.m.

The Stanford (law School] Supreme Court [Clinic] had taken … and argued [a] case in which a Sex Offender Registration Act out of South Carolina barred registrants from using the internet. [They] were waiting for a decision in that case, and the lawyer who had argued it was a friend and colleague from [SORA litigation] meetings that we had nationally. By blind chance, the Court issued the opinion that morning. I don't remember the vote [but the registrant-plaintiffs won]. *Packingham* was the case, and it couldn't have been … better tim[ing]! We're sitting in the ACLU National Headquarters. This case lands on our desk at 10:30 in the morning. We all get a copy of it, we read it as fast as we can read it, and we know that the SG's office is doing the same thing five blocks away or whatever. We get over there [at 1:00], and it turns out sex offense laws don't concern most of the rest of the federal government and so the room is mostly empty. It turns out the person assigned to the case (which we knew [by then] … is a senior SG in her last days of the Obama administration, … [who] was a law school friend of my closest colleague at the law school and someone I knew a lot about. It turns out the person from the criminal division comes in with one of their new lawyers who [was] a former student of mine from a year before. And the person, the senior person from the civil division comes in and the junior lawyer that they've got with them is a former student of the new ACLU National Litigation Director. It's a small group sitting around the table and most of us know each other. You can be very straightforward [in this setting] because opposing counsel is not there. They got their separate shot with this group. And we were able to very persuasively say to them, look what the Supreme Court just did this morning. You let cert be granted in this case, and yeah, the risk that the federal SORNA will go down is a hell of a lot bigger than it was yesterday. You ought to be concerned about this and there's an easy way to make sure that this isn't heard by the Court and that's to make it clear that the Sixth Circuit did exactly what it was supposed to do. It looked at a statute that's unique unto itself, that is not identical to SORNA, and even if it were, has enough differences that this doesn't need to be litigated in this case. And that's exactly what the [SG] did. So again, a unique experience for me coming out of [*Does I*] – not a lot of lawyers get to have a CVSG hearing with the Solicitor General's Office. … I'm now retired five years out, and I'm still working on *Does III* because I enjoy the work, and it's endlessly fascinating. And I believe in the cause because I believe that 45,000 people have had their lives ruined. And … yes, there are some people who commit horrible offenses and remain dangerous for a long time. But of all the people on the registry, the vast majority of them, [some starting] early on in their post-incarceration years, pose no more risk to anybody than other males in the population. And all of these [SOR] laws are based on horrible [but exceedingly rare] crimes that were committed usually by someone who stalked, raped, and murdered a [young] child, and the statutes are named for those [victims]. It tells you the statutes [are] done in anger, not based on anything that's scientific or related to the real world. And yet politically, no one's going to undo them, and only the courts can. My view is, this is as one-sided a cause [as can be], on behalf of people who need help more than anybody else. They have no political power and their lives are hopeless in lots of ways, often **[1:55:00]** for something relatively minor that they did. But given the changes in the statute, it [now] has lifelong consequences. I have no excuses for [my] position. I feel good

about it. [A] fun thing for me is when we finally win … [one] of these really long-lasting cases – [I get in touch with the students who on worked on it]. [For example], we did an immigration case [that] went to the Sixth Circuit three times and [took] 16 years [to litigate]. When we finally won it (and even got the guy citizenship…, he was mentally impaired and we spent months with flashcards getting him to learn how to pass the citizenship exam), [so] when we finally ended all of the litigation and made it so that he could never be deported, I sent an email to, I think it was, the 48 students, who had worked on the case over the years. Within 48 hours, I heard back from all but two of [them]! I mean they remembered it… – it had been part of their education and meaningful to them. And when they heard that … we were still litigating it all these years later, they were shocked and [surprised], but they were so grateful [when I told them}, "You get part of the credit." We talked earlier about what students are able to do and not able to do. And why in the Clinic, I wanted to do more complicated cases so that they would have not just the ability to be first chair in an easy case, but also have the ability to understand the complexities of a more complicated case, a case that was going to involve a lot of discovery and motion practice and potential appeals, longer trials than a half day or a couple of days, that sort of thing. And I wanted them to learn how to be team players in cases where they wouldn't be fully integrated into the team, where they would do a piece of it, as happens in law firms all the time, where you're given an assignment, whether it's a motion or a memo or whatever. And so early in my career, I was looking out for ways to change the caseload by finding work that an impact case would solve, a bigger problem. And I said earlier, … one of the cases that may have been as important a case as I had was one that came … early [in my career]. I'll tell you the facts about *Jindo v. Commissioners*. [The clients] were [a woman], and her husband [who] had gotten sick. They didn't have a lot of money. I don't remember if they went directly to an emergency room or if they got to the hospital through a doctor's office, but he needed more than could be done in an emergency room or in a clinic. So he was recommended to be hospitalized, and he was hospitalized overnight. Whatever [the medical staff] needed to do by way of observation or care, they did. The students asked her, "Were you satisfied with the care?" She said, "Absolutely, it [was] great. He recovered fine." The problem [was], they didn't have insurance and they were billed, I believe it was $400 (this was a *long* time ago) for [an] overnight stay in the hospital. And when [they didn't] pay, eventually, the hospital [sent] it either to a collection agency or [had] its own collection attorney … sue [them] in the lowest level state court, in the district court. And [the students] said to me, "You know, it looks like we lose. It's a contract that she has with them to provide service. They provided it. There's consideration due and it hasn't been paid. It's a contract … and there's no defense." And I said, "Well, do you want to take it? What do you want to do with it?" They said, "Well, can we take it when there's no defense?" I said, "What do you think?" And they said, "Well, if we go with her [to court], it seems like she'll be in a better position than if we don't go with her, even if it's just to talk to the lawyer and see if we can't work out a payment plan or maybe get some kind of deduction." And I said, "You're … right. That's exactly what you can do. And the answer might be yes or no, and we can talk about some strategies to try to get … opposing counsel to that position. But it isn't going to be easy, and

you're not [likely] to come out of this winning." And they said, "Okay." So that's what we did. In the meantime, unbeknownst to me, the [students] went and did some research. … **[2:00:00]** They went looking to see, who's supposed to pay when someone doesn't have any money? Can [the hospital] do this? Should [the clients] be getting social services money? Should [the husband] be getting Supplemental Security Income (SSI)? Is there [an agency] that would pay? They stumble upon a 1930s statute that is still on the books that says [in effect], if there [are] poor people who are admitted to the hospital, and cannot pay, the county shall pay. … You know, I did not have a clue! … I think we go to court and request an adjournment and we say to the judge, we've found some law that might have an effect on this case. We get an adjournment, we collaborate with the friend who did the Supreme Court case with me, the head of Legal Aid, and we figure out that as far as we can tell, our county and probably most of the counties in the state have managed to read this statute in a way that they allocate almost nothing towards inpatient care and then say they've met their obligation under the statute. …We file a class action lawsuit on behalf of [our clients] and every person who has ever had to pay a judgment where the county should have paid it. We sue the University of Michigan Hospital, we sue St. Joseph's Hospital, two giant caregivers. At that time, there were [also] three local [in-county] hospitals, [so] we bring them into it. We sue the county itself. …Class certification is granted and [collections are] enjoined. Two things happen. One, we get a [decision] that we're right [on the law], that … the statute says [what we say it say]. We get discovery show[ing] that approximately $10 million in medical debt has either been paid or is owed under this statute, as far back as the statute of limitations would go. All of those people who either paid or [could] be sued are now potentially out from under [their debt] (although in the end it was hard to get money back to people because [we] couldn't find them). … But much more importantly, once we knew that we were going to win, the parties sat down together [to negotiate]. … Some of this is because, again … I use the word "provincial," [because Ann Arbor] is … a small town where a lot of the lawyers know each other. It turns out that the Legal Aid Director and I, and the lead county attorney, and one [defense] lawyer, are all on a co-rec softball team together. And so we're friends, even though we're litigating against each other, we know each other and we trust each other. The other big difference in a case like this is we all want what's best for the community. …What we gradually figure out by talking to the providers, the hospital lawyers and doctors, is that it doesn't make sense for a county to be paying for inpatient care *after* the emergency has occurred. … [It's] the failure of treatment that puts them into the hospital [in the first place that matters]. …What you really want is *primary* care for these people. The problem is, they're not poor enough to be getting Medicaid, but they're not rich enough to have insurance that will pay for anything else. So they wait, and wait, and wait, and then they go to the hospital because that's the only place they can go. And so instead of having the county pay for every one of these inpatient admissions, we get the hospitals to calculate what it would take to build an accessory to Medicaid for the next level up of poor people. And the county says, we'll kick in $500,000, but we want the hospitals also all to kick in, because if we can create … primary care clinic[s] that will keep people from being sent to the hospital with nowhere **[2:05:00]** else to go, [we're all] going to save a ton of

money. And they bought into it. By the time we were done, we had created the Washtenaw County Health Plan. … With the county … kicking in $500,000 a year, [and] the hospitals saying, we'll either kick in more, or accept the people who [are admitted here] for free because some of that [we] can write off. It might have been that the tax incentive was stronger than the actual payments. We'll forgive all past loans … before we were obeying the law. …Over time, …the [county] added … staff to run the program. We got doctors to [see people with a] health card; … all of these people could go to practices that would accept the health card. All of a sudden we had the equivalent of Obamacare – 20 years before, maybe… 30 years before, that was in anybody's mind – for our county. …Ann Arbor was [also] the site of a giant complex of one of the big drug companies. It had … been Warner Lambert, then … Park Davis, then somebody else bought it. And they were always looking for charitable donations that they [could] make to the [community] because they're … a huge corporation and they want to have good relations. And so they were persuaded to provide drugs for all of the people on the health plan. The judgment that was entered in the '80s still exists. We periodically update [it]. …The Family Care Act made it so that much of this program was no longer necessary. …But there's still a group of people who don't fit anywhere, or [who] forget to get what they should be getting. They miss a deadline or whatever. The program still exists. … [B]ut before [the] Family Care Act, there was a whole bunch of other county money that you could put into medical needs. And if you did, you got a federal match. So we were able to persuade the county to do some of that. By the end, I don't remember what the peak number was, but this was something like a $3M/year program with a bunch of employees and a … professional board that ran it. And even when the hospitals consolidated and we wound up with only two systems in the county, they were all on board and they were our strongest … advocates and adherents. This was an example of discovering a case that no one should have even known about, that only happened because we went to court with students who had done the research, [and] we had the resources through Legal Aid and the Clinic jointly, to do a class action, [and] we had [defense] lawyers who litigated it well in the early stages, but came around to seeing the wisdom of what we were doing [making settlement possible]. It was an amazing story … because in the end it was almost entirely collaborative, and it was the doctors and the hospitals who were telling us, here's what you need to do, and here's what makes this efficient both for the county and for the [doctors] and still provides topnotch care for the patient population. …Whenever I used to run into the director of the … health plan, she would say, you know, the board still meets, there are still people getting care, and [that case] just changed the face of healthcare in this county. And when you're doing litigation on a grand scale **[2:10:00]** but at a local level, I think it's especially meaningful because you're seeing the result daily. We'd see clients who would come in on a landlord-tenant case, and [we'd ask], "Are there other things going on in your life that we might be able to help with?" And you'd learn that one of [their] kids has asthma, but because there's some income in the family that [disqualifies them from] Medicaid, … it's ruining their lives. We [could] say, "Go to the Washtenaw Health Plan. [We'll] help you and it works." That was … a case that, for me, represented what [law school] clinics can do, and [what] clinics in collaboration with good legal

aid lawyers can do on an impact case, even if its impact [is local]. That's probably the case in my career that I feel best about.

[Andrew Eslich] Well, that's incredible. I think it's a great example of showing how important clinical education is and the contributions that students make and the major impacts these cases can have. Absolutely incredible.

[Paul Reingold] The other thing that [the clinic teaches] students, I think, is that no matter where you go, whether you go to a big firm or whether you're going to public interest work or even if you don't become a lawyer in the end and you do real estate or something, it gets students out there in the community with people who have legal needs and other needs. … My guess is that people who take clinics, they may be more disposed that way anyway. But I think having been in a clinic where you're litigating on behalf of poor people and helping them day to day, when you're [later] in a position – whether it's corporate real estate, big firm, whatever – to do the same kinds of things, … I think you're more likely to say, … why don't we put some of *our* resources in this direction? And if you're at a firm, it can be more than that, as some of the big firms have done. It's not just that we're going to do some landlord-tenant cases on the side, but we'll hire a *partner* who's in charge of our pro bono work. … We will do this as a significant part of the firm, … in part because it's good PR [for the firm, but] in part because it attracts public-interest-minded lawyers to apply to that firm…, and in part because [we] think it's just the right thing to do. If you can get that mindset taught early on, I think you're way ahead. So that was the case that brought me, I think, overall, the most joy, … probably in part because it proved the value of the clinical model. Paul Reingold as a lawyer [on my own] would have missed [the legal claim]. I would have gone to court without looking at a thing, and I would have said, "Can we knock this down to $200 payable $10 a month?" and they would have said yes. I would have patted myself on the back and said, "What a good lawyer you are." And that's the lesson of both clinical work and teamwork in public interest litigation. [T]he last thing I want to [share] is one little thing that I've had [framed] in my office for a long time. … We were doing a case on behalf of prisoners that involved retaliation, where the prisoners [did] something that they [had a] constitutional right to do – [like] file a grievance or something like that. Instead of the grievance being filed and disposed of appropriately, the … [prison] officer … instead retaliate[d] against them.…We thought that was wrong, and we brought a series of cases challenging the retaliation [under the] First Amendment. … [I]n prison … you have fewer rights, but you still have rights. **[2:15:00]** We lost [badly] in the district court…, and [so we filed] … a motion for reconsideration. In the motion I went after the district court judge for some of his rulings in the case. I don't remember the exact [text], but of course, he [read it] and he was not happy. And … he wrote a fairly searing opinion denying everything we'd asked for, [and] criticizing me personally. And I always thought it was important that this be on the wall of my office. And so I

blew it up, … I printed it and framed it. And this is what it says. It's my favorite thing … in the office, … other than pictures of my family. … This is what he said. "It is the sincere hope of this court that counsel Reingold's remarkable flight of cavalier, irresponsible, baseless, and unresearched conjecture is not representative of the operations of the entire Michigan Clinical Law Program, an institution that enjoys an impeccable reputation and provides uncompromising and invaluable service in the legal community." So that's what students [saw] when they came into my office. …[A[nd I have a picture of the judge beside it and it says the honorable so and so, Chief Judge U.S. District Court. I have it on the wall for two reasons. One is, … sometimes you have to piss off the judge, it just happens. … I was wrong [on this one] – [but] sometimes you have to take a stand that will make the judge unhappy and can trigger [a response] like this, even if you haven't overwritten it, as I did. … The other reason … is because if you're being the kind of civil rights lawyer that I wanted to be, you're bringing cases where you're going to get swatted down hard by a judge who thinks you're just plain wrong, and in good faith believes that there's no law on your side, and the facts [aren't] in your favor. That said, the fact of the matter is "the remarkable flight of cavalier, irresponsible, baseless and unresearched conjecture" is now the law of the Sixth Circuit. It's a case that has been cited [numerous] times because we took it up. We lost in front of the panel. We asked for en banc review and got it, and we won (8-7), and cert was denied on the state's [appeal] to the U.S. Supreme Court. That was a case that I argued. It was a thrilling case because you've got a big panel, 15, 16 judges. (As I said to the court, you need good peripheral vision when you're arguing en banc, because you see someone trying to get your attention over here and over there.) It's a case that [applies] in [many] areas of the law…, and you see it still cited to this day where someone like a public official tries to do something that he or she has the right to do, and someone higher up says no and fires them or retaliates against them, [abridging their] First Amendment rights. [T]he [legal] standard is, would a person of ordinary fortitude … wilt in the face of that retaliation. If the answer is yes, you have a claim – even if *you* are not the person who would be deterred by what's been done to you. Some of the cases that we litigated were prisoner cases where exactly this happened, and we won some big damages, several hundred thousand dollars for prisoners for … minor things that happened to them. [The win] had a big effect on their lives [if] the … damages [or injunctive relief] were significant. [I]t's because the [legal] standard is [relatively low]: … [that] ordinary people would be deterred. If you don't have that low standard, then no one's ever going to take one of these cases up. You're going to lose by default. **[2:20:00]** And so, I wanted [students] to see, here's what a judge can say about you, and here's why even when you get slammed, you keep going. You know, you don't stop. To me, that case was emblematic of both the defeat *and* the victory that [happens] doing this kind of work, and how when you win, it changes the law in your circuit and then gets borrowed by other circuits. As the standard spreads, you've changed the law for people all over the country who face exactly the same dilemma. And you've strengthened [a] constitutional provision. It's a core one, you know, the right to be able to petition the government or make other First Amendment claims without being retaliated [against] by those against whom you're complaining.

[Andrew Eslich] No, absolutely. Thank you so much for sharing that anecdote. I think it's a testament to your career and also a great lesson for what students can learn. So I have just one final question for the interview that you've alluded to numerous times throughout this interview. But for students looking to become involved in civil rights litigation, what is the advice that you would give to them?

[Paul Reingold] I mean, in the end, I think all lawyering is fortuitous. It seems like everyone I know who's got a great job that they love in some way fell into it. Early on, when you first start working, after being in [school] all your [young] life, the rewards are very different. You know, academic work, you want to get an A. You want to be on law review, you want to get a [clerkship} or fellowship, whatever it is you're doing, it's grade oriented. In the real world, it's not. You're expected to do the work. No one's going to be patting you on the back all the time. Often it's the contrary. They're going to be telling you where your deficiencies are. You need to develop for yourself a scale of what makes you feel good and the work you want to do, and then you want to put yourself in situations where you're more likely to be able to migrate in that direction. I was lucky because early on I was with people who said impact work is what we're going to be doing, and I did it and liked it. I understood why it was cool. But in the end, everywhere you work, the question is, what have you done for me lately? What does your history look like? When you move, you don't always know what you're moving to and sometimes it's a step in the right direction and sometimes it's not. I think people need to be flexible. You need to try things and if it doesn't work, you need to get out before you stay too long. I think a lot of people who go to big firms, you know, the money is too good, and then it's hard to move. And I always say to people who go to big firms, pay off your loans, save everything you can save, and don't spend high because you get used to spending high. And it's then harder to move. And if you save instead, it's easier to move, … because you haven't been spending all the money and [instead] you have it in savings…. But it's the finding *people* whose work you get to know or respect and then making connections with those people or their friends. It's saying yes to the fellowship, that's a volunteer fellowship because it'll get you into the ACLU for eight weeks or something, even if you don't get paid or don't get paid much. You meet people, and when you meet people, all of a sudden they're the people who can be writing … recommendations for you. All of these things are insular. It's word of mouth. That's why [hiring was] discriminatory for so long. If it was old white guys, they're hiring young white guys because that's who they've seen and that's who they get along with. That isn't true anymore in the public sector, especially in civil rights work and in clinics. We've done a great job at making it not that way; everybody has opportunities, but it [starts with] people who look like they'll be good to work with and down the road can help you … by referring you to other jobs. Even just what's in the wind, they'll know in advance: somebody's going to be working on this, or they're about to get a decision on [that], and they're going to need people to implement whatever it is, and you should apply to them or

talk to them and see if they need help. …For me, teaching was just the perfect match because I love to write, **[2:25:00]** and during sabbaticals … I got to write, I got to publish, [*and*] I got to do litigation. I got to work with [great colleagues]; when I had a question of federal practice, … I wasn't picking up the phone and talking to some [stranger]. I was going down the hall to the office of Ed Cooper, who wrote the book on federal civil procedure. …[I]f I had a criminal law question, I [was] going down the hall to Yale Kamisar [or Jerry Israel] to talk about it. You know, you're in a good position when you're in a law school, and you have a credibility … that helps you in every arena, and that's part of why I love the work so much. One foot in academia, one foot in the real world, and … trying to change [both] … to make them more open, more responsive to the people they serve, and in the end, more just.

[Andrew Eslich] No, absolutely. Well, thank you so much for that piece of advice and for all the work that you've done. It's been truly an honor to speak with you today, and your story and everything that you shared has been an inspiration. So thank you so much.