Since 1954 the Regional Oral History Office has been interviewing leading participants in or well-placed witnesses to major events in the development of Northern California, the West, and the nation. Oral History is a method of collecting historical information through tape-recorded interviews between a narrator with firsthand knowledge of historically significant events and a well-informed interviewer, with the goal of preserving substantive additions to the historical record. The tape recording is transcribed, lightly edited for continuity and clarity, and reviewed by the interviewee. The corrected manuscript is bound with photographs and illustrative materials and placed in The Bancroft Library at the University of California, Berkeley, and in other research collections for scholarly use. Because it is primary material, oral history is not intended to present the final, verified, or complete narrative of events. It is a spoken account, offered by the interviewee in response to questioning, and as such it is reflective, partisan, deeply involved, and irreplaceable.

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It is recommended that this oral history be cited as follows:

Arlene B. Mayerson, 1990, photo courtesy the Disability Rights Education and Defense Fund
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SERIES HISTORY by Ann Lage

Historical Framework

The latter half of the twentieth century witnessed a revolutionary shift in the worldview and legal status of people with disabilities. In major cities across the United States, people with disabilities began in the 1960s and 1970s to assert their rights to autonomy and self-determination and to reject the prejudices and practices that kept them stigmatized, isolated, and often confined to institutions or inaccessible homes under the care of family members.

Within a few years of each other, groups of people—usually young, often with a university connection, and frequently wheelchair users with significant physical disabilities—formed organizations in Berkeley, New York, Boston, Denver, St. Louis, Houston and elsewhere to foster independent living in the community and to advocate for laws and policies to remove barriers to autonomy. Characterizing these groups, which formed relatively independently of each other, was the evolution of a new core set of beliefs that gave a distinctive character to this emerging disability rights and independent living movement. Their members came to insist on self-determination and control over their organizations. They resolved to make changes in their own lives and in society. And as they engaged in political actions, they began to recognize the shared experience of discrimination and oppression among groups with diverse disabilities.

Very quickly, informal regional and national networks of activists developed, often including people with a range of disabilities, who shared information about the nuts and bolts of funding, peer counseling, and service delivery. They joined together to advocate for essential personal assistance services and for the removal of architectural and transportation barriers. These networks were formalized in national organizations, such as the American Coalition of Citizens with Disabilities (founded in 1975), and national gatherings, such as the 1977 White House Conference on Handicapped Individuals, which served in turn as catalysts for national and grassroots organizing on a cross-disability basis.

From the beginning, the movement was a part of the activist and countercultural climate of the times, evolving within the context of civil rights demonstrations, antiwar protests, and the emerging women’s and gay rights movements. Early leaders such as Judith Heumann, Fred Fay, Ed Roberts, Lex Frieden, and a host of others conceptualized their issues as a political movement, a struggle for the civil rights of people with disabilities. A wide-ranging group of activists absorbed this civil rights consciousness and cross-disability awareness during a series of defining political actions, such as the nationwide sit-ins and demonstrations in 1977, organized to demand the issuance of regulations for section 504 of the Rehabilitation Act, and during the subsequent peer trainings on the rights of people with disabilities, which were carried out nationwide.

As the political movement grew, the new cadre of activists made connections with the emerging parents’ movement and its efforts to free people with developmental disabilities from the massive and dehumanizing state institutions of the time. A series of landmark federal lawsuits, most notably PARC v. Pennsylvania (1972) and Mills v. Board of Education (1972), established for the first time a right to a public school education for children with disabilities. Alliances and coalitions also developed with a number of traditional, disability-specific organizations, which
were themselves undergoing changes during this period.

New organizations devoted to pursuing legal and legislative reforms, such as the Disability Rights Education and Defense Fund (1979), ADAPT, a grassroots direct-action organization (1983), and a growing number of other local, state, and national disability organizations and alliances profoundly influenced national policy in education, transportation, employment, and social services. Their best known legislative victory was the passage of the Americans with Disabilities Act in 1990, which, although compromised by subsequent court decisions, offered broad civil rights protection for disabled Americans and has served as a beacon for the creation of disability rights legislation in fifty other countries.

Less concrete than the legislative accomplishments and legal cases, and still evolving, is the shift in attitudes and consciousness that was driven by, and has transformed the lives of, people with a wide variety of physical and mental disabilities, challenging the notion of disability as stigma and instead embracing disability as a normal facet of human diversity. Theoreticians and artists with disabilities play a prominent role in defining and communicating concepts of disability community and disability culture, and academicians are promoting disability as a category of cultural and historical analysis.

These achievements, as significant as they are, have not ended the discrimination or the prejudice. Indeed, the first years of the twenty-first century have seen several Supreme Court decisions which have limited the expected scope and effectiveness of disability rights law, and many disabled Americans remain economically and socially marginalized. While the need for change continues, the tremendous accomplishments of the disability rights and independent living movement cannot be denied. American society has been profoundly transformed, and any accurate account of the social and political landscape of the late twentieth century will acknowledge the contributions of disability rights and independent living activists.

Project Design, Interviewees

The Disability Rights and Independent Living Movement Project at the Regional Oral History Office, the Bancroft Library, UC Berkeley, preserves, through oral history interviews, the firsthand accounts of the activists who have made significant contributions to the origins and achievements of this movement. The Bancroft Library also collects, preserves, and provides access to the papers of organizations and individuals who have been a part of the struggles for disability rights and independent living. All of the oral history texts, finding aids to the archival records, and selections from the archival papers and images are available on the Internet, as part of the Online Archive of California, California Digital Library.

The first phase of the project, completed in 2000, documented the movement during its formative years in Berkeley, California. Berkeley was the site where the concept of independent living was most clearly articulated and institutional models developed, originally by and for students on the Berkeley campus and soon after in the community, with the founding of the nation’s first independent living center in 1972. These organizations and their dynamic leaders, together with the activist tradition in the Bay Area and a disability-friendly climate, made Berkeley an important center of the disability movement and a natural focus for Phase I of the project.
During Phase I, Regional Oral History Office interviewers recorded forty-six oral histories with Berkeley leaders, many of whom have also been figures on the national scene. The Bancroft Library collected personal papers of interviewees and others in the disability community and archival records of key disability organizations, such as the Center for Independent Living, the World Institute on Disability, the Disability Rights Education and Defense Fund, and the Center for Accessible Technology.

Phase II of the Disability Rights and Independent Living Movement Project (2000-2004) expanded the oral history research and the collection of archival material to document the growth of the movement nationwide. The project again focused on those leaders whose activism began in the 1960s and 1970s. The forty-seven Phase II interviewees include founders and organizers of disability rights groups and early independent living centers in New York, Boston, Chicago, Texas, and California. Of these, many have also been national leaders in the movement and founders of national organizations who helped to conceptualize disability rights as a political movement and shaped the programs and philosophy of independent living. Others have been key figures in the development of disability rights law and policy, as organizers, strategists, and lobbyists behind the scenes. The project’s ongoing Phase III has continued interviews with the founding generation, but incorporated leaders whose involvement began in the 1980s and 1990s.

A number of interviewees have held positions in state and federal government agencies and commissions, helping formulate government law and policy on transportation access, social security and health benefits, and personal assistance, education, and rehabilitation services. Several have worked to free disabled people from institutions, and others reflect on their own experiences living in institutions. Some interviewees were deeply involved with the parents’ movement.

The international disability movement is represented by Yoshihiko Kawauchi, a leading proponent of universal design and disability rights in Japan; many American activists interviewed for the project also have connections to the international movement. Two interviewees are pioneering artists with disabilities, who discuss their careers as artists and the relationship of art and advocacy. Several have taught disability studies at colleges and universities, contributing to the concept of disability as a category of analysis analogous in many ways to class, race, gender, and sexual orientation.

**Interview Themes and Topics**

An overarching research goal for phases I and II of the Disability Rights and Independent Living Movement Project was to explore and document how a broad group of people with disabilities, in key cities across the country, initiated and built this social movement, and how it evolved nationally, within the context of the social and political fabric of the times. Lines of inquiry include social/economic/political backgrounds of interviewees and family attitudes toward disability; experiences with medical and rehabilitation professionals and with educational systems; identity issues and personal life experiences; involvement in civil rights or other social movements of the era; and developing consciousness of disability as a civil rights issue.

Interviews record how people with disabilities built effective organizations, with information about leadership, organizational structure and style, organizational turning points, stumbling
blocks, achievements, and failures. Challenges particular to the disability community are addressed; for example, leaders of independent living centers point out the difficulties of providing much-needed services to clients and answering to government funding agencies for their service mandate, while still maintaining the essential advocacy roots of the independent living movement.

Interviews explore the building of national alliances and coalitions, investigating networking among groups from different locales and among groups accustomed to aligning on the basis of a single disability. Indeed, the issue of inclusiveness within the movement—the nature and meaning, and sometimes tenuousness, of cross-disability alliances and the inclusion of newly recognized disabilities—is a complex and significant theme in many project interviews, and offers an area for future oral history research.

Interviews document the range of efforts—from protest demonstrations, to legislative lobbying, to litigation in state and federal courts—to influence disability law and policy, to embed disability rights into the canon of civil rights, and to alter and expand the very definition of disability. Several interviews also reflect on a recent philosophical shift of some movement thinkers, who draw on a human rights framework and acknowledge the disability community’s need for social supports along with equality of opportunity and civil rights.

Also examined by many narrators are race, gender, and sexual identity issues: the role of women (large) and minorities (limited) in the movement; the development of programs for women and girls with disabilities; questions of sexuality and disability; and the disability movement’s relationship over the years with the women’s, gay and lesbian, and African American civil rights movements. The involvement of able-bodied advocates, including parents of children with disabilities, is examined by many interviewees, both disabled and able-bodied, with telling accounts of often awkward and sometimes painful struggle over their place in the movement. (For instance, one organization toyed with the idea of granting able-bodied members only three-fifths of a vote.)

Another important theme running through these interviews is the question of equal access. This includes the impact of technological advances—from motorized wheelchairs in the early days of the movement to adaptive computer technologies more recently, all of which have profoundly extended opportunities for people with disabilities. And it includes the campaigns, legislation, and lobbying—on campuses, in communities, and in Congress—for removal of architectural barriers to people with disabilities, for access to public transportation, and for access to personal assistance services, all essential requirements for independent living.

Many interviewees reflect on the process of developing a disability identity and a sense of belonging to a disability community. Several explore the concept of disability culture and its expression in the arts and in media, and theoretical explorations of disability by scholars and educators. Interviewees who have pioneered the fields of disability scholarship, arts, and ethics point out the contributions of disability studies to the broader society in fostering new and more complex ways of thinking about the body, about normality, about crucial ethical issues relating to abortion, euthanasia, and physician-assisted suicide; and in contributing a unique disability perspective to scholarship in history, literature, and cultural studies.
Since its inception the project has been collaborative, with staff members and advisors drawn from the disability community, from academia, and from the Bancroft Library and its Regional Oral History Office. The national advisory board for Phase II includes disability rights leaders Fred Fay, from Boston, and Lex Frieden, from Houston; scholars Frederick Collignon and Sue Schweik from UC Berkeley, Paul Longmore, historian from San Francisco State University, and Karen Hirsch, disability scholar from St. Louis.


Harilyn Rousso, educator and consultant on issues of women and girls with disabilities, and Laura Hershey, writer and disability activist, also contributed interviews to the project, as did Jonathan Young and Susan T. Brown.

**Oral History and the Oral History Process**

Oral history provides unique and irreplaceable sources for historical study. It preserves the reflections and perspectives of those who have participated in historical events, documenting with firsthand accounts how events happened, how decisions were made, and the behind-the-scenes interplay that underlies the public face of an organization or social movement. Beyond documenting what happened and how, the words of participants reveal the personal and social contexts and the institutional and political constraints which profoundly shape events but may not be apparent in the written record. Most significantly for this project, oral histories offer an opportunity to elicit reflections on often elusive matters of identity, changes in perception and consciousness, and the personal experience of living with a disability. Finally, they provide a record of how people remember and understand their past, often an indication of personal values and cultural meanings.
The DRILM project team all contributed to the design of the project and assisted in developing interview protocols. Once narrators were selected and arrangements made, they prepared a preliminary outline before each interview session, based on interview protocols, background research in relevant papers, consultation with the interviewee's colleagues, and mutual planning with the interviewee. The length of each oral history varied according to the length and complexity of the narrator’s involvement in the movement, but also was dictated by scheduling and availability limitations.

Tapes were transcribed verbatim and lightly edited for accuracy of transcription and clarity. During their review of the transcripts, interviewees were asked to clarify unclear passages and to give additional information when needed, but to preserve the transcript as much as possible as a faithful record of the interview session. Interviewees were offered the opportunity to seal sensitive portions of their transcripts, or omit them from the Internet versions. Many of the oral histories are supplemented by a videotaped interview session. Video and audiotapes are available at the Bancroft Library. The project Web site (http://bancroft.berkeley.edu/collections/drilm/) links to the full-text of most of the completed oral histories, with video and audio clips, and to related projects on Artists with Disabilities and the self-advocacy movement.

The Regional Oral History Office was established in 1954 to augment through tape-recorded memoirs the Library's materials on the history of California and the West. The office is under the direction of Richard Cándida Smith and the administrative direction of Charles B. Faulhaber, James D. Hart Director of The Bancroft Library, University of California, Berkeley. Regional Oral History Office interviews can be accessed at http://bancroft.berkeley.edu/ROHO/. Print volumes can be read in the Bancroft Library and at the University of California, Los Angeles, Department of Special Collections.

The Bancroft Library's Disability Rights and Independent Living Movement Project was funded by field-initiated research grants in 1996 and 2000 from the National Institute on Disability and Rehabilitation Research [NIDRR], Office of Special Education and Rehabilitative Services, U.S. Department of Education. Additional interviews, focusing on antecedents, implementation, and impact of the Americans with Disabilities Act, were completed for the project under a 2006 contract funded by DBTAC-Pacific ADA. Any of the views expressed in the oral history interviews or accompanying materials are not endorsed by the sponsoring agencies.

Thanks are due to other donors to this effort over the years: Dr. Henry Bruyn, June A. Cheit, Claire Louise Englander, Raymond Lifchez, Judith Stronach, the Prytanean Society, and the Sol Waxman and Tina P. Waxman Family Foundation. Special thanks go to Professor Raymond Lifchez for his generous donation in 2006 in honor of Susan O’Hara.

Ann Lage, Project Director
Regional Oral History Office
Interview History—Arlene B. Mayerson

Arlene B. Mayerson was interviewed for the Disability Rights and Independent Living Movement oral history series because of her role as directing attorney for the Disability Rights Education and Defense Fund [DREDF] beginning in 1981 and continuing until the present. One of the nation's leading experts in disability rights law and a tireless advocate for the rights of children and adults with disabilities, Ms. Mayerson has made a lasting contribution to this area of law. She has been a key advisor to both Congress and the disability community on major disability rights legislation enacted during the past two decades, including the Handicapped Children's Protection Act of 1986 as well as other legislation ensuring the special education rights of students with disabilities, and the landmark 1990 Americans with Disabilities Act [ADA]. At the request of members of Congress, Ms. Mayerson drafted legislative language and briefing documents and supplied expert testimony during their consideration of the ADA. Following the enactment of the ADA, she filed comments on proposed implementing regulations for more than five hundred disability rights organizations.

Ms. Mayerson has devoted her career exclusively to disability rights practice, representing clients in a wide array of leading-edge issues involving full inclusion of students with disabilities in educational programs, the right of children with diabetes to be admitted to child care programs, and the deinstitutionalization of people with disabilities. She has provided representation, consultation to counsel, and coordination of amicus curiae briefs on key disability rights cases that have been argued before the U.S. Supreme Court, specializing in representing current and former Members of Congress.

In addition to her position at DREDF, Ms. Mayerson has served as a lecturer in disability law at the University of California, Berkeley, Boalt Hall School of Law from 1987 until the present. She has published many seminal articles on disability rights and is the author of a comprehensive three-volume treatise on the ADA: Americans with Disabilities Act Annotated—Legislative History, Regulations & Commentary, which sets forth the legislative history, regulations and analysis for each provision of the ADA.

Ms. Mayerson was born and raised in Cincinnati, Ohio. She attended Boston University, where she received a degree in political science, from 1968 to 1971. After traveling abroad for several year she attended the University of California Boalt Hall School of Law, where she was awarded a law degree in 1977. As a law student she worked for Judge W. Arthur Garrity, who was overseeing Boston’s bussing program to achieve racial desegregation of the city’s public school system. From 1977 to 1978 she attended Georgetown University in Washington DC where she obtained her Master of Law degree and worked as a graduate fellow for the Institute for Public Representation, Georgetown University Law Center. Ms. Mayerson joined the legal staff of DREDF’s predecessor organization, the Disability Law Resource Center of the Berkeley Center for Independent Living, in 1978.

Ms. Mayerson’s interview took place in eight sessions over a five-year period. Interviews took place in October 1997, May 1998, July 1998, March 2001, April and May, 2001, and December 2002. All but one interview was conducted at the home of the interviewer in Berkeley, California. An interview appended to this oral history was conducted by project researcher Susan O’Hara in Ms. Mayerson’s office in Berkeley, California, in May, 1998. Throughout the lengthy
interview process, Ms. Mayerson spoke easily and thoughtfully, though she occasionally mentioned that she did not have good recall about certain details. The interviewer who conducted seven of eight interviews was a colleague of Ms. Mayerson. Interviews were transcribed by the Regional Oral History Office, lightly edited by project editor Sharon Bonney, and returned to Ms. Mayerson for review. She moderately edited the final transcript, clarifying where necessary and omitting portions of discussions which may have been inaccurately stated or too politically sensitive for wide distribution.

The Disability Rights and Independent Living Movement Project interview transcripts are available for research in the Bancroft Library and in the UCLA Department of Special Collections. Audio or video tapes are available for listening in the Bancroft Library. Transcripts of most oral histories in this series are on line at http://bancroft.berkeley.edu/collections/drilm/.

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Mary Lou Breslin

Interviewer

Berkeley, California

February 2004
Interview with Arlene Mayerson

[Interview 1: October 15, 1997]
[Begin Tape 1, Side A]

Breslin: Thank you so much for coming over. I think we should start by talking a little bit about your Cincinnati days and your family.

Mayerson: I have a mother, a father, two brothers, and I grew up in a somewhat extended family with an aunt, an uncle, cousins, Grandma, Grandpa, in a Jewish community, kind of living in a Jewish community, first in an area that was more inside Cincinnati and then in an area that was in the suburbs. It was a pretty Midwestern, normal, ordinary upbringing, I think. I didn't have any particular political education at all. I went to a high school in Cincinnati that was supposed to be such a great school, which I have a lot of resentment about now, because I realize it was during the height of the civil rights movement, and that wasn't even part of the curriculum. So I feel like it was kind of a void. A Midwestern void.

Breslin: What years were you in high school?

Mayerson: I guess ‘63 to ‘67.

Breslin: And what was your father doing in those days, and what was your mother doing?

Mayerson: My father was doing real estate, and my mother was doing homemaking. She was driving us around and being the Boy Scout leader and the Girl Scout leader and cooking dinner every night, and also doing my father's books at the time.

Breslin: For his company?

Mayerson: Yes. Going to the bank a lot [laughter]. They tell me now that they were involved in a lot of community activities, but it wasn’t visible to me.

Breslin: Do you remember whether they were oriented toward the Jewish community?

Mayerson: That they were—I was just going to say except for the shul. That I was aware that they were involved in. And they were definitely interested in that.

My grandparents were both from Russia, and my grandfather's story I'm more familiar with. He was definitely escaping pogroms and came here with nothing—that whole story. He was very much tied to the Jewish community, and we had a very strong sense of tradition because of them.
Breslin: When did he arrive here?

Mayerson: Around the turn of the century, I think.

Breslin: And you remember him?

Mayerson: Oh, very much so. He was a very big figure in my life.

Breslin: And did he marry here or did he marry in Russia?

Mayerson: He came here when he was about twelve. He married here—someone who was from a different part of Russia. They didn't know each other in Russia.

Breslin: This is your father's parents?

Mayerson: Yes. My mother's mother had died when she was sixteen, so I never met her. My mother's father, sister, and brother, and brother's family lived in New York. She's from New York. She grew up in the Bronx. She came to Cincinnati because my grandfather—her father—had owned a factory to do women's clothing. After the Depression he lost it, and he became a cutter at the factory. Then they moved to Cincinnati because of a job opportunity, and that's where she met my dad.

Breslin: And did they live with you at any point or you with them at any point when you were growing up?

Mayerson: My grandparents?

Breslin: Yes.

Mayerson: My father's parents were the grandparents that we were close to, and they never lived with us or us with them, but they lived nearby. We had Friday night dinners every Sabbath no matter what, because the idea was that when we were teenagers if you wanted to go on a date it would be after Sabbath dinner.

Breslin: What do you remember about those dinners?

Mayerson: Well, now I have a very nostalgic feeling about them, because of being a mother myself and feeling kind of a lack of community and tradition. So I just remember that we all went to our grandparents. My family and my cousins and my aunt and my uncle, we always were there Friday nights. My grandfather always said the kiddish. I remember the house was always full. My grandmother had a heart condition. My grandmother was just full of warmth and affection. When we came in she used to give us candy behind our parents' backs and stuff like that. She would sometimes all of a sudden go to her room to lie down. We were always told that she was tired and to be
quiet—but never that she had a heart condition, because it was one of the
ethics of the Jewish community, or at least of my Jewish family, that you
never talk about illness in front of children.

Breslin: What's the origin of that?

Mayerson: It was just accepted. You just don't burden children with that. That was very
consistent throughout my childhood. My father got melanoma when I was
about two, and my older brother was five or six. He was diagnosed in
Cincinnati, and they said he was going to die. I think he was given like two
weeks to live or three or a month—something very short.

My mom and my dad and my grandparents went into high gear and took him
to New York to a doctor who was at that time doing not experimental but
somewhat risky surgery on people with melanoma. My dad went there for the
surgery because he had nothing to lose. He had a lot of his arm and chest
muscles removed—a lot of stitches there, like thousands of stitches. He came
back, and he was weak.

There's all these things that I don't remember, but I was told about his—they
said he wasn't going to use that arm, but then he was determined to use it. So
he would have my aunts and my mom do this physical therapy with him all
the time with his arm. They would cry and he would scream because it was so
painful and this whole thing. Well, all this was going on supposedly behind
our backs; we weren't supposed to know, because it was more of this tradition.
This was harder than my grandmother deciding to lie down. I don't remember
it, but I just feel like it must have been very strange to me as a child to have all
this happening but yet never be given an explanation.

Then later, when he did live and he had all these scars, and it was sore on that
side of his body, I do remember that we would go to jump on his back or
something, and my mother would scream at the top of her lungs, "Don't do
that!" I remember being told that my father was in the navy, and he worked
on airplanes, and a propeller had cut up his body, and that's why he had all
these stitches, and that's why that's such a sensitive part of his body. Now I
think that's so interesting, because why that was supposed to be a more
reassuring story to a child is kind of amazing, because that's a really
frightening story.

Breslin: There's something deeply seated about the idea of illness that's perceived as
more disturbing than an accident to a kid.

Mayerson: There was also this idea, I think, that cancer was somewhat of a family secret.
At the time, in the early, early fifties, there were all kinds of beliefs about
cancer. One of the main ones was that you were going to die. My father,
being newly out of the service and trying to start a business, he basically—no
bank would lend to anyone who had cancer, and no one would do business
with anyone who had cancer, because they figured they'd never get repaid. So my father feels like because of the cancer he always had to go in through the back door. He always had to figure out a way to get into things that didn't require the normal channels. So he was very interested in the whole world not knowing that he had cancer. There was a lot of stigma, but there was also just a lot of feeling that you don't want to deal with someone who you don't know is going to be alive to pay you back.

Breslin: How old were you when you actually learned that he had had cancer?

Mayerson: I don't know. I feel like my aunt told me when I was maybe twelve or something. I think that I also overheard my mother talking to somebody. My father always used to come home every day from work and when we asked how he was, he always answered, "Fine! Fantastic! Fabulous! Terrific!" That was his line every night. And then I remember once I overheard my mom telling someone who was going to work in his office that there was a couch in his office, because sometimes he had to lie down. She said that every day he's in pain. I remember being really surprised by that. So I don't know—maybe about ten, eleven, or twelve. I think it was a very defining thing, even though it wasn't spoken.

Breslin: I'm sure it was.

Tell me a little bit about the high school that you went to and what made it be interesting for you.

Mayerson: It wasn't interesting for me.

Breslin: Or not interesting for you [laughs].

Mayerson: In Cincinnati, every sixth grader takes a test, and if you pass the test, you're eligible for Walnut Hills High School. It's like Lowell High School here [in San Francisco]. So I went to Walnut Hills High School, and I felt very unacademic, and the very first day we got there there was an assembly, and they said the school is about academic excellence; if you're not excellent you don't belong here. It was a very uninviting atmosphere. It was mandatory to take Latin.

Breslin: Really? [laughs]

Mayerson: For three years, and I was horrible at it. It was mandatory to take languages. I never could hear them, I don't think. I never could quite get that.

It was extremely social, and it was very much tied up to who's cool, who's the cool girls. Girls had clubs—my high school went from seventh to twelfth. In seventh and eighth, I think, there were clubs, and ninth it's when it changed to sororities. There was 'rushing' and all that stuff, just like in college. It was
very social. I think of it now as all very uninteresting, superficial. I have no
fond memories of high school, basically. Everyone keeps on having these
high school reunions and high school alumni newspapers, and I always look at
them and always want to write an editorial back to them saying, "Why are you
glorifying that high school? It was not a good education." It was supposed to
be like the best education, a classic education, but it wasn't; it was just—I
don't know. I have a lot of resentment towards high school. I had good
friends, but no sense of purpose, I don't think.

Breslin: Let me ask you a couple of questions about high school. Having grown up in
the South and having had some of my points of view defined by high school—
it's an interesting period for me—you said you did poorly at languages
because you now in retrospect think that you weren't hearing well. Did you
have some idea at that time that you might have some hearing loss?

Mayerson: No, not at all.

Breslin: Not a clue.

Mayerson: No. And I don't know if I did. I don't really know whether I did or not. It's
partially hearing, but it's like that language thing, different languages—I don't
have that part of my brain.

What was interesting for me about high school is that I always thought high
school was absolutely the hardest school I ever went to. It was way harder
than college and way harder than law school. And the reason why is because I
have—this is my own theory, and it's very unscientific—parts of my brain
don't work well, and parts of my brain work really well. In high school you
have to work all those different parts that don't work well.

Breslin: We had to work all of the parts [laughs].

Mayerson: You had to work all the parts, but including the parts that don't necessarily
work very well. So it was a very tortuous experience for me. By the time I
got even to college it was already kind of dropping math and dropping
languages and dropping the things that I wasn't good at.

Breslin: You didn't have that option in high school; that's the difference.

Mayerson: You had to take those things, and you had to get tested in them.

Breslin: Let's go back to the civil rights movement for a minute. Were you aware that
there was a political movement going on at the time you were in high school?

Mayerson: Not in any way that had any meaning to me. And I really, like I said, had a lot
of resentment about that. We had a girl in my class, Carolyn Shuttlesworth,
and she was always getting in trouble. What the rumor was at school was that
her dad was in jail. So her dad being in jail was a big—that's kind of scandalous—and people figured he's like a common criminal or something.

Then it turns out when I got older I learned that Reverend Shuttlesworth, who was one of the leaders of the civil rights movement, I thought, "That is bizarre." He was in jail for the same reason Martin Luther King was in jail. There was no context why—Carolyn was always getting in trouble, and her father's in jail. The whole thing didn't fit in to any kind of other context.

It's interesting, because the school was definitely—I was always proud when I got older of the fact that the school was integrated, because of it being a citywide school. You just had to pass an IQ test; it wasn't a neighborhood school, in which case mine wouldn't have been integrated, because our neighborhood wasn't. But the school was, and there wasn't any feeling that I was aware of of inequality between the races at the school. I mean, there wasn't any sense of the civil rights movement either; there wasn't any overt racism or fights between blacks and whites or anything like that. In fact, people dated and that kind of thing—although that was considered exceptional.

I think that my parents were very unsupportive of the civil rights movement, although now in their revisionist history they weren't. But I have a feeling they were—but not proof. Just the feeling that they thought it was just like more trouble.

Breslin: Say a little more about what their reasons might have been, because now you have two points of view: from the perspective of a teenager, and from now the perspective of a civil rights lawyer.

Mayerson: I think that my parents were probably—well, let's put it this way: they were definitely of the school that blacks and whites, for instance, do not go on dates and marry. That was absolutely, positively ingrained. I think that that shows a belief that—well, they, of course, didn't think you should go out with anyone who wasn't Jewish.

Breslin: I was going to say that they probably didn't approve of your going out with a Catholic either [laughs].

Mayerson: No, that is true; I wasn't allowed to go out with gentiles. That would also have been considered a major transgression. To marry a gentile would have been considered a major tragedy.

Breslin: But was that the same level of tragedy as would have been perceived if you had dated an African-American man?

Mayerson: I think it wasn't probably the same level, although at the time that I was a teenager I believed that marrying a gentile would kill my parents. I believed in
that. They felt very strongly about that; that was a horrible thing to have happen to anyone's family—that they not marry a Jewish person. So I guess it was mainly the Jewish insular, "you can't really trust anyone but your own kind" mentality. My parents were really into family also. Family's the only one you can really trust and count on. To the extent that it was any larger than family, it was the Jewish community.

Then after that basically all gentiles are anti-Semitic, and it will come out at one point or another. I remember my mother always used to tell me the story, "You marry someone and they're not Jewish, and you think they're not prejudiced, and then the first fight you have, they're calling you a Jew or a kike." She totally believed that. I think they believed it was part of all non-Jewish people's fundamental make-up.

Breslin: Did you have black friends from school that you recall?

Mayerson: No. I don't know if I had any non-Jewish friends. I had people that I saw in the hallway or was acquaintances with who were not Jewish or who were black, but my friends—the people that came over to my house and slept over at my house and hung out at my house and did things with me, and we were in the club I was in—like, for instance, the sororities and fraternities were Jewish and non-Jewish; they weren't mixed. And so the friends mainly were Jewish.

Breslin: So you have no recollection of the civil rights movement that was fomenting at that point. It wasn't really touching your life or your community in any way that you can pinpoint in retrospect.

Mayerson: No. I can remember when the big riots were in Cincinnati, actually. My friend Paula and I, for some reason we were out in car, and for some reason—something happened to the car—and we were in the neighborhood where the riots were taking place. We didn't know that; we couldn't see it. We called my parents to tell them where we were, and they were absolutely beside-themselves hysterical. But mainly no—it was a pretty insular. We were in a Jewish suburb, and we didn't really even go to downtown Cincinnati in terms of, to where people lived. We went to the downtown. And also the downtown in those days was like—the downtown we went to, you had to get dressed to go downtown. You could never, ever dream of wearing pants downtown. Five or ten minutes from where we wore our dresses, there were areas of town that I had never even been to.

Breslin: How about your brothers? Did they go to the same high school as you?

Mayerson: Yes. My older brother was the height of Midwestern "Mr. Cool Guy." No social consciousness whatsoever. I really think it's strange.

Breslin: Why do you think it's strange?
Mayerson: For one thing, my daughter has just turned ten, and she is so political and so aware and so involved in her perceptions of what's happening around her and what kind of values come from that. It's just a completely different upbringing. So I feel like I was raised in this kind of vacuum.

For me I don't think it really fit; it showed when I went to college. I went to college with my several trunks of clothing, my matching outfits and my matching shoes that went with my matching dress with my matching headband or whatever the hell I was wearing at the time. By the next year I was a flaming hippie radical. So something was not really mixing with me.

Breslin: You were ready for the—

Mayerson: I didn't know I was. I went to Boston University—when I first got there I had a huge fight with my sociology professor, because he was pro-choice. I went to his office afterwards telling him how upset I was because I thought that anyone who would have sex before marriage deserved whatever they got, that they should have to live with that responsibility. First of all, my religion was virginity. I totally, completely believed in virginity [laughs].

Breslin: What was the basis for that belief?

Mayerson: It's like a brainwashing thing. It's like, you have to be a virgin when you get married. Who's going to want you if you're not a virgin? Who's going to buy a used car if they can get a new one, and all those kinds of things.

Breslin: And this was a function of Judaism or your family or both? Your high school community? Your girlfriends?

Mayerson: All of it.

Breslin: So your girlfriends in high school believed in virginity as a way of life as you did.

Mayerson: Right. I think that there was one girlfriend for whom that was controversial. But that also made her life hard. I mean, she was also very popular, but she also had a mixed reputation.

I also had a big argument with that same professor when he said that [Fidel] Castro had been right during the Cuban Missile Crisis, and that [President John F.] Kennedy had really blown it. I was absolutely, totally appalled by that.

I didn't think I was ready for anything. I also started, all of a sudden when I was a freshman at college, to be like the smart kid, which was also really weird for me, because I hadn't been that at all in high school. I had gone to school with geniuses [laughs]. I tell you, that was the hardest school I ever
went to. All of a sudden I had more of this idea that I was—I was getting more attention being smart and getting that kind of feedback with grades and stuff. I had a boyfriend who had been the "Mr. Cool" at his high school in Great Neck, New York. It was like fulfilling my high school aspiration at my first year at college in that way. But he wasn't so smart. I would always ask him what his grades were first, so that when he asked me what mine were I could kind of adjust them.

Anyway, so I remember these women coming to our dorm, and my best friend and I were into being cute little teases, basically. I hate that word. These women came to our dorm, they came upstairs, and they started talking. One woman said she used to wear her hair long because her boyfriend liked it that way, and then she realized she didn't want to define herself according to his desires, and so she cut her hair. I remember really soaking it in. It was like that with everything; everything I started to hear that had kind of an alternative point of view I basically started soaking it in.

My poor boyfriend from Great Neck—I came back the next year and I was like—oh, I had long, frizzy, curly hair, and I had always ironed it and blow-dried it and put it in huge juice cans. I came back the next year and I had this huge frizzy hair and no bra and jeans, and he was like, "Whoa! What happened to you?" [laughter] So I went through this big transformation, and I became this overly zealous—well, I say "overly" only in that I saw everything in very black-and-white terms, good or bad [laughs]. I got involved in protesting the war and being a feminist.

Breslin: I want you to talk a little bit about that in a minute, but let's back up to this business of the kind of values that you brought to college from your family: the value of remaining chaste until marriage and the value of Jewish family above everything else. Did your brothers have the same set of values?

[End of Tape 1, Side A]

[Begin Tape 1, Side B]

Mayerson: My brother Fred was definitely not chaste; I'm sure he wasn't a virgin—I would say by probably tenth grade or something. My younger brother, I don't know. He had a girlfriend. Anyway, so I think my brothers had basically the same point of view, except my brother Fred was always very clear that it was his pleasure that he cared about most. For instance, he had a party scheduled for the night that JFK was assassinated, and he and my father had a horrible, horrible argument, because my brother wanted to continue with the party, and my father thought that was the most obscene thing he had ever heard. [Brief section omitted during narrator review]
Breslin: So you decided to go to Boston University for what reasons?

Mayerson: Because I wanted to go to Boston, and that was about where my grades were at in terms of being able to get into schools in Boston. I had this idea that if I went to Boston, there were all those schools there, and I could have this exciting life of a college town, basically. I don't know why I had this idea, but I did. It wasn't really like that, because the school I went to was my little life; it didn't really matter that there was also Harvard and MIT and Tufts, et cetera, all these things that I thought was so exciting when I was reading about it, because I never went there. I never had anything to do with those schools. I just had my little teeny group of friends and my little whatever. I never went anywhere. It was interesting—in terms of me and my brother. I lived in the dorm for as many years as I could, because I liked going down and having dinner and stuff like that. My brother moved out as fast as he could to the nicest apartment he could find, and every time there was a school break he would go to Puerto Rico or something.

Within the second year when I had become a hippie and a radical I also eschewed any vestiges of this lifestyle. I was in the dorm, but then I kind of moved to different slums. They weren't exactly slums; they were more like crash pads [laughs]. Not exactly fancy places. Not really bad though, either. It's not like there were rats and cockroaches crawling around.

Breslin: I know exactly what you mean [laughs].

Mayerson: I know you do, but I can't think of the right words.

Breslin: It was student housing [inaudible].

Mayerson: Cool places, really. Not all of them were cool, but some of them were pretty cool.

Breslin: When did you start college?

Mayerson: In ‘67. I started college when I was seventeen, in 1967.

Breslin: Almost two years after the Civil Rights Act was passed. Does that event punctuate that time period for you at all?

Mayerson: Not at all.

Breslin: It came and went.

Mayerson: It came and went.

Breslin: You can't even remember it as a newspaper headline?
Mayerson: No.

Breslin: What were you thinking about in terms of career when you went off to college?

Mayerson: I was going to be a teacher, because a teacher is a good thing to do after you get married in case your husband has financial problems [laughter]. That was what I was told to do. Of course I would never have to work, because I would marry someone who could obviously provide for me. But it was always nice to have a teaching credential.

Breslin: And did you imagine teaching elementary? Secondary?

Mayerson: Whatever [laughter]. I wasn't too ambitious; I didn't have a whole lot of desires to be anything. My brothers were very much—that's what so interesting, because my parents also won't cop to this now—but my brothers, there's no way they didn't see their lives as becoming something important. I was supposed to just marry well. That was my goal. And to do that you had to look good. My father always thought I had much too clumsy and boisterous a personality for the genteel way that men liked women to be.

Breslin: What was the origin of that belief about yourself, that you would be someone's trophy wife and grace their home and raise kids as—

Mayerson: I'm not sure I ever really thought that, but I think that's what I was expected to be. I'm not sure that I ever thought that I would really be that. But that was the idea. The idea was to be at least engaged by the time you were a senior, to get married the next year. I always wanted kids; that I did want. But as far as that other stuff, I don't think that lasted real long after I was out on my own.

Breslin: Your last couple years in high school and your first year or two in college straddles kind of the peak early years of the hippie movement in addition to the civil rights movement. Did it have any impact in Cincinnati before you moved on to Boston where obviously it did begin to have an impact on you?

Mayerson: In Cincinnati not really. There were a couple of people who were accused of smoking pot, and one of them had been a good friend of mine when I was little. It was absolutely scandalous. Unbelievably scandalous. I had no idea.

Breslin: Was there a community in Cincinnati that was kind of espousing the hippie lifestyle?

Mayerson: I have no idea.

Breslin: You weren't aware of it in—you didn't perceive that it was there.

Mayerson: Right. I'm sorry to say, I really had a boring childhood.
Breslin: It's just fascinating how insular our lives were as kids. Tell me a little bit more about Boston and about your undergraduate time there. Tell me what kinds of shifts happened, what sort of doors opened for you, the kinds of things [inaudible; crosstalk].

Mayerson: I got turned on intellectually, I think, a little bit. I started getting a different image of myself in that way because I never thought of myself as really smart, because I was surrounded by these geniuses, and because I had never been able to focus on what I could do best. So I started getting a lot of attention from professors—not a lot, but significant to me, and my best friend was aware of it. That was important.

Then I just got turned on to basically everything at once. In terms of me saying it didn't really matter that I was in Boston—or in the social scene of going over to Harvard or Radcliffe and all these schools that I imagined as a senior in high school—what did matter, I think, is that Boston was really a hotbed of activity around those years. So in that sense I really—I don't know how it happened. I don't even actually know how it shifted, because my best friend didn't shift, and my boyfriend didn't shift.

I actually don't remember how I did. I just started being very attracted to the radical people, the artists, which I was always interested in. I was hanging out with writers and journalists and musicians and radicals and all these people who I had never known before. I was still friends with my best friend, and I still lived with her. She had also gone from virginity as a religion—one thing that she did pick up on was promiscuity [laughs]. That definitely hit her.

Breslin: Hard to miss it in those days.

Mayerson: That hit her definitely. So we had that in common, a very fluid social life.

Breslin: No particular epiphany that you can recall during that period.

Mayerson: I don't really remember any particular epiphany. I just feel like I got more and more into that lifestyle. My father always says I must have had some very bad influences [laughter], and that if only I hadn't gone to Boston. It was a horrible time for them. I was really angry, and I was really angry at them. I was really accusing of them. And I said very bad and awful things to them. I had a lot of also that kind of naïve searching and yearning for acceptance, so I remember once that I wrote them a letter and said, "If I want to marry a black person, I would think that you would be so proud of me, because it would mean that you would have raised someone who was true to their beliefs and not swayed by society's prejudices." I thought this was an unbelievable letter that I wrote them, and instead I got this response which was like devastated, and I was crushed by that. I couldn't see how they couldn't see the logic in what I was saying. So it was a hard time for me and my family. I also didn't look very appropriate when I would come back home.
Breslin: To them.

Mayerson: To them, right.

Breslin: You fit in perfectly well in your Boston community, I would imagine.

Mayerson: Right. I started taking political science courses by Howard Zinn [author of *A People's History of the United States*], and there was another person there, Murray Levin. Howard Zinn became a total idol of mine. My college transcript the last two years reads like "American Imperialism; American Oppressive Practices; Feminism"—kind of like that.

Breslin: Why were you angry with your parents? Or angry in general?

Mayerson: I think I was angry that people were so complacent in Cincinnati and that I hadn't had any exposure to this before, and then I found some voice which I had never been able to express in Cincinnati or gotten in touch with in Cincinnati. I thought my family was very conformist and unaccepting of this great transition I had gone through. I thought that if they loved me they would be able to see that that was my true nature. So I think that's what it was. I was judgmental of my father because he had built shopping centers. Both of my parents are very looks-oriented. That was another act of rebellion, to go haywire with that. Also there was a lot of no school in my junior and senior year because of closing down the school and—

Breslin: Are you talking about the student strikes?

Mayerson: The student strikes.

Breslin: What was your role in any of that?

Mayerson: I was kind of a hanger-on, basically. I was involved in having the boyfriend who was the head of the student union, that kind of thing, and hanging out, writing posters and going on marches. But I was mainly a hanger-on. I had absolutely no leadership, no sense of myself in that way at all. I was a true believer but I wasn't a leader at all. I don't remember women leaders from that. I went to the big march in Washington, but I also went to the moratorium in Washington where there was civil disobedience.

Breslin: Are you talking about '68?

Mayerson: Is that when it was, when there was civil disobedience? Not the big march—I went to that, but then there was another one that was really more militant. I don't know the year. There was a lot of civil disobedience planned and blocking bridges and blocking streets.

Breslin: What was the purpose?
This was the Vietnam War protests. I went to the "Free Bobby Seale in New Haven." So it wasn't just like going out on Saturdays to whatever happened to be happening in Boston; I was pretty involved in going around and being involved in protesting, but not really thinking out the strategies or anything like that.

When I had graduated from college I had already definitely given up the idea of being a teacher, but I also didn't know what I was doing. Before I graduated from college I was living not in a way that my parents could really accept. My father came to one apartment: there were three of us and three dogs and basically one bedroom. It was a small one-bedroom apartment. He came in and got my dog Yippy and he said, "I'm taking Yippy for a walk. I don't think it's fair that you're letting a dog live like this."

That happened to be kind of a coincidence because I had moved out of a place—that particular setting was particularly bad. But anyway, the point is, I didn't really take money from my parents that I'm sure would have been available to me. I started waitressing on weekends. It's very much part of the times too, I think, because I've told people about it now, and they say, "Why would you do that?"

Why would you do that if there was money available? That's what I wanted to do. I have mixed feeling about that now, because I feel like while I was in college I should have been getting something out of being in Boston or whatever. But on the other hand it was good experience for me. So I waitressed on weekends and lived in a commune. Our commune was thinking of—actually, our idea was—a lot of the people weren't in college anymore. We got a house my senior year of college. We were going to live in the city for a year, and then we were going to move to the country. When we moved into that house, when we set up the bedrooms, it was like four couples. None of the couples could be in the same bedroom, because we were also kind of against monogamy.

You mean individuals within the couple couldn't share a bedroom.

A couple couldn't share a bedroom. We had a lot of conversations about monogamy. That would be a bad idea, because then couples would be like units unto themselves, and we had to be a whole unit, blah blah blah. We took it all very seriously.

That summer of that year—I guess it was when I was a junior when that happened—some of the guys got a job in California at Emigrant Gap. In the middle of the woods there was this guy who had this machine that made
bricks in the middle of the woods. So we all went to Emigrant Gap to hang out and make bricks in the woods. I left first, and I went to Cincinnati, and I was going to hitchhike across country. Anyway, while I was there this non-monogamy thing broke down, and one of the other women became lovers with my lover, et cetera. That became a whole drama when we were in Emigrant Gap that summer, and then we came back the next year and moved into a new place. Shortly after that it broke up mostly because of me.

Breslin: Where was Emigrant Gap?

Mayerson: It's near Lake Tahoe. It's by Emerald Lake. That's why I was moving into that place that my father didn't think was fit for Yippy.

Then I graduated from college, and I started working in Dorchester. I'm not sure how I got this job or why I even knew about it. Dorchester is a part of Boston that's poor. The part that I happened to be working in was called Field's Corner. It's surrounded by black neighborhoods. Suddenly I really was in a community of poor struggling people but also where a lot went on that I had never been really exposed to before.

I was a group counselor, and I was working with different girls. The place I worked was what they called a settlement house, but really it was like a community center. I got really involved with the girls, really close to the girls. I'd start finding out things like the girls got beat up by their boyfriends all the time—fourteen or fifteen-year-old girls. The boys would tell them who they could talk to. If they didn't like their girlfriend they weren't supposed to associate with that girlfriend anymore. If they were seen with the girlfriend, the boy would hit them.

One of the girls I was close to was raped by her stepfather continuously—incest. A lot of things were going on. I realized, particularly at that moment with this girl that I really cared about—her and her stepfather—that I really was in over my head. I loved the kids, and I think they really trusted me, but I didn't know what the heck what supposed to happen to them.

Also the other thing was I really liked the boys. They were getting in trouble all the time, and they were getting in fights, and they were racists—incredible racists. Black gangs were not allowed in our neighborhood, and they would get in fights with them. They also would get in trouble for hanging out on the stoops and hanging out on the corner and get arrested or get hassled by the police and all this.

In Field's Corner there was also a legal services, Field's Corner Legal Services. I talked to them about putting together a legal training for kids in the street, basically.

Breslin: A training about what?
Mayerson: About their rights. What happens when they start getting hassled by the police on the stoop? Did they have any rights? What were the things that were legal and were not legal?

Breslin: What prompted you to think to do that?

Mayerson: Because they were getting hassled all the time.

Breslin: But why would you think about a legal solution?

Mayerson: I don't know. But I think of it now, I think of so many things I did when I was young; as taking so much chutzpah. So there was this chutzpah there that was waiting to come out, because I went up there, and I was just a punk, really, and these were all lawyers, which now I can recognize. I went to them and told them my idea that I wanted to develop this thing, and I wanted them to basically work for me to do it. Somehow or another it actually happened. I made materials, and we held community forums, and I went to school, I think. That's when I got associated with legal services. Then I worked there—I mean, there are some people who worked there that I still remember so well from that—who I'd love to see, but I don't know if I'll ever find them again.

One boy who was I was really close to, who I loved, actually, had a difficult home life. He loved his mother, but she had many different kids from many different fathers, et cetera. Anyway, he killed someone. He killed a black boy who had come to his neighborhood, in a fight. He was going to go to prison. I'm not sure what happened. It was very intense there for me—and for them.

So then I left there, and I went to Europe with a high school friend of mine. Within very little time, this trip to Western Europe became an overland-to-India-odyssey. That was a whole trip in itself. It was absolutely amazing, and I'm so glad I did it, because I would never do one day of what I did then now. The risk-taking was insane.

When I came back I went to the Dorchester House, and there had been this big racial incident in Boston where a white woman had been set on fire, and in retaliation a bus of black schoolchildren had been turned over. There were these people at Yale Medical School who were basically activists, and there was this money at the time—it a federal program that was progressive.

Breslin: Federal money?

Mayerson: Yes. It was like EEO [Equal Educational Opportunity funds], but it was called something else. It was money that ended up funding a lot of stuff. It was really good. Anyway, they got this money from the federal government to do a meeting with activists in Boston, black and white.

Breslin: What year was this?
Mayerson: This was like ‘72. They got this money. Anyway, it turned out that Dorchester House asked me to represent them.

[End of Tape 1, Side B]

[Begin Tape 2, Side A]

Breslin: Finish your thought.

Mayerson: So I said sure, I would go. I got there, and there were all these people from community organizations all around Boston. It was the most amazing thing I've ever seen. I think that either Field's Corner was the only white community or one of the very few white communities. So basically everyone was African-American, and the few white people who were there were working for communities that were African-American and the leadership was African-American.

It was one of these early seventies very intense things where we'd wake up and the first thing we'd do is have a T-group and really discuss things. It was so intense, it was very personal, it was very strategic, and it was very much about how to get a community like Boston—racial harmony, but also just in general working with kids and all this stuff. I expressed there how I felt like I was dealing with kids who were having experiences that I certainly had never had.

The people there were so influential to me. First of all, people were nice; they weren't like, "And what the fuck are you doing here?" But they did also tell me, "We can take care of our communities. We're here from the community, we grew up in the community, and we're working in the community. What you can do—because you obviously want to do something—is go to law school, because we can't go to law school, because we haven't gone to college. That's not one of the options. So take advantage of the fact that you're privileged, go to law school, and come back to the community with an actual skill. Something that we can actually use."

Breslin: Are there particular people you recall giving you that advice?

Mayerson: I don't recall anyone's name or position, but I remember getting that advice from people who were African-American community activists, and in a very nice way getting that advice—in a way that wasn't at all shoving me out of the system, but in a way that was saying, "You have an opportunity to have something to offer that is concrete and that we do need." So really it was quite a welcoming thing, and it was a very different way of thinking of law and law school. At that point I was also waitressing and working at odd jobs in an eyeglass store and at a marketing research firm and various things like
that. I wasn't happy doing those things, and I knew that I didn't want to spend
the rest of my life doing those things. I didn't have any ideas, but I thought of
a lawyer as a traditional thing, and then that opened up the whole possibility
that I hadn't really considered. I pretty much started applying to law schools
after that.

Breslin: Did your exposure to neighborhood legal services also contribute to your
understanding of the range of things that you could do with the law?

Mayerson: Probably.

Breslin: Were there attorneys in legal services that were interesting to you in terms of
their work?

Mayerson: Yes, definitely. So that all came together for me to go to law school. Law
school was interesting because, from an academic point of view, law school
was kind of like bingo for me. It just totally clicked with my mind.

Breslin: No math, no languages.

Mayerson: Yes. It was logic. It's linear, and it's logic, and it's the things I can do. So
there was that aspect. I didn't realize that. The first year I was into the "I'm
going to fail law school" thing because everyone really inculcates that. I still
didn't really think of myself in that way—and there's no way to gauge yourself
during the year. At the end of my first year at law school I was first in my
class. That's when they it kind of clicked that this was clicking with me.
Something must have happened right.

Breslin: Where did you go to law school?

Mayerson: When I went to law school and when I applied to law schools I was staying in
Boston, and I went to this little law school called New England School of
Law. When I became first in my class I thought it gave me the opportunity to
go to one of the best law schools. When I decided to go to law school, my
idea was that I'd go to some law school, get C's and pass, and then I'll be a
lawyer and it doesn't matter. I didn't have any interest in my academic career
in law school at all. None. In fact, I was very, very proud of the fact that I
didn't. I just wanted to be a lawyer so I could do this work. But ending up
first in my class kind of kicked in the idea I might as well go to one of these
great law schools.

Anyway, I had always thought there were two places in the country I could
live, which is Boston and Berkeley. Berkeley because a lot of the people I had
been with in Boston had moved to Berkeley. There had been a back-and-forth
kind of thing with radicals between Boston and Berkeley.

Breslin: Had you been to Berkeley at that point?
Mayerson: No. So I came out here. I also really was interested in going to Northeastern, though, because it had the strongest clinical program of any school in the country.

Breslin: Say what a clinical program is.

Mayerson: It was very conscious of students working in the community in law jobs, particularly in poverty jobs. So I was very interested in that school. I came out to Berkeley to see Berkeley and to see the school. I was here when classes were starting, and I still didn't know whether I was going. I had no idea whether I was going; my stuff was still all in Boston, I only had my shorts because I thought it was supposed to be warm here.

Breslin: You had been accepted.

Mayerson: I had been accepted to both of the places, but I hadn't decided where I was going. I had proven myself, basically, in law school. I was able to get into most of the places I applied to. But those were the places I was most interested in. I just kind of stayed in Berkeley. My friends to this day from Boston are cursing me for calling them up and saying, "Okay, now empty my apartment, pack up my stuff, and get it out here," because it wasn't really fair. So everyone took something, and they all feel very justified [laughter]. They all still have little things in their apartments, and I go, "Hey!" [laughs]

That is how I started to go to school in Berkeley.

Breslin: Did you actually make a conscious decision to stay in school here at some point, or did the momentum just carry you through?

Mayerson: I guess it was. Decisions have always been really hard for me—personal decisions. So it was kind of like I kept on going each day, and then I started thinking that it's too late to go to Northeastern; I guess I'm going here. Then I started going to Berkeley.

Breslin: Did you come in as a second-year student?

Mayerson: Yes. I went to a woman's orientation, and I remember Tanya Nieman, actually, giving this talk about how everyone in this room has always been the best student. Everyone in this room has always been the valedictorian. Everyone in this room has always been a straight-A student. And now all of you are together, and you're not going to be that anymore. I remember listening to her and looking at all these people and going, "Hmph—I haven't been. So I don't have to worry about that. So I don't have to be worried about me being disappointed not being that, but I do have to worry about who I'm in school with now."

Breslin: Who was Tanya Nieman?
Mayerson: Now she's very active: she's the head of legal services for the Bar. She's also now not very active because she had a mastectomy. She's a lesbian, et cetera.

Breslin: Who was she then?

Mayerson: She was one of the only "out" lesbians—but that wasn't even the point at that point. I didn't have any idea who she was, so it's kind of irrelevant really. Anyway, the point being that I thought that would be a problem, but it wasn't at Boalt [School of Law at University of California at Berkeley]. One of my best friends at Boalt went to Radcliffe, and she could never get it right at Boalt. Your mind either wraps around it or it doesn't. It doesn't really have to do that much with intelligence, I don't think.

After my freshman year in Boston I went back to Field's Corner and worked over the summer for Field's Corner Legal Services. Then after my second year I worked for this thing called the Childhood and Government Project. It turned out that they had gotten money to write a book about law and childhood, but all the people there were Marxist, and they wanted to do a Marxist analysis of childhood. It was fascinating, actually.

Breslin: This was Field's Corner?

Mayerson: No, no, this was back in Berkeley, after my second year.

Breslin: You stayed in Berkeley the summer after your second year?

Mayerson: Yes. After my second year I stayed in Berkeley and worked with this—

Breslin: And where was this?

Mayerson: It's associated with Cal; it's the Institute for Childhood and Government. I was very interested in children's stuff. Anyway, so we did a Marxist analysis of childhood.

Breslin: Say a little bit about that. That was for publication?

Mayerson: It's in a book somewhere which I just lost track of. There is that book somewhere, and someday I would like to see it. I don't even know what the title of it is. The idea that I learned from it is that views of childhood, views of marriage, views of everything basically, are based on economics.

Breslin: In a nutshell [laughs].

Mayerson: In a nutshell. The first semester of my third year I wanted to clerk for a judge. I went back to Boston again. I was still really not accepting Berkeley as my home, and I had been in Boston for a lot of years. I got a clerkship with Judge [W. Arthur] Garrity. That was starting to be very relevant to what I did,
which was that he was the busing judge in Boston. It was like working for a
great historical figure. This man had been vilified in every way possible. It
was not exactly the absolute height, but it was close enough to the height of
the Boston Louise-Day-Hicks-on-the-City-Council days. There was
incredible opposition to his busing. There was a Boston busing case, a school
desegregation case hearing in his courtroom every week.

Breslin: Say a little bit about the events that led up to the Boston busing process that he
was involved with.

Mayerson: There was a segregated school system in Boston, basically, and there was a
total racist city council and school board. This very famous racist, Louise
Day Hicks, was the head of it. Judge Garrity got the case—he was a federal
district court judge—and he ordered as one of the remedies that there be a
busing program in Boston. The white community particularly responded very
violently to it. It was basically all this racial war. A lot of the reason for it, a
lot of the reason people pointed to, was Judge Garrity's busing order. He
became the most hated figure of the white racists.

Breslin: What was the suit and who brought it?

Mayerson: It was a school desegregation suit brought by the NAACP [National
Association for the Advancement of Colored People].

Breslin: On behalf of families, parents?

Mayerson: On behalf of families. There were a couple private lawyers, too, who were
involved in it whose names I'm not remembering. There was also the
Department of Justice, I think. I'm not positive. The incident I told you
before that led to the conference in New Haven was also just part of this
whole thing. There were racial incidents happening in Boston all the time.
School buses being turned over, et cetera, and there was a lot of—he had
crosses burned on his lawn and effigies of him burned. He was also very
committed to his order and to what he had done.

Breslin: Do you have personal memories of him?

Mayerson: Oh, absolutely. Totally. He actually had a clerk whose case it was to do the
Boston school case and whose full responsibility was the Boston school case.
I actually dealt with the rest of the docket—this guy had other cases too, but I
dealt with the docket that—a lot of it was trademark and copyright and all the
other things that federal court judges do. But I also was given a special
assignment, the Charles Street jail case, which was another thing that he was
working on at the time. It was the issue of overcrowding and bad conditions
in the Charles Street jail. But he also always let me come to the school case
hearings because he thought it was good experience for me. He was an
absolutely incredible man, just one of these people that you don't know how
they get through life being so gentle, kind, soft spoken, unbitter, and at the same time very smart, very caring. He was an incredible judge to work for.

He also did some formative things for me, like one day he called me to the courtroom when the Boston school case was happening. He said, "I want you to hear this woman, because she's a great lawyer." The woman stood up, and her hands were shaking, and her voice was quivering, and she presented her argument. He said to me, "That was a great lawyer." She didn't have any of the bravado of the male lawyers, and she was shaking. And he said, "But what she said was right on the mark." He had a very bad back; he used to be on the bench, in the chair, and the next thing you know he'd be lying flat on his back behind the chair. You couldn't see him. And he'd scream to the lawyers, "Go on! I can hear you!"

Breslin: [laughs] A little unconventional for the time.

Mayerson: He spent a lot of time also in the office on his back, on the floor. My job was the Charles Street jail case, and I had to go to the jail. I can't believe these things that young people are given responsibilities for. I remember going to the jail and drawing on a piece of paper all the jail cells and how many there were per row, and trying to figure out the issues around overcrowding in the Charles Street jail. That whole thing turned out to be a really great experience for me.

Breslin: Was that one summer?

Mayerson: That was one semester, one full semester, which Boalt has—it's called a judicial externship. So all I did that semester was work there. Then I came back from there and took my last semester, graduated—

Breslin: Take me back to Boston for a minute and tell me whether you were forming any ideas about your own direction.

Mayerson: By the time I went to law school I was already wanting to go to law school to do something socially active.

Breslin: But had you begun to think about the focus?

Mayerson: No.

Breslin: Because you're heading down sort of a civil rights implementation road, it seems like, in terms of working for Garrity.

Mayerson: Right. I had an idea that I would do public interest law—that's as specific as it was.

Breslin: Had you been able to define that in your own mind?
Mayerson: I thought it would be poverty law, women's issues, race discrimination issues, or children's issues. So it was pretty broad. It was never like environmental issues or consumer issues; it was also something to do with people a little more.

I went back to law school, and then I graduated—oh, but before I graduated, the last year of law school at Boalt, there are constantly employers from all over the country coming to the school to interview students. They're all dressed in their little suits and everything. It's a lot of pressure, just the momentum of it, to go to those interviews. But I basically really didn't go to those interviews, and it was very, very few of us who didn't. Because even if you didn't plan to, once it starts happening, all your classmates are going—so I ended up going to one interview of a small firm in Denver or in Boulder. It sounded kind of interesting. But I didn't go to any of the big firm interviews.

I guess along the way, when I was looking through the books at the placement office, I found this application for the Institute for Public Representation, which was a fellowship program at Georgetown University Law Center, and it had a fellowship in public interest law. I think it's the only fellowship in public interest law in the country. So I blithely applied to it, and I ended up going for an interview there, and the person who was the head of it at the time—his name was Victor Kramer, who's a very famous lawyer—it turned out he went to Walnut Hills High School. So we had a big thing in common there.

I ended up getting a job there, moving back to Washington again. Again, it was like East Coast-West Coast-East Coast-West Coast, not knowing really where I had my roots. I got there and found out there were five fellows, and these fellows were all those same kind of major stellar students who had all absolutely had as their goal going into law school to work at the Institute for Public Representation. It was the same kind of thing where I just fell into something that turned out that it was a real gem of a job. It was a fellowship but you got paid—not much.

The job was to do public interest law and to supervise the third-year law students who were also there full time. There were five of us that were fellows, and I was one of them. We supervised third-year law students. We had Victor Kramer, a teacher, who was as I said a famous lawyer, who was absolutely demanding. He didn't believe in that touchy-feely way of acting at all. He screamed at you, yelled at you, he was always exasperated, but you kind of accepted it because of his status, because he was so—he had been the head of the anti-trust unit in the Department of Justice, he had been one of the founding partners of Arnold and Porter—the law firm in Washington. He had a lot of stature. He was also brilliant, and he was also unrelenting about getting stuff back that he felt was really good. There was a lot of writing that happened there. So I think it was a really, really good experience for me.
But the thing about it that was really the good experience was the clients of INSPIRE were the public interest law firms of Washington. That's who its clients are. So its client is the Women's Legal Defense Fund and all those kind of groups. So by virtue of being there, you got exposed to public interest law in Washington, D.C. At that time I was fresh out of law school, and I was also young and insecure generally. And I was meeting people who I literally worshipped, like for instance Judy Lichtman, who is the nicest person you'll ever meet but made me totally shake in my pants. I never, ever felt comfortable in front of Judy Lichtman, even though she's totally unassuming. But to me she was just a grand figure.

Breslin: Who is Judy Lichtman?

Mayerson: Judy Lichtman was the founder and head of the Women's Legal Defense Fund, and is often credited with being the head of the old girls' network in Washington, D.C. Her husband, Elliot Lichtman, is also a very prominent civil rights lawyer who did many of the school desegregation cases.

So I got a lot of exposure to public interest law. I had a really good just legal experience, and I also got some teaching experience, so it was a really all-around good thing to do. I worked my butt off. I think that's something that from the beginning I did do. I did not work harder than anyone else as a fellow; we all worked our butts off. But it was an ethic that I got very early on in lawyering. And I got trained by people who had very, very high standards. And my fellow fellows had very high standards.

Breslin: Tell me about your relationship with your parents during those couple or three years when you were in law school.

Mayerson: Well, I got rehabilitated by going to law school. I got greatly rehabilitated. They were very pleased with that move. They still would have liked to see me married and that kind of thing, but they were happy that I was on some kind of track that wasn't completely foreign and off the beaten track to them. My father, when I was at the Institute, I found out that I passed the Bar, and my father arranged for me to be sworn in by Justice Potter Stewart at the Supreme Court, which was quite amazing, because it was like, "Yeah, yeah, I'm living my little life" in Washington, and my father was just so thrilled. The Tafts are from Cincinnati, and they're friends of my parents, and they're friends of Potter Stewart, who's also from Cincinnati. He arranged for me to be sworn in in Potter Stewart's chambers, which was an amazing thing. I was very embarrassed of it because I was also—see, when I was growing up, one thing we didn't talk about is my parents were not rich. Everything's very relative, but they were very comfortable, but I didn't have any feeling whatsoever that they were rich. They weren't extravagant in any way. They were like every other upper-middle-class [family]. And almost not the upper part. I basically was raised in a way that wasn't self-conscious at all, because everyone was in the same position. And then my father's situation started to change: basically
what happened was he finally sold something. As long as he wasn't selling anything he would always say, "It's not what I own; it's what I owe." So he really didn't also think of himself as having money, because he didn't really have money.

Breslin: He had assets.

Mayerson: He had assets, and he sold something, and all of a sudden he had money. That changed his whole view of the situation and the family's. Being sworn in in the chambers of a Supreme Court justice was the kind of thing that at that point would really embarrass me. But now when I think about it it was nice—it was interesting. But that response basically to them having the opportunity to do something like that for me was exciting to them in terms of this question about relationships. I was now someone who they could have sworn in by Potter Stewart.

Breslin: They were proud of you.

Mayerson: Right. Even at graduation I was—I had also done very well at Boalt, so I was—

Breslin: How well did you do at Boalt?

Mayerson: I don't know, but I was in what's called the Order of the Coif, which is the honors society. I think it was the top ten percent of the class, and I don't know what number I was in that, because I never asked. I think there were 170 in my class, so I think it was the top seventeen within.

So they had these new things to chalk up the kinds of things they could relate to. The fellows that I was with in Washington were very impressive to them. So they thought maybe I was moving into this whole new strata of people. These were liberals. The people I met in Washington that I was fellows with are really people I hadn't previously been close to either; they were solid, smart—

[Begin Tape 2, Side B]

Mayerson: They were good people. I hadn't really ever met the nice, clean-cut liberals so much.

Breslin: Before.

Mayerson: Before. I really to this day love them all, although I never see any of them.

What I was going to say about that experience is that at the time I was there there was another person who I was working with, one of the fellows, who had all these disability issues. The disability issue that he had was the big case to get the regs out—
Breslin: Which regs?

Mayerson: The Section 504 regulations, which as part of the overall strategy of the disability movement—to get those regulations to come out—one of the things was a lawsuit, and the other thing the institute did—

Breslin: This was *Cherry v. Mathews*?

Mayerson: Yes.

Breslin: Was it really?

Mayerson: *Cherry v. Mathews* was the institute case. The other thing that was an institute case was the first case to make the metro accessible in Washington. That was there while I was there. Now of course it has all the significance to me. But at the time he was dealing with Mr. Cherry the whole time. Now it has significance; at the time it was just something that he was working on.

Breslin: That was exactly the question I was going to ask, whether this really rich experience and exposure to disability issues, in any context—sounds like not in your personal work, but in relation to the person sitting next to you—

Mayerson: In my colleagues.

Breslin: What about in the public interest community in Washington in general? Was there anybody doing anything in disability that you were aware of or had any contact with or remember or affected you in any way?

Mayerson: Not at all. Nothing. I think that's true.

Breslin: This was ‘77, ‘78?

Mayerson: Yes. I'm not saying no one was doing anything; I'm saying I didn't have contact with them. If it was anyone at all it would have been the National Center for Law and the Deaf, but I'm not even sure. I think we might have had some cases with them at the institute.

Breslin: But they weren't cases that you were working on yourself.

Mayerson: No.

Breslin: Say a little bit, in conclusion for this session, about whether there was any awareness that you were developing about disability issues at this point.

Mayerson: No.

Breslin: That's a quick answer [laughs].
Mayerson: I'll just say this: before I left Boalt I had two experiences—I don't have a very good memory, so when I remember something it means it was pretty significant, I think, because I don't remember things. The two experiences I had that were significant to me is I remember reading about the sit-ins. I don't generally remember what I read in the paper, but that blew my mind. I remember so well reading about the sit-ins in the *San Francisco Chronicle* when I was at Boalt.

Breslin: You're talking about the sit-ins to—

Mayerson: The second set of sit-ins, for the 504 regulations. I can still picture reading about it. There was something extremely—like when you're drawn to something. I couldn't psychoanalyze that, but I think it's interesting that I remember it so well, because I suppose there's a lot of people who read it like any other news item and they obviously don't remember it twenty years later. But I really do remember it. At that time I had no exposure to anything. The other thing I remember is that my grandfather—who was my very, very, very beloved grandfather—had developed Lou Gehrig's Disease. What's the name of that?

Breslin: Amyotrophic lateral sclerosis—ALS.

Mayerson: ALS. Gradually things had gone, in terms of his ability to do various things, with his legs first and then his speech became very slurred, and then it became almost inaudible. He was writing notes, and writing notes, and writing notes, and he was such a big talker. Then his hands went, and he wasn't able to write notes. So he was basically not able to communicate. Somehow I found out about CIL [Center for Independent Living], and I went down there to find out if there was anything for my grandfather.

Breslin: What was your impression?

Mayerson: It's really weird [laughs]. My memory of going to CIL was somehow that it was like a recreation center, and I don't know why the hell I left with that memory.

Breslin: What other context would you have had to place the organization?

Mayerson: I can't imagine how I even got to CIL, unless maybe it had been in the news article or something, because I don't know how I got there. First of all, I didn't really spend time on Telegraph Avenue. When I was a law student, even though I had only waited a few years before I went to law school, I felt like an adult there, and I just went to school and went home. I had a house. I didn't spend time on campus at all, period. So it wasn't from walking around—I'm sure it wasn't that. But it's so funny, I kind of have this memory of people playing darts or something. I don't remember really if I got any information,
but I think I did find out about spell boards. I think Hale Zukas was there, who uses a spell board. But that was about it. That wasn't my entire exposure to disability my whole life; I mean, I had met people who were disabled before that, but that was right there—the only kind of formative things.

Breslin: When you left the institute, you were done with law school, you had passed the Bar—the California Bar?

Mayerson: The California Bar.

Breslin: And the D.C. Bar, I assume.

Mayerson: I waived-in, which you could do.

Breslin: Your fellowship was over, you came back to Berkeley, and you had to think about what you were going to do next, I assume. What was on your mind on that point?

Mayerson: My mind was I wanted a job in public interest law. That was not an easy thing to come by. Basically I just sent out letters. There has to be a job opening, and really there wasn't anything. It wasn't like I was interviewing and getting rejected; I just wasn't doing anything. I was waiting, basically. Finally in November, I guess, there were these two job announcements, and one was for DLRC [Disability Law Resource Center], and one was for the new Bay Area Center for Law and the Deaf [BACLAD]. They both were at the exact same time, probably from the same money or similar money, and suddenly there were two places where I could apply. It was interesting, because I probably didn't know what disability rights was. I basically knew nothing. That gets to the next thing—that's my story of why I got hired.

Breslin: Well, that's a good place to stop.
Breslin: Hi, I'm glad we're finally getting back to it again here.

Mayerson: Finally.

Breslin: You left off the last time talking about having applied for two jobs in disability law in the Berkeley area. I think we should start by having you talk about how you made your selection.

Mayerson: Well, I don't really remember much about going to BACLAD or who interviewed me, but I did get the job offer. I do remember, very well, my interview process at CIL; that is surprising since I actually remember very little of my life. [laughter]

First of all, I wrote a letter for a job. This was a project of the Center for Independent Living Disability Law Resource Center that was just being formed. It was actually a joint project with the legal services of Alameda County. I wrote a letter saying that I was interested in a civil rights job, and that I was applying for this one, with my resume, of course.

The first interview I had was like a pre-screening that didn't have anything to do with law, and it didn't have any lawyers. It was just people at CIL who were people with disabilities. Really, I was just being checked out.

Breslin: Do you remember who was there?

Mayerson: I remember the people, but I don't know their names. You would know their names. I would know them if I saw them. I would have to go back to that. I can't think of who they were. Who was the guy who, I think, came over to DLRC and ran like an omnibus program?

Breslin: The ombuds program.

Mayerson: Oh, ombuds program, I never got that straight. [laughter]

Breslin: Vince Creek?

Mayerson: Yes.

Breslin: Is that right?

Mayerson: Vince Creek, and maybe Guy.

Breslin: Guy Guber?
Mayerson: Guy Guber. Anyway, some people from CIL. I don't think there was really much substance to it. I think they were just trying to see if I was someone they could feel comfortable with. Then, I got another interview that was actually a formal law interview. I had never been to an interview like that, and I've never conducted an interview like that since I've been interviewing other people.

It was like being grilled. There was Bob [Robert] Valencia who was the head, at the time, of Alameda County legal services. No, no, Bob Valencia was the head of Berkeley legal services, and Cliff Sweet was the head of Alameda County legal services. And, Bob [Robert] Funk, who is going to be the executive director of DLRC.

That's how I remember it. I was just grilled, and grilled, and grilled, and given hypotheticals. It was a very grueling interview process. I remember I walked out to whoever was waiting and said be prepared for a grueling hour. Anyway, I was offered that job. Then, in terms of just deciding, like any time you get offered two jobs, it's a hard process. I think I thought that DLRC, even though it was really unformed, and it was not even really a physical facility yet, would be a fuller experience.

Breslin: Do you have any recollection on why you thought it might be a fuller experience?

Mayerson: Well, for one thing, just because it was about disabilities in general and not just about deaf issues. I think, also, that it was attached to kind of a community organization that I didn't know much about but that I was kind of getting a feel for it just by being there. DLRC was just this big building across the street from CIL, as you remember, and it was a big warehouse, and people were just laying floors.

It's funny because I definitely remember walking in, and when I first saw you in that little cubicle on the left with someone you were working with. I think she was your assistant. Paul Silver, I don't think he was part of the interview, but he was the senior attorney; even though, I don't think he was very senior at the time.

Breslin: He might have actually had a job out of law school as opposed to having just graduated maybe.

Mayerson: Yes, but he wrote the grant with Bob Funk to get the money, so I guess that's how he got to be head of the legal unit since it was kind of his and Bob's idea. [laughter] Bob was the head of the whole place, DLRC, and you were the head of the 504 training component, and then there's this little legal services. We were up in this little—. It looked like a prison. [laughter] It was this enclosed area with bars, and it was me, and Paul Silver, and Shirley Nakao. Paul Silver was a great guy, but he wasn't exactly into being like a real
directing attorney or supervisor, so we were kind of on our own trying to figure out what to do with the new organization.

The first thing I did was, I remember, I found some files of this case that had been started. I don't know whether it had been started, at this point, by Paul or who, but there was this case. Clarence Hart, was my first case, had been someone who had—I say had because he has died—epilepsy, and had been turned down as a juvenile counselor at juvenile hall. I called Prudence Popink, from the employment law center who I also didn't know, and was much, much more senior than I was, and asked her to co-counsel the case, and that became a start of what we were doing.

When I first got to DLRC, it was also just after the Davis [Davis vs. Southeastern Community College] decision in the Supreme Court. It was the first decision interpreting section 504. Everything was basically new, and there wasn't a lot of precedent for anything. We didn't really have a strong definition of what we were doing, so we would go from doing cases like 504 cases, Clarence Hart type cases, to just anyone who happened to walk in, anything that happened to have happen to them, and just trying to make phone calls and seeing what we could do to help them out.

Breslin: Do you remember the purpose of the money that was provided for this program, what it's intent was?

Mayerson: Alan Housman, I guess, had been head of legal services, and he had commissioned a report, which had looked at legal services and come to the conclusion that there was a population that wasn't being served, and that was people with disabilities. Actually, Paul Hearn was a legal services lawyer at the time too and somehow had been involved in that. So, this was a grant—. I can't remember what it was called; it had a name. It was a type of legal services grant that was like a demonstration project. It was a two-year project to basically supply legal services to people with disabilities. Other than that, I don't think there was a lot of definition to it.

Breslin: Do you remember whether the services were supposed to be provided to residents in the immediate area, or not?

Mayerson: It was for Alameda County residents. It was a program with the Legal Services of Alameda County. So, it was a legal services program. We were bound by legal services rules.

Breslin: Wait a second before you talk about that. Say a little bit about what was going on at DLRC generally at that time.

Mayerson: Well, what happened was, after the 504 regulations came out in 1977, there was money available to do training, and this legal services money, and a few grants that were available because there was this new civil rights law, and the
court administration put some money into it basically educating people about it and doing some research. That's what the DLRC was. It was kind of like a legal arm of the Center for Independent Living. Well, there was a training project, which was, I think, the biggest component of DLRC, which I'm sure you have other people talking quite a bit about. [laughter]. Then, there was the legal services component, and there was this ombuds program.

Breslin: Ombuds person.

Mayerson: Whatever. Then, whatever Guy did. I can't remember. Then, there was this whole back room; I don't know what they did actually. Are you allowed to tell me?

Breslin: Well.

Mayerson: What's in that back room? There was that whole back room of people.

Breslin: Do you remember—?

Mayerson: Susan Shapiro was there. I'm not sure what she was doing.

Breslin: Do you remember Johnnie Lacy?

Mayerson: Johnnie Lacy was there. She was in the back room, wasn't she, that big room?

Breslin: Do you have any recollection of the project?

Mayerson: I have no recollection of her project. What was it?

Breslin: She was working on running a training program for the Community Services Administration and was really taking the disability message out to people who did community organizing for the Community Service Administration.

Mayerson: Then, Julie Landau came. She had been this young upstart who kept on bugging Bob Funk about wanting to start a parent project for parents with kids with disabilities to do special ed advocacy. She just bugged him enough and did enough work around the place, as a carpenter, and a carpet layer, and whatever else she could do to stick around, so that he would finally relent and say yes. So, she started a parent advocacy project, which was, I think, a very vital and vibrant part of what was going on there, too, because she recruited parents of disabled kids to come and work as volunteers, to talk to other parents and to answer their questions and start doing some organizing. There was a lot going on there.

Breslin: What was the ambiance like there, as you look back on it?
Mayerson: My recollection, at first, was that I felt, even though there were a million things happening there, like I was just finding my own way. I've had this big recollection; whenever I recall DLRC, I always remember that I didn't even have a desk at first. I guess that office hadn't been designated for us at first. I think, at the beginning, I was in the back room just kind of sitting on the floor or something. I mean there wasn't a lot of direction, and there wasn't a lot of help, like, "Oh, you're new here. Would you like me to introduce you to people?"

I remember, at first, I was just kind of like just trying to figure out what the hell was going on. [laughter] I have a very anarchistic feeling of the ambiance of the place. I think your project was more organized because you were training people, and you were getting to know them in that way. We didn't have a lot to do with your project, and I was very intimidated of you, very intimidated of you.

Breslin: Oh, dear.

Mayerson: People were working on their own projects, and, gradually, people got to know each other in various ways, I think just depending on personality. My general view of the place was that Bob Funk, who ran it, ran it in a way that—. What I describe as his management style was basically finding talented people that he could then leave alone. That's how I always felt. I felt that he just was really great at picking the people who he really wouldn't have to manage. It was a long time ago. I can't really remember how I ended up getting to know.

Judy Heumann got very, very interested in the parent project, and she became very close with Julie. I also became the lawyer who was working very closely with the parent project. It was a real pet project of Judy's. So, I got to know Judy through that, and I was also very intimidated of her. At that time, if Judy Heumann called, you like ran. [laughter]

Breslin: Nothing has changed.

Mayerson: I mean it was like, "Judy Heumann wants something," and she always wanted things. Then, I remember I got to a point where I would actually be called to her house for something, like to meet or something. I remember going there, and I always give her shit about this now. I would go there and literally sit there while she talked on the phone for an hour. It wouldn't even occur to me to say anything, or it would occur to me, but I wouldn't have the nerve. [laughter]

Breslin: What was Judy's role at CIL at that time?

Mayerson: I don't know. She's kind of like always vice president, which I always thought was kind of—. Whatever the vice part of the—. You know, the vice
executive director or whatever. She was always under a man as long as she was there, I think.

Breslin: Tell me a little bit about the way your project developed and what kinds of issues seemed like important ones to be working on.

Mayerson: Like I said, we all kind of did our own thing. I got involved in some litigation. This Clarence Hart case that became a very famous case really because it was used so much in the legislative history of the Americans with Disabilities Act as an example of what the definition of essential functions of the job were, and some other cases that were, I guess, employment related cases.

Then, I just became very, very involved in the parent stuff and the special ed stuff. I was very involved in, as a lawyer, an effort that was absolutely being led by non-lawyers, so that was a very interesting thing as a lawyer because there was no question that—. The ideas for it, the motivation for it, the agendas for it, everything were being developed by non-lawyers, so I was really being used, in the role of someone who happened to have a particular education, to look at things from a legal point of view, but absolutely not as any kind of leader in that. So, that is why it was interesting.

Just recently, I was talking to someone on the hill who was doing some kind of oral history project or something about the ADA, and they were saying that one thing that had really bothered Chai Feldbloom was she would have liked to have been more involved in all the decisions that were made and known the whole picture more. I said that I liked always being in the role of—I'm trying to think of who I was talking to—being called upon to give legal advice, or have an opinion, or write something, or whatever. Then, it occurred to me when I was talking to this person that it came very much from my orientation from the beginning at DLRC and CIL where it was very much a movement-driven organization. I mean it really truly was. I always saw that as my role.

Breslin: You were referring earlier to Chai Feldbloom.

Mayerson: I was referring to Chai, who came from a different point of view and perspective. She came from a legal organization, for one thing, the ACLU [American Civil Liberties Union]. To her, it was very frustrating, and to me, it really wasn't frustrating to the extent that I didn't know everything that was going on and wasn't involved in absolutely every single thing, that was fine.

Breslin: Fascinating.

Mayerson: I'm trying to think of who I was having that conversation with. It was probably Netta.

Breslin: Netta?
Mayerson: Netta Zeiv, who's also doing her Ph.D., by the way, on the role of lawyers in the legislative process.

Breslin: Think about the parent project for a minute. What was its mission? What was its purpose?

Mayerson: The parent project at DLRC was, I think, very dynamic. The project was meant to just really provide something similar to legal services to parents, such as, people called up asking questions about what their legal rights might be. Quickly, it developed into a place where there could be some accounting of similar problems that were being heard over and over again, and therefore, a really rich source of information for community organizing.

Even though it started out just like, "Let's answer the calls," when the three-hundredth call came in about occupational physical therapy services not being provided, it became clear that was some place to make a focused effort. It really worked in the way it was supposed to work, I think.

I give that example because that was actually the example that came out. In California there was a different agency other than the schools providing occupational and physical therapy for kids. This other agency was a medical organization. This medical organization was supposed to be providing services in the schools under a law that was devised not from the medical model but more from a rights model.

So, there was a total collision of these two organizations' philosophies, and therefore, services, and it wasn't working. So, the parent organization, really interestingly I think, under the leadership of Julie Landau who, at the time, was like twenty-three years old, who was not a parent but had all the parents working at the project, devised a plan to get the U.S. Department of Education to hold up money to the state of California unless they corrected this problem of this clash between these two agencies.

This little parent project in Berkeley all of a sudden was walking the halls of Washington in the Department of Education talking to very, very high officials about withholding money to the biggest state in the country and millions, and millions, and millions of dollars. I think it was $36 million at the time. I'm sure it's a lot more now. It catapulted from being very grassroots to being very national. What happened because of that also was that we started calling upon people who did more national work, in particular Daniel Yohalom from the Children's Defense Fund, who became very involved in our efforts and very useful. Because our efforts became national, we started having more contact with national groups.

Breslin: What was the legislative authority for challenging the relationship between these two entities?
Mayerson: Well, at the time, it was called the Education for All Handicapped Children's Act, which was passed in 1975, which provided for every student with a disability to have a free, appropriate public education in the least restrictive environment. As part of their education, children are entitled to related services, related services being things like occupational or physical therapy. So, in most states, actually, those services, if they had been provided at all, were traditionally provided by a medical organization under the medical model.

Under the medical model, you get physical therapy if you have, let's say, an injury that you need a certain amount of sessions to restore function to get you back to where you were, which was very different from the educational model, which might require ongoing physical or occupational therapy just in order to either increase function or to prevent regression of function. The medical people were not prepared at all to deal with this new model. If someone wasn't getting better, better meaning all the way better, they would feel like they would cut services.

It would be one more interesting thing to write about. It really does symbolize this class of philosophies and orientation. And then it was so successful because the federal government actually did hold up the money to the state of California, and it was absolutely done completely, totally by parent initiative. Parents got so involved in the letter-writing campaign to the U.S. Department of Education, sent out hundreds, and hundreds of letters.

The other thing it did was it really connected us with other people in California, and other parents in California. It spread it way passed the Bay Area because, of course, the problem existed throughout the state, so we got involved with, basically, anyone who was doing anything in the state.

Breslin: The money was withheld by the Department of Ed as a result of the administrative action that you took?

Mayerson: As a result of the organizing.

Breslin: What was the ultimate outcome do you think?

Mayerson: The ultimate outcome was that the U.S. Department of Ed got involved with the California Department of Ed and CCS—it was called Crippled Children's Services; now, it's called California Children's Services, CCS—to work out an interagency agreement so that if the medical people didn't see fit to continue the therapy that the school district would still have the responsibility. So, it didn't totally change the orientation of the medical community, but it made clear that their abdication was not the end of the story.
Breslin: You mentioned the medical model in the context of this activity. What was your understanding of that model as compared to what was developing when you started working at DLRC and during this first period?

Mayerson: I don't think I had an orientation towards that. This particular O.T. and P.T. [occupational and physical therapy] struggle was very, very concrete because you could see this was how the medical community defined occupational and physical therapy, and it was not the educational view of occupational and physical therapy. They were very, very different perspectives, so it's very concrete. One was more having to do with cure, and the other was more having to do with function, but I never thought about things in those terms really.

Breslin: You later, though, spent some time thinking about those issues.

Mayerson: Yes, and I don't know how that happened exactly or when. I don't remember when we were at DLRC really spending time talking—I didn't anyway—about philosophical issues about disability. It was just more like a very rights orientation, and a very strong kind of political orientation for me.

Breslin: What do you mean by political orientation?

Mayerson: Well, I mean like another thing I remember that happened when I was at DLRC was we had our overnight sit-in, or whatever we had, protest when the [U.S. Department of Transportation] regs [regulations] came out. Everyone that was at DLRC would be involved in something like that. It wasn't exactly civil disobedience but demonstrations and protest. Going to the Department of Transportation, we all stayed overnight. That is when I first met Pat Wright, that night at the Department of Transportation. [laughter] That is what I mean by political; it's very political-action oriented, legal-rights oriented, but I don't remember any kind of musing. I don't. Other people might have been doing it, but I don't think I was.

Breslin: What was Pat up to when you met her first?

Mayerson: Well, when I met Pat at that demonstration, she was there as a—. I don't know if she was there as anyone's particular attendant, but she was there as kind of a—. Well, I don't know what she was there as actually. I met her because something happened to somebody; they fell or twisted their leg or something. I went over to the scene, and she said she would take care of it. She acted very authoritative over the situation. She seemed to know what she was doing. [laughter]

Breslin: If you think back on that—.

Mayerson: She had the buttons unbuttoned on her shirt. [laughter] No, she used to wear her shirts very low cut, which is very funny, now, when I think about it.
Breslin: When you think back about that year—. It was about a year, right, at DLRC?

Mayerson: Yes.

Breslin: What are the highlights? What are the things that stand out?

[Begin Tape 3, Side B]

Breslin: So, you were talking about your recollections?

Mayerson: The highlights of DLRC were, I think, the work I did with the parents, and getting involved in all that, and that whole issue. And, I think just the idea of being a part of something that was bigger than the law.

Breslin: What do you mean by bigger than the law?

Mayerson: Well, I mean, I was just working with people who weren't lawyers, who were doing all kinds of other things that felt like something that was bigger than just being a lawyer. I was part of a movement. That was pretty unusual in 1980.

As it turned out, I think probably a highlight was getting to know Judy, but so much of our relationship developed after that point that it's hard to trace it back to then.

Breslin: Do you have any memory or recollection of what went on at DLRC in response to the Davis case?

Mayerson: This is my recollection. I use this in the law school class that I teach now, and it might not even be accurate or like anyone else's recollection, but this is how I teach it. I say, so, I'm at DLRC. I'm just starting. I'm a lawyer, and there are all these community activists who formed this movement, made this movement happen. The person I'm thinking of particularly, as I remember that incident, is Kitty [Curtis] Cone.

Everyone is saying they want to do protest. They want to say it's outrageous. They want to say the Supreme Court doesn't understand 504. From a lawyer's point of view, and me, at the time, being just a young, punk no one lawyer, is, when the Supreme Court speaks, that's the law. You don't really want to talk about how it devastated your law because the next case is going to come around the corner. The community activists want to be outraged because it is outrageous.

I remember trying to assert a point of view that maybe it wasn't the best idea to give quotes and to be reacting to the case as though there was nothing left of the law. I don't know how it ended up being resolved, but that is what I recall as feeling the first bit of coming from different orientations and having some different ways of thinking about it.
From a lawyer's point of view, it was like admitting defeat, even in addition to the defeat that actually happened, to send a message out that the law had [no teeth. From a community organization point of view, it was just like one more institution fucking over people with disabilities, and you want to respond to that.

**Breslin:** Interesting dynamic.

**Mayerson:** Yes, that's how I remember the whole thing and feeling like we couldn't just respond to it as a community organization anymore. [sigh]

**Breslin:** Talk a little bit about what *Davis* was about because it had such a big impact forever down the road. [sigh]

**Mayerson:** Well, it's so funny. When you said that, the reason I huffed is because it's like the Department of Transportation regulations that we were protesting in that five years later there were demonstrations to get them back because they had been taken away. All the demonstrations for the next decade were to get the original ones that we had protested back. Well, this is how *Davis* is kind of turning out too.

It's so weird how much this *Davis* decision, which has been considered the bane of disabilities' existence, is now being used by people who aren't disability lawyers; they are now, but they weren't then, and they don't know the negative feelings that are attached to that case. So, it's being quoted all the time by people who are on our side of litigation.

**Breslin:** It's being quoted as something good?

**Mayerson:** Yes, yes because things have gotten that much worse, but that's another conversation probably, which it looks like you might want to have some time. [laughter]

**Breslin:** I think so.

**Mayerson:** It's hard for me to explain to them, "No, no, we never want to quote *Davis vs. Southeastern Community College,*" and they're like, "Why not? The Supreme Court said that sometimes an accommodation is necessary." Anyway, basically, that case was the first case heard in the Supreme Court involving a woman who was hard of hearing/deaf, who did have some hearing but relied a lot on lip reading, and she wanted to be a nurse.

There were parts of the clinical training program that were considered inappropriate for her to do because of not being able to hear normally. So, the question is whether there was an accommodation that could make it appropriate, or whether it could be waived, or whether she was just not going to be able to be admitted. The Supreme Court held that it was appropriate
that—. I sat next to Mark Charmatz at the recent ESP. Mark Charmatz argued the case. He is now still with the Center for Law and the Deaf in Washington, D.C.

He told me it has a new name by the way, which I forgot. They took the case. I'm thinking this was a great example of 504 because this woman wants to be a nurse. She's qualified in every way. There are a certain amount of things that would require accommodations. I actually don't remember whether she signed, but I think she did. A sign language interpreter would have been a way of bridging that gap where she just could do something else and not that particular task. The idea being that she could still be a nurse, and that there are many things that nurses do that don't require one to hear at the normal range.

Well, the Supreme Court thought the whole thing was, I think, pretty bizarre because they were used to a model of discrimination where you could do absolutely everything that the other person could do. The black person could do everything the white person could do. The woman could do everything the man could do. It was the mere fact that they had the status of black or woman that was being used to prevent them from doing it. To them, that is what discrimination was.

So, being given a case where, wait a minute, so she can't do it, but it's discrimination. Why is that discrimination? That was a concept that was way too hard for the Supreme Court to get. Consequently, they came out with a very, very negative decision, which kind of negated the whole premise of disability-based discrimination in the regulations for 504, which was that, in order to have equal opportunity, you had to have accommodations.

The Supreme Court had only dealt with a equal-treatment model. So, everyone gets treated equally, and if you get treated equally, you automatically have the same opportunity. This was a very different concept, which had been incorporated in the 504 regulations, which was sometimes, in order to have an equal opportunity, you have to be treated differently, and you have to be given an accommodation. That was way beyond their grasps, and they didn't like it, and they rejected it. After *Davis*, the whole notion of a meaningful antidiscrimination law was in question.

**Breslin:** Do you remember your own perspective on that case as it related to the future of disability law?

**Mayerson:** No.

**Breslin:** You mentioned early that the Department of Transportation 504 regulations had been an issue during this first year of your practice at DLRC. What was the issue?
Mayerson: The first Department of Transportation regs?

Breslin: Yes.

Mayerson: Actually, I'm not even sure. I think that the first regs were unacceptable to people because they had a phasing in, basically, to accessibility. Wasn't that it?

Breslin: That's my read. Let me ask you just the question this way. When were the regulations withdrawn, and what were the circumstances of their being withdrawn, remember?

Mayerson: Yes, I do. I remember that. They were issued in seventy-nine towards the end of the year. By eighty, Reagan had been elected. Right?

Breslin: Yes.

Mayerson: One of the first things that administration did was withdraw the Department of Transportation regulation on 504 under pressure from the American Public Transportation Association [APTA].

Breslin: APTA [American Disabled Accessible Public Transportation] sued, right?

Mayerson: APTA sued? That, I don't know.

Breslin: I don't know, but my recollection is that there was a lawsuit involved. The reason—.

Mayerson: They said that the Department of Transportation exceeded its authority?

Breslin: Yes.

Mayerson: I don't remember that.

Breslin: What was the tone, sort of the reaction, of DLRC? What was going on in the organization during this period as these attacks on this very new law were beginning to escalate and were gaining momentum? Do you have any particular memories of what was happening at the time?

Mayerson: You mean what else was happening, or what was happening—?

Breslin: What was happening at DLRC, and what was the organization's response?

Mayerson: Well, like I said, all I remember is everyone planning this demonstration in San Francisco.
Breslin: Do you remember the organization that formed following the Davis decision, anything about its position?

Mayerson: I don't think so. What was it?

Breslin: I'm strong in remembering this myself. It was called Organization for the Rights of Disabled People, ORDP.

Mayerson: Was that the one that Hale [Zukas], Kitty [Cone], and—? That was that little office there?

Breslin: It was a little ad hoc organization. It was formed to really—.

Mayerson: Work on transportation issues.

Breslin: Yes, and also to organize, nationally, a series of kind of information, protest, demonstration, public relations days to elevate the important issues in the communities.

Mayerson: Besides transportation?

Breslin: Yes, in reaction to Davis, and also following from some of the things that were going in the transportation area. I wanted to know if you had any kind of memory of any of that in that first year.

Mayerson: No, actually. But, I do remember, now that you remind me, about Kitty and Hale being at DLRC. I'm kind of picturing them.

Breslin: Amidst their piles of paper. [laughter]

Mayerson: Because I kind of got to be friendly with Bobby, who was Hale’s assistant.

Breslin: Okay, let's go back. I want to talk just a little bit more about DLRC because I think it's an interesting period in your formation as a disability rights lawyer. I'm interested in what the influences were for you that you think were most significant now as you think back on that time.

Mayerson: I mean I think the biggest thing that happened to me there is that, professionally, in some ways, it was like I was going to a place that didn't really have a structure. It didn't have a supervisor. It didn't have anybody to teach me anything. In some ways, those are very negative things.

I remember my parents saying something to me that I had been to Boalt, and I had graduated Order of the Coif and I had this credential. I remember them saying something to me like, "It's like throwing away your credential." The whole idea of having this credential is to go some place that has some prestige or something attached to it.
Breslin: Not this dumpy storefront.

Mayerson: Not this place that's like nowheresville, that had no structure, no supervisors, nothing in that sense to offer me at all. And, that could be very negative for certain people, but, for me, actually, I think the whole thing turned out to be very positive because I was given so much room to kind of develop myself.

In his own way, Bob Funk, who was in his own very minimalistic way, gave me a lot of confidence because he never stopped me from doing anything, which made me think he thought I could do it. I think, by that time, I'm sure I was probably writing briefs that were pretty much above my level of just being a new lawyer.

It was my first exposure to the disability rights movement. I was certainly getting to get the gist of it. I think that, in some ways, it was really good for me to have this kind of totally anarchistic, you know, almost like the frontier mentality of you can make what you want out of a situation, and that just really worked with me. I think someone else would have just run from the place with horror like, "Oh, my God, how can I handle this? I don't know what I'm doing."

Breslin: A few did, I'm sure.

Mayerson: For me, I didn't know what I was doing either, but somehow it was okay. It just felt like an open field, and open arena. I met a lot of people that I liked. Also, I was doing things that were kind of fun.

Breslin: The area of law was so new, at the time, it's interesting to hear you say you were sort of writing above your experience level because it strikes me that there wasn't much that preceded you.

Mayerson: That's true. There wasn't that much, but it was also like that's why some people had to jump in. Now, it's funny because it's such a different ball game. I mean there are so many people who do disability rights law. I'm sure not so many compared to the need.

Breslin: How many people do you think were practicing disability rights law as a career when you started?

Mayerson: I don't know, but we really weren't tied in to a whole bunch of lawyers who had been doing all the deinstitutionalization cases, and that's an interesting thing to me now when I look back on it how we had basically—I say we because I think it was institutional as well—no connection to these people who were really the kind of founding fathers of disability rights law.

Breslin: Really the pioneers.
Mayerson: We thought we were. It's interesting because now I see that these were people who, although they were litigating different issues because there was no 504, were the forebearers of the idea that people with disabilities had rights at all.

Breslin: I never understood it either until I read the *Willowbrook Wars* [David and Sheila Rothsman, New York: Harper Row, 1984].

Mayerson: Yes.

Breslin: It was such an epiphany to understand what they had done using constitutional arguments long before anything else was around.

Mayerson: Right.

Breslin: It's interesting to hear you say it too because I don't know where that piece was in our—.

Mayerson: Right, in a way, I wish I had had a chance to be under the tutelage of some of those people. In another way, I think there was a benefit to us kind of establishing our own way of thinking about things. It's like the work of DLRC and then later DREDF [Disability Rights Education and Defense Fund] took own its own identity very much, I think, by not really being under anyone's tutelage.

I think there was, maybe, potentially, some advantages to that. In some ways, I regret that we didn't have more contact with the people. Tom [Thomas] Gilhool, for instance, I didn't know Tom Gilhool from Adam at that time. Daniel Yohalom was about the closest we came because he had done special ed litigation. I don't think we knew Stanley Herr. Patricia Wald, you know, all these people, I still don't know her. She's, of course, a circuit court judge now.

As far as we knew, there was no one else doing it except for like Sy Dubow, and the National Center for Law of the Deaf, P and A [Prevention and Advocacy], but they were doing, as far as I knew at the time, special ed in particular. You know who I met at the time, that I met that year, was Paul Hearn and Jimmy [James] Weissman. I actually met them that year. It's funny because there was this legal services conference. This is one of those times when I wish I had a better memory. I don't know whether it was people who did disability or it whether it was a legal services conference for whatever those two-year projects were called. Do you remember what they were called?

Breslin: Quip.

Mayerson: Quip projects. I don't know which it was.
Breslin: Quality Utilization Improvement Projects.

Mayerson: But, anyway, we went to this. It was one of my greatest, most wonderful experiences. I went to this conference and somehow I hooked up with, luckily enough for me, Paul Hearn and Jimmy Weissman, so, of course, I spent the whole weekend in stitches.

Breslin: Laughing hysterically. [laughter]

Mayerson: Paul, I think, was doing legal services then. Well, he was because that's why he was at the conference. So, there were a few people.

Breslin: Do you remember the formation of DREDF, and what's your recollection of that?

Mayerson: Well, I kind of remember. For some reason, what I do remember is that only one of us was going to be able to come over.

Breslin: One of?

Mayerson: One of the lawyers. This is my recollection anyway, that Paul Silver kind of stepped aside for me to go. That's how I remember it.

Breslin: Do you remember what the impetus was to form DREDF?

Mayerson: I wasn't in on any of those meetings, but I kind of found out about it. I wasn't in on the meetings, and I also wasn't aware of all the tension or anything that was happening with CIL, or Judy, or anything. I was just totally unaware of any of that. I kind of still am. That's another part of it. That's always been absolutely fine with me. I love that.

All I know is that we were moving to this storefront on San Pablo Avenue, and I was going to be there but neither one of the other lawyers was going to be there, and that this big civil rights conference was being planned, and that we were going to become a national defense fund, and I was going to be there. That's all I knew. [laughter]

So, no, I wasn't in on any of the formation, or the discussions, or the negotiations with CIL, or no one even told me about them—. I didn't know you at all. I didn't know Pat in that way. Bob Funk never said much anyway, and no, I didn't know anything other than that my next assignment was to be on San Pablo Avenue, and that there was going to be some papers written for this conference.

Breslin: What's next in your own mind?

Mayerson: Well, the next thing, I guess, is the conference.
Breslin: Well, talk a little bit about the conference.

Mayerson: So, then, there was a storefront on San Pablo Avenue that became our offices. At first, I just remember being occupied by this idea that we were all assigned to write papers on various issues on disability rights issues. I was assigned to write the one on education, and that we were going to have this conference. I remember that, I think, you, Pat, and Bob all went to D.C. looking for who should appropriately come to the conference. I don't remember being in on that at all either.

Then, the conference came, and I was at the conference [in San Francisco, November, 1980]. I don't remember playing a very big role in it or anything, just being there, and hearing people, and learning from people, meeting people, and being like a very cool kind of experience, but I don't remember anything particularly about it. Then, the next day, when we came back to work, we were in the back room—this, I remember really well—and Pat passed me a note saying, "Can you go to D.C. for two or three months?" Then, I remember there was a lot of joking about that I was chosen to go to D.C. with Pat to set up a Washington office because I had the wardrobe. [laughter]. I could actually like wear the right clothes.

Then, we went to D.C., and then I started to remember more. We went to D.C., and we walked around to all these offices and met these people. I remember when we first walked into Paul Marchand's office, and, basically, we were saying to people we're not here to step on your toes. We're here to do something different, to do something new. It's disability civil rights and only disability civil rights. We're not going to do anything other than disability civil rights. There was this whole thing where I guess the only points that there was a bit of tension were over the Coalition of Citizens with Disabilities, but it was Reese Robrahan. What was that organization called?

Breslin: It was American Coalition of Citizens with Disabilities, ACCD.

Mayerson: American Coalition of Citizens with Disabilities. I remember that was a little hard because they were supposed to be doing civil rights, but I think he wasn't really effective, or we thought that he could be doing more, or the organization could be doing more, or let's say Pat did because I just, at that point, was pretty much just following in her footsteps. And, I think probably not sure why I was there.

Breslin: Let's go back to the conference a minute. Do remember what it's purpose was?

Mayerson: It's purpose was twofold. One was to let the civil rights community know that we existed, and that there was such a thing as disability civil rights. The other was to learn from them and get their suggestions. One of the big suggestions they had was that since [President Ronald] Reagan had already been elected,
won the election, and hadn't been sworn in yet as I recall—. Was it in December?

Breslin: November, I think.

Mayerson: November, yes, but it was after the election. He hadn't been sworn in yet, and one of the big recommendations was to open a Washington office. There were amazing people at that conference. I wish so much it had been videotaped now.

Breslin: Do you remember who was there?

Mayerson: I remember. You know who made a big impression upon me was the person who was there from the American Indian movement. I don't remember his name, though. He's a person, actually, I remember being most impressed with. What was his name?

Breslin: He wrote *Custer Died for your Sins*. But, his name is not coming to mind here right this second.

Mayerson: Anyway, let's see, well, that's when I met Ralph Neas, and Judy [Judith] Lichtman. Judy Lichtman I had already met because I had worked in Washington.

Breslin: Ralph was—?

Mayerson: He was, I think then, the head of the Leadership Conference on Civil Rights.

Breslin: And, Judy?

Mayerson: Judy Lichtman was the head of the Women's Legal Defense Fund and is.

Breslin: So, you went to Washington and met with—?

Mayerson: Oh, we had an apartment there in Washington. The DREDF apartment. I can't believe that now. We hung out in Evan Kemp's office.

Breslin: Vine Deloria.

Mayerson: Vine Deloria, that's right.

We hung out in Evan Kemp's office. He had two rooms. The front room had a double desk, and the double desk is where Pat and I hung out. He was in the back room. It was our office; it was just open to us to use. We had our own apartment. Pat knew a lot of people from having worked with Judy, and we just started going around introducing ourselves to people and talking to people.
Then, the deregulation effort began.

Breslin: What was that?

Mayerson: It's interesting. I just read someone's book on that, about the whole deregulation. I don't remember whose book it was.

Breslin: Not Richard Scotch's book?

Mayerson: I don't remember. Is that in No Pity [Joseph Shapiro, No Pity: People with Disabilities Forging a New Civil Rights Movement, 1994] also?

Breslin: Yes.

Mayerson: I think it might be, and it's like I'm totally not in that chapter. That is actually something I think I was very, very involved in, like extremely involved in. I think, in No Pity, it just said Bob, and Pat, and Evan were meeting with the administration all the time.

[Begin Tape 4, Side A]

Breslin: You were recalling the deregulation effort.

Mayerson: So, when Reagan came into power, he established a [Vice-President George] Bush task force on regulatory relief. One of the first sets of regulations that they decided to deregulate was the section 504 regulations that had just been passed in 1977. We decided that would be the major focus of our efforts, as DREDF at least in Washington, to try to stop the deregulation effort.

Basically, we were able to get a lot of leaks of documents. The Department of Justice was in charge of the deregulation effort. It had coordination responsibility at the time, so it was responsible for the deregulation. It was working with OMB.

Breslin: What's OMB?

Mayerson: The Office of Management and Budget. So, we were getting a lot of leaks of what the proposals were. We were able to get alerts out to the community—and this was the Washington office and the Berkeley office working together—to all the contacts that had been made during the 504 training, all the people that had become kind of very loyal to section 504 and its regulations through the trainings became people who were very responsive to alerts about any changes in the regulations. I think that's also a very interesting historical phenomenon because it's very unusual for a movement, any kind of movement of people, to be able to relate to something that's purely legal.
It's extremely unusual. I think it might be unprecedented for people to feel so tied to a particular law that the idea of it being watered down is a personal insult to them. If it doesn't involve a cut in money or something that is very immediate, I think it's a very, very unprecedented thing. I think that's because, and this is why I wanted to talk to Susan O'Hara, of the work that you did for all those years. You were talking to people for whom 504 became like the Bill of Rights was to the founders. It really became something that was very personal, and that is very unusual.

Anyway, people responded in droves to this idea that the Reagan administration was going to water down this law that really hadn't had a chance to have its impact yet. So, there was a lot of community organizing, which worked very well with high-level negotiations with the administration, the two worked hand in hand. The reason we were able to have high-level contact with the administration was because Evan Kemp played bridge with [C.] Boyden Gray, who was counsel to Vice President Bush and was able to, therefore, have access to him.

When Boyden Gray called a meeting, because he was so high up in the White House, people, of equal rank, in the Department of Justice had to come. That's how we got meetings with [Bradford] Brad Reynolds. Otherwise, if we had been able to have a meeting with Brad Reynolds that was, even if it had been called because of pull from the White House, it would have been with much lower ranking, much, much, lower ranking people, even maybe line attorneys. Because Boyden Gray was actually going to appear, then Brad Reynolds appeared, and people from OMB of equal rank. I think it was Charles Cooper actually appeared, and it became a much, much higher ranking kind of meeting and an amazing thing at that point in terms of civil rights groups having access to the Reagan White House; that was also unprecedented.

Our meetings would last hours. We had an opportunity to go through all the changes and explain why they were bad, and why they would affect people. Often times, when there was somebody in particular, we have people like Ron Mace, who was an expert on architectural access come and really talk about it from a personal point of view.

I remember he told the story of he, himself, being sent away from home because of polio. It just had such an impact on the people in the meeting. Partially, it was all political, and it didn't have anything to do with what anyone felt, and I understand that. But, I also do think that people at the meeting did have a change of heart from meeting people who had disabilities who had experiences they could relate to. I do think that made a difference.

Basically, after this very, very intense campaign of community organizing, an incredible response from the community, and the access to the White House and the Department of Justice the deregulation campaign was called off. I
think that was really what set DREDF in motion as an organization and also as having credibility in Washington and in the civil rights community.

**Breslin:** What was the relationship of DREDF, or your personal relationship, with members of the civil rights community at during this phase?

**Mayerson:** We were going to the LCCR meetings, Leadership Conference on Civil Rights meetings. I think we were meeting people. I don't remember anyone being very, very involved in what we were actually doing. I do remember it being remarked to us, or us being aware of how we were having an access to the White House that other people didn't have at the time and how that could be a potential benefit to us in terms of the civil rights community getting access through us.

I remember that somehow being in our awareness. That's why I paused, because I'm thinking that so soon after that was the whole *Grove City* thing, and then it became very important that we were able to create certain entrees. At the time, I think we were pretty much a disability-organization focused.

**Breslin:** What were the key issues in the deregulation effort? Do any of them stand out in your mind?

**Mayerson:** The big thing that I remember was that there was this idea that whether reasonable accommodations would be an undue hardship what would be judged by what the payback of the individual would be after being given the accommodations. Basically, it was a OMB, Reagan administration, cost-effectiveness approach to disability rights where the more someone was going to be able to pay back to society the more you would spend on them, and the less they were going to be able to pay back the less you would spend on them, which, in their universe, made perfect sense. From a civil rights point of view, it's particularly offensive to people.

It was something that could really rouse people's spirits in the disability community. I think that is one reason why this kind of response was so strong because it really was something that went to the philosophy of the civil rights movement. It wasn't really a technical, legal point. It was more basic.

**Breslin:** Do you remember any point where there seemed to be a breakthrough with either the DOJ people or the OMB people in terms of making that point?

**Mayerson:** I don't know. I do remember that they really, really liked Ron [Mace]. I do remember that Ron was someone with a very significant disability, and who had been sent off as kind of potentially not worthy, and who is now so incredibly talented, recognized as talented, knowledgeable, acknowledged in society as having a value. I think that was impressive. For some reason, I remember them really being impressed with Ron.
Breslin: Why do you think they turned around the effort, or why did they turn around on the issue, ultimately?

Mayerson: I don't know. I say this is what I think, but I haven't really studied it. I thought that they thought they could make changes in disability rights regulations without a bunch of notice, without being attacked, without having to be hassled, basically, because so many of the things that are in our regulations were based on, title VI and title IX, race and sex, that it would be an inroad into those other areas of civil rights. That, when it became a big public and very visible issue that they were kind of doing something bad to disabled people, it became not politically worthwhile anymore. So, it's not that I think that all these people had a tremendous change of heart, and then they understood disability rights. There was also, mainly, a political component to it. I think Boyden Gray, this is my own little Pollyannish view, did also kind of get it. He also became a little convinced that there was something to this notion of disability rights as a justice issue.

Breslin: Why?

Mayerson: Because I think he really was impressed. I think he had a personal relationship with Evan and could see that a lot of, probably, his own stereotypes and those of the community in which he traveled were unjust. I don't think that's his main motivation in life, but I do think that he had a true appreciation and affection for Evan. I think that it did translate somewhat into his personal views. I also think that's part of Boyden being in the Bush administration; that's where I was going to jump to. I think they also saw that they were under so much attack from the civil rights community. It was almost like disability was being used as a way to mollify their horrible civil rights record. That's what they always had a twinge of uncomfortableness about. It's so clear to most people that the only reason the Republicans took on disability rights had nothing to do with getting it, but it had everything to do with a way of being able to continue their very destructive path and have a little something to show on their civil rights record.

Breslin: It was a public relations strategy.

Mayerson: Right. So, the cynical view is that the whole thing was a public relations strategy. I do think that, through the meetings I was actually at, a little education did take place.

Breslin: Do you think—?

Mayerson: Even with Brad Reynolds, I mean Brad Reynolds became the real interesting thing because he was literally the most visible foe of the civil rights
community. He was a visible foe of civil rights, and I don't think he did much for disability rights except that he also saw a little something to, at least, the notion that people with disabilities, I think, had a right to be protected against discrimination. When it went much farther than that, he became negative.

Breslin: You mentioned earlier that DREDF got leaks of documents from various sources. Where did they come from?

Mayerson: Who did they come from? I don't know.

Breslin: You really don't know?

Mayerson: I really don't know.

Breslin: You really don't know, or you just don't want to say?

Mayerson: Well, I have a suspicion of who they came from, but they were never handed to me by anyone.

Breslin: Who do you think they came from?

Mayerson: I'm not saying. [laughter]

Breslin: Why not?

Mayerson: Because I don't think that's right. He or she wasn't authorized to give something, and I don't believe that would be appropriate.

Breslin: Did Tim Cook have a role in any of the efforts at this stage? I actually can't remember what he was doing at this point.

Mayerson: I don't think so.

Breslin: Was he in private practice at the time, or working for PILCOP [Public Interest Law Center of Philadelphia].

Mayerson: I don't think he was ever in private practice. I mean he had—.

Breslin: He was actually, briefly but, maybe, later.

Mayerson: Oh, I think his private practice had a name.

Breslin: Yes. [laughter]

Mayerson: What I mean is I think it was a nonprofit.
Breslin: This is a tangent. I just can't place him in my mind right at this particular moment.

Mayerson: Actually, I met him pretty early on also. I know why I met him. I met him because he came to apply for a job at the Institute for Public Representation when I was there.

Breslin: No kidding, I didn't know that.

Mayerson: Yes, and Victor Kramer, who was the head of it at that time who was this major famous lawyer, actually I just got his autobiography, went on and on about how much he admired Tim for basically, the little crippled boy, for being able to come to the interview.

Breslin: That's interesting. Why do you think the disability community took 504 so seriously, my role notwithstanding, but why do you think it was so important to the disability community, which it clearly was because people were really rallied around the possibility of 504 being gutted?

Mayerson: Well, I don't know. I do have kind of a mythical view of your—.

Breslin: Well, cut through that for a minute and try to figure out—.

Mayerson: Well, that's the only view I have because I was never at the training, but I heard so much about it in terms of people who—. I remember hearing about people who had never been out of their mother's house, basically, coming to these things and being told that they had rights. I think it's very understandable why people who have never, ever for one minute, considered themselves having any rights being told this was the vehicle that gave them rights—. I can see how that could become very near and dear.

I don't know. In a way, I wouldn't venture to make comparisons of race and sex discrimination in terms of the laws, but I think people in the movements of race and sex discrimination really did believe that there was at least an unalienable right, that there was basically an unalienable, constitutional right to equality. I don't know if people with disabilities even had that.

Breslin: I don't know the answer to that question either. I've thought about it a lot. I'm wondering what the convergence of other influences were at that time that built on this perception of rights, but there had to have been more to it than coming to a training meeting. There has to be some other factors.

Mayerson: I don't know. I think that many disabled people were raised to believe that they are absolutely inherently inferior—if you're raised in a minority family, you're raised to believe the rest of the world thinks you're inferior.

Breslin: But, your community certainly doesn't.
Mayerson: At least, your mom, and your dad, and the people you look up to and respect in the world are the same as you are in that respect. So, I think that if you are raised from the get-go to believe that you are inherently inferior, and you believe that, and then someone comes and tells you you're not, and that the law recognizes that you're not, I'm just imagining that would be an incredibly powerful experience.

Breslin: Well, I was thinking about the influence of the independent living movement overall at that historic juncture. By this time, '81, '82, there were independent living centers in a lot of places. There was the community grassroots activism oriented issues. I think that contributed pretty dramatically. It was a series of things that came together.

Mayerson: Well, it would be an interesting thing for someone to study because I think that, usually, an abstract law would be hard to translate into a community action, but you know people marched for the civil rights act, definitely.

Breslin: Let's go back to the relationship with the civil rights community to sort of address deregulation work for a minute. I'm really interested in when the civil rights community bought into, if they have, the idea of disability as a legitimate civil rights issue.

Mayerson: I'm obviously not the best person to ask because I wasn't, like I said, involved in everything, but I think that, in my mind, it all started coming together more during the Grove City Civil Rights Restoration Act [Grove City College v. Bell] It was, I think, the first time, number one, it was so absolutely clear that there even was a disability civil rights law and that it had been modeled so directly on Title VI, the race, and Title IX, the sex discrimination law, and that everyone was going to be in bed together whether we liked it or not.

In that sense, that's like the silver lining of that case because it became clear to the civil rights community that anything bad that happened to one was going to happen to the other, so it was kind of a shotgun wedding. That happened, and I think that was kind of just pragmatically important because people had to work together to kind of protect everyone's interest. People in the civil rights movement had to be interested in what happened with disability rights.

I feel, also, that it was an opportunity to work together in coalition in a way that disability had never worked on the Hill before. My impression is that, even though disability ostensibly was part of the LCCR Coalition, people with disabilities were never part of the inner group. At least at that time, there was absolutely an inner group. The inner group would go and represent everyone's interest, but that inner group never had people from disability in it.

The fact that five people would be going to see senators, and congressmen, and their staff on the Civil Rights Restoration Act, and among the five was actually a person from disability rights, made the people who were leadership
people in civil rights, generally, start to recognize that there was a disability civil rights, but also that they were talented people that could be in leadership roles. I think that was a really, really huge difference.

For one thing, it's like that paternalistic thing anyway where we can speak for that because they don't really have anyone that's good enough to speak to you anyway, not consciously, but the absence kind of spoke that. I'm talking primarily about Pat, not myself; at this point. Her talent, I think, raised the level to a new level of respect. Also, her boldness and her in-your-faceness also made it so that it was really clear that this is not the way it should be able to look. I don't think many other people would have the nerve to do that. I don't think many people other than us will ever appreciate that.

Breslin: What was your personal contribution to the campaign to save 504 regulations?

Mayerson: I think I had a big role in that because I feel like I wrote almost all the stuff there was to write on what was happening, and the impact it would have. So, I was very instrumental in getting the word out to people, translating the legal into something that people could relate to. Also, just being there as the lawyer in the meetings so that when they brought lawyers we didn't feel out done, that same thing of not feeling out done, not feeling like we couldn't defend ourselves; we couldn't stand up to whatever was in front of us.

I think that all my work, from the beginning, has been as someone who does more of the substantive work, but Pat was always the strategist. I think that it was kind of like the general showing that they have an army. It was important that she be able to bring people along who go up against their lawyers, just for her own credibility sake also, just someone to make it clear that we were equipped to deal with whatever level of discourse we had to deal with, I think.

Breslin: I have such strong recollections of your writing during that period because you sent so much stuff out.

Mayerson: We sent so much stuff out. We constantly—.

Breslin: Every two days, each thing was built on the last thing. Each analysis that you did was to basically rile people up with what was the facts, but also the implication of the facts in terms of what would happen at the community level.

Mayerson: I think that also gave us a lot of credibility in the community, and also to the White House, and the White House also, then, with getting a response from the community. We'd walk into a negotiation sessions, and they'd said—I remember this one time in particular—the White House got 40,000 letters, which I still can't quite believe given how much trouble we're having getting letters now actually.
Breslin: To what do you attribute that response? You've answered that in a couple of different ways, but that is a lot of letters.

Mayerson: I kind of feel like maybe that's part of our own mythology, like we kind of made that up, but I really do kind of remember hearing that too.

Breslin: It sounds like it actually got told to you somehow along the way.  [laughter]

Mayerson: I just can't even imagine that could be true now that I think about it.  I think that, actually, the DREDF Berkeley office was taking care of that.  That's how it happened.

Breslin: What do you mean?

Mayerson: Well, I can't think of anyone other than you who would have been working on that in Berkeley.

Breslin: Well, it was an organizational priority.

Mayerson: But, who else was it besides you?  Then, you were the person that was getting it out in the community and getting responses from the community.

Breslin: Well, getting it out, but getting responses back is a function of something you can't control.

Mayerson: No, but I mean I think, obviously, it wasn't just being sent with no follow up.  I don't think.  Then, it would really, truly be amazing.  [laughter]

Breslin: What was the impact of preserving the regulations?

Mayerson: Like I said—.  When I give my lecture about how the ADA came to be, I always start back at least there because—.

Breslin: I learned my lecture from you.  [laughter]

Mayerson: Evan Kemp told me.  I'll never forget this one night we stayed up all night in a hotel room.  Janine [Bertrum] was there, sleeping, in the next room.  He said, "In Washington, they like you as long as you're winning, and you have entrees as long as you're winning."

Breslin: It is true.

Mayerson: It was really true.  I think that it was a big win.  I think it set the stage for the disability community having a lot more clout.  For whatever reasons the Reagan administration decided to withdraw those regs, it looked like a big win.  There was a substantive thing that the regulations were still in place, which was good.  Although, the courts have had their own way with them.  I
think, mainly, it was just an incredibly big political win that got a lot of attention, and it got a lot of respect.

Breslin: Tell me about Evan's role.

Mayerson: Evan was pivotal. He was the, in his own little quiet way, power player. He was the one who set up the meetings. He was the one who made the meetings happen, and he was the one who always really, really supported Pat. He gave DREDF a lot of credibility. He was a Washington insider, to the extent anyone in the disability community was. He was basically saying go meet with these people from Berkeley who, in Pat's case, weren't dressing appropriately, and might seem outrageous. This is who you need to meet with. This is who you need to—.

[Begin Tape 4, Side B]

Breslin: You were saying.

Mayerson: I was saying that I think that Boyden really had a lot of affection for Evan, so Evan had absolute direct access to him.

Breslin: What was the basis for that affection?

Mayerson: I think he just liked him. I think they were friends. I mean Evan was an interesting person. He had some interesting thoughts, and he was amusing, and gracious, and smart, and I think he liked him.

Breslin: What is your recollection of Bob Funk?

Mayerson: You know, I don't really remember him having a role in the deregulation, and that is not at all to say he didn't because the book said he did.

Breslin: Which book?

Mayerson: I think No Pity, said he was meeting with the administration on the deregulation. I'm not saying he didn't. I just really don't remember him being that involved in it. Do you?

Breslin: Well, I have a slightly different recollection, but I'm more interested in your perceptions.

Mayerson: Yes, I just don't remember him. I don't remember him in that role.

Breslin: Do you remember who was attending most of the meetings that you attended from DREDF?

Mayerson: Me, Pat, and Evan, that's who I remember being there. Again, I feel bad if he was there, and I don't remember his being there, but I don't really remember it.
Breslin: You remember what you remember.

Mayerson: I mean I'm sure he was there sometimes. I don't remember his writing things either. I don't remember him involved, but anyway.

Breslin: Do you want to say anything else about the deregulation process?

Mayerson: No.

Breslin: Any other memories that you have that you haven't had a chance to talk about?

Mayerson: I don't think so. It does seem like a very long time ago, though.

Breslin: Well, you know, it was eighteen, nineteen years ago. It is a long time to be remembering. [laughter]

Mayerson: Oh, God.

Breslin: I guess I want to ask you to talk about what was next in your personal career at DREDF that stands out in your memory. It sounds like the Grove City effort was what was next for you.

Mayerson: That was the next big effort, and I remember, at times, being intensely involved in that effort and, at times, not being involved. I think it was the function of me going back and forth to Washington. I remember once something very big had to get done, and me and Margy Kohn, who I had previously been terrified of—she was with the Women's Law Center at the time—and me and Margy Kohn and a couple of other people had to do some big thing that took like a very long time. I can't remember what it was. It also had to be done very quickly. I think it was probably right before the committee hearings, or something like that. I know we spent a lot of time talking about trickle up and trickle down.

The thing I remember most about the whole Grove City thing, though, is absolutely feeling like I had blown the whole law. I had one of the most horrifying, terrible experiences of my entire legal career during that time. It's significant. Usually, I don't admit to these things, but it was amazing because Pat totally, completely, utterly supported me in it.

Breslin: Why don't you start by saying a little bit about the background on the case, and it's a Supreme Court case?

Mayerson: Right. The Supreme Court case, Grove City College v. Bell, was actually about the issue of student loans. It was actually a Title IX case, which said that an entity could not discriminate in any program or activity that received federal financial assistance. That language had been built on Title VI, which
said you couldn't discriminate on the basis of race, ethnicity, or national origin in any program or activity that received federal financial assistance.

Then, 504 in 1973, which said you couldn't discriminate on the basis of, at the time, handicap in any program or activity that received federal financial assistance. The question before the Supreme Court was what does it mean, a program or activity that receives federal financial assistance? Previous to the Grove City decision, the agencies had interpreted those statutes to mean that if an institution, such as a college, got federal financial assistance in any of its parts, its whole would be covered. The Supreme Court decided in Grove City College v. Bell that only the actual, little entity that received the money would be the only program or activity within a larger institution that would be covered by the civil rights law.

In that case, if it were a student loan, only the financial aid office would be covered within the whole college, and that was not where the person had been discriminated against; therefore, there was no coverage under Title IX. The same day the Supreme Court issued a decision saying that would be the same for 504, and, then, of course, it was the same for Title XI because that was the predecessor to both statues.

The idea of the Civil Rights Restoration Act, which took four years to pass, was to restore those laws to the previous understanding by the agencies charged with implementing them, which was that, if any part of an entity got federal financial assistance, the entity as a whole would be covered.

In devising that legislation, there were a lot of questions what would or would not constitute federal financial assistance for the sake of coverage by the civil rights laws. One thing people wanted absolutely. They were called Pell Grants, which actually went to the individual who then gave the money to the college, so it didn't go directly to the college. Everyone said that should be covered.

I said, "Well, if that's covered—I wrote or answered in response to some question that was being asked—then food stamps should be covered for grocery stores. So, if people got food stamps and gave them to the grocery store, then the grocery store is in receipt of federal financial assistance, and they would be covered. Everyone had a fit because, first of all, it's not relevant to any other group other than disability because everyone else, at least, can go to the grocery store. People aren't discriminated on the basis of race and sex in the grocery store, supermarkets. Well, they weren't at the time.

Breslin: Theoretically. [laughter]

Mayerson: Well, theoretically, certainly not by sex. It wasn't a big issue in the race discrimination genre either, shopping in grocery stores. Working is a different
story, but shopping. But, it was a big issue in disability. I thought, oh, that's a hook to getting grocery stores and supermarkets to be accessible. Anyway, this was a big faux pas because, apparently, everyone thought that was a horrible answer, and that it would open up the whole thing. It would be politically infeasible. It would show that the whole indirect thing had gone too far. It could end up cutting back on student loans. It was like, for me, a nightmare.

I thought, oh my God, I've ruined this thing by raising this issue. I felt very insecure as a lawyer and as a person involved in this whole larger struggle. I was not just doing a disability thing. I was doing something larger, and I was getting feedback that this perspective had been a really bad thing to say. I remember, actually, I think we were at Lisa Walker's house, for some reason. We were at someone's house. I was with Pat. I remember her just getting on the phone and saying, "It makes sense to me. I don't see the difference," and just being really strong and supportive. It didn't sound like it was such a stupid ass thing to say to her and really being supportive.

I remember that was a very important thing for me because I felt like I was definitely being backed up, even though I would have backed down in one second. My impulse would be to back down when I thought everyone else thought it was a bad move, and I did not have the security to go up against the whole civil rights community. I remember Pat—I think she was on the phone with Ralph—just totally defending that it sounded like a very smart thing. I mean we didn't have to highlight it necessarily, but it didn't sound like a wrong answer. It sounded like a right answer, an important thing. That's actually my memory. It's very personal because it seemed so awful at the time to have potentially done something that could affect civil rights generally. I also, probably, had exaggerated in my mind the impact it was going to have. It was my first legislative effort, and it was my first time working with the broader civil rights community.

I think the awesomeness of the involvement really hit me very strong. The awesomeness of what you were potentially responsible for or could potentially be laid at your feet was so huge and so overwhelming.

Breslin: So, what was the outcome of the food stamp issue?

Mayerson: I don’t think we ever actually totally withdrew from it, but I do think we probably didn’t really highlight it. I don’t remember ever actually having to write that it didn’t mean it was federal financial assistance. I mean it somehow passed. The issue kind of passed, I think. I really couldn’t see how you could make a distinction. I still don’t to this day.

Breslin: What’s politically expedient and what’s legally accurate are not always the same things?
Mayerson: Right.

Breslin: So, what was the tone of the relationships between the civil rights community players and the disability community during this process?

Mayerson: Well, I feel like it was really Pat's opportunity to prove herself to the civil rights community generally. I think that she really went in there with the big boys, and that it was because of her personality that she was able to do that. I think, in that world, the people who go to those meetings were Judy Lichtman, Marsha Greenberger—Elaine Jones. They were like the heaviest hitters, the most respected civil rights leaders in Washington D.C.

Pat absolutely went in there with an entitlement attitude. I just don't think many people could have pulled that off. I think it elevated the issue. By elevating herself, it elevated the issue; I believe that happened. It made people watch their p's and q's. All of a sudden, you're at a meeting and the traditional civil rights meeting would be going, "race, sex, and disability," whether they knew what it meant or not. [laughter] It started to be something that people would, at least, give voice to.

Breslin: Are there any particular meetings that you remember attending that really stand out in your mind as interesting, pivotal, worth reporting?

Mayerson: No, I just remember endless meetings about making graphs about trickle up and trickle down, and what kinds of things would be considered federal financial assistance.

Breslin: Playing all scenarios out.

Mayerson: Yes, and also trying to figure out something that was going to sell. I was involved in that, but I wasn't as involved in it as I had been in other things. I definitely was involved in it, but I think a lot of things happened when I wasn't there. I don't think a lot of things happened that Pat wasn't there, though.

Breslin: Conrail [Consolidated Rail Corporation v. Darrone, 1984] was in this time frame too, I think. Do you remember where it came into play?

Mayerson: I guess, in 1984, the Supreme Court granted cert on the next 504 case, the one after Southeastern Community College v. Bell. I called upon myself to decide that DREDF needed to get really, really involved in that case. I was able to contact the lawyer whose case it was and basically just butt in, in a major way, to his case and get very, very involved. So, what happened was there was a lawyer from Scranton, Pennsylvania, Joe [Joseph] Lenahan from the law firm of Lenahan, Lenahan, and Lenahan. They just had a storefront office, and they were a family, obviously, firm. Thomas LaStrange came to their office.
He had been a railroad engineer for many years, and he had left the railroad on disability. He had lost an arm. He came back to the railroad wanting his job back, and they said you can't be a railroad engineer with one arm. He didn't think this was fair. He went to this law firm, and the law firm just kind of evaluated the case as a jury appeal case. It thought: It's Scranton, Pennsylvania; Consolidated Rail Corporation was laying off a lot of people, the railway was a major industry in that town, and that they would take the case because the jury wouldn't like the big railroad being mean to the one-armed guy. So they took the case. [laughter]

The next thing they know they were in district court. They [Conrail] got a motion to dismiss on the basis that employment was not covered by Section 504. They lost. They went to the court of appeals. It turned out there was a clerk at the court of appeals who really researched and did a good job on the opinion, who I've subsequently met, and it was a very, very good panel of the court of appeals. They did a great job and said that employment was covered, so Consolidated Rail Corporation appealed to the Supreme Court.

The next thing you knew, Joe Lenahan was in the Supreme Court on an issue that he knew absolutely nothing about and cared less about. Other than, of course, he wanted to get a good jury and get a good jury verdict. I mean, as far as the broader issue, he had no interest in it, so I decided to contact him and ask him, since he was in Scranton, Pennsylvania, to come to Washington D.C. to meet with civil rights lawyers about this important civil rights case that was going to be in the Supreme Court.

I remember we met at the—. Where were we? We were in a meeting room in—. I can't remember actually. I remember the room, but I don't remember where it was. I had called all these public interest lawyers together. Again, it was a 504 case, but, because it involved 504, it had potential implications for other civil rights laws. Basically, it was probably a mistake because it was a very overwhelming meeting with all these national civil rights lawyers.

Joe Lenahan, basically, came up and all he knew or wanted to talk about was the facts of the case because that's what he intended to tell the jury about. Anyway, we had that meeting. Then, I started to develop a relationship with him. We were strange bedfellows, indeed. We started to develop a relationship, and I basically told him that we would write the brief.

Breslin: Write the party brief?

Mayerson: Write his brief, yes. Also, write an amicus brief for the disability community. I decided that a good move would be to get the NAACP Legal Defense Fund on a brief because the fund, I had been told, was well-respected in the Supreme Court. So, two things, if their name was on a brief, it would probably be read. Second, if their name was on a brief at least the civil rights justices such as [Thurgood] Marshall and [William J.] Brennan would at least
get, "Why are they on the brief? Is this kind of like a civil rights issue," because that was missing from Davis. I feel like, now, I'm amazed by how much nerve I had considering how little experience I had, how little clout I had, how little anything I had to go with. I just had a lot of enthusiasm. [laughter]

I remember I went to the NAACP in New York to tell them about getting involved in this case. This I don't remember, the meeting, but I met Eric Schnapper. I met Beth, whatever her name is, too. Somehow, Eric Schnapper was going to be involved with me. He was a Supreme Court litigator, though. He was going to be involved with us on writing this brief, me and Joe. We decided that he and Joe would file the party brief, and that I would write out the amicus brief for the community.

Then, I was working here in Berkeley with Kim Swain and Margaret Jakobson. I decided, I guess, to write what's called a Brandeis brief to the court because what I figured in reading Davis was that the court did not understand why it was discrimination if someone couldn't do something in the same way and equally to the person they were claiming discrimination with. In other words, discrimination is a comparison of two groups. If the two groups, the groups—. What's it called, like in an experiment?

Breslin: The control group.

Mayerson: The control group was the white able-bodied man. Then, if you had a race discrimination case, you did it the same as the control group, and you just be discriminating against a race. If you did sex, you would have done it the same; you would be discriminating against sex. That's how it was determined whether the discrimination had taken place, if you did it the same as the control group. So, when you didn't do it the same as the control group, the question was why is that called discrimination?

Also, the idea that people with disabilities were not being excluded from jobs because of their disabilities but because they couldn't do things, that was also foreign. It was understood that was true. There was a history of race discrimination. It was understood, even, that there was a history of sex discrimination that had been developed over the years in the Supreme Court. There was no even comprehension that if someone wasn't doing something who was disabled it was because of discrimination. It was understood that it was because of their disability. So, that's what our brief was going to address. It's just kind of like setting a very fundamental Disability 101. [laughter] Actually, there was no ground work.

Breslin: This is Disability 101. [laughter]

Mayerson: This was Disability 101. I mean we were desperate for writings on this topic. Kim and Margaret spent months in the University of California social science
library, psychology library, medical library. We spent, basically, no time in the law library trying to find studies that showed disability discrimination, that there was such a thing as disability discrimination.

Then, I was given the studies, and then I had to make a determination as to what they said and whether they would be helpful. I would say the majority of things I just found completely not helpful, and not to the point, and very soft.

There were enough things, kind of gathering them all together, that were studies that were trying to compare race discrimination, for instance, with disability discrimination, or just the fact of bias, that people were biased regardless of ability, and that kind of thing, that tried to bring that point across. The other point, of course, trying to bring across the point that paternalism can also have its own discriminatory impact even if it doesn't have that intent, and that kind of thing. So, that was the whole purpose of that brief, and that brief was something. I don't know if anyone ever read it, but I think it was an important document to exist.

Breslin: That's true.

Mayerson: The Unexpected Minority is an excellent book.

Breslin: Oh, I know. I have my students read it.

Mayerson: An excellent book, that's another thing. They did some real groundbreaking work in that book. Anyway, there was some stuff available that was very good, but there wasn't tons. Then, the party brief we worked on very closely with Joe Lenahan. I would meet him in Washington. I remember this one time we went out to dinner, and he was drinking. He got drunk. I tell my students this. We were talking, and he said, "You know, I don't really give a damn about this disability rights thing. As a matter of fact, I really agree with the government." [laughter] He said, "It's like I feel like I'm Attila the Hun, and you're left of Castro." That is exactly the expression he used to describe me.

So, I was like, oh God, what do we have in common here? Then, what he said to me is, "The only thing I care about is not embarrassing myself in front of my family who's going to be at the oral argument." So, what I tell the students is that's it, that's enough. I said to him, "You know what, if you don't want to embarrass yourself, don't do one single thing that we don't tell you to do," basically.

Remember that article that was out a long time ago, and he was quoted as saying that it was much, much easier arguing in front of the Supreme Court than it was doing all the stuff I made him do, like piles and piles. I made him a notebook to read and to study, and then I'd test him on it. It was really very
much of a tutelage kind of thing. He went up and he did it, and he did a good job. We won the case.

Breslin: He did what he was told.

Mayerson: He did what he was told, and he did a good job, though, too. I definitely developed an affection for him, and he won. We won that. Then, basically, we've been involved in almost every 504 case since then, and now the ADA.

Breslin: What would have happened if you hadn't gotten involved in that case, do you think?

Mayerson: I have no idea. I have no idea. I can't imagine what would have happened. Maybe, he would have won anyway because we were right on the legal argument, and the Supreme Court does have the absolute best and brightest law clerks. It's always questionable how much they rely on litigants in the Supreme Courts, the lower courts, I think, definitely, but I guess I don't know.

Breslin: Do you think somebody else might have come forward if they found out about it, or was there someone that—?

Mayerson: I don't think so, not at that time. Now, I mean, you know, we're like swarming with people who want to get involved in Supreme Court disability litigation.

Breslin: What do you conclude from that?

Mayerson: Well, it's a more established field.

Breslin: What was the importance of that case?

Mayerson: Well, the case was important because it established employment coverage under 504; 504, at the time, was the only thing there was to cover employment discrimination, which was obviously a very big area for people with disabilities. The threat of the case was that there would be no coverage at all.

Breslin: What was going on in your personal life during all this?

Mayerson: My personal life?

Breslin: Were you just working? Were you bi-coastal during this period?

Mayerson: I really think that I, for about five or six years, spent all my time working. I did go back and forth a lot, but I mainly worked. I worked a lot.
Breslin: Arlene, I think we're in the 1983-'84 period in your career. What stands out for you in this period?

Mayerson: Well, besides ConRail, I was also litigating at home in Berkeley. We had developed a priority at DREDF to do integration cases, integration of disabled kids cases. That, actually, had started to develop, I think, at DLRC.

Breslin: You're talking about integration of kids in school?

Mayerson: Integration of kids in school, and we were focusing primarily on the most severely disabled kids, and that was actually, I think, very interesting. All of our cases involved kids who were cognitively disabled, and usually, often, physically disabled, and often times, the most significantly of each. That kind of just came about partially because those were the clients we had, and also because that was the population that was the most segregated in the California school system.

In California, there was a dual system of education with the most severely disabled kids going to what were called development centers, which were, basically, mini-institutions where all the most severely disabled kids went. It was very much kind of a medical model. They needed to be there because they were fragile. They needed to be protected. There were, supposedly, all kinds of services like therapies available. The teachers were specially trained. They could have a lot of attention, and all those things.

What was missing from the environment were any nondisabled peers, role models for important things that they were needing to work on such as language and social behavior. Gradually, it became clear to the kind of cutting-edge educators in the area as well as parents that whatever they were gaining through being in segregated places they were losing more. There became a move to try to break down the dual system of education and get the kids that were at the development centers into regular schools, so we became very involved in this effort.

In several places we started representing parents who were wanting their kids to leave the development center and go to, at the time, this is 1984, special day classes on regular school sites. They would still be in a special ed class with disabled kids, but they would be able to go to the general school for certain activities, certain classes, certainly for things that were non-academic, such as lunch, assemblies, or music, et cetera. That was the model, at the time, for kids who were cognitively impaired. At this time also, I should mention that there were also schools for kids who were just simply physically disabled as well.
Actually, if I can step back for a second, now I'm remembering where our first big effort was. It was the Ralph Bunche School in Oakland. Actually, in 1980, we developed a big effort in Oakland to get kids out of the Ralph Bunche School for Mentally Retarded Children. We worked with a parent group in developing a parent group to start urging the school district to break down and change that school, which it eventually did do. We continue that effort in the school districts in our more general area, the Bay Area.

One particular case involved a bunch of school districts in the Tri-Valley area of southern Alameda County.

Breslin: Right.

Mayerson: Livermore. What happened there was that there was a bunch of kids who were severely disabled, and by this, again, cognitively disabled, physically disabled, kids who are mostly nonverbal, have almost complete physical needs. These kids who would have traditionally been in development centers weren't, in this area, because they didn't have one to serve that area. So, for this kind of coincidental reason, they ended up being in a special day class in regular school.

The parents of these kids, who would not have necessarily been the ones to advocate for that, found their kids there and learned to see the benefits of it, and, particularly, the relationships that they were developing with other kids in the community, which is very important for the kids. I have come to believe it's very, very important for the family in terms of breaking down the kind of stigma of not really being a member of your own community.

If your kids can't go to your community school, then you're not a member of the community. It's like the whole family has a hex on it or something because there's something defective about the family that it can't participate in the community like any other family. A big part of community participation is going to school. Your kids go to school. That's why people choose to live in certain communities, et cetera. These parents said they were in the community.

Then what happened was at one point there was a lot of school closures. The school population, for some reason, declined, and there were also budget cuts in schools, so there were a lot of school closures. They were trying to consolidate schools, et cetera. When they were consolidating the schools these kids were in, they said, "Oh, no problem, we have a couple of classrooms with these severely disabled kids. They can be shipped off to the development center that's an hour away and give the space for nondisabled kids in the community."

The parents were like "Wait a minute. Why are our kids the ones that have to leave?" These parents, who would normally be your suburban, not political, if
anything, probably politically conservative, you know, cut-grass lawns, et cetera, were pretty outraged that they would just automatically assume, without really even discussion, that their kids would be the ones who would have to leave. They, somehow, got in touch with us. I don't know, actually, how that happened. We decided to take this case on.

We filed a complaint in court saying that it was a violation of section 504, their civil rights, that they were being treated as though they were of lesser value than nondisabled kids. They were already there and were being moved, so kids who weren't there could go there. So, basically, it was a straight discrimination claim not really having to do with special education; although, I'm sure we added that also.

We filed the lawsuit. What I remember more than filing the lawsuit is how involved we got with the parents and their kids. For one thing, it was important for us to be sure and start documenting the benefits the kids had received from being in that environment, in that class, and also to make sure that their IEP, their Individual Education Plans, reflected the benefits that they had derived from that environment.

So, we got very close working with the families. We got ready to file a lawsuit and to ask for a preliminary injunction from the court. I remember we got all the way there. We got all the way there, actually, all the way to the argument, and, then, the case settled, and they decided to let the kids stay. It was a very big victory for those parents and for DREDF in terms of seeing the same thing that we've done in everything else, working with a community group to make something happen and using the laws as a vehicle to make that happen. Also, it also sent a shock wave through the whole development center community. That and some of the other things that we did started creating rumbles.

There was a meeting called in Alameda County with all of the parents who were at development centers, and they said, "If any of your kids leave this development center, we're just going to have to shut down the whole thing, and they're just going to be thrown into regular ed. They're not going to get any services." There started to be a lot of scare tactics to try to keep the development centers open because they had their own reasons for being open. They had their own staff, their own union, their own administrators, their own salaries, et cetera. Gradually, I think we were very much a part of the process of breaking down the dual system and having most of the kids, although there are still some development centers, at least, educated on the regular school sites.

In the years to come, we learned that model was faulty in very, very fundamental respects and moved from the model of placing kids in special education classes on regular school sites to what is now called inclusion, which we will get to later, if we're going in chronological order.
Breslin: Well, we don't have to go chronologically. [laughter] Say a little bit about that conflict while you're there.

Mayerson: Okay. The move from separate schools to regular school sites was a lot dealing with stigma, and it was a lot dealing with the inherent badge of inferiority that came from having to be separated. I think all that was very good and wise. I think what happened was that the focus on being in the environment of nondisabled kids but not really being with them—the idea of having a special day class on a regular school site ended up carrying with it its own stigma.

I think that it also was educationally unworkable. The idea that the disabled kids would kind of, through osmosis from being in the same environment, somehow benefit. I think educators, first, learned that wasn't really happening. So, now, when we look back on it, when I'm teaching about inclusion and this whole movement, I think it's always in hindsight that you see things. When you think about it, you take the kids that are the most outside of the mainstream and have the lowest skills, in terms of things like social interaction, and you put them in the absolute hardest situation that any kid could be in for social interactions, which is being in a separate environment and being put into the mainstream environment only on special occasions and then being taken back out.

I use the example of my daughter, for instance, who is nondisabled and incredibly socialized and would have an incredibly hard time all of a sudden going to someone's class for music, all of sudden to going to someone's class for art, all of a sudden going to the assembly or to the lunch table and socializing with kids that she wasn't with the rest of the day.

Now, when you think about it, it just doesn't even make any sense that you would put those kids in the hardest social situation that any kid could be in. It wasn't working because they were still strangers in a strange land. So, the idea of inclusion is educationally more sound. Independent of stigma, in order for the kids to be a part of or to even be able to benefit from the interactions, the nondisabled kids have to want to interact with them and have to be in a position where they consider them part of their community. Their community is the class and that's basically the rap.

Breslin: What was your role in Tri-Valley in terms of developing the legal arguments or talking with the parents about what options they might have?

Mayerson: I really can't remember if I even had co-counsel on that case. I just don't remember. I think I was lead counsel, and I was working with Kim Swain who was also great. She was working at DREDF at the time. We were very involved with the parents, and it was a great group of parents.
Breslin: The parents were swimming upstream in terms of what they wanted for the kids because everybody in the community was suggesting the kids should be segregated. How do you evaluate their interests in having the kids be, at least, on the regular school sites now in hindsight?

Mayerson: Well, first of all, in terms of their swimming upstream, that's true. They had already appeared before the school board, appeared before this, appeared before that. I find this all the time that even the most well-organized parents often can't succeed without a legal tool; that's a comment on our society, but it's true. If they can get sued, and they have someone who says they have a legal right, they are given a different level of respect. I love that part, coming in with that.

These parents, I think, had reaped the first benefit, which was true for the families, that if their kids were in the regular schools, they were, at least, were part of the parent community and the family community. And, their kids were did derive some benefits because they had, at that time, peer-tutoring programs. They did develop some special relationships with kids that they valued. I think that first level was the parents' understanding what it was like to be part of a community and then to be told their disabled kids had to be moved to make room for nondisabled kids.

First of all, almost every single one of those families had more than one kid. The families that lived in Livermore, et cetera, had more than one kid, and their kids were going to this school. You're a part of the community, and you're assumed to be a part of a community, and, all of a sudden, you're told that you have to leave. Your kids have to leave. It was such a slap in the face to these parents.

If their kids had originally been in development centers, and they had bought the whole thing about they go there for their protection, and they get a better education, that's one thing, but there was no gloss to this decision. This was, "We need the space." It wasn't that, "Your kids are going to be better off." So, in that sense, it was really incredibly interesting. It stripped away all of the gloss, and all the little niceties, and that whole charity approach was stripped away. It was like, "Hey, we need the space." It was really something very stark for them to experience.

Breslin: How did this case compare to what was going on in other parts of the country?

Mayerson: Well, it was a lucky case, in that way, because of the circumstances because the kids were already there. Every case that we've won—. Well, not every case that we've won, actually, but almost every case that we've won, involved some circumstance or happenstance that the kids have some reason, usually a mistake, in why they had ever been in the regular educational environment so that you were able to actually show that there had been the benefit. So, in that sense, they were different.
It was much harder, first of all, to get parents who had been told from the get-go that this was the nicest thing that the state was doing for their kids and who were bought into it, and understandably so. Number one, it was harder to get to those parents. They saw us very differently. Number two, when they wanted to change, they had nothing to show that their kids would be okay. They had nothing to show the school districts, and they had nothing to really reassure themselves with. In that sense, it was different. But, in the sense that it showed something that was behind the whole separation thing, it showed that there also was bias behind it. Then, it had implications to any situation.

Breslin: Do you recall any responses from the school districts in the early stages of this case? What was their justification for this action? How did they react to being charged with discriminating against kids?

Mayerson: I don't know. It's not like one of those cases where you get involved, and the next day they fold, at all. I mean we definitely had to file a lawsuit. We definitely were ready to go to court. I remember that because my parents were in town, and they had come with me to court, and, all of a sudden, it wasn't happening because we settled. I know that after it was all over, school officials were into being very proud of this model that they now found out they had.

Breslin: They had an obligation, at this point, to comply with the, then, Education for Handicapped Children Act, and they were clearly just paying no attention to any of the individual assessment requirements or the least restrictive environment requirements, which raises the question: how could they defend themselves in the face of the request of the parents?

Mayerson: Well, what they were saying was they weren't changing their education; they were just changing the location of where they were educating them. In fact, I think, maybe, even the same teachers were going and everything. Now that I think about it, the county might have even paid for those classes. Somehow, they were able to say, "We're not changing anything. We're just changing the location, which meant they weren't recognizing any benefits of them being in a regular school. It was just happenstance that they happen to be housed there; they could be housed somewhere else.

Then, after we wrote all the briefs and all the declarations about how much they had benefited, and after we won the case, like I said, then they were, all of a sudden, very proud of this model they had where severely disabled kids were on a regular school site benefiting. There was a great, great teacher involved, and she really made it all happen, the peer interactions.

Breslin: Do you think that case had an impact nationally?

Mayerson: No, I don't think it did, only in a sense that one philosophically considers ripples anywhere to contribute to a stream.
Breslin: What else was going on at DREDF at this time that you were involved with?

Mayerson: I don't know. What else was going at DREDF at that time?

Breslin: Well, I think the *Smith v. Robinson* case had been decided.

Mayerson: Okay, and that was '87. Wasn't it, or, was it '86, '85?

Breslin: ‘84.

Mayerson: ‘84, oh, yes, that. [laughter] The Supreme Court decided that there were no attorneys' fees available to parents who prevailed when they brought a case, at the time, EHA [Education for the Handicapped Act], now, IDEA [Individuals with Disabilities Education Act], case. That was a very big deal because, if there were no attorneys' fees available to a parent that prevails, it basically means that there's no availability of the law to poor people, or even middle-income people for that matter because the only way to bring a case against a school system that's extremely well-financed is to have a lawyer to whom they can say, "I don't have the money to pay you, but, if we win this case, you'll get paid by the school district."

So, it was a very big deal, and we decided to get very involved. Actually, we really weren't involved, at first. At the very beginning, there was a movement in Congress to overturn that decision, and it was being done by the CCD [Coalition of Citizens with Disabilities]. Oh, we didn't go over the deregulation of IDEA.

Breslin: We can come back to it.

Mayerson: So, it was being done by CCD, which was the Coalition of Citizens with Disabilities. Actually, at the time, I think it was still CCDD, the Coalition of Citizens with Developmental Disabilities. Wasn't it?

Breslin: Yes.

Mayerson: So, they were all writing the statute, blah, blah, blah. Then, I came to town with Pat, and we were starting to get involved in the process. I looked at the statute that they had already made all these commitments on, and it was a piece of mealy-mouth—. It was all this stuff about you could get attorneys' fees unless the school district had acted in good faith. It had all this kind of, like, charity model stuff in it about if someone was looking out for your good, or something like that. I said this isn't about attorneys' fees. I mean, attorneys' fee statutes say you get attorneys' fees if you prevail. We don't care about their good faith, or their intentions, or anything. So, we came in and, basically, turned the whole thing upside down much to the absolute chagrin and met with so much hostility from the people who had been working on it.
Dave [David] Esquith with the United Cerebral Palsy was so pissed off because, as far as they were concerned, we were going to ruin the whole thing.

Then, Pat totally, completely, utterly supported me again. We went to this meeting. It was so unpleasant. I had this little handbook on civil rights laws, and I really just relied on this little handbook. It turned out that I read this thing about how, in Title VII, with sex and race discrimination in employment cases, there was a Supreme Court case saying you could get fees for the administrative hearing, and that was called the Gaslight case. They had absolutely given up on getting fees for administrative hearings. This was only going to be for court.

Breslin: And, why was that important in this situation?

Mayerson: Well, it was extremely important because, in the IDEA, you can't go to court unless you've first gone to the administrative proceeding. The school district used attorneys in those proceedings, and, if the parents can't go with an attorney, they just don't go. It didn't matter if you had attorneys' fees for court proceeding if you never got there. So, it was extremely important. We went in saying, "We think there should be fees for administrative proceedings," and there was a very big uproar about that. I don't know how we ever prevailed actually.

Oh, I know, we had a major ally who was Paul Weckstein from the Center for Law and Education. He and I worked really closely together, and, finally, we were working with the staff in the House, for Representative Pat Williams. Pat Williams, the head of the committee, his counsel was Bobby [Robert] Silverstein. We started, at that time, when he was still in the House working for Pat Williams. That's when we first met Bobby Silverstein, and, probably talking out of school, Bobby started meeting with me and Paul to try to make this idea we had come true. The reason it's out of school is because the main staff person working for Representative Williams was someone named Gray Davies, or something like that, and he wasn't in support of what we were doing, and Bobby worked with us to help us make it happen.

So, anyway, it happened, and we won. That was another major, major win. It was an incredible good attorneys' fees statute. We ended up turning around CCDD. We totally turned it around, made it into a strong civil rights statute that matched other kinds of civil rights statutes, took it out of this rubric of disability rights being something different, something softer, and also met a lot of people who were going to be very beneficial to our future work.

Breslin: Say a little bit about CCD in terms of its role in policy making that you experienced during this period.

Mayerson: Well, actually, I'm trying to remember, now, everything that had gone on and who were the major players. It was called the Handicapped Children's
Protection Act; it became known as this euphemistic term. I don't really remember anyone, except I know Dave Esquith was involved. I think he worked for UCP [United Cerebral Palsy] at the time. I don't really remember where Paul Marchand was at with it, and I don't remember that much about who the players were. I think that it's fair to say that, in general, the approach they took was very much consistent with where CCD was at that time.

[Begin Tape 5, Side B]

Breslin: You were talking about Paul Marchand.

Mayerson: No, no. That's where you think it cut me off, because I had gotten farther than that. I was saying that, even though I don't remember the actual characters that were involved, the actual people that, well, except for David Esquith who hated me, that's why I remember that, other than that, I don't remember the people. But I think it's fair to say that the approach was, at that time, a CCD approach, which was still like a disability lens.

It wasn't quite there from the civil rights perspective. It was still too soft. It was still too much like a lens with, what is it, like a haze on it like you're trying to soften the image. I think that, in those days, CCD was not at the place that it came to be by the time of the ADA. I think it was a gradual learning process for people who had traditionally done benefits work, who were great people, but I think it was a gradual learning process to get to the point of being really hard-nosed civil rights advocates.

Breslin: What agencies comprised the membership of CCD, generally?

Mayerson: Well, it's huge, but the hugeness of it does not represent its leadership at all. It's service organizations. It's parent organizations. It's the traditional disease oriented organizations; United Cerebral Palsy; ARC, which is the Association for Retarded Citizens; Council of the Blind, something like that; and then there were the OT and PT associations, the psychologist association, that kind of thing, people who worked with people with disabilities and school children. At the time, in the early eighties, the primary mover and shaker in the group was from the CEC, which was the Council for Exceptional Children, which was Fred Weintraub.

Well, Fred Weintraub and Paul Marchand had the CCD in the palm of their hand, I think from my little outsiders perspective.

Breslin: Well, what do you mean when you say "in the palm of their hand"?

Mayerson: They were really the Hill veterans. They were the smart lobbyists. They were the people who knew the ropes. I think that they were very, very, very much, because of that and rightly so, in a tremendous leadership position. They did what they did the best it could be done. There would be no IDEA without
Fred Weintraub, and there would certainly not be any of the benefit programs and all the various programs that are available to retarded people without Paul Marchand. They really did do their job in an excellent and very sophisticated fashion. Neither one of them had come from a civil rights perspective.

Breslin: And, neither of them were persons with disabilities.

Mayerson: Yes, they're not.

Breslin: What was Fred's position on Handicapped Children's Protection Act?

Mayerson: Like I said, I don't really remember. I mean I assume that he was very involved, but I don't really remember him at all. I can't picture him there. I picture him very, very strongly at the meetings that became also very difficult on the deregulation of the EHA, which was before this. After that, he did become much less involved. I don't know if there's any direct correlation, but he definitely did become less involved. Pat would know a lot more about whether there was a correlation. I'm not sure he was a major player in the Handicapped Children's Protection Act.

Breslin: How do you see your role being perceived by these more traditional members of the CCD?

Mayerson: I don't know that I was ever really perceived that much. I think that Pat was always perceived. I think I really always kind of was like in her shadow, and I think that was—. I think that people obviously knew that I was there with her, but I don't think I was so much of a persona, myself.

Breslin: You suggested that *Gaslight* was the justification for fees at the administrative hearing level. Originally, how was that perceived?

Mayerson: Oh, horribly, I mean I got screamed out of that room. I was considered completely outrageous, off the wall. It was very, very negatively perceived. I've been in situations, that situation and the IDEA deregulations situation, in which I was just called a hick, basically, from Berkeley who didn't know what the hell I was talking about, and out of touch with reality, and didn't know how the Hill worked, and stuff like that.

Breslin: Yet, you prevailed with this position.

Mayerson: Yes, but that was because Pat was saying, "I know how the Hill works, and that's what we're going with." She was called a hick from Berkeley too, but not for too long.

Breslin: So, what was the key to your relationship with Pat that enabled the two of you together to sort of promote these really very revolutionary policies?
Mayerson: Well, I think Pat and I were a good team because neither one of us necessarily wanted to do what the other person was doing. It's funny because it never really hit me about that until I talked to Netta, and she was trying to understand the role of the lawyer, et cetera, and then she told me that Chai found it very frustrating that there would meetings or anything happening that she wasn't in on. I responded that I wasn't frustrated by that, then it hit me that I never wanted to have Pat's job. I was very happy she had her job. I think that helped in our partnership. I wanted to do what I did; she wanted to do what she did. Everyone was happy with what they were doing.

Also, obviously, it helped that she respected that if I said something it was probably worthy of going forward with it. She has no level of heat that she can't sustain, so it gave me a lot of confidence too. My style of advocacy is pretty in your face and zealous also. I mean I'm not going to attempt to let go of something. So, the combination, I think, worked.

It is true. I think I probably cared more about people's opinion than than I do now, for instance, but I don't think that was ever a really big thing with her. I think she gave me a lot of confidence to go forward with ideas that weren't necessarily the accepted way. I also felt I was only coming from a civil rights perspective. I really wasn't that sympathetic to the other point of view, so that helped I guess to take unpopular positions. Bobby Silverstein, for the record, still owes me dinner because when I came to him telling him that we were going to get fees for administrative hearings and that there was precedence for it, he did not believe me, and he said he would buy me dinner if I was correct. He still hasn't.

Breslin: Who is Bobby Silverstein?

Mayerson: He was a lawyer for the committee in the House that was doing the Handicapped Children Protection Act. Then, he became the staff person for the committee in the Senate who really wrote the ADA and the IDEA re-authorization. We have a lot to cover still.

Breslin: He bet you that the Handicapped Children's Protection Act would never include fees for administrative hearings?

Mayerson: Well, he bet me, yes. He didn't believe that there was a *Gaslight* case. He didn't believe it existed; he thought I made it up. [laughter]

Breslin: Jane West did her doctoral thesis on Handicapped Children's Protection Act, and she suggests that there were very, very specific camps that played very specific roles in regard to the process of getting the law enacted. Do you have any recollection of who you might put in which camp? You've spoken a little bit about it generically, but do you have recollections of who was where?
Mayerson: I should read her thing. I mean it's interesting because that's an example where I was so involved on the House side; I wasn't really involved on the Senate side. I think, probably, because what happened was we developed, in that particular case, the language on the House side, I think. By the time we got to the Senate side, it was all politics, so Pat handled it. So, I actually don't really know. I know how the language was developed and who it was developed by, and that they were a strong camp against what we were proposing, which was a radical change. They thought we'd, basically, lose votes because of it. As it actually ended up playing out, like all the way to the floor of the Senate, I really don't know.

Breslin: How does the Handicapped Children's Protection Act play out in terms of DREDF's role as a policy advocate? Towards the evolution of its role as a policy advocate?

Mayerson: Well, what happened was we came in with the deregulation; we played a part in the Civil Rights Restoration Act, but that was the overall civil rights effort. We won the deregulation on 504. Then, we were very involved in the IDEA deregulation, which was also targeted by the Bush Task Force on Regulatory Relief. We're going to cover this later, but just to make this make sense. Then, Fred Weintraub who was very much in charge of CCD, I remember, going to that meeting on the deregulation and them saying, "We have to negotiate with the department on what's going to be deregulated.'"

I remember Pat and I saying, "We don't think we should negotiate. We think we should just fight it." They told us we were stupid, and we didn't know the Hill, and we didn't know anything, and we were stupid, and that it wasn't going to happen. We went back up to the office

Mayerson: A woman from the American Council for the Blind, of the Blind was working very closely with us then. Her name was—. She ended up marrying Chris [Christopher] Bell.

Breslin: It'll come to me.

Mayerson: Anyway, I remember she came back up with me. We were shaking; we were like, oh, God, these people. That felt really uncomfortable. That was like we were being ostracized, and I don't know how we turned that damned thing around either. That's another example, though, of where the DREDF Berkeley office and the Washington office really worked together and with many other parent groups.

By the way, we were representing a view of parent groups that was not unique at all, really. It happened to be unique at that meeting with people who were so used to dealing inside. The point of view we were representing was very in sync with the national parent community, and we worked very hard on the hearings in organizing them around the country to oppose the regulation, and,
then, that won. Then, the Handicapped Children's Protection Act won with administrative hearings in it. This is all the answer to your question of how did it affect DREDF’s role as an advocate.

DREDF's role as an advocate was unbelievable by then. I think we had gained so much credibility that it was going to be hard for people to come into a meeting and say, "You're all wet. You're all wrong. You don't know anything about politics. Leave." We had gotten past that point by that time because we won all those things. At this point, the IDEA has the best attorney's fees provision in the country because, what happened was *Gaslight* later got overturned by the Supreme Court.

Mayerson: I feel like sometimes—I tell my students this too—it's just amazing. It helps to do your homework, and it's amazing how much people don't. So, we have the best attorney's fees provision in the country.

Breslin: On any discrimination issue?

Mayerson: On any discrimination issue, but I mean it's important because it's also mandatory to go to the administrative hearing.

Breslin: Yes, unlike some of the others.

Mayerson: Unlike some of the others, where, if you can skip it, then, okay, you just skip it and go to court. You still have attorney's fees. Who's doing Pat's [oral history]?

Breslin: David Landes.

Mayerson: David Landes is doing hers. That should be a hundred hours, at least, because everything I said, “I don't know” to she would know the answer.

Breslin: That depends on how good her memory is, too.

Mayerson: No, but she knows the character stuff better.

Breslin: One of the things she's interested in doing is actually some co-interviewing with you for a few hours.

Mayerson: Oh, I know so we could bounce off each other.

Breslin: The synergy would be good for both of you, and you did something jointly, and you had different roles, and you can't remember exactly what happened.

Mayerson: Right, or, we'll remind each other of things like meetings.

Breslin: I think for the ADA, particularly, it's a good way to go.
Mayerson: For the ADA, I really feel like I should write Chai and ask if I can have, at least, my own stuff back, copies of it.

Breslin: We'll think about that. Before we end this one, do you want to say a little bit about IDEA and finish that up, about the dereg, or is that too big?

Mayerson: The IDEA regs at the time?

Breslin: The '94, '92 dereg effort.

Mayerson: Oh, I remember that was a high point, though. That was amazing. I remember the hearing in L.A. Did you go to that?

Breslin: Yes.

Mayerson: That was so great. First of all, there was a whole thing about how much I had been blown away by the parent community anyway. There's this whole thing about that that's so intense for me. I actually didn't tell you about my first special ed case with Julie. I wrote about her. She was the inspiration for my little piece that I wrote on special ed as a feminist issue, because this woman was your most typical suburban housewife you would ever meet in your entire life.

All of a sudden, her kid, who was disabled, was getting fucked over. And, this woman turned into a rabid feminist advocate. She was the kind of woman who wouldn't say peep in front of two people. With a little support, she just turned into this incredible, uncompromising, right on, righteous advocate. So, I've seen that so much with parents that I just love that. Anyway, that's what the hearing was like. It was a lot of righteous, very vocal—.

Breslin: This is '82, '83 [the first IDEA deregulation attempt], and the issue was the, then, Bush Task Force on Deregulation had targeted special education, and deregulation was in opposition to that proposal?

Mayerson: Right.

Breslin: Were there specific proposals on the table that were being rejected too?

Mayerson: I don't remember the real specifics, but it was just like anything that was going to water down rights the parents felt were barely minimal and barely working was considered an outrage. That's the word. People were outraged. Parents were outraged. It was just this wonderful outrage fest, of, you know, people outraged. The great thing was we had this—I don't know if you remember, I loved this guy—wonderful reporter from the L.A. Times who covered it. I can't remember his name right now, but he was great. Savage, David Savage. I know that the reporters don't do the headlines, but that headline "Parents Boo
Reagan Proposal," was just priceless. Then, they had to back you down on that. By that time, we just felt empowered, interesting. It's interesting.

Just a little note, when I was back East, I just met with Bill Lann Lee for fifteen minutes. It was really a squeeze in, and we really didn't have a lot of notice. It was just so interesting to me that we had so much access during the Reagan years and the Bush years. It's just so interesting to me like I told Bill Lann Lee when I went to his office. I said, "The most time I've spent in this office was with Brad Reynolds, and I don't want it to be that way." I think it's because, when you have the bad guys in, they, at least, don't know everything that you would be saying. I think, when the good guys are in, they figure they know what you're going to be saying, so they don't really need to meet with you.

Breslin: Who is Lee?

Mayerson: He's the new attorney general for civil rights.

Breslin: He succeeded—?

Mayerson: Deval Patrick.

Breslin: Are you hopeful for his reign?

Mayerson: Bill Lann Lee?

Breslin: Yes.

Mayerson: I don't know. That's another question about what is the Justice Department's role? What are they doing? What can they do? What could they be doing better? How much he'll get involved? I don't know. At one point, I can't remember exactly even what position I was told I was being considered for, but I think it was like a deputy to the attorney general for civil rights, and I feel very glad that I didn't pursue that alternative because I think you are so stymied once you're in those positions. I really want more from them, constantly want more from them. I just want someone to be really out there. I'm not optimistic generally because I feel like the people we have in there—. Disability, to me, has so many people in there. Well, not so many, but more than ever before, and I think that they're stymied.

Breslin: Well, and they have more agendas than they would have if they were advocates.

Mayerson: Exactly. You know, it's interesting. I talked to Liz [Savage] a little bit about why the disability community is so much more divided than it was during the ADA times. The ADA time was a beautiful, exquisite moment of unity in
history. It was really amazing when I think about it now. The community worked so in harmony. It was amazing.

Breslin: You don't think that is made-up history but that's true?

Mayerson: It was true. It wasn't true that there was no, like, anything going on, but it was true that no one actually opposed another. There was one little scuffle at the very end, and that's another story, where there was actually two different decisions. Besides that, there really wasn't ever a time when we had to fight against something the disability community was taking a vocal position in, I don't think.

Breslin: Do you think the coalition that formed to work on the ADA was a bonafide, serious, breath and death coalition?

Mayerson: I don't know. I mean that gets into the whole thing of what Netta likes studying. Well, she studies what is the role of the lawyer, but you could take that one step farther to say what is the role of anyone who is representational. I mean it's just an interesting question. For instance, I don't think I'm representational of any disability community. I don't even pretend to be, I'm not. I do think that I always advocated for the most protective words and the best provision from a civil rights perspective. So, in that sense, I wasn't necessarily representational of anyone, but I was always trying to get the best.

I think, from the point of view of transportation, I feel completely confident because of Tim Cook and Jimmy Weissman being involved. That was one where there really were a lot of detailed things you had to know. The stuff that I was working on and Chai was working on it there really wasn't that much you had to know. There was a lot of good stuff.

I felt like I really contributed from having been in the movement and been with people so long that I could know little things like "stick in curb cuts," and that was important, but the actual provisions, themselves, you just tried to make them the best they can be, the most protective. Well, drugs and alcohol, they certainly got blasted out, but they had a very good representative. Deaf issues, I think, were pretty well represented. I don't know. I think the lobbying was really representational. I think people that were lobbying did know what was in the law. I don't know. I guess I have a very idealistic view of it, maybe.

The other thing is I was protected from a lot, just like in anything else. I mean there might have been things going on that I didn't even know about. There probably were horrible fights, and I just didn't happen to know about them.

Breslin: I'd be very surprised if you didn't know everything that went on that was important.
Mayerson: Yes, I mean I know there were fights that were scurried, "So and so did what? They called and said what?" but not like front page of the *Washington Post* or even the *Disability* Rag or anything where it was like undermining certain people's decisions or trying to power play them out of that position. I don't know.

Breslin: What do you think about that?

Mayerson: Lizzy [Elizabeth Savage] at least has the perspective that the disability community is very divided now.

Breslin: What do you think about that?

Mayerson: About what?

Breslin: That point of view.

Mayerson: Lizzy's point of view?

Breslin: Yes.

Mayerson: Well, I don't know all that much about how the disability community functions, but I think it's easier to be unified over something like getting the basic civil rights than it is to be unified over the next stages, like with more of the second generation stuff. I haven't given this any thought, but I told her, in particular, I think that, when you have people who are your people, so-called, in the administration, and they are dealing with you at arm's length, you feel pissed off, and you feel more outside the system than you did when you were being dealt with at arm's length with people that weren't your people. It's a real double-edged sword I think, and I think it's very interesting.

People for her, in particular, might be very pissed because she's taking conservative positions or whatever. Even independent of that, I think if you are in that position you do have to work with people at a certain amount of arm's length. I mean that's a little bit debatable, too, but certainly a perception of arm's length, and I think it makes people feel more alienated.

Breslin: Well, you have an employer to whom you owe allegiance.

Mayerson: Yes.

Breslin: As though you work for a corporation to whom you owe allegiance as long as you work for them.

Mayerson: Right, and I think that people in the movement feel that they deserve the allegiance.
Breslin: Yes, and that's the paradox.

Mayerson: Yes, and I feel, and that's why I'm not sympathetic, that the people that work
in the civil rights division or the Department of Justice do owe their allegiance
to the constituency. But, that's just one of those you're-a-hick-from-Berkeley
ideas. I think that they're there for the constituency, but that's a very
unrealistic point of view. Then you don't get re-elected, then you have a
conservative president, then you have someone who doesn't care about it at
all. I understand the argument on the other side of it.

Breslin: Did you read *The Mouth* article?

Mayerson: I skimmed all of them.

Breslin: What's your reaction to them?

Mayerson: I hated it.

Breslin: Why?

Mayerson: Well, for one thing, I thought it was low-brow. So low-brow, I was
embarrassed. The writing stunk. What do you call it? Is this racist, "yellow
journalism"? Where did that come from, that phrase? I don't want to use it if
it's not appropriate, but what I mean is journalism that isn't really intelligently
researched or written. It just seemed very—. Some of it was good to be
exposed, and I think some of the questions are good, but I just didn't think
they were done in a very insightful, or analytic, or interesting way.

Breslin: What kind of conclusions can you draw from—? That's the wrong question.
We know all the players in the Department of Justice and have known many
of them for a long time. It's hard to read the kind of piece that *The Mouth*
wrote and know that it applies to people that we've known and worked with
for a long time. I'm just wondering what's your thought about what's really
going on in Justice at this point as compared with the charges that are levied
by the article? What's your reaction to it?

Mayerson: Well, I'd have to look at the article again. I can't remember really what it said.
The only things that would stick out to me are the things that I considered
outrageous.

[Begin Tape 6, Side A]

Breslin: We were talking about the Department of Justice.

Mayerson: If it is, in fact, true that the people at the Department of Justice that are
enforcing disability rights' laws are not enforcing them within the department
that's very important, and that's good to know, or whatever. I thought all the
personal attacks were just outrageous and extreme, particularly against John
Wodatch. I don't know. I really can't say whether he's the best advocate in that position. I don't know whether he is, in fact, someone who pushes as hard as I would, for instance, in that position.

I do know where his heart is at, and his mind is at, and where his commitment is. If they want to say he's not a good advocate, and you need to have a really strong advocate to go up against a bureaucracy there, I wouldn't mind if someone said that, if that's what they thought, but to say he's a pathological liar, and et cetera. I mean I thought that was a little extreme.

Breslin: What's your experience with John over all these years?

Mayerson: The opposite about the lying, and also someone who had points of view that are helpful and broad-minded. I'm frustrated with him there, but I think a lot of it is inherent to his position. Maybe, this has to do with his personality. I just don't know. I would have thought and hoped that he would have more authority, basically, but, according to him, he doesn't have that much authority even though he is the head of the division.

Breslin: What is his title?

Mayerson: Section chief of the ADA section. That's a very, very high position there, but not high enough to have the final word.

Breslin: From a civil rights perspective, it seems like as good as it gets having him where he is now at least in terms of who the available players are. It's hard to imagine people with better politics and better comprehension of the issues than he does.

Mayerson: Right, and more allegiance. I think he does have an allegiance, and he does see himself as working for the disability community.

Breslin: Talk about what would come next, or what the next incarnation would look like?

Mayerson: I think there are a lot of people in the section who are really committed now. It is interesting to see that. I think there are more, and more, and more people. First of all, lawyers that are being trained there that are really getting it, believing in it, pushing for it. I mean it's interesting, even just seeing the people that have come through DREDF, I mean Lainey [Feingold], for instance. The same thing is happening with the Department of Justice.

People are coming through and really believing in it, people who didn't necessarily come there to do disability law. I think that is true. I think that is happening. It's very interesting to me to see it happen because many of these concepts are starting to not sound so strange to people. It's like when something becomes accepted as a premise. We were never at the point before
where the whole gist of it was even accepted as a premise. Now, I see more and more people who are just like people. I mean they didn't come from any particular orientation other than law school, and they're accepting the premise and going from there. I find that really interesting. You'd think you would have to explain the premise to them, but they're kind of getting it. I mean they're also kind of missing it in some ways, some people, but they're also kind of getting it.

The interesting thing on *Yeskey* was just all the discussions that we had about whether having a medical criterion for getting into boot camp is intentional discrimination.

Breslin: What's *Yeskey*?

Mayerson: Oh, this is the most recent Supreme Court case that just was argued last Tuesday on whether prisons are covered by the American with Disabilities Act. The person who was excluded was excluded because of a medical condition, high blood pressure. We just had a talk about whether excluding someone for high blood pressure is intentional discrimination. I was actually trying to tell the people how much the justices would not see it as that.

Breslin: Would not?

Mayerson: Would not. I was trying to explain to them. A lot of people didn't see it as that also, but there would be people who would say, "Well, of course it is," and I was like, "Whoa." It's interesting because, on one hand, of course, it is; on the other hand, you don't get where these justices are coming from, how much they won't see it as that. It's just interesting. I don't know how we started talking about the Department of Justice. Do you know?

Breslin: Well, we were talking about the divisiveness in the movement now, which was not the case as you perceived it prior to the enactment of the ADA. What's your analysis? There's one piece of it that applies to the Justice Department's relationship to the community, and then there's another piece of it that is separate from that.

Mayerson: Which is the thing about the second generation issue. It's like [Rev.] Martin Luther King became considered a conservative in the civil rights movement.

Breslin: By whom?

Mayerson: By people who became more radical. Conservative may not be the right word, but more traditional, not a radical. That's now being revised some, but that was true at the time.

Breslin: Well, I think that people challenged the kind of integration goals of the movement of later leaders like Malcolm and others.
Mayerson: Right.

Breslin: Why is that though?

Mayerson: And, also, just the whole style. His style was very conciliatory, in a sense of still wanting to talk to people, still wanting to wear a suit and tie on a march, and that changed. I think that we're kind of reaching a point where there's kind of the old guard, and the new guard, and all that. At the time of the ADA, everyone was still in the same boat kind of. I don't know, maybe, that's not true.
Mayerson: Okay. Well let me just say that that was a big deal because that was one of my first forays into the politics of the CC—oh, at the time it was called the Citizens Coalition of Developmental Disabilities. It was run by Fred Weintraub and Paul Marchand being really, really very much in control of it. Pat and I came to the meeting and said that we didn't think that there should be any compromises. They felt very strongly that they had an opportunity to be on the inside track in terms of compromises, and if they weren't on the inside track in terms of compromises, they would be worse, which you know, I can sympathize with being in that position, but at the time we felt very strongly, and in touch with the parent community that felt very strongly, that there just shouldn't be any compromises made. When we came to the meeting to say that, we were basically told that we were [mic noises], you know, Washington outsiders, Berkeley hicks, and that our position made no sense and was very naive, etc.

And it was after that meeting that we had a meeting—a few of us talked about how to try to promote our point of view and that's when we got together with some people who were interested in trying to go on the parent-led strategy of no amendments.

Then, when I came back to Berkeley, I worked very closely with a group that was organized in California to fight the deregulation. It was a very, very strong parent group from north and south. The hearings were in L.A. and they really were one of the most [phone rings] fun—[tape break]—so it was fun, because there was so much energy at the parent community. And the people who came from the Department of Ed. to hear the comments probably faced the same kind of crowd in other places throughout the country but our crowd was very rambunctious, very passionate, very strong, and clear that the balance of power between kids in school districts was not such that the schools' district needed more assistance in order to leverage against parents. So that was a very successful hearing. I remember there was an L.A. Times reporter, David Savage, who was there who was great and next day the headline read, "Parents of Disabled Children Boo Reagan Proposals," which was a very, very powerful headline even for a Reagan Administration. And so there was a lot of power—empowerment—from the experience for the parent coalition that had gotten together.

Then like the 504 deregulation, the IDEA deregulation was halted and the community had won again. It was in the Reagan Administration, and these
wins were very, very notable, not only to the disability community but also to the other civil rights groups and also to people who were working on the Hill.

I should also just comment that one of the things that was great about the IDEA deregulation is that DREDF played an important role in it—was also, I think, instrumental in making it clear that the coalition between adults with disability and parents with kids with disabilities need to come together for the fight. And people having been through the 504 deregulation were kind of, you know, in a position to join with the parents against the IDEA deregulation.

Breslin: How do you see that coalition playing out in terms of the local organizations around the Bay Area?

Mayerson: At that time you mean?

Breslin: Yes.

Mayerson: I don't remember anyone really being involved in it other than DREDF. That's not to say they weren't, I just don't remember, I mean, as far as parents were involved everywhere. But I don't remember—as far as DREDF, I think people at DREDF were involved. You were involved in it, you went with us, but I don't remember other people being involved. Maybe they were.

Breslin: What was your personal role?

Mayerson: It's funny because I remember what I wore [laughter] more than anything else.

Breslin: Well, tell us what you wore.

Mayerson: I wore a white dress. I remember that dress so perfectly—it was so small—no. [laughter]

I was with the parents. I mean, I don't know if I had any particular role—I was probably what I usually was in that whole unit which was the legal person because no one else was a lawyer there in our parent unit. But certainly the people that were involved like Diane and Julie certainly knew the law very well.

Breslin: I think there might have been some analysis of the regulations that was developed and distributed to parents; were you involved in that?

Mayerson: Probably. I mean, I think that I—I think DREDF's role was, I'm sure, to go through—just like we have at 504—go through the IDEA proposals and tell parents why they were bad. And I'm sure that we were the ones that did that and that we played a leadership role in that.
Breslin: Are there any particular issues that you remember from that deregulation—that specific effort of deregulation—that stand out in your mind?

Mayerson: I don't remember. I mean, I remember the issues on the 504 so much better. I don't really remember what the specific substantive issues were. There was just this perception, that there is now, that school districts needed more flexibility and parents felt like they were barely even beginning to get what they were supposed to get with the less flexibility that was perceived to be current—and now it's the same thing! I mean, the schools are still saying, "We need more flexibility;" the parents are still trying to get the point across that they're not getting what they were supposed to have gotten twenty years ago.

Breslin: Were there particular victories along the way in that process that stand out in your mind?

Mayerson: Particular what?

Breslin: Victories?

Mayerson: In?

Breslin: That deregulation effort. I'm thinking about the Congressional level, because I'm wondering why the administration actually decided to reverse its attempt to deregulate. What was the real reason they decided to?

Mayerson: I don't know. I mean, I think that one thing is they had decided to do these hearings all over the country.

Breslin: That was a strategic mistake. [laughs]

Mayerson: It was a big mistake because there was so much public outcry against it. [pause] I don't remember the role that Congress played. I don't know if Congress was telling the administration to stop or not. I can't remember that at all. But it did work, I mean, it was really surprising when you think about it now.

Breslin: Well, and continues to work in terms of sort of parent influence over the process of developing regulations.

Mayerson: Well it is, except that when we think about the reauthorization, it was so much the other side having kind of an upper hand. I mean, now I'm thinking back and even though it was the Reagan Administration, there must have been a Democratic Congress. There was a Democratic Congress, so there wasn't as much as fear of the law actually being changed—[phone rings] [tape break]

Breslin: So what else was going on for you in the early mid-eighties?
So along with our other work we were also starting to get involved in knowing that we should be very active in Supreme Court litigation. It’s interesting because now, when I look back on then, I'm amazed at having the kind of confidence or courage or whatever it took to kind of do what I did for the next few years which was just kind of bully my way into all the cases that were in the Supreme Court. The first one that came up after Davis [Davis v. Southeastern Community College], the very first Supreme Court 504 case was Consolidated Rail Corporation v. Darrone. Actually, that wasn't the name of it. It was Consolidated Rail Corporation v. Thomas LaStrange.

We got involved in that case. We found out that cert. had been granted, the question being whether employment was covered by Section 504 at all. We obviously thought that was a very important issue and were worried because of the way the Davis decision read—that the Supreme Court wouldn't really care whether it was covered or not because they really didn't get the idea that there was discrimination. The idea that, you know, whatever the legal points of the brief would be that it was important for the court to get that there was such a thing as discrimination on the basis of disability. And it looked like from the Davis decision that the only thing that they could understand was someone who was more analogous to a minority person or a woman in terms of discrimination, in other words, someone who was actually similarly situated who was being discriminated against based on their status.

In the Davis case, this woman, Frances Davis, had a very significant hearing impairment and would have required for things to be done differently and would have required significant accommodation in order to complete the program. So what we thought was that we should step back a step and let the court know that there were thousands and thousands and thousands of people out there who were being discriminated against because of their status of disability, who were similarly situated to their nondisabled counterpart to do the jobs. Just step back and try to show the court that there was such a thing as bias, prejudice, and discrimination. That was one big aim we had. And that a lot of people were affected because there also was a line in the Davis decision that said, "While we admire Frances Davis for her determination and wish her well, she's disabled and she can't do this thing." So we also felt that it was important to let the court know that it wasn't just like poor Frances Davis, but that it was thousands and thousands of people that were being precluded from employment opportunities. So that was one big aim that we had.

The other big aim that we had was to get involved in the actual writing of the brief for the court and to make sure it was a good brief. So the two different tracks that we took in that case were, one, getting together a coalition of disability groups to write an amicus brief, which is called a Brandeis brief, where you try to bring the sociology of the situation in the real world to the legal analysis. This came from Justice Brandeis, [who] before becoming a justice of the Supreme Court, had filed briefs in the Supreme Court on behalf of women, in particular, saying, in the area of the women protective laws why
those laws had come to be and how it really was for women [mic noise] in the work place. Those kinds of briefs that brought the sociology to the court became known as Brandeis briefs. So we thought it was important to write a Brandeis brief from the disability groups saying, you know, there is such a thing as discrimination. For that brief, which I worked on with Kim Swain and Margaret Jakobson, we spent much more time in the sociology library, the psychology library, and the medical library than the law library because we were trying to find studies that documented the existence of bias. And there were some.

We also were trying to find studies that made comparisons between the type of bias that people with various disabilities faced and the type of bias that racial minorities face. And in fact, what we were able to find were studies that showed that when employers were interviewed, for instance, and asked to rank the types of disadvantaged groups that they would hire or not hire, people with disabilities were actually always on the bottom, and people with mental disabilities were on a rung below people with physical disabilities. And so this was the kind of thing that we wanted to document.

Then we, of course, also had to document that the bias was unfounded by showing that there were also studies showing that people with disabilities could, if given the opportunity, perform at the same level. The biggest study that was done that we were most impressed with and that Congress had actually looked at was a needs study that had been done during the Second World War when able bodied men were sent off to war. And who filled their spaces? Everyone's aware of women filling their spaces, but less aware of people with disabilities filling the spaces in jobs that they were previously and subsequently considered unable to do. So anyway, that was the Brandeis brief that we filed on behalf of a coalition of disability organizations around the country—and at the time I think it was sixty-three organizations, and that was a very good showing at the time.

The other thing we did was get in touch with the lawyer who was representing the actual plaintiff, who by the time it got to the Supreme Court, had died and so [he] was representing his estate which is why the name changed from LaStrange, who was the actual plaintiff, to Darrone, who were the relatives. His name was Joseph Lenahan and he had belonged to the Scranton, Pennsylvania law firm of Lenahan, Lenahan, Lenahan, and Lenahan—a family practice that operated locally and really was not involved, certainly, in law reform or civil rights, or even really doing legal issues. It was much more involved in factual issues. Their reason for taking the case was they figured that their plaintiff had worked for the Consolidated Rail Corporation for many, many years, had lost an arm, had come back and was told he couldn't have his job back and they thought that would appeal to a jury because the jury was from Scranton, Pennsylvania. Con-Rail had done a lot of laying off and was basically the big, bad employer of the area and so they just figured they could get some money. The next thing they knew they were in the
Supreme Court on a legal issue. It turned out that Joseph Lenahan, who was very young, was very, very thrilled to get the help. And it turned out to be a very strange bedfellow.

Breslin: To get your help?

Mayerson: Yes, to get our help. It wasn't just my help, though.

Then the other thing that happened was—well, just in terms of that, though, what happened was I called him up, met him in DC, and brought him to a meeting with basically the whole civil rights bar. We all were sitting around the table and he comes in with his, you know, three-piece suit and slicked back hair. The only thing that he really knew about the case were the facts and when we all started talking about law reform and the implications for the civil rights laws, he was just thrown.

Over time I was able to develop a very good relationship and a rapport with him, recognizing kind of what his stake in the case was and what—him really not caring that much about what our stake was but recognizing that his stake was promoted by our interest.

What I was going to say was who else was very, very, very important in this case. We brought in for the first time the NAACP [National Association for the Advancement of Colored People] Legal Defense Fund and in particular Eric Schnapper, who was their Supreme Court litigator—one of their Supreme Court litigators. And all that also happened just from basic chutzpah: I went up to New York and I met with the NAACP Legal Defense Fund and told them they should be interested in these cases because 504 was not unlike Title VI—anything that happened to 504 would affect Title VI—somehow got Eric's interest, and from then on worked very closely with Eric on all the 504 Supreme Court briefs. He was extremely important and instrumental. I learned an amazing amount from him—just so smart, and was very, very skilled. [pause] I was going to say advocate, but it's more than that, it's a way of putting together an argument to make it persuasive.

Anyway, so we worked very closely with Joe Lenahan—very closely. Sy Dubow also worked with him from the National Center for Law and the Deaf and I got to know him very well. But okay, so then that's what we did with Joe Lenahan. We worked with him, we wrote both briefs—both the amicus brief and the party brief—we worked with him so much on preparing for oral argument. There was this quote—when we had a—you know, there was a newspaper article about him in the Reporter about the lawyers at DREDF, and they interviewed a lot of people and he said something like arguing before the Supreme Court was much easier than basically fulfilling my requirements of him which were, you know, major because I was really worried. He ended up pulling through. He ended up studying and doing his jobs and getting grilled a lot and being really receptive to it, which now, after I've worked with other
people, I'm actually very—I appreciate more than I did at the time. So that was that.

And then I guess a couple of years after that the next Supreme Court case involved the issue of whether Tennessee could cut back on its Medicaid in hospital days from fourteen days a year to less.

This wonderful legal services attorney—who I'd also love to get in touch with, Gordon Bonnyman, brought a case in Tennessee just to try to fight the cuts on all kinds of grounds because basically he just wanted poor people to get in hospital care. He didn't think Medicaid should cut any further down for anyone, and so he had used all kinds of vehicles that legal services lawyers used and then just kind of threw in for the heck of it 504, saying that it had a disparate affect on disabled people and never really perceived the case as a disability case per se, but just a try to stop the cut-back case.

The next thing he knew he was in the Supreme Court on the 504 issue, as well. We pulled him together to come to D.C., also, to meet with the civil rights lawyers, many of whom he knew. And we developed a fabulous working relationship with him, as well.

He was an incredible guy. DREDF—we decided to co-counsel that case and we took responsibility for writing the part of the brief that involved the legal issue of whether Section 504 covered actions that were not done intentionally to discriminate, but rather had the effect of discrimination. And that turned out to be the hot civil rights issue of the day and so all the civil rights groups again were very interested in that. How it affected 504 would very much affect how it affected the other civil rights laws. And again, we worked with Eric, who also worked with us. And we also contributed to the other part of the brief which was assuming a neutral rule could be a violation of 504—why was this one a violation of 504?

Oh, I forgot to tell the part about Con-Rail when we got the Department of Justice involved also—I sat at a counsel table with Joe Lenahan when he was doing his oral argument and next to me was Brad Reynolds, the villain of the civil rights community who was in on the Con-Rail case on our side.

In the [Choate?] I also sat at the counsel table with Gordy Bonnyman as co-counsel while he did an argument, which was tough because there were a lot of questions by the court as to the scope. It was a shame because it was a big, big case to get as a second case after a negative ruling in Davis and a positive on Con-Rail, but on a legal issue, to get a case that was so much a challenge to the way things are done. In particular, the issue of medical care for poor people which is obviously an inequitable system in and of itself, and trying to apply a civil rights law to an inequitable system is the hardest thing you can do because people basically don't have any civil rights to health care. So we lost, but we won on the issue that we had briefed, which was an over-archi
issue that 504 would cover actions whether or not they were intentionally done if they had a disparate impact on people with disabilities.

Breslin: How did you come up with the briefing strategy?

Mayerson: Of dividing it in half?

Breslin: Yes.

Mayerson: Well, the main thing was we wanted to make sure that—we knew that the particular facts of the case were tough—really tough, really hard—and we spent—oh, and Kim Swain worked on that, also. We spent so many hours going around and around and around and around about those legal issues. We knew we could lose and since we knew we could lose, we felt like it was really important to have a discreet part of the brief that was about just disparate impact generally under 504.

It's very interesting because I remember I wrote the brief, circulated it to all these people, and I had all this stuff in there in terms of legislative history, about the court being concerned about transportation and all these other areas that had nothing to do with health care, and I remember people that were much more experienced than me, lawyers, crossing it all out and telling me not to use it. And I used it and it's all reflected in Marshall's decision—every single bit of legislative history that we did is in that opinion. So it turned out to be a really good strategy to have a separate part of the brief that really acted like there were no facts in the case, but just that we were trying to establish that Congress had to have meant that disparate impact was covered in order for 504 to have any meaning. That part required drawing upon all kinds of areas that were outside of the facts of the case, many of which lawyers told me I shouldn't include in the brief. I did include [them] in the brief and it worked, so I feel really good about that.

Breslin: How'd you devise the Brandeis briefing strategy in Con-Rail

Mayerson: Well, the reason we had the strategy was because, if you read Davis, the thing that really screams out at me—and now I teach disability rights law and every year I read Davis over again in preparation for my class. Every year it just amazes me how much the court really just didn't get and was hostile to the idea that people with disabilities would be covered by discrimination at all. At the time there was so much fervor and enthusiasm about the 504 regs, and how'd they'd been a victory and how much the disability community understood them, that it was hard to even understand what the Supreme Court wasn't getting. Now I really see what they weren't getting. They weren't getting that if you're not similarly situated—the whole construct of discrimination in this country comes from the idea that similarly situated people are being treated differently because of status—that is, the whole idea of color blindness, that is, the whole idea of like not—
---the idea that you can—you know, to the court the idea that you can need interpreters, that you can't hear what the patients are saying, that there's somehow—that the school not letting you in is discrimination, just it was like, "No, it's not discrimination, it's like you can't hear, you know." [laughs] So the court wasn't ready for it. And now, in retrospect, it's very easy to see that that was not a great case to take up.

Breslin: I guess the question I'm asking you to think about is who brought forward this idea of Brandeis briefing strategy? Was it you? Was it Sy Dubow?

Mayerson: Oh, no, Sy—no, Sy Dubow wasn't involved in that aspect at all. Anyway, so from the Davis decision I decided that it was very important to kind of step backward and let the court know that there was such a thing as discrimination. I remember I had two sentences in the brief that I worked on for so long and they just are very simple sentences. [One sentence is something like: most people do not think of the exclusion and segregation of people with disabilities as discrimination. That was really what the whole brief was about because the "most people" was supposed to be the justices. Then it explained how—and it says that it is assumed that people are excluded or segregated because they can't do the job or because they need protection. This brief is dedicated to changing that perception to an understanding that there's bias, just pure, simple bias, the kind you can relate to, the kind racial minorities face. The women analogies are so strong, because of biological inferiority basically—and that was my idea of having that kind of brief. And it was very much carried out through the very, very, vigorous work of Kim and Margaret.

Breslin: What was going on at DREDF during this time that might stand out in your mind? Or what was going on with the organization?

Mayerson: What was going on with the organization? You know, I don't know. I mean, it's funny, because I was just thinking—I was trying to imagine writing the Con-Rail brief. I kind of can't even imagine where we were. I can't quite picture the whole thing. We had written another brief before that, too, which I clearly lost track of now that I think about it. [pause] Really important big thing—I can't remember it. I don't know. I mean, I don't even know—where were we located?

Breslin: On San Pablo Ave.

Mayerson: Until what year?


Mayerson: Until '85? And we were still typing with typewriters? Yes.

Breslin: Well, there were two computers at the end of that period.
Mayerson: But like for Con-Rail we still went in and out with a typewriter?

Breslin: Yes.

Mayerson: Yes.

Breslin: Sure hard to imagine now!

Mayerson: And Tanya was probably doing that.

Breslin: Probably, probably.

Mayerson: Because that was a lot of work!

Breslin: I don't mean to interrupt your train of thought if you were—

Mayerson: No, I don't know. I can't remember anything about the organization at the time.

Breslin: You know, one of the things we actually haven't talked about that occurred a little earlier was this big civil rights meeting that we held out here, remember?

Mayerson: No, we did talk about that.

Breslin: Have we talked about that? Have I lost my mind? Did we?

Mayerson: I'm sure we did.

Breslin: Okay, forgive me, I haven't—

Mayerson: I don't know. I mean, I'm pretty sure we did.

Breslin: Okay. In about 1984 you were involved in a case involving a child with a developmental disability?

Mayerson: Yes. I got involved with Lana after Tri-Valley [Southern Alameda County]. We talked about Tri-Valley, too, didn't we?

The case involved a girl who had I don't know what disability but something degenerative, something that was progressive. She had been a very bright and active toddler and she developed something that made her lose more and more function. It was very graphic because as she lost function you could just see her freedoms being lost and her respect being lost and her dignity being lost and her options being lost. So it was a very compelling case because of that—just so obvious that it was attached to her disability, because each notch that her functioning went down her whole life quality was, kind of, closed in.
Her mom and sister were vehement advocates on her behalf and treated her and believed in her as the same Lana that they had known, you know, who was the active bright toddler and knew that a lot of Lana was still there. One of Lana's problems was that she became unable to really convey through motor degeneration what it was she knew or didn't know and so she was presumed quite not to know by the school system but by her family presumed to know. Also, they felt that they had ways of knowing she knew and couldn't convince anyone. It was a very hard situation for a family.

Basically I got involved at the point where they wanted to put her in a development center, which was a segregated place. She had been in regular school and then she had gone to a special class and then she had gone to, you know, more and more isolation. The Palo Alto School District wanted to put her in this county-run development center.

I'll never forget the day that I went there because it was really striking to me that there was this room full of very severely disabled people who were all either totally not engaged in anything or engaged in something destructive or making noise or just kind of engaged in something that was purposeless, so it was the worst of the worst. The guy who was teaching the class was an emergency-credentialed person who had worked in the institution. A lot of the institutional people went there during the day. You know, to the parents—for Lana it was like the end of the line—so her parents felt very strongly about her not going there. I represented her in that effort with Kim Swain.

What did we do? We had a hearing. What happened was I think we lost because I think, unless I'm getting this confused with Tri-Valley, the hearing officer said, "If there's no integrated options, and there's no appropriate placement that's integrated, then they can't place the child there." That's the defense and we just thought that was like unbelievable.

So if you didn't have any integrated options then you didn't have to place the child there so—anyway, we took it to court. We filed a case in court and at the last minute settled the case.

But I got very involved with the family and at the last minute we settled the case that she would go to Palo Alto High School and that she would be part of a special day class there that they were going to establish for the first time. And perhaps because it was the first time and perhaps because it was done reluctantly, it never really worked out that great, which I always felt very badly about because then what happened was it became like a daily maintenance kind of situation. What happened was DREDF's capabilities were stretched beyond the point where anyone felt we could help any longer, so this wonderful, fabulous, victory turned into something that was less than perfect.
The whole situation was actually extremely disappointing in that the parents never really felt like Lana got her due. It raised a lot of issues about what DREDF was and what DREDF could be and how to deal with clients. And for me, particularly, I got so involved with clients emotionally that—you know, I was sleeping at their house all the time and really becoming very close with the family. So when I was assigning the day to day maintenance, the other people in the office who were lawyers or associates and didn't have that emotional connection and didn't even think it was appropriate to have that emotional connection, it just became impossible for them to deal with daily complaints about things that were going on. Then I would try to come in every few months to try to like patch something up and then it would fall through. Anyway, we ended up basically throwing up our hands at the end, but I think it was somewhat a lesson on what we're good at and what we're not good at. I think we were very good at getting the law reform part done and very bad at the kind of social work part.

Breslin: And does that show that there's not enough follow-up support available at the community level for these kinds of arrangements?

Mayerson: Well, it really did. I mean, they got into every bureaucratic mess there was, basically. What happens I think a lot with kids who can't express themselves, particularly, is that the services that they get or not get depend on the skill and also the popularity of their parent. Because people didn't want to deal with her mom, Lana didn't get services. Her mom was very exacting, her mom had very strong ideas about what kind of services Lana should get, and what really came down to me—and I really did try to work this out, but it also fell through, which I felt very badly about—was I finally got the agency that was supposed to be serving her (because a lot of the issue then became basically just in-home care) to, you know, basically agree that they would just give her the money to hire her own people, because as long as they were doing agencies and providing it through them it wasn't working because there was too much conflict.

Breslin: Did you learn anything from that case that was useful to you in your practice later on?

Mayerson: I don't know. I mean, I have become pretty shy of clients. I mean, I love clients on one hand but on the other hand I've never really reached a balance with them of how to kind of be involved but not be too involved. I think that I've definitely leaned on the not being involved side. I mean, I don't do that much directly with clients any more, but I don't know if it's all because of that. I mean, it's in the nature of our work and how it progresses and what kind of role was most appropriate for me to play, I think, that had a lot to do with it. But it's very difficult for me to deal with clients and not get very involved.

Breslin: Do you think that this case was useful in terms of DREDF's overall perception of its role in law reform?
Mayerson: I think that it was important to see where our limits were. But I also think that we haven't ever totally resolved that issue of letting go of a client, because the clients definitely don't want to be let go of and there's no place to send them. You know, it's not like—at the Youth Law Center, for instance—they have just as many social workers as they do lawyers who deal with that whole aspect of everything that happens in the family independent of legal issues and we just don't. And no one else does, as advocates.

Breslin: Why is it that that wasn't perceived as an important function in association with legal reform?

Mayerson: It is important but it's not—well, basically our problem at DREDF, as I see it, is that we are always pressed to do legal reform because it's a needed thing that we do, and to do legislation and to do big policy issues. It’s simply a matter of time. I mean, if the staff is all wound up spending hours and hours and hours a week on, you know, whether someone got picked up, whether the bus company left them or was late, or all these things that are really real in the day-to-day lives of parents with disabled kids. We obviously have to do what we have to do. And we've never had enough staff to do all of it.

Breslin: I understand that. I guess I'm thinking that I've never heard it articulated as a social work function which was and is something that could be accomplished by a social work advocate under that umbrella and we've never added that to DREDF.

Mayerson: Yes, you know, I think that is true for a lot of the day-to-day—a lot of the day-to-day has to do with dealing with systems which individuals are uniquely unqualified to do. I don't know anything about social work, to tell you the truth, and I'm not even sure that's the right person, but people who are used to dealing with systems know how to deal with systems, know how to kind of manipulate systems, know how to say to a system, "Well, just because our client doesn't fall under X maybe they fall under Y." I mean, I think good advocates can do that without being lawyers.

Particularly in Lana's case, I'm thinking about what happened with the whole respite situation and dealing with the regional center which is, you know, a nightmare. She was basically having fights with everyone who came to the house. And they didn't want to serve her anymore and that's why we threw up our hands because what are we going to do? Someone could have gone down there and had a mediation or whatever you call it between the people who work there and her and, you know, all these kinds of things that are much more human frailties—you know, human interactions—I mean, that was that particular case, but those kinds of things do come up a lot. What happens a lot also, particularly with parents is that there's so few agencies that—I mean, there's just—if you alienate the agencies you have to deal with, it can get to be just a really bad situation, you know? We've had that situation a lot. I'm thinking of Jimmy Peters, I mean, it got to the point with Diane—this is
another integration case—but she got to the point where she was getting called every single day. You know? We're not really equipped to deal with the every single day maintenance.

Breslin: It really raises the issue of what the mission of an organization is and the difficulty of maintaining the focus on that issue.

Mayerson: It does. I think that the one thing DREDF has been good at is realizing what we do and what we don't do. It's sad when you're involved with a family because it's not like you can point to another agency that does do it. You know, we've been so strongly pushed in the direction, so many times, of doing benefits advocacy at times when that was the most important thing happening in the country, really, and we haven't. I think that in part it's because we really have absolutely no expertise in it and in part it's because we've realized we are going to do this niche and this niche is what we do best. There's very few of us, you know, and for whatever reason—which is a whole another story—we've never had the option of having, you know, a whole building with three floors and one floor is the lay advocates and the second floor is the—you know, we haven't had that option.

Breslin: Why?

Mayerson: Well, I mean, I think that—I don't know why. We've always been at the bare bones of funding and I guess one—well, no, for one thing I think that model doesn't really exist, although it would be interesting to talk to the Youth Law Center about their model.

Breslin: You mean the model of having substantial numbers of people working on the issues?

Mayerson: Well, what I was thinking in particular about was the model of lawyers doing the legal stuff and social workers or other type people doing the family follow-up. Because I guess in their work it's so obvious to them, if you get someone—you know, you can advocate for a kid on the street or in CYA [California Youth Authority] or whatever, but if you don't follow through with the family or with the kid and get them placed in the community in an appropriate—I mean, I guess that it's so obvious that it's not going to do any good to only do part of it. I don't even know that much about what they do, but and I'm sure that there are restrictions—I'm sure that they have these same problems, actually, but—but the other thing is I think that we have never really had a solid funding base. I don't know what all the reasons for that are. I mean, I think, we think, it's because of the money not being there for this issue, but I don't know.

Breslin: Arlene, I just wondered, candidly from your own experience, whether you had a different viewpoint about the funding problem that has been the prevailing wisdom in the organization?
Mayerson: I think that we do have a problem with getting—I don't think there's a lot of funding out there for it, and I don't think we've ever had—at DREDF this phantom, firecracker, brilliant—as brilliant as what we do at everything else—fundraiser. I don't think we've ever had that person. I think that person might exist, but I don't know.

Breslin: Do you think that that's something that any fundraiser can do? There's some wisdom that says that the people who do the substantive work in organizations usually are the people in leadership roles. Like, executive directors are also the best fundraisers because they are in charge of the mission and also can convey the mission’s purpose to funders.

Mayerson: Yes.

Breslin: Whereas a development person's job is a different job.

Mayerson: Right, I mean, I think that the fundraiser probably should be an executive director because the persona—you know, have a persona, have a—yes, a persona—to be known, to be someone who's known, who's famous, who's, you know, considered—. I mean, Ed Roberts was that and I don't know, maybe he actually—I mean, he certainly got a lot of money into the movement. It was never enough, though. But he was a persona, he was known. You know, Judy was known. People who are funders in the community knew that they were people to deal with. DREDF has never had that person.

You know, it would probably still not be enough money because there's never been enough money for any of the organizations. I mean, I remember once just having dinner with Max Starkloff, you know, in St. Louis. He runs the independent living center there and he's from there, very connected there, and he just blew my mind in terms of talking about Leo, what he does basically to bring in money to Para-Quad. I think he's very successful at it, but a lot of it is just that he knows all these people. He goes to their houses and he dines with them and actually enjoys it. [laughs] You know?

Breslin: You know, about the time that the litigation was going on behalf of Lana was also about the time DREDF's early federal funding ended and there was a transition to all private support, primarily private support. Do you have any recollection or memory of what was going on in the office at that time?

Mayerson: All I remember is that there were a lot of years in there when there basically was no money. I mean, most people were laid off. There was no money. We barely had salaries. It was always very unstable, but I remember things were being done. But I don't know if that's something to really talk about.
Breslin:  
I don't know, I was just wondering what your impression of the time was because the culture of an organization influences your day-to-day work, and if it had an impact that you remember and want to talk about, that's useful.

Mayerson:  
Well, I do feel like DREDF became more focused on the individuals that actually worked there because it got kind of pared down to its key players. And my first impression of—like from DLRC days and then to like San Pablo days—which were much more like lots and lots of activity. And then my impression after that was it was more like a few people who were trying to do a very big job and not as many activities.

Breslin:  
What was or what do you remember of Bob Funk's role during this time?

Mayerson:  
Bob Funk, to me—I talked a little about him already—is that he was somewhat of an invisible presence because I didn't have a lot to do with him. I mean, I would never say that he like directed me at anything, but I was aware of his directorship [small laugh] of the organization and that he was kind of aware at doing his job, but his job and my job didn't intersect that much. And I felt like—and I said this I think before—I think his biggest skill was getting people who he trusted to do their jobs. That's not to belittle it at all because now that I'm in a role of trying to get people to do their jobs, I find it's amazing because it's very hard to find. I mean, he did not get people he had to sit on. You know, he got people like—Julie Landau was like begging him to work there and set up this amazing parent advocacy and really thrust us into the national scene. And I mean he never had to tell her one single minute of what to do. And that was just how he—I'm sure absolutely the same was true with you and I'm sure—and he had people running his projects who had their own very strong enthusiasm and energy and direction. And you know, that's great.

Breslin:  
Yes, there's some bits of observation by people who were analyzing the transitions that organizations make between first generation workers, founders—a team of people committed to the same vision and mission—and the second and third generation—those who come in the wake of that early sort of outpouring of activity.

Mayerson:  
Those who are just hired.

Breslin:  
Right. I'm thinking that in this period when you were working with Lana that some of that might have been going on. Do you have any thoughts about that?

Mayerson:  
When I was working on—

Breslin:  
On Lana—just about at that time?

Mayerson:  
Well, I mean, Lana—I don't really, because I don't blame any one. Kim Swain was one of the people who just got to the point where she thought
DREDF was completely flaky and irresponsible about Lana because she felt we should have cut her loose. I thought that was a very respectable point of view and responsible point of view. I think she was a person who was a hard worker and incredibly committed to the issues, but was also very in touch with how to run things, you know. I don't feel that way about her at all in terms of that. Then Diana, of course, was the other person. And she was very torn. She's a parent and she understood it. So I don't really feel like that was what was happening with Lana; I felt like the people who were—everyone was so torn—about getting the rest of our work done, you know?

Breslin: So what happened next for you in terms of your work?

Mayerson: Well, the next thing I can think of is the Handicapped Children's Protection Act.

Breslin: Which we talked a lot about last time.

Mayerson: We did, right? That's what I thought.

Breslin: Yes.

Mayerson: And then after that did we talk about Arline?

Breslin: We haven't talked about Arline.

During this whole period of time of the eighties, ever since the deregulation we had developed, we had started to develop a close relationship in Washington with the Department of Justice and any developments that were going on there and just being very tied into the whole national scene and still very tied into administration policy and meeting with their people.

One person—I think Brad Reynolds's special assistant at the time was Chuck Cooper—and he really became a very prominent leader of right-wing legal thinking. One of the things that he did in the eighties was came out with a memo analyzing whether AIDS was covered by 504. The memorandum said that it wasn't. The rationale in the memo was that because someone could be discriminated against on the basis of contagion, and because you could be contagious without having a disability, i.e. a substantially limiting major life activity impairment, then discrimination on the basis of contagion was not discrimination on the basis of disability.

Actually, I remember being there for some conference—the thing that I'm really weak on that other people are strong on in terms of my recollection are things like conferences and who I met at the various conferences and the kinds of conversations that took place. All of that's actually important but I've never kept a record of it. But I remember being at a conference and Evan being
there—and Evan Kemp being very close to Brad Reynolds. I remember getting into an argument with him about that memo and feeling very strongly like the reasoning was very bad.

It was soon after that that the Supreme Court—I think this is the timing of it—granted cert in the *Arline* case. And the *Arline* case involved the issue of whether a woman teacher who had tuberculosis was covered by 504 and so it was prime for the government to come in and argue that because she was discriminated against, not on any underlying incapacity, but on the basis of contagion, it was not disability-based discrimination and therefore not covered by 504.

We were very aware of it being a promotion of the anti-AIDS policy that had come out of the Department of Justice. The U.S. Department of Justice became very involved with the school district and so we saw it as very important to become involved with the plaintiff’s attorney like we had in the previous cases. But because their implications for AIDS were so clear and extensive and, you know, potentially disastrous, the AIDS community was also very interested in getting involved in the case. Pat [Wright] had been working very closely with the AIDS community through the eighties on the fair housing act and I had had very little contact with the AIDS legal community. I guess Nan Hunter, at the time, was really representing that community.

So when *Arline* was coming up, there were a lot of attempts that a lot of groups made to try to call the lawyer for Jean Arline who was George Roddard. George Roddard was not returning anyone's call and so we organized a phone call with the AIDS groups and DREDF, basically—there might have been other disability groups in there, too—to try to figure out a strategy for contacting George Roddard and getting him to respond and be responsive and work with us. Somehow—luckily—again, I think back on it now and things have changed so much—I got the role of really being the point person. I was working very closely with Nan, but what happened was I got in touch with George Roddard.

I told him we wanted to work with him on the brief. He, unlike the other two lawyers I had worked with, really considered himself Supreme Court litigator material. He had gone to Yale, which in the legal circles means that he considered himself a major intellect. His whole specialty was first amendment law, so it was constitutional law. That's why he was in St. Petersburg, because they have a very good newspaper there that he was representing. He wasn't as receptive. Then he also really felt it was important to his case not to be associated with AIDS and so it was a little bit more hard-going.

The thing that I remember now, again I think of it as just unbelievable, is that I might have had some very vague invitation but I just flew to St. Petersburg.
I just showed up at his office and I just said—you know, because he was one of these private lawyers who's very busy, very busy, not getting to it, but not getting me back anything. You know, the briefing schedule's moving along and you're worried, basically. You want to see the brief, you want to be a part of the brief, you want to write the brief, you know. So I went to St. Petersburg and I showed up at his office. I, like, packed into his office.

Well, it turned out he was doing the case with this other lawyer named Steve—I can't remember his last name, he's on the brief. Jean Arline had actually been his client when he had worked for George Roddard. But between the time that she was his client and it had wound its way up to the Supreme Court he had left to become a public defender. But he was very involved writing the brief, so he and I basically worked together for several days. I stayed at his house and we just like did the brief—you know, basically forced George Roddard every time he walked in the office to sit down and talk with us and you know, kind of progress along that way.

I think this is the first time that we wrote a brief on behalf of members of Congress, an amicus brief, where we wanted to give the legislative history of the ADA in the light of coverage. It was a very challenging job. I also feel very proud of this brief because this whole brief, the amicus brief, what happened was I did the legislative history in a way that was creative, that required looking at the legislative history and turning it into an argument that fit because there's nothing in the legislative history about contagion. I mean, that word just does not appear. The legislative history that I did was really the only one.

What we did is we took the exact legislative history pages from the amicus brief and put them in the party brief and so that is the only thing in the party brief—and something George Roddard would not have done—which the court really relied on to build the case that Congress was concerned, extremely concerned, not only about an individual's incapacity, but also about reactions of others. Once we established in a legislative history that Congress was concerned about reactions of others then we were able to say contagion is a concern about others, it doesn't take you out of the rubric of disability. So it was persuasive.

That case we did with Bonnie Milstein from the Mental Health Law Project—and she didn't write the brief. She might have had a little bit of a hand in that, I'm not sure, but she did the sign-ons in Congress.

Breslin: That means that she got members to agree that—

Mayerson: She did all the legwork there, which is extremely important because, you know, I was free to write the brief. She was working and making sure that enough people signed on. And it was a good showing of people that signed on. And when it came time for oral argument time we also arranged a moot
court for George Roddard. Nan and I worked with him extensively, continued to work with him, you know, beyond the point that he thought was necessary. That turned out to be a very good result, as well. It really set the stage, too, for the later work on the ADA in which Nan played a very big role representing the AIDS community with the person working for her being Chai Feldbloom, who I then developed a very close working relationship on the ADA with. Chai at the time was at the Supreme Court. [laughs]

Breslin: She was a clerk to one of the justices?

Mayerson: Yes. So that was Arline.

Breslin: Why is Arline important in the greater scheme of things?

Mayerson: Arline was very important in the greater scheme of things and, boy, should have been more important than it even was, in that it should have established that the inquiry in disability discrimination law is not always on the limitations of the individual but a broader kind of societal look at negative attitudes and barriers. The thrust of the decision was in that direction. It was written by Justice Brennan, and it was the first decision of the Supreme Court that sounded like a civil rights opinion.

As we've gone through the other decisions, none of them sounded like they were in the real home of civil rights, where they had been accepted. This decision is just filled with underlying principles like, "It's not the disability itself that causes the inferior treatment, but the barriers and mis-fears and stereotypes [that] are just as disabling as a disability," and all that kind of civil rightsy stuff. So it was very important in that regard. It was a very big victory.

I think in the Supreme Court it really changed the whole way of looking—finally these civil rights statutes were getting a recognition by the court as being civil rights statutes. It was not at all true before that and I'm not sure it's holding either, but it really marked a major turning point.

Breslin: Why do you think it's not holding? What's your evidence for that or what's your opinion about that?

Mayerson: Well, since that time, of course, the ADA has come into law. The ADA has made the whole issue—has popularized the issue of disability in a way that 504 never did. 504 was more narrow in its scope and it didn't get the publicity and the visibility and the general political awareness.

Since the ADA, there's been a lot of confusion as to what the ADA is about. So much of the focus of the ADA litigation has been about who's disabled. And I think a lot of the real conceptual foundation, which is really that it's supposed to be about society's practices, gets lost in so many of the cases.
It's such a big problem. I mean, it's become such a big problem that it really takes some significant rethinking. Particularly I'm interested in it from the point of view of all these other countries that are modeling themselves after the ADA, because it's assumed that it's a good and broad definition.

Now the other thing about the definition is that—it's my pet peeve—I mean, some countries might want to focus their nondiscrimination on people with the most traditional disabilities, but I think in our conception of it, it was never supposed to be about who has the most severe disabilities, but about using disability as an exclusionary tool. In that regard, I think it matters less who the person is it happens to than whether the criteria is being used. And that's a part that's still very much in flux even among people that are lawyers and policy makers on our side. I think there's still a lot of hang-up about that and I think a lot of the hang-up about that comes from the definition of disability. The Arline decision, if you read it, it's radical in that way because it really isn't so concerned about what Arline could or could not do, it just kind of skips over that part and talks about societal mis-fears and stereotypes, so it's interesting.

This whole history has been very instructive about changes in the disability paradigm. It's kind of interesting because by the time you really learn your lesson about legislation, because you've been involved in the predecessor legislation, the legislation, and the post-legislation litigation, by the time you've learned your law—you know, forty years later, you really get it, that's when you're basically out of it. I think it really helps to see the whole process kind of carry itself out to know what you should have been thinking about at the time.

Breslin: Are there some parallels between the disability experience and the gender and race experience in terms of that historical perspective?

Mayerson: Well, I am absolutely totally positive that everybody who's ever been involved in legislation, civil rights or not, afterwards has gone through the experience that I've gone through, which is being surprised by something you haven't thought of or an interpretation that you never envisioned. [pause]

I don't know about the actual issue. I mean, the actual issue, obviously, of race—the whole way of approaching it is being rethought after forty years, fifty years. I mean, it's interesting because it's actually very analogous in the sense of the civil rights laws have gone from laws that are geared towards protective classes to laws that are really looking at practices. And it happened in such a horrible way. This is why I was saying about getting in an argument with Bob Burgdorf, who is also moving in this direction. He never thought we should have this definition of disability, to his credit. I mean, not that we did either. My first reaction to him was so visceral because he's saying, you know, sex discrimination does not protect women, it protects men and women. But the way that came to be is because men horned in on the statute—same
thing with race. He says it's not protective—it doesn't protect blacks, it protects whites and blacks. The reason that came to be is because you know, Bakke [Steven Bakke]. So I have a very bad feeling about those people who made it that way.

But now that it is that way, it is kind of the direction that you don't concentrate so much on the person, it's what criteria do you think society should not be using to make decisions. In the race and sex case it's really had a very negative result to move away from the protective class status. In disability, I don't at least now, see the downside of that, so it's interesting.

Breslin: What's the negative side in race?

Mayerson: Well, the negative in race is this illusion of a color-blind society and the idea that it's the criteria of race that you never want to use regardless of its political and social implications, so anti-affirmative action.

Breslin: Your objection is not that white people or nonminority people get the opportunity to use the statute?

Mayerson: No, I do object to that. I mean, I think that that's bad because that's not the problem.

Breslin: And it wasn't the intent.

Mayerson: It wasn't the intent and it's not the problem. I don't think that white people lack opportunity and so obviously in those cases, that particular white person feels that they were precluded from an opportunity, but the larger societal purpose of these statutes is not to protect white people and men. It's because the statutes were interpreted that way that you could ever get to anti-affirmative action, because there's this illusion that it's bad to use the criteria for race, period; it's bad to use the criteria of sex, period.

Breslin: Well, the handicapped parking issue is a big deal. [laughs] Everybody would like to horn in, because it's an advantage people would like to have even though they may not be entitled to it.

Mayerson: I mean it wouldn't work in disability, obviously, if you couldn't use disability as a criteria. See, my idea is that you shouldn't be able to use disability as a criteria for adverse action, but you have to be able to use it as a criteria for accommodation, so it is maybe a little more complicated than I think. But there are also affirmative action programs for disability.

I think we should have a way, of course, of resolving the race and sex thing, also, in a way that preserves affirmative action. Anyway, I'm rambling, but my thinking on the whole issue is try to get out of the box of concentrating on the person, to looking at the exclusionary criteria, without being regressive.
Breslin: We should talk some more at some point about whether you see if there's any potential to move toward that definition of disability as it relates to the ADA.

Mayerson: Well, I think the ADA—my shtick in life is that the ADA was meant to be that, by having a third prong. The whole idea of the third prong was not to look at the individual but to look at the practices. My problem is that—and this is a legislative problem—it says or [someone] is regarded as having such an impairment, so it moves back, it references back. And that's the thing that screwed everyone up in terms of their analysis of the definition. But the intent is so clear that it drives me nuts because there is no other reason to have a third prong. But it's being interpreted very narrowly; you have to be regarded as having a severe disability. But you know, it gives rise to a very anomalous and crazy result.

Breslin: Any thing else on Arline?

Mayerson: Actually, the whole thing amazes me because I feel, if anything, like I've lost confidence.—in a way, I don't think I have as much confidence as I had in the eighties. I feel like I've lost confidence as I, you know, continue to gain it. When you think about it now, that we were in a position in that basically short period of time to be representing Congress before the United States Supreme Court, that DREDF had established itself to that extent as a legitimate legal defense fund, but to the point that, "We want to be represented by DREDF in the Supreme Court," by members of Congress—it's really quite an accomplishment. I mean, to say nothing to the disability community and the civil rights community and everything else. That's a lot of establishment of an organization to be in that position.

Breslin: To what extent are you able to give yourself credit for that accomplishment?

Mayerson: I give myself credit to the extent that I was positioned to do that level of legal work. I mean, part of it is just a focus—you know, to be focussed on doing that and to do it. Part of it is just being able to do it, to do it right. So in that sense I think I helped establish DREDF as a legitimate legal force to be reckoned with and to be relied on.

I mean, I think DREDF has gone through a lot of stages of acceptance or inclusion or leadership of the movement, or not—or people being alienated—you know. I don't know, I think DREDF's status in the movement changes over time, but I don't think anyone's really ever doubted our ability to do a legal analysis. Maybe that's been criticized as being too narrow a focus, or whatever, but I don't think we're really not considered able to.

Breslin: I should hope not. Well, this was a busy period historically. The Fair Housing Amendment Act was also cooking along during this period. What was your role?
Mayerson: The Fair Housing Amendments Act, at that point, I had always worked very, very hand-in-hand with Pat. And part of my interview should probably be a reflection on that relationship. I think it’s pretty remarkable because I don’t know how many teams there have been that would have withstood that many years. From what I know, from what I gather, I’m pretty oblivious to everything that happens around me in other organizations, etc., but I kind of notice that people don’t stay that long, and that people who work together aren’t working together, and you know—

I think Pat and I are extremely different. I can’t think of two more different people, really, in many ways, but yet, somehow the combination has worked over all these years, so I think that’s really remarkable. There’s a certain balance, also, that I feel very comfortable with about just how much we’ve worked together; how well we know each other, and also having very separate lives. I mean, so it’s been a very interesting combination.

The reason I brought that up and I want to talk more about that is during that particular time was the only time where she was really, I would say, on a daily basis relying on someone else. That was Chai. I think that Chai was much more involved with Fair Housing Act Amendments than I was. I still got calls from Pat and I still was asked about things and I still kind of knew what was going on but it wasn’t that same kind of vital intense day-to-day kind of way. I think that’s because she was really exploring this other relationship in a very primary way, so I don’t feel that much ownership or attachment to the Fair Housing Act Amendments. I mean, I think it was an incredible accomplishment, but I don’t feel like it was my accomplishment at all.

Breslin: Why don’t you say a little more about your relationship with Pat, in general, in terms of this synergy during those years.

Mayerson: Well, what happened was after—I think I might have mentioned this on the tape before—after that big meeting we had, it was real clear that we needed to establish a Washington office. I remember being in that back room on San Pablo and Pat passing me a note saying, "Would you like to go to D.C. for the next three months?" Something like that—or even three weeks, maybe, but something longer than a few days. I thought, "Okay." I didn’t really know what about D.C. I’d never—I had worked in D.C., which was one of the reasons. I mean, I did know some people in the civil rights community in D.C.; I didn’t know the disability rights community at all in D.C. And you know, I always tell people that—the reason I was told, anyway, that I was chosen is that I had the right outfits, [laugh] because at the time I actually had clothes, too.

Anyway, so we went to D.C. together. DREDF had an apartment at the time that God knows how we even had. It was someone’s apartment—I don’t know if we paid for it or it was Evan’s or what—but anyway, and we had Evan’s office.
I'd say the first several years that I was working with Pat she just—I basically, on a very gut level, found her kind of terrifying. I really didn't know if I would be able to establish a balance with her, because her style is so different than mine. I mean, I am not much of a bull-shitter; I really basically can't do it. And I really can basically only talk about what I absolutely know. I feel like I'm pretty accurate to the T. I mean, maybe with some exaggeration in my own personal telling of a story, but not in work.

[A portion of the interview has been sealed by the narrator until 2032.]

Anyway, I started seeing a lot of things that were very impressive, but also that were fascinating to work with. But also that, in combination, was making a whole, because I could see that we had different things to bring to the same situation, that we could stay on the same wavelength, and that it really wasn't as unsafe as I kind of was afraid it would be. It had a foundation. It started developing its own foundation, and the foundation was very, very strong—I mean, throughout, not just with me, but with all the people we were working with day in and day out.

It's really interesting because I think part of it is the nature of the work and part of it's Pat. Because our foundation in Washington was much stronger than it ever was out here. And part of it is—you were asking me during the break about ties to organizations in the Bay Area and I said I really didn't have any because no one else was doing law reform. I mean, just using the law and the civil rights laws in this way, but in Washington, it's kind of like what everyone does. I mean more of our community, really, in a way was there. I mean, not everyone does it, but a lot of people that we needed to be in contact with on a regular basis.

And I really believe that the decade of the eighties was DREDF's decade. It was absolutely Pat's persona, that thing that I was talking about before, that absolutely did it, because she was an absolute force to be reckoned with in the eighties in D.C. I find it just amazing to come up from basically nothing to pop into town. I mean, the way they knew her was as Judy's attendant from like way back when. Then to be really, probably, the premier civil rights strategist in town and very much treated with a lot of respect by people who I still was groveling over, like, Judy Lipman and Marcia Greenberger.

We worked really well together because, for one thing, we always backed each other up. She was like a stage mother for me because she was always kind of pushing me forward in places where I didn't necessarily want to go, but she made me do it because someone had to do it.

Breslin: Like where? What's an example of that?

Mayerson: Well, I remember the very first example of that was way long ago. I think it was, maybe, the American Bar Association was holding a conference in San
Francisco. And they were having a panel with, like, the top civil rights lawyers in the country speaking on behalf of their issues. They were Elaine Jones and oh, God, really, really famous people: Drew Days, Elaine Jones, I can't remember who else. Every single person was extremely famous and absolutely someone I looked up to. Somehow or another the next thing I knew I was scheduled to be on this panel with these people talking about disability.

I remember it because I had rented a house at the beach and I remember people coming out and I was just like preparing my speech there. I remember being just totally undone by the idea that I was going to even have the audacity to share the stage with them, to share the panel with them. And I remember—and you were in on that, too, because I remember—I mean, I think I probably begged both of you not to do it. [laughs] But I did it because I had to do it. I mean, it had to be a lawyer and I was like what we had. [laughter] You know?

So I was up there with Drew Days—you know, people who'd been assistant attorney generals of the United States and whoever else—so that was kind of interesting.

Then Pat has this way about her which I find absolutely amazing which is this sense of entitlement or whatever. Well, the same sense of entitlement she has towards herself, she had towards me: "Well, okay. Arlene will be there." You know, or, "Arlene duh de duh." And I'm like, "Who me?" She was just always like that with me.

Then it got to the point where it actually was true. You know, it got to the point where I actually had a—it wasn't as farfetched that I was there. But it was only because she made it that way.

Breslin: When do you think that moment, that magic moment happened? When you were suddenly legitimate whereas before you had been an "imposter"—which I, incidentally, don't buy into for a moment! [laughs]

Mayerson: Well, it was interesting because now I'm thinking—this is rambling, totally, because I don't have the dates on any of this—now I'm thinking of something else. There was this President's commission on mental retardation [President's Committee on People with Mental Retardation] and Pat had established this very close relationship with the head of it, Larry who happened to be from Cincinnati and knew my family. I don't even know why the hell she was having that relationship with him, now that I think about it. It was like a little period of our lives we were very involved with that commission for some reason. Maybe it was during the IDEA. Yes, it was probably the IDEA potential deregulation. Anyway, they were in preparing one of these think tank meetings and at the think tank meeting, where people had to deliver papers, I was also invited to go to that with all these people who had been
really founders of the disability civil rights legal world; the ones that we had no contact with but were, in fact, our predecessors.

Breslin: For example who?

Mayerson: I mean, like Stanley Herr and what's his name—not Alan Housman, but well, Tom Gilhool—all these names— you know, a professor from Harvard, Martha Minnow, who's like one of the major brilliant people in the—the youngest person ever to get tenure at Harvard [laughs] and then the professor at Yale, [Beau Burt] and all these people who had been part of the deinstitutionalization movement. Tim Cook was there and he was my level—generation—but I found it to be kind of daunting. I think I was kind of a tag-on because of Larry wanting me to be there, but when I got there I realized that we did have a little bit of a different perspective, that we did have kind of our own hit on things that was different than where we had come from, from a legal point of view. These other people did have a different point of view. It was interesting because most of the time I think of everything starting with us, you know. It didn't, it started way before us, but there is still our own culture. Something did start with us which is—not just us, but I mean our era, which is a certain culture that really they weren't that much a part of—the earlier people. I mean, that is just one example I can think of.

Testifying before Congress—that was something she always made me do. I always felt like a bit of an imposter there. I always felt like—I was also usually on, you know, Civil Rights Restoration Act, but I was also on panels with all these very seasoned people.

I guess the thing that made me feel—[phone rings] [tape break] I was saying that I think the thing that made me feel more in myself doing the work was a lot of contact with a lot of people and realizing that there really wasn't anyone better. [laughter] I mean, there was no secret code that I hadn't cracked yet. See, the whole time before that, you're kind of thinking there must be and then finally after a lot of time goes by you realize, well, really there wasn't all that much more to it than I had. I think you learn a lot with experience, but as most people who are newer in any field do, I had romanticized and glorified the skills that were involved and the people I'd most admired. And I think finally we realized that—I realized and I think we realized and I think Pat just instinctively knew—that there really wasn't anything that they knew that we didn't know. I mean, not that didn't know—there was stuff to learn, but not that we couldn't do.

I think part of the thing with feeling like an imposter before Congress, too, was always feeling like a Berkeley person dressing up like a Washington person and trying to pretend like we were like—you know, I was much more conscious of that kind of thing than Pat, I think. I was much more conscious of style and like, you know, you can kind of see through. I always felt people could see through—that I really belonged to Berkeley. [laughs]
It's been very interesting, though, because I think that it's been a really long time now. The same thing, I mean, with you, me, and Pat; it's been, you know, twenty years basically.

Breslin: It sure has.

Mayerson: So, I mean that's a long time to not—to just kind of work together. I also felt like a lot of times I understood where Pat was going when other people didn't because I got used to her way of thinking. That happens over just time I think, too. It still surprises me how much she's willing to think about things that are just far out.

[Begin Tape 8, Side B]

Mayerson: Oh, yes, right, I mean this whole IDEA thing has been hysterical because like everyone in the whole country is on one wavelength and then every time she comes into the meeting, she's on a completely different wavelength. For instance everyone's been concentrating on, okay, you can suspend a kid for ten days, but how do you keep them from being continually suspended? What kind of protections can be in place? Of course, the school districts want more and more time and the advocates are trying to push back the time. That's the whole context of discussion and Pat keeps on coming back even after the law is passed, the proposed regulations—no matter what all already has happened—how many negotiations everyone's already had—she comes and says, "I don't think they should be suspended for the first ten days." It's like, "Well, yes. Well, none of us did, but it was impossible." But she's still talking about that and she still runs around the hill talking about that, that kind of thing where it's like, "Okay, well great. Let's talk about that then." [laughs] You know? And in fact, I mean, she's like the only person who can get away with that.

Breslin: Get away with it in what sense—that people still respect that she's got that position?

Mayerson: Yes, and actually are willing to sit down and talk about it and not just say you're absolutely insane and get out of my face and we lost that, you know, because people don't generally say that to her. I mean, she might not win it—and the same thing with the IDEA reauthorization. At the very end, you know, she was just willing to push that one inch further. And she did win.

Breslin: What was the victory?

Mayerson: Well, she just wanted there to be—there were all these compromises and there was nothing saying that the law would be better enforced. At the very end, after every negotiation, and there were a hundred of them, she and [Senator Ted] Kennedy's office wanted to get in that the Department of Ed could refer for enforcement to the Department of Justice. Everyone said the bill will fall,
the bill will go down, hundreds of—you know, two years of hundreds of negotiations will collapse over this. She never ever gave up on it and it is in there.

Breslin: So what do you conclude from that?

Mayerson: And she wasn't making a lot of friends during that time, either. I mean, that's the other thing, is that she is willing to risk public opinion because she knows it swings back to the winner. That's a very interesting thing about Washington—she's in a perfect environment.

So I remember Evan Kemp one night when we were at one of these conferences that I can't remember, we stayed up all night in his room talking. What he told me—he had all kinds of thoughts—he told me that, you know, Washington loves winners and as long as you—he thought that 90 percent of Pat's glitter had to do with winning. He really felt like when you stop winning you stop being powerful, but as long as you’re winning, really it doesn't matter how many people you alienate because they're still going to be on your side. So. I guess that all sets the stage for the ADA.

Breslin: Well, anything else on Pat before we go on to that?

Mayerson: [pause] No.

Breslin: Okay, so let's start talking about the ADA.

Mayerson: My first meeting was—we were in D.C. and—oh, I remember when it first came into DREDF and we were all sitting around the back table. That was when it was the flat earth bill.

Breslin: What does that mean?

Mayerson: It was basically the first draft that came out of the National Council on Disability that Bob Burgdorf had written.

[A portion of the interview has been sealed by the narrator until 2032.]

The next thing I knew—but I think it might have been the next year, the next Congress—I was sitting around a table where we had our offices, the National Women's Law Center, at a conference table with a few people looking at the Burgdorf bill and thinking about how it could turn into a viable piece of legislation and having that discussion. And I remember very, very clearly having that discussion about some of the principles, one of the principles being the idea that Title III entities—these new public accommodations—that the bill wasn't going to work if they all had to be accessible. It wasn't going to be a good bill if they didn't have to be accessible. I remember having a philosophical conversation about coming up with some in-between standard.
I remember actually, at the time, John Wodatch feeling strongly that it was bad to have an in-between standard because that could spill over to be the accessibility standard, period.

[A portion of the interview has been sealed by the narrator until 2032.]

Breslin: Had the bill been introduced at this stage, or was it still in draft form?

Mayerson: The bill had been introduced as the previous bill.

Breslin: As the one he had written?

Mayerson: Yes.

Breslin: By whom?

Mayerson: By [Senator Lowell] Weicker and [Representative Tony] Coehlo in '88. This was going to be the 1989—what is what Congress? One hundred and whatever Congress—102, or something, I don't know. From that point on, it was going to be reintroduced as a new bill. From there I just remember it being reintroduced as a new bill and being there.

It's so funny because I've seen the tape of the other hearing so much because I teach it that— I wasn't there at the hearing in '88—the 1988 hearing—but I've seen it so much that it's infiltrating my mind about what actually did happen when it was introduced in '89. But we were very much a part of planning that first hearing.

Breslin: After '88.

Mayerson: The '89 introduction hearing was a joint hearing between the House and the Senate. We were very involved in planning that. I do remember many of the witnesses who were there. What I don't remember actually is whether I testified. I have no recollection of whether I did or didn't. I kind of feel like I might have and I did, but I don't have any recollection of my own testimony. I do have recollection of others and I have a recollection of getting to the point of deciding who those people would be, but I don't remember my own.

[A portion of the interview has been sealed by the narrator until 2032.]

Two things were discussed immediately at the meeting about the changes that would have to take place in the '88 bill in order for it to be politically feasible. One was the change back from the definition of disability, because in Bob's bill, to his credit, he had taken out the substantial limitation provision, and he had made a much, much more stringent undue hardship provision. At that first meeting I remember both of those things. I remember Bobby being very strong that the definition had to at least be the same, so that people could
think—the same people—I mean, so it wouldn't be so confusing and be accused of being so overly broad.

Breslin: God, what a mistake—well, not a mistake in terms of a political decision, but too bad in terms of the actual outcome.

[The portion of the interview has been sealed by the narrator until 2032.]

Mayerson: But anyway, John Wobatch very quickly answered the question that he believes there is no way at all possible that we could have had a different definition.

But you know, we also really were not apprised of the problems with the definition, because although there had been a little bit of scuttlebutt in a few cases about the bad back situation, there are not that many definitional cases under 504. In all the cases, they just assume the person had a disability. The defense counsels weren't really challenging that and so we really didn't know. We didn't have warning that it could be such a powder keg.

Now, of course, it's impossible to change it because the other side has completely gotten the upper hand in terms of everyone thinking the definition is ridiculous and broad. I mean, even Joe Shapiro put in his article the thing about the man who sexually harassed his coworker and then claimed it was a disability. If that gets in his article—I mean, that's about as bad press as ADA needs. So that's the image that people have. [pause]

From then on it was just a lot of work. I think the thing I had to offer a lot in that process was being able to write fast, because I wrote things so fast.

[The portion of the interview has been sealed by the narrator until 2032.]

Breslin: In terms of your role writing those words and those drafts, were you primarily here in Berkeley or were you Washington?

Mayerson: See, the Senate bill and the Senate report were basically the background of the foundation and for that Senate part I was mainly in D.C., or I was in D.C. at least half of the time. The reason why is because it took place in a really short period of time. I mean, within a few months, of which I was in D.C. at least half of that time, we got from the hearing to the floor, basically with a summer break in-between. In the House, however, it was a couple of years and I did most of that work from here, although, you know, with frequent visits—very frequent.

[The portion of the interview has been sealed by the narrator until 2032.]

In any case, the part I think I contributed the most of was just trying to be able to spin things out pretty quickly and come up with alternatives pretty quickly.
I didn't contribute at all to political strategizing or organizing, of which Pat was absolutely the political strategist and Lizzy was absolutely the organizer. So in that sense my role was very limited.

I think that DREDF had an amazingly important role to play in the legislative history of the ADA, though, because of our knowledge of how people's lives really kind of worked. That's like the clear-cut example, you know, where there were a lot of examples where we could just kind of go, "Oh! You know, we haven't covered this one and we haven't covered that." There's so many things that I'm still—I mean, the structure of ADA still has major gaps in it that I feel just sick over, still, which we didn't know were there. If they had been there, then we would have fixed them.

Breslin: Like what?

Mayerson: Well, actually one of the major gaps which I think might be worth revisiting with the Department of Justice and I think this reminds me to do that—when we did the structure of the ADA, "for public accommodations, auxiliary aides and services or other like services," is what it said. And we were really thinking that would be where we would stick in all the things about people getting help that needed physical help. But it was interpreted by the Department of Justice as only covering communication access, so what happened now is like this huge gap of anyone who needs physical help. They're kind of trying to stick it under modification of policies and practices which really doesn't make any sense. I mean, the literal words of "modification of policies and practices" I would not want to have to argue in Supreme Court to mean helping someone physically do anything. That's the examples that are given, and that is one of the most common ADA scenarios that we're faced with all the time.

Breslin: Right, it is.

Mayerson: I think we were very good negotiators, too, on the ADA. Altogether it's a remarkable job by the disability community and by us in the leadership of it, but you know, there's problems with it too. A lot of the problems were just purely governed by the political realities. But something like that, it's just kind of a mess-up, I think. But maybe it was a mess-up by Justice in which case maybe we can get it fixed instead of just accepting it.

Breslin: Do you have any specific memory about meetings or conversations while the bill was going through the Senate that come to mind?

Mayerson: Well, [pause] yes. I mean, I was dealing a lot with Evan [Kemp], Chris Bell, and well, Bobby, of course, every day. And then Michael and Carolyn Oslonik—oh we had so many conversations. There were a lot of conversations with Carolyn about how what we were doing intersected with the Civil Rights Act of 1991, which hadn't been passed yet but was very much
being contemplated; about job necessity, and the impact each way on civil rights, generally. There were a lot of strategy meetings where it required a lot of concentration and a lot of patience and a lot of focus. And I feel like, you know, they were really good meetings. I mean, we really accomplished a lot by having a small group that worked well together. I mean, with Bobby the conversation was daily.

But on that whole business of necessity and job relatedness that came up in the negotiations—on the Senate side, what happened was the staff of the Senate and the White House and the OMB [Office of Management and Budget] and the other interested parties were negotiating together on everything that they could negotiate together.

We'd just get word, "We need language on this," and that was one of the things I wrote language on: how should job necessity and job-relatedness be related to the ADA in a way that wouldn't interfere with the stuff that was happening on the civil rights acts. That's one of the couple paragraphs that I like shipped off immediately for review. It was reviewed, meaning that it wasn't just me doing it, but it was my role to write it.

[A portion of the interview has been sealed by the narrator until 2032.]

Breslin: What was Pat's role?

Mayerson: Pat was like—yes, she was—she was kind of like the supreme commander. She was the only one who had the whole picture—I mean, the only one, totally the only one—and that includes Bobby. I mean, no one, no one had the total picture except for Pat, which is a really hard role to play. She was absolutely the primary person that Ralph Neas worked with, she was the primary person that Lizzie worked with, she was the primary person I worked with, she was the primary person Chai worked with, she was the primary person that Bobby worked with, that Michael worked with, that Carolyn worked with, that Melissa worked with—everybody—she was their primary person. And everyone else was secondary. So therefore she had all the relationships. I mean, everyone else—we all had relationships but she had the relationship. It was an amazing role she played, I mean, absolutely amazing.

She had a relationship with the disability community and she really talked to people who were on the various kinds of subcommittees a lot, like the transportation people, who, you know, definitely had their own interest, I mean, their own positions and strong ones. I mean, it was Tim and Jim who were mainly dealing with the transportation issue. Jim and Tim very much had the respect of the transportation community.

Breslin: You're talking about Tim Cook and Jim Weissman?
Mayerson: Yes. She was in touch with them. And with Evan and the White House—totally. I mean, it was a big job.

Breslin: What was Evan and Chris' position that you can remember?

Well, Chris was a big pain about the definition of disability and everything I did—you know, he had a whole thing about—he was into this myths, fears and stereotype thing, which was good, except for they were also really into limiting the definition of disability.

[A portion of the interview has been sealed by the narrator until 2032.]

Breslin: Well, what was his real underlying concern?

Mayerson: By that time, you're right, they were at the EEOC, and they saw what they considered to be the bulk of complaints being people who they didn't give a damn about and didn't think should be covered and were thinking were basically frivolous. I mean, you know, Chris is blind and Evan's a quad and they felt like, "I'm sorry, but you know, this law is not about someone who can't paint one jet." I can see that point of view, but what I was trying to argue with them is it's just too slippery a slope. I was right, I—

It's a slippery slope. I was trying to tell him that they couldn't really accomplish what they wanted to accomplish without pulling in a lot of other people, you know? Blah, blah, blah. But we had big fights—that's the whole next stage—which was the regulatory stage where DREDF really did play very much of a leadership role in writing the comments of the regulations for the disability community.

Breslin: That's true, but that's jumping ahead a little. We haven't really talked about the House.

Mayerson: What?

Breslin: We haven't really talked about the House fight.

Mayerson: Right.

Breslin: Do you want to stop at this point?

Mayerson: Yes.

Breslin: And we'll pick it up there.
Breslin: Arlene, we completed, the last time we spoke, your recollections of the Senate passage of the Americans with Disabilities Act. Today we’re about to talk about the passage of the act through the House side, and your memories of that time. Can you tell us a little bit about where you remember being most involved, and what the issues might have been?

Mayerson: I was definitely most involved in the Judiciary Committee, which was headed by Don Edwards and Stuart Ishimaru, who was the staff director or the counsel there. There was a lot of activity in the transportation department, but I really had a very, very minimal role there. Small business had a hearing that I actually testified at. I was testifying with a disabled person from I think, NFIB, the National Federation of Independent Businesses—who was disabled, who said that people shouldn’t have to have disabled people around them if it made them uncomfortable.

Breslin: Do you remember who that was?

Mayerson: His name? No. But I thought that was very interesting. I don’t know if that has come out in other interviews, but I thought that was—that was just one of those amazing things where you go and you have someone who is speaking out against the bill who is a beneficiary of the bill, basically, and giving—the reason, that was so—basically, you know, internalized prejudice. And that they would also make the strategic decision to even use someone who had that much internalized prejudice. It was one of those situations also where obviously if you change it to any other group, if you had someone who said—you know, a Jewish person testifying that they thought people shouldn’t be subjected to Jews if they didn’t want to be, it would just be—there’s no way anyone would even think that would be something that you would want to promote in a Senate hearing—I mean in a congressional hearing. This was in that small business association, or bureau, I don’t even know what it was, that was a subcommittee of a larger committee, and it was pretty much a hearing that people didn’t pay attention to. But it was interesting for that reason, I thought. So I was in a position there of speaking out against his position. He was sitting there, you know, using a wheelchair.

Breslin: Were there questions from the members for him regarding his position?

Mayerson: Unfortunately, my memory fails me in that regard. I’d have to actually look at the transcript, which I’m sure we have. Then the other part of it that I remember really well on the House side was that a lot more questions came up about the actual implications of the bill. That had been done to a certain extent on the Senate side, but on the House side it was really, really hopping. And that included working on the Senate side during the House side, because Harkin was targeted in Iowa, and I believe he was up for re-election—and he
was being targeted with a lot of false propaganda about the bill. So also we were answering questions for congressional staff on the [hillside?], but continuing to work very closely with Harkin’s staff. In particular Harkin, because he was targeted on the Senate side.

There were, on the House side—the things that were the highlights, that I remember the most, were, going through the various committees, and ending with the Judiciary Committee, that it was going to be the end of the line in terms of changes, and that is why so much focus got on that particular hearing and that particular report, and also that period of time, because it was like the end of the line. So up until that point there were amendments that were starting to be floated by members.

Steny Hoyer, who was in charge of the whole process in the House, he was majority whip. He was in charge of coordinating what was happening in all the various committees, and it was a very unique role, since he wasn’t on any of them. And obviously you know the whole history of that and how he had been handed that role by Tony Coelho.. So we were also working very closely with his office with amendments that were coming up constantly by members who wanted particular things that were being raised by their constituents. For instance, a couple that I remember, the police didn’t want to do, they didn’t want to have to wait until post-offer to do a psychological exam. They thought that they should be able to do that pre-offer. I remember that was a perfect example of an assignment where he would say, “This is what we heard, and we need to know by tomorrow how many police departments are in fact doing post-offer psychological exams, because if there are, then obviously it’s not so much of a hardship.” And, you know, “What are all the issues, and what kind of opposition and what kind of support?” and that kind of thing. And every time there was a potential amendment, that would be our job to do that.

Breslin: And what would you do, personally, in response to that kind of amendment?

Mayerson: What I would do personally in response to that kind of amendment is just try to network really quickly, and call someone who would have contact with people who knew police work. And that is just one example. But whatever it was—or sometime it would be a legal issue, and then it would be more turning to the books. Sometimes it would just be a hypothetical that had really no answer other than what we made up.

Breslin: Can you remember an example of that?

Mayerson: Well, this was throughout the whole process, Senate and House, but there would constantly be examples of, like for instance, well, do you have to get rid of stools at bars? And now that is—I think I have even mentioned that before in my own interview. But at the time no one had really thought about stools at bars, so we would have to like kind of get together and think, well, let’s see, no. Because you want to come out with the answer no, because
people want to continue to have their bar stools. But you have to have a reason for it. So you have to kind of figure out how to, how you could—you couldn’t always get the right answer.

For instance, another example is, that was really big with Rep. Brooks from Texas—he was being pressured really strongly by the airlines from his state that they wanted to be able to exclude people based on their physical criteria. It is ironic, because this became, obviously, a very important issue in the Supreme Court. But that is what they were concerned about even before the ADA. They knew that they had criteria that were beyond disability, beyond not wanting someone who is disabled. They didn’t want someone who was nondisabled, but not as good as the next person who they could get. It was like this—and they wanted to make sure that that area was preserved. We felt very strongly—I felt very strongly that that area couldn’t be preserved because of the slippery slope. So it was very interesting, because a lot of the same arguments we were trying to get together before, particularly around airlines with those physical criteria, that are, I don’t know how else to put it, but above disability level, end up being a very big issue and came back to haunt us anyway. And actually there is something to be learned from that in terms of the legislative process. Because what we were trying to do at the time was just kind of squash it.

Breslin: You mentioned that there is something to be learned in terms of the process. What is to be learned?

Mayerson: I’m not necessarily saying that we could make it different, but I would at least be thinking about it differently, which is—a lot of times we were just trying to shut people up and get on with the process, and kind of wing it. But I think if I would really have more time to reflect on it—this is just bringing this up for me—I could probably connect some of the things that we later had problems with and the things that we just tried to wing during the legislative process. I mean, some of the things were just very explicit and difficult. The definition of disability, we were just trying to do the best we could with very strong forces to make it a narrow definition. And I think that primarily came up on the House side, I’m sure it did. And that became one of the big later issues in implementation. So—

Breslin: In retrospect, do you think it could have been done differently, the definition issue could have been done differently?

Mayerson: In retrospect, I don’t, and I rely on, for instance, Pat, to tell me what can be done politically or not. There was so much political appeal to doing the exact same definition as 504, but it’s such a problem now that it seems almost like we should have just tried something broader, at least initially. See, we came into the second round with the 504 definition. We didn’t come in even with something more. So—I don’t know. I think the definition of disability is—the other thing that I think now, is that it is so profound. The whole thing we were
doing was so profound. But the pace of legislative work is so fast and furious that you are not really able to go to the profundity level and also get your work done. And so we were doing something that was trying to combine the politics of the day with a vision of the future, which involved a paradigm of the day, and a future paradigm, and it was all a very ambitious task. And it still hasn’t caught up, but maybe that’s okay. Maybe it will. But we were expecting more.

Breslin: More in what respect?

Mayerson: More advancement in the paradigm of disability. That the ADA has been, I think, tremendously successful in a lot of ways—as far as this fundamental question of who is considered disabled, I think that is where people are still, where the ADA has not necessarily cleared the air. In fact, I think it has made people more confused. I mean, one thing that I really love about the ADA, and I love it in every single aspect, including its failures, is that it has absolutely stimulated a national dialogue, an academic dialogue, a philosophical dialogue, a moral dialogue. I mean, it has really opened this question and all that opening hadn’t happened before the ADA.

If we had had ten years of Law Review articles, and academic articles, and movement meetings, and everything about what was disability, and—maybe the ADA would, it would have been built on a different foundation. But we didn’t. We just had this law, 504, you know, and it wasn’t—as we know now, you know, it was also just kind of pieced together to try to push something through. It was a profound piece of legislation and it was an advancement in this particular issue. But the dialogue—I don’t know if you can have profound legislation without more of an understanding in the other institutions of society.

In that sense, you know, the international work we’re doing, I think really does benefit from our experience, which is why I thought the whole idea, you know, why I didn’t object to having an “American” quote-unquote focus in some of the things at the conference, because I think that, I’m hoping that people learn, and that the dialogue is much richer through our failings.

Breslin: You’re talking about the international law conference [sponsored by DREDF]?

Mayerson: The conference and also just the work that people are doing in international law, that our experience, I hope, resounds very, very deeply around the world. That was the point of the conference. That was my idea of the conference. I wouldn’t want to see anyone make the same mistake. But I think that our—not that it was a mistake at the time, but I mean now that we know more about what people’s hang-ups are about disability. I don’t know if you could actually use the word “disabled” and get to the result we want to get to.
Breslin: Why?

Mayerson: It’s a literally thousands-of-year-old concept of—like, visceral, psychological, emotional baggage. Maybe it is a whole shift in the idea that we’re not really talking so much about defining the person, the class of people, as we are defining the kind of conduct, which affects a class of people, but—it’s all very philosophical, as you know. [laughs] But we weren’t having those discussions then, getting back to the chronology here. I mean, we were not having those discussions, we were not having them—

Breslin: Can you describe a little bit what it was like during that eight or nine month period when the ADA was being considered by the various committees of the House—what was the tone, what was the—what did it feel like to be involved in that process? And were you physically in Washington during that time?

Mayerson: I was more or less there. The critical stuff in the Senate happened in a condensed enough period that I could be there through most of everything—not everything, but those few months where a lot of things happened. In the House, I was more or less there. I was there sometimes, but I was also here sometimes. And it is interesting to me too, and I would like to track this down, but if I recall, the fax, it was semi-new, and its use as a tool of communication, the extent of its use, was somewhat new during that period. It was amazing during the ADA, because not only did it allow me to be very involved without being physically present, it also allowed us to work around the clock, which we did, often times. I mean, the judiciary report was around the clock. It was a very interesting thing, it allowed 24 hours of work to be done, from the different coast.

I remember when I first came in to the House deliberations, Melissa Schulman was chief staff person for Steny Hoyer, was very close to Chai Feldbloom, who was doing most of the staff work in the House, lawyer staff work. I remember coming in and feeling that I was a little out of it at first, but then immediately having just so many tasks to do, because Pat, was the primary person and because I was associated with her. I always was able to have access to the critical moments, which I think would be difficult if I wasn’t there all the time, and I wasn’t associated with her. But I remember being able to, like, step into the scene and whip out work immediately. [laughs] You know, I really felt like I was so productive. I think—I mean, I’ve never been so productive as during those years, because there was never a time when things didn’t have to be actually produced.

Breslin: When you say productive, what do you mean? What examples can you offer to kind of illustrate the idea of productivity?

Mayerson: Well, I think that what I was referring to specifically was written work, because I went to a lot of meetings, and I did a lot of talking, but there was also a lot of written work that needed to be produced. It goes from answering
the—literally binders and binders and binders and binders of questions about
the ADA and its implications, and just answering. You know, like I’d sit down
at a desk, actually, the first time I had used a computer was at Chai’s office. I
mean, I did most of it by hand, of course, but I’d either sit down, and literally
sit there with, you know, fifty questions, and write answers, short, concise,
readable answers, fifty questions. And then write a letter to someone who had
made an inquiry, and then do a legal analysis, and then get fifty more
questions.

Breslin: Was this the pace throughout the entire process?

Mayerson: There was never a time when there wasn’t a lot of work to do. I feel like I
worked—well, through that whole decade, I did feel like I worked a lot, I
mean, just a lot. And that was a really—I mean, there was never ever a time
when I would ever feel like there wasn’t something that needed to be done.
[laughs] And then, of course, the big climax came, and then I was very
involved in the House again, getting ready for the judiciary hearings. Right
before that was the Rules Committee. And we had to kind of put together
what version of the bill was even going before the Rules Committee.

That’s when I remember being involved in collaborations with the group, and
with Steny Hoyer himself. And then again when, right before the Judiciary
Committee, I was very, very involved with all the amendments that were
popping up, and there were like several of them we had to figure out strategies
for defeating. And at the same time, last minute negotiations were going on in
the White House, and I was very involved in those. And I think that, I mean it
is interesting to me, because—I mean, it is definitely one of those things that it
doesn’t matter who did it, and it doesn’t matter in some ways, but a lot of it
was so behind the scenes, and it is so forgotten, even among, you know, even
people that were close to me, I think. But there were critical things that
happened in the ADA then, and it was just interesting, the other day, someone
I had a meeting with explained to me about how the ADA covers the lessor
and the lessee and the definition of who was covered by public
accommodations. That was one of the main things that happened in this last
minute White House negotiation and which I was instrumental in drafting.
And when, at a time when no amendments were allowed to be accepted,
except the technical ones, the breadth of the ADA expanded, I don’t know,
100 times?

Breslin: Well, you have to explain it to me?

Mayerson: Okay. So what I mean is—I mean, you probably have this—right before the
judiciary—what happened was, there were members of the Judiciary
Committee, Armstrong and—I don’t remember—I’m blanking on his name.
But very right wing conservative members who wanted amendments, and they
were really pushing the White House, and the White House they thought
hadn’t carried any water for them as Republicans. And so they opened the door to wanting a few things.

We, at that point, had discovered that there were actually some things we wanted, too, and we had already gone to Steny to try to figure out if we could get them. But the rules of the game at that point were that everything was closed. So actually them wanting some things was a good opportunity for us. I mean, they weren’t thinking about that. [laughs] So they wanted there to be, you know, a definition of direct threat, because they were trying to appease their own constituencies about that—they wanted a couple of things. I mean, I don’t know if you want me to go into what they were.

Another one was they wanted, it says you don’t have to do something if this is going to cause an undue hardship, and they wanted a definition of undue hardship. And the way the 504 regs had been written, it looked like you had to look at the entire entity to determine undue hardship. So they were concerned about multifacility corporations that had a budget that was unbelievably large nationally, but their local store in some rural town was really, they said, operating at a deficit. And how much renovation would they have to do? Would you compare their undue hardship to the revenues of that store, or to the entire company? That was a big issue to them. I’ll think of the other things as I go along, I’m sure. But they had a few things that they wanted.

So we were called to the White House to—and that was me and Pat and Chai, and I don’t know if there was anyone else with us—were called to the White House for this meeting with Boyden Gray and his chief lawyer that was working on this at the time. Her name I also know and I’m blanking on, had been the president of the Federalist Society. Anyways, we were called to the White House, and we negotiated a deal that was one of those things where we walked out, and it was like, “Yes,” because we got things that were so critical to us, and really felt like we really had given basically nothing. So one of the things that we had—now getting to what we had wanted—what we had realized is that the way the definition of public accommodation was done in the Senate, which you have from previous interviews, or other interviews with other people, it had been done very quickly, and it seemed like it covered everyone. Then this incident had come up that Evan Kemp, who is the chair of the EEOC, had been asked to speak at an ABA, American Bar Association convention. He got to the place and there were steps, and he couldn’t get in. It was an outrage, and he was in the cold, and etcetera, etcetera. We looked at our ADA and realized it wasn’t covered.

Breslin: What wasn’t covered?

Mayerson: That situation wouldn’t have been covered. Because the way the law was written at the time, the ABA wouldn’t have been any of the things on the list, that we had made for public accommodation. So we were like, “Whoa.” This is like a big omission. So our goal was to get a different definition of public
accommodations, which, you know, Steny was saying, “Well, we can’t just like go in there with a whole new thing.” So what we did, we did two things in that regard which were huge. One is that—and I know—it was me and Chai, but—I don’t know. We came up with this idea, which was—at the time it said, “A public accommodation cannot discriminate.” That is what it said at the time. We thought if we could change it to, “Anyone who owns, operates, leases, or leases to a public accommodation,” and we were saying that that was a clarifying amendment. Like, well, who were the public accommodations. We just went in saying it was a technical amendment, it was a clarifying amendment, it wasn’t a substantive amendment. And for some reason they bought that, but when you think about it, obviously that made—that’s like huge. The other thing we did was we made a specific provision for entities that gave tax qualifying exams, licensing, so that—because we realized they hadn’t been covered [in the list of twelve?]. So that was very big. That was huge.

Breslin: To what do you attribute that success, given that no substantive changes were really supposed to be made at that point?

Mayerson: Well, I don’t know, that is an interesting question, because I feel like in a way there is—well, they obviously had opened the door, because they wanted some changes, and we gave them a definition of direct threat, we gave them the definition from Arline, which we had already wanted to be the definition, and we gave them a compromise on due hardship, which was pretty wishy-washy, and basically one of those pass-the-buck compromises, where we just said, “Well, okay, Court, you look to the entity, you look to the parent company, you look wherever you want to look, and you decide what is an undue hardship.” And I did negotiate that deal the day of the Judiciary Committee hearings, Steny told me to go back with the people who wanted that particular thing.

But part of me thinks that they really didn’t get it. Boyden never had that, like, attack dog attitude towards us. And Leigh, was her name, she would have thought, she is really a smart lawyer.

Breslin: Now you are referring to Boyden’s attorney?

Mayerson: Yes. He never got—I’ve done enough litigation to be on the other side of people who are just irrational without even letting you discuss changes. He was never ever like that, he was just kind of like—he’d think about it for like a minute, and then he’d go, “Okay.”

[A portion of the interview has been sealed by the narrator until 2032.]

[Begin Tape 9, Side B]
Breslin: Let’s go back and talk about Tim Cook’s interest in getting something on institutionalization in the judiciary report. Had there been any discussions by anybody about the impact of the ADA on institutions in the course of any of the deliberations that you can remember?

Mayerson: Title II got totally ignored in the ADA, which is also really interesting because now we’re all wrapped up in Title II. It was only thrown in because it was not what the ADA was ever about. The ADA was about getting coverage that was the same as Title VII for employment, and getting public accommodations, which weren’t covered by 504, because they didn’t get federal financial assistance. The only reason Title II was even in there at all was because we just wanted it to be a complete bill. No one gave one moment’s thought to Title II. I mean, if you look at most—well, except for transportation, I must say—I mean transportation was the reason for Title II, because that obviously was an area that needed to be done, because we needed it to be done. It was a huge, I mean, one of the biggest accomplishments of the ADA, obviously.

But as far as Part A of Title II, it was a throwaway, no one ever thought we needed anything. Look at the bill itself. It just said, “504 regs.” Everyone was just—here was an area where 504 actually covered the actual entities. So, I mean, no one thought we had to think about it. But Tim did, because he knew that there was a problem with 504 in how it was being used for institutionalization cases, and he was hoping to use the ADA as kind of a boost. Sure enough, it worked, in Olmstead. And, you know, I wish he had been here to see that, because it is completely his doing. And, oh boy, I hope no one else ever claims credit for that.

Breslin: In terms of the House passage of the ADA, during that, whenever, eight or nine month process, what was your take on the cohesiveness of the disability community in relation to the key issues?

Mayerson: I worked very closely with Hill staff, and Pat, and Chai, and Lizzie and some of the other lawyers very occasionally, but didn’t work a lot with the community directly. Oh, and I worked very closely with the Justice Department, and I worked very closely with the EEOC, [Evan and Chris]. I mean, I had a lot of people I worked with, but I didn’t work very closely with anyone in the disability community, and my impression was that it was a very cohesive time. What I did do, is I slept as Liz Savage’s house throughout the entire process, and she was in charge of making sure all the pieces were connected with the disability community, and mainly, at least in the war room, and the people that came to Washington, there was an incredible feeling of comradery, an amazing feeling of comradery. To the extent there were little fires to put out, I basically wasn’t really very aware of them. In fact, I came home every single night to the person whose job it was. So to that extent I was pretty exposed, and to that extent I don’t think that there were huge things happening. I mean, I’m sure some things happened, I can’t imagine they didn’t, but nothing like a rupture that you, one would expect, I would expect,
in something so huge, with all, so many different disabilities, and so many different kinds of groups.

Breslin: To what do you attribute that phenomenon?

Mayerson: The one thing I think that—first of all, everything you asked me, I just say off the top of my head, because I really—it’s not necessarily my answer after deliberation on any of these topics. Each one is worth a lot of deliberation, actually. Maybe I answer this way just because it was something I was thinking about today, which is, there were very few, legally, there were very few cooks. And I don’t know if that could happen now. I mean, I’m about to go to a meeting in Washington after one of the Supreme Court decisions where there are thirty lawyers who will talk about what direction they think things should go. As far as big decisions then, there was me, and Chai, legally, with some very, very wonderful additional help from various particular expertises. [laughs] There was Hill staff, and there was one leader, Pat, who relied on Ralph—it was a pretty small group. All the other people in the disability community didn’t think that that was their job. It wasn’t like they thought they should be the ones in there negotiating a piece of legislation of that magnitude.

I mean, like, I don’t know, nowadays—right now we would be having committee meetings with thirty lawyers over every provision. I can’t even envision it. I mean, I don’t know actually how this all is going to work, because this whole thing with this meeting that I’m going to tomorrow is, one of the ideas of it is legislation. I don’t know whether everyone thinks they’re now going to have a say—it’s perplexing. I mean, it was still at a period of history where there were a few enough people who were responsible for it, that I think it made it go easier, even thought there was a shitload of work. And I also think that—I mean, now I think that it is a good thing, that there are so many people that want to devote themselves to disability law, and particularly law, because that is where I am most knowledgeable. But it is different.

Also, I mean, it is interesting, because I was just saying to someone today about my own role, and my changing role, and my own life, and et cetera, I was saying that it used to be that I really thought if I didn’t do it, it just wasn’t going to get done. I mean, I don’t mean it wasn’t going to get done well, I meant it wasn’t going to be done. And now there are so many people that want to do, are doing disability rights—which is not to say there is no role for the, you know—just any person with a lot of experience is always going to have some particular perspective that might be useful. But it’s different. At the time it was just, the disability community put a lot of faith in that team, too. But I don’t think anyone was positioned to think they should second guess it. But now I don’t know. It’s different.

Breslin: [What was your ] best personal moment during the process?
Mayerson: The whole ADA?

[Begin Tape 10, Side A]

Mayerson: Right. I said I don’t know if I have one. But I think that in my life, the way I look at it from a personal point of view, as opposed to a more historic or legal point of view, is that I felt like I really—I did a good job in what I was supposed to be doing. I felt that satisfaction of really turning out work that was useful, and good, and needed to be done, and—so, I mean, I don’t have a moment, like a moment in time. It is just like the whole thing is one big, huge, amazing experience, but also an experience which really was deeply satisfying in terms of my work, because—and that is pretty amazing, because it is not like how I always feel about everything, you know. I just, it was like the whole thing just really—I don’t remember a lot of bad memories, that’s more amazing to me. Because for me, I would think moments of extreme self doubt would pop out more. Given my particular personality I would expect that. But I don’t really have that either. I don’t have moments where I felt like, “Oh, I made the wrong choice.” Like, I have a moment from the 1991 Civil Rights Act, which I’ll just like never forget in my life, I had so much self doubt about, that I thought maybe I had done the wrong thing. And I don’t really have that feeling about the ADA, which is to me more remarkable than not having a good moment—I mean a particular good moment.

Breslin: You were working on the ADA intently from, I guess, 1988 through its enactment. Do you have any particular recollections about what was going on with DREDF during that time?

Mayerson: I’m very bad at dates, so I don’t actually remember—I just was looking at your thing [notes? oral history?] and saw you said something about 1988 was when a kind of big shift happened, but I don’t really recall that, because I recall that we were still—you were very much absolutely still there through that whole time. I mean, that’s my recollection. So I don’t think any of the big shifts had happened. I don’t know. I don’t remember anything impeding us working. So I don’t know.

Breslin: Do you remember what happened that involved you, regarding—?

Mayerson: My experience—as, between me and Chai, certainly I had a lot more experience with the disability community in knowing what the issues were. And when we were starting to do an actual Title II section, and actually starting to look at it—we were talking before about Tim having a very strong desire for his institutionalization points to go in. I remember putting in curb cuts that actually went in the Health and Human Services report. There was enough in Title II, there was a little section in Title II in that report, and that was, we took the Senate report, and we basically “Christmas tree’d” it, you know, just putting in a lot of different little inserts and stuff. I remember
adding curb cuts there. It wasn’t the only thing, certainly, that I added based on my experience with the disability community.

I think that—but I don’t remember exactly—but I have a feeling it might have been your idea to do curb cuts. But if it wasn’t your idea at that moment, it was definitely from that experience—you know, like I remember you describing about the area right around Vine, Shattuck area, like how many blocks you had to go to get from one short block to the other. I mean, I think, if you hadn’t done it that day or the day before, or the week before, it was, very much something you had definitely talked about.

Breslin: [Anything] specific that you remember being involved with?

Mayerson: I put it in the Title II language, as an example of program access, I think.

Breslin: The reason I asked you the question, actually, was because I was curious, because I don’t remember exactly how it came about, but I have a very, very clear memory of a particular interaction with you about curb cuts where you sort of flew in the office one morning, and you know, it had sort of come to you, and you said, “You forgot curb cuts. I’ve got to deal with it.” But I also asked you the question because there has been a recent case in Sacramento involving the obligation of the city to basically retrofit the entire city for curb cuts, and the judge just isn’t buying the idea that the ADA requires curb cuts. I was just interested in whether you thought that was an appropriate interpretation that you can get to curb cuts through program access.

Mayerson: Well, the other big thing, the Department of Justice also says you have to have curb cuts. So, I mean, it did work to a certain degree, because it was incorporated into the Department of Justice regulations. Then there was this whole big gigantic thing about delaying the starting date just for curb cuts. And there have been several successful cases on curb cuts. But I certainly didn’t think about it as being a huge expense. I mean, apparently it is one of the biggest ticket items there is, but I wasn’t thinking one way or the other about that. I was thinking from the experience of disability that I have been exposed to that it was obvious. You can make all the buildings you want accessible, but if you can’t get to them, it’s pretty irrelevant.

It was one of those things with a legislative history. One of the things the legislative history really did work for, in terms of the hierarchy of the Court, is even, as much as they want to downplay the legislative history, they haven’t gotten to the point where they are willing to completely disregard agency regulations. I mean, we’ve lost some, but they never had a doctrine that said, “And we’re also going to explicitly ignore them.”? So to the extent to which we had legislative history that we could manipulate or help form—and then have friends in the agencies who were writing the regulations who understood it also because they came from a disability perspective, and then at that point
we were better equipped in the Court. The curb cuts alone, if the Department of Justice hadn’t adopted them, wouldn’t have been as strong.

Breslin: Is there anything else about the House process that you want to talk about?

Mayerson: I remember giving Judy the assignment of doing Representative Hamilton Fish’s floor statement. It’s a really interesting floor statement—

Breslin: That’s Judy Heumann?

Mayerson: Judy Heumann. It was one of those things that she really thought she maybe couldn’t do, and she did it. And it is really good. I remember meeting with Hamilton Fish and that being extremely impressive. It was a very—it was one of those meetings that had a lot of, you know, reverence, because it was me, and Pat, and Ralph. Ralph had a very special relationship with Hamilton Fish, and he had that very stately manner to him. He was a Republican, but he was like a mensch kind of a person. And he saved the day in many regards for us on the House side.

What we were actually meeting with him at the time was that issue of undue burden, and there was a big campaign by the restauranteurs through their association, the National Restaurant Association to make it so that only the facilities’ resources were taken into account. He was, had been really bombarded by that, and we were explaining to him why that wouldn’t be a good way to go. He was principal in negotiating through all of the last minute amendments that we needed accepted in the Judiciary Committee, which he was on. I remember that being a very important meeting.

I remember also being in the House, in Steny Hoyer’s office, and this story is so much about Steny Hoyer as a human being. We were in his office, and actually Emma was with me, because I brought Emma with me, my daughter Emma with me, almost the entire time, almost every time. Most of the time she had babysitters at Lizzie’s house. Sometimes I had to get her before the day was over, because the work day kept on going on and on. [laughs] It was after the first floor vote, and Emma was delivered to me, and I was having a meeting with Steny Hoyer. She was, of course, a baby, she was two. She didn’t even, obviously, have respect for process or anything. She was just saying that she was hungry.

Steny said to one of his aides, “Will you get the baby an apple?” because he knew, I guess, there were some apples in the fridge and the aide brought an apple, and he goes, “Well, it’s not peeled!” He got up and went into the bathroom to peel the apple to give to Emma. I was so impressed by that. I remember Pat kind of looked at me like, “We’re in the middle of this tense negotiation,” because some things had gone down on the floor the first day that were really important to get to, and you know, our principal was like off in the bathroom peeling an apple. [laughs]
I don’t know. I don’t know if I have any other particular memories about that.

[A portion of the interview has been sealed by the narrator until 2032.]

Judy wrote Hamilton Fish’s floor statement. She testified in the first joint hearing of the new bill. She was a Hill insider, I mean, a lot of people knew Judy. I think she had some—I don’t know, because I’m also very close personal friends with her, and I don’t know if we’ve ever really discussed it, but I think she might have had some degree of frustration by not really knowing what her niche was in the development of the ADA. Now that you mention it, I remember periodically getting kind of frantic calls from her to make—where she had heard something about a compromise that might be going down, or something like that, and some call saying, you know, this is happening, and this shouldn’t happen. But I can’t remember any specifics, and I can’t remember anything that happened, and I might, as we talk, but I don’t remember right now.

The thing about the ADA, how we were just a small group, is that it wasn’t that we were trying to exclude anyone, it was just that you get a momentum going, and you get so much work that has to be done. I’ve also been on the other side of this in other ways. But I don’t, you know, it definitely wasn’t anything personal to have an “in” group and “out” group, some people that were incorporated or not, but it was one of those things that it was hard to come in and out of, because it was such a moving target. I was able to come in and out of it, at least physically, in terms of location, because Pat was always in it, and I was always in touch was her. But I think for other people who really didn’t have it as their number one thing they were doing, it was hard to figure out where they fit in, except people who were just willing to come and like walk the halls, which a lot of people did. And Ed probably did, I just don’t remember. I do remember Gerald doing this, from CIL.

Breslin: Independent Living Center people around the country felt a connection to the legal process that was going on, and I know that they were very active in terms of being involved in community organizing, but do you think that they felt, you know, a part of the process?

Mayerson: With the movement, the ADA movement and with transportation, they were really part of that process, and that people were really keyed in to what those provisions were going to say. They were new provisions, and they were very particular to someone’s actual experience. I think that the area of employment, it was more something that was basically whatever 504 was, it was going to be. I think that in the area of public accommodations, it was kind of a little bit of that also, which is, you know, just certainly involved in something like not wanting a ma and pa exception, certainly involved in things like not wanting big gaps in coverage, you know, “the pastrami sandwich but not the pharmacy,” kind of way. Transportation, it was starting from scratch, so, yes,
people cared about whether there was one car per train, et cetera, et cetera. There is a big activist movement around transportation. So I think, my impression anyway, is that that was what people were most involved in, from a movement perspective, legally.

Then, of course, the telecommunications section. I don’t know to what extent Karen Strauss was in touch with an actual Deaf community. But I assume, at least as DREDF is, she is. But the transportation, it also was an ADAPT issue at the time, and they are an activist disability—visible—group. Also the equity issues, that people with disabilities should have the remedies that people of color and women have. It’s a legal concept, and it was a critical one, at that end disagreement or problem area, right before the vote. I think people were involved in that, I mean, I think people had the idea of equity as a movement idea.

Trying to explain whether job relatedness and business necessity mean the same thing or different things, we don’t even know—[laughs]—but, you know, not on that level. Definition of disability, actually, I don’t know, because now, you have to look at the movement incorporating Evan Kemp and Chris Bell. If you look at that, then you see a total split, and I think it represented a real split. Now it’s not a split, everyone seems to think there should be broad coverage, I mean, not Chris Bell, but he works for management.

Breslin: What do you think the biggest success of the ADA has been?

Mayerson: I’m sure that if I was someone who used a wheelchair I would think the biggest success is access, in my daily life. From the more abstract vantage point, I think that the national dialogue on disability is the biggest advantage of the ADA. Because it’s amazing to me that on any given day in the country, and particularly right after the ADA, there were seminars, and there were workshops, and there were this, and there were that, and there were articles. I mean, I think something that would be interesting to do is compare the amount of articles in national media written in ten years after 504, and then one year under the ADA. That would be an interesting assignment to give somebody, like a student, because I will bet you anything that it was at least ten, twenty times the visibility in the press and the public mind. Even the negative stuff, I mean, it is—disability is out there. N

Now it is kind of interesting too, because the whole issue of access and wheelchair access, it’s pretty well incorporated into the public consciousness. Now there are some really controversial issues, obviously, and they are hard issues for the public to grapple with, and the court, certainly to grapple with. But the basic things, while not at all perfect, and not total implementation, and not total access, it’s not a foreign concept to people in this country to see access as a matter of course in their daily lives. And that is huge, I think that’s huge.
And then of course, what was really moving to me is forty-eight countries that passed disability rights legislation after the ADA, that was the other great thing. You can’t really deny the fact that forty-eight of the laws came about after the ADA, and you can’t really deny the fact that it was an international phenomenon. The impact of the ADA, in that way, you can hardly think of something that is more groundbreaking, something to cause that much international movement. Unlike some of the other advances in civil rights in our country, disability is an international phenomenon. So, anyway, I think that those are the biggest accomplishments of the ADA.

Breslin: Is there anything else you want to say about the ADA at this point?

Mayerson: About the ADA, I think that—it is a law, and I think all the things that I just said. But I also think that it doesn’t—and wasn’t supposed to—but doesn’t grapple with a lot of the most important issues in disability. So now that is what a lot of discussion is about also. I think the ADA also generated discussion of what role a particular civil rights law has in a larger picture, when you have other basic precepts that it doesn’t necessarily fit with, like capitalism. [laughs] I think that is interesting, that it is a particular approach. In disability, as like in other areas, I mean—the next chapter or the next level of thinking about it— it opens as many questions as it answers, I guess I want to say.

Breslin: Let’s come back to that, because I would like to hear you say a little more about what that means. But I want to tie up the actual ADA process by asking you to reflect a little bit on the actual signing, the day of the signing. Did that day hold any particular meaning for you, was it significant, was it anticlimactic, or—?

Mayerson: It was a very exciting day, my whole family was there. It was a beautiful day, a lot of people from DREDF were there, you were there [laughs], people who—it felt like a very connected day with people that—a pretty amazing day, actually, in terms of that feeling of connection with your work, and your life, and the meaning. It was very, very, very amazing for me that Evan kind of threw in my name from the podium, and it was a very few names. Personally, that was amazing to me, because it was just Evan and his view of what—of him seeing me fulfilling a particular role, which was extremely generous of him. That was really amazing, and shocking, and surprising. I was very aware, I mean, it did feel very weird for Chai not to be invited, and so it did come off—it did put a kind of negativity to it.

[Begin Tape 10, Side B]

Breslin: Why was she not invited?

Mayerson: I think it was because George Bush hated the ACLU and that made it kind of creepy, that kind of put a creepy feel to it. It didn’t ruin it, but it definitely was
there somewhere, that it was George Bush, [laughs] and those Republicans, that had pulled this thing through. It was also really creepy that none of the Democratic leaders were acknowledged in the ceremonies. So it had creepy aspects to it, and I definitely remember that. I was a little bit torn about how much I wanted to be into it for that reason. On the other hand, there were thousands of disabled people on the lawn of the White House, passing the ADA, so it was amazing, too.

Breslin: Would you like to talk a little bit about the ADA regulations?

Mayerson: It was a mammoth job, because I was getting comments from everybody. I went to meetings in Washington to describe the regulations to a lot of people, got a lot of feedback—[tape interruption] Anyway, then we filed briefs on behalf of 504 groups, which was kind of DREDF at its heyday, because we were the coordinating body for the whole country. I’m hoping I’m not leaving somebody out who was really working with me, because I’m kind of thinking I must be, because there were so many comments, I mean, they were mammoth. But, yes, on behalf of 504 groups, that was a huge undertaking. A lot of things that were in those comments were incorporated in the final regulations. When I think about this whole time I forget about that whole aspect, which was huge.

We also had meetings in Washington with the EEOC. Pat and I had a meeting that was extremely unpleasant with them, because it was around the definition of disability—Naomi Levin, Chris Bell, Evan Kemp—it was all around the definition of disability, actually. I found it extremely frustrating, and so did Pat. It was a very bad meeting, I remember that.

We also met with the Department of Justice. Anyway, I don’t know what more to say about that, but that was a big undertaking.

Breslin: What was the impact of the comments that you and DREDF filed on the final outcome of the regulations?

Mayerson: I think that there were many things that were incorporated. We pointed out the fact that the Title II regs did not have an employment section at all. And then we said, well, then agencies of less than fifteen weren’t covered. Then the Justice Department adopted their own employment regulation. Employment had two different places where it was covered, and then we ended up running into troubles without the courts also. But that was one thing I remember definitely being incorporated.

Incorporating “was readily achievable” into Title II was a whole legislative finesse, which we did, which was, when we incorporated the regulations into Title II, we added this thing that said, “The regulations under this act should be consistent with this Act and the 504 regulations.” To this day, everyone knows that it incorporates the 504 regulations, but no one, most people don’t
know what this “Act” means, and what we put it in there to mean, so that we could also incorporate into Title II some of the new stuff that we had gotten into the ADA, like “readily achievable,” “associations,” that kind of passes people by. But when we wrote our Justice comment, we pushed that. We said, “It says that this Act,” but they didn’t incorporate “readily achievable.” We urged them to, and they rejected that. But they did incorporate “association.”

Breslin: Did or didn’t?

Mayerson: They did not incorporate “readily achievable” under Title II, which I still think they should have, but they did incorporate “association.” Another issue that we were very involved in was, of course, the definition of disability. One of the examples the EEOC used in the proposed regulations of someone who wouldn’t be covered by the ADA because they had such a specialized job, was a surgeon. And we went crazy on that, saying that wasn’t such a narrow job category, surgeon, that they should not use that as an example of someone whose job was so unique that an impairment that prevented a person performing it was a “disability.” I think that is where we ended up getting airline pilot, which we ended up getting screwed on [laughs], but what we urged them to do anyway is to switch surgeon for a baseball pitcher, for a narrow class of jobs. But anyway, in other words, to try to make it clear that the exception to coverage was very narrow.

If you file comments on behalf of 504 groups, those 504 groups are interacting in the process. They are having some relationship to each other, because they at least have a document in their office that shows all the other people that are on the same comment. I mean, I really do think those things have a tremendous organizing effect. Also, they inform people what the regs said.

Breslin: So after the ADA, what kinds of things stand out as highlights of the next year or two after the regulations were finished?

Mayerson: I guess for me the thing I think of right away is the Supreme Court litigation on the ADA, which is always very involving for me, and always very important to me, and also very interesting to me.

Breslin: The prison case was the first one?

Mayerson: What’s that?

Breslin: The prison case, was that the first one?

Mayerson: I think maybe Abbott was first, the HIV dentist case? Or maybe Yeskey was first.
[A portion of the interview has been sealed by the narrator until 2032.]

Breslin: The fact that there are so many people interested in the area [disability law] and who are competent is a manifestation of the movement and the issue reaching some kind of maturity. What do you think about that?

Mayerson: Absolutely. It’s like the ADA, it is the same thing. It is like the 504 bar, the people that were interested in this issue pre-ADA, compared to now, I mean there is—it is the movement, but the ADA itself is very, was very visible. It was very tremendous. It was something you want to be on the bandwagon of. It presented a whole new area of law to perfect, which was available, actually, in 504. I mean, it was so funny for me when all these state and local agencies in particular were giving ADA workshops after the ADA. And it was, like, they had been covered for seventeen years at that point, and had no idea. So I think it is a tremendous tribute to the movement.

For me, it is a real wonderful thing. It is also somewhat of a loss because having that particular role is as much there anymore. But having seen that, you know, the issues, like, grown up, it has got a life of its own, and it is well taken care of, and you can die tomorrow; everything is going to go along fine and all that kind of stuff, that is a good thing.

I think that is really true, I mean—and not only that, but the people that are doing it now, the influence of the DREDF kind of perspective—I have a self interest in believing that, but I also do believe it, and not only just me, by any means, quite contrary—everything that went on before that at DREDF is, I think, now very incorporated into how people think of disability rights. There isn’t, among that list, people on that list of lawyers at this meeting I am going to tomorrow, post-Garrett, there is not one single person on there that thinks of physical disability and mental disability differently. I mean, actually there are people that are more interested in mental disability, that is for sure, because this—another thing that is very interesting about this is that the whole mental disability deinstitutionalization, the very first people, that whole segment has been reignited. When I was involved in the eighties, they were pretty dormant, actually, because institutionalization and disability rights were too different bars completely, and we didn’t interact. These people are all now ADA lawyers. Like Steve Schwartz, I never interacted with him at all. Now he is a top ADA litigator, but he had come out of the deinstitutionalization. Same with Ira Burnim from the Bazelon Center.

Breslin: It is interesting that you say that because so much of DREDF’s focus has been on school integration of kids with developmental disabilities who would face or could face institutionalization. Our interest in the institutionalization is very strong, though it manifested itself primarily in an integration orientation.

Mayerson: Yes.
Breslin: So it is odd that you would say that there are two bars, though you are right, but there is so much overlap philosophically between the two, at least between DREDF’s orientation and—

Mayerson: Well, there was a group of lawyers who had done mental health law that were interested in institutions, deinstitutionalization, but primarily a lot of litigation was about patients’ choices. It came out of, more of an ACLU kind of—

Breslin: Patients’ rights kind of—

Mayerson: What’s it called? Well, patients’ rights, but that falls under the umbrella of— not civil rights, but-

Breslin: Civil liberties?

Mayerson: Civil liberties! So there was a whole group of lawyers who had come out of the civil liberties tradition who were doing institutional cases from a civil liberties point of view, from the fact that people were being drugged against their will, were being abused, and were living in inhumane conditions. That is what I was talking about, about two different bars. So that bar had a whole lot of very impressive, esteemed lawyers. In the eighties, when I was doing this work, I basically never even knew them. I didn’t even know some of their names. I mean, some of their names I absolutely did know.

What I am saying is that that bar also has reemerged in the civil rights— And like you said, they are natural to go together, but they came from different routes. It was really interesting. The President’s Committee on Mental Retardation did a conference, a big retreat, which was actually very enjoyable to me. But it was—I went to that conference. It was all the hot-shit biggest thinkers in the area of disability rights, as far as the President’s Committee on Mental Retardation was concerned. Tim Cook and I were the only people there from the disability movement/civil rights perspective. Everyone there was very simpatico with it, but that is not the roots they came from. I remember, when I was asked to respond to one of the papers, I was asked to respond to Charlie Halprin. Do you know him?

Breslin: Yes.

Mayerson: You do know him, okay. My whole response paper was about the movement twist on the theme. See, I didn’t know him.

Breslin: What year was that?

Mayerson: I don’t know, pretty early on, maybe ‘80, something like that, or ‘81, ‘82, yes, something pretty early on. But these people are now, I mean, a lot of these same people are now very involved in the ADA.
Breslin: I assume you think that is a good thing.

Mayerson: I think it is a great thing. I think the more people that are involved in the ADA, that are brilliant, and committed, and—I mean, it’s fabulous, it’s wonderful. It does, like I said, it does pose some personal questions for me: “Is this my role?” But it is a good thing. I mean, it is a good thing for disability to have lawyers.

Breslin: More than two.

Mayerson: Yes, and also ones that do a whole variety of things and have a whole variety of ways of funding their institutions, and, I mean, lots of things. It’s not like I think it has fallen into bad hands, you know, that wouldn’t be a good thing. I think there should be a little bit more respect for some of the people that have worked along the way. I think that would be a good thing. In particular who I’m thinking of in that regard is Bobby Silverstein, but that is a whole other topic. [laughs]

Breslin: There’s one more question that should come toward the end of this interview that comes to mind now, so I’m going to ask it. What do you think the future of disability law is in terms of the trajectory from where we are now as you just described it?

Mayerson: The future of disability law? I think that we’re still left a dichotomy of civil rights and social welfare as two different tracks, that people can either be on one or the other, and there’s some movement in that direction, which I should know a whole lot more about than I do. [laughs] But I guess the ADA’s biggest failing, if you look at the statistics at least, has been in the area of employment, which is another reason I was so interested in the international conference and sharing our experience, is that, I think a natural, for instance, would be to have reasonable accommodations paid for by other than the employer. More positive incentives, more than you just don’t have to discriminate, more than just the negative. Because I don’t think just having the negative is going to really have the results in terms of employment.

Breslin: What other examples of proactive stances are you recommending?

Mayerson: I think that the disability definition is an endless trap. If I thought anything got accomplished at retreats, we should have a retreat to discuss these things. But I don’t know if there is a way out of that. I’m starting to think there is no way out.

Breslin: There’s no policy solution to that problem.

Mayerson: What I’m starting to think is there’s no way out as long as it’s still disabled people focused, instead of just trying to move it away from the person involved, to the action involved. But there is also a lot to lose from moving it
away from a protected class. I started to explore that a little bit—I don’t know if anyone was aware of it—but I, at least, was starting to think about that a little bit in the paper at the international conference, which I don’t even know if I have any notes about, actually. But I was intriguing myself with that possibility of how much there is to lose by losing protected class status. But in terms of the legal results, I think politically there is so much to lose, and I think in terms of legal result there is no way to get there with protected class status. So I am very interested in that particular topic and a way out on that. I think that would be a very interesting topic for further consideration.

[A portion of the interview has been sealed by the narrator until 2032.]

But in fact, I think that the whole—really, really weighing the pluses and minuses of it in a very open way that doesn’t have a politically correct answer would be extremely interesting. Because I don’t know about it. You know, I have been the biggest proponent of a broad definition, but I can see how there is a lot to lose in terms of the kind of roots with other groups and political movement momentum. And identity. So I mean—let’s see. Obviously, now I am just starting to get involved in this. I am a complete novice, and I have so much profound respect for the people that have been doing it all along. There is this whole issue of nursing homes and Medicaid and—I’m just baffled by that, just how long it stayed the way it has for fucking no good reason.

[laughs]

Breslin: To create incentives in the Medicaid rules—

Mayerson: Well, that’s what I mean, there’s no reason to have that kind of Medicaid law. Medicaid law is just so, so out of step, and it’s absolutely astounding to me how out of step it is with—It’s like the gap. Every one of these things could be, you know—the gap between law and culture is just so extreme. And it perpetuates itself in such a real way. Like sometimes the gap is interesting, but it doesn’t have such profound consequences on the ground.

I think those are the most interesting issues. I think the other things are just continuing to have compliance, and more compliance, and all that stuff is really important. But in terms of really tough issues to grapple with—

[End of interview session 5]
Breslin: Arlene, we talked last time about the development of the ADA regulations following the enactment, and you talked quite a bit about some of the issues that you were concerned about and that the community was concerned about. But I’m wondering if we could back up a little bit today and ask you to revisit the actual process of developing the ADA, and say a little bit about the issue of reassignment in Title I. And the reason I’m asking you to reflect on that today is because there has been a recent agreement by the Supreme Court to hear a case on reassignment. So why don’t you talk a little bit about your recollection of the reassignment issue during the enactment?

Mayerson: Okay. One of the big problems that had arisen in the 504 case law was that the courts were saying that you couldn’t have reassignment as a reasonable accommodation if it violated the terms of the collective bargaining agreement, specifically meaning that if a nondisabled employee had seniority, you couldn’t give a disabled person who might need, for instance, a daytime shift, because of their diabetes, for instance that had to be controlled and regular hours of sleep, et cetera, you couldn’t give them a daytime shift if someone else was going to get a daytime shift because of seniority. Almost all the cases, not all of them, but almost all the cases under 504 said that seniority in a collective bargaining agreement won out. And in the ADA process, as I spoke about earlier, the idea was that we were only doing what 504 did, but we were extending the provisions and the principles to a greater number of entities. So everything that we did that was different than 504, we had to kind of do in a not obvious way and there were few exceptions to that.

One of the exceptions is that the definition of reasonable accommodation in the section 504 regulations does not include, as an example, reassignment. The ADA statute does include, as an example of reasonable accommodation, reassignment, and that was a huge thing that we added. It was huge in that it had been a problem in 504 case law, and it was huge in that it was explicitly in the statute different than the 504 regs, and that was not something that we were normally able to do.

It went through pretty much without a lot of fight about it, and it was in the original Senate version. When it came time to actually write the report, even in the Senate, there was some concern, and I don’t know whether it was by the unions at that point—I just can’t recall who was concerned, or who finally understood that it had an implication on this collective bargaining agreement stuff. But suddenly we were faced with writing a report that had to kind of walk a very thin line on that issue, so that even though it said reassignment in the statute, the Senate report didn’t really take a stand one way or the other as to what happens when seniority is in a collective bargaining agreement. And what it said instead, there were, like, three paragraphs, and what it said was that a disabled employee should be reassigned as reasonable accommodation,
because it is often the most efficient way to accommodate someone, often the least costly, so there is really good language about reassignment being a good accommodation.

But then it says that a collective bargaining agreement should be one of the factors in undue hardship. But it just kind of throws it out there, leaving it for the courts to determine how to use it as a factor. So it is not determinative. The House report states that when there is a conflict, the CBA is not determinative. Well, it is always a good thing to put in legislative history, but when you are a court, and you are trying to decide, well, it is not determinative, then what is it? And so, there have been cases under the ADA that have gone both ways, mainly against us, but there is one very noticeable case decided by David Tatle, who is a disabled judge in Washington on the D.C. circuit, that goes for us.

The courts are trying to struggle with the fact that reassignment is in the statute as a reasonable accommodation, but the legislative history is kind of wishy-washy on how it is to be applied when it conflicts with a collective bargaining agreement. So now the Supreme Court has decided to hear a case, the *Barnett* case out of the Ninth Circuit, where there was no collective bargaining agreement in the workplace, but there was a seniority system instituted by the employer, U.S. Air. The Ninth Circuit said, “Well, we’re just going to consider this as a factor, and as a factor in this case, we think the disabled person should get the reassignment.

Breslin: Why do you think the court, the Supreme Court, decided to hear a case with what sounds like the same fact situation in terms of no collective bargaining agreement? I mean, are they interested in voicing a view about this?

Mayerson: I think that is an excellent question, because you’d think they’d want to take a case that involved a collective bargaining agreement. It’s kind of unique to have one that doesn’t. I don’t really know where they are on whether there is or is not a collective bargaining agreement, just the fact that there is vested rights by other employees. In general, they don’t like the idea that a nondiscrimination statute can have preferences. And they— and we— well, we first of all, were making such a huge leap in the ADA in terms of what we were squeezing into the nondiscrimination concept, and the courts have absolutely never caught up with us. I think our hardest argument is reassignment. So it is taking the reasonable accommodation that is most controversial [reassignment], and really most hard to justify, under pure nondiscrimination, and probably they are all prepared to rip it to shreds, when I think about it.

Actually, now I am thinking about how it kind of exemplifies the thing that people hate most about the ADA, which is that someone is getting a preference because of their disability. And even our liberal cronies can’t quite
understand why should someone get a preference because of disability, if someone else has other reasons why they need a particular shift, for instance.

Breslin: These issues were being considered when you all decided to put reassignment in the list of possible ways in which somebody could be accommodated?

Mayerson: I mean, in some ways, when I look at it now, I think we were very cavalier in the ADA, and I think that we just felt very self-righteous. Well, yes, someone else might want it, but a person with a disability can’t work unless they have it. I mean, I still do think that is a valid distinction. But it is a little cavalier in the idea that there wouldn’t be, like, a backlash to it.

Breslin: Who dreamt up or thought up the idea of including reassignment in the original statute?

Mayerson: I think it was me, because I was aware of the negative case law, and I kind of remember just putting it in, but I am sure it was with, obviously, the agreement of everyone that we worked with, but—if I had to guess, I would guess it was me. [laughs]

Breslin: We talked a little bit last time about the complications regarding the definition of disability and some about the development of the Title I EEOC regulations throughout the legislative process defining disability. And there is now yet another case that has been granted cert. by the Supreme Court yesterday, that deals with the definitional issue again. Can you just say a little bit about what you think the long term outcome is going to be of this line of cases, given the concerns that were raised during the development of the ADA?

Mayerson: The ADA was based on a race and sex paradigm, for lack of a better word, protected class paradigm, and I think that I’m going more and more towards the idea that it doesn’t really work to accomplish the kind of more comprehensive goal. The more comprehensive goal being not using someone’s disability or someone’s medical condition or physical condition or diagnosis as a reason to make an employment decision. I mean, even though not everyone agrees with it, the easy part is that you don’t use a medical condition to exclude someone. But then the next part of it is, what about accommodation, and how far do people have to go to be accommodated? And then it starts to sound more like a benefit that you get because you are in a protected class. And that is where, again, the whole issue becomes very dicey. My idea is that, obviously if you have a broad definition of disability, you have a broad definition of who gets accommodated. And I don’t think there’s anything wrong with that. It’s probably where things are going anyway, or should be going. But it is something that bothers people a lot, because a lot of times the accommodations look like preferential treatment or are considered burdensome to the employer.
And also, I think another problem, I’m just kind of rambling here, is that the disabilities that seem to be coming up, like carpal tunnel, a lot of people just don’t believe that they even exist, that they don’t want to—people feel vehemently that they don’t want to accommodate whiners. I have a very different feeling about carpal tunnel. I think, you know, it obviously can be a debilitating disability and have a huge effect on someone’s life. But what has happened in a lot of cases is that, in the carpal tunnel areas, that people have carpal tunnel at work from repetitive stress, basically, from doing a repetitive task. In her case [recent Supreme Court case they are discussing], she worked in an automobile plant, and she did some kind of—almost like assembly-line type thing. It wasn’t a computer. And that condition, in many cases, doesn’t really affect the person’s life other than at work. And those are the hardest cases in terms of the ADA.

Breslin: Any prediction about the outcome yet?

Mayerson: No. I haven’t studied it closely enough. I’m hoping that, I’m actually hoping that—even though it seems like a setup to take one of the most controversial disabilities, it seems like a setup by the Supreme Court to yet again knock down the definition, part of me kind of hopes that maybe they’ll use it to rehabilitate some of the very negative decisions, because once they get past the hump of recognizing the debilitating affects of the condition, they can fit it into their substantially limited to show that the ADA is not just a statute for people who have the most traditional kinds of disabilities. But I don’t know.

Breslin: Okay, let’s talk a little bit about what has gone on since the enactment. There has been an awful lot of activity in the last ten years. Shortly after the completion of the regulations, you were involved in writing a law book on the ADA. Can you say a little bit about that?

Mayerson: Well, yes. I had this idea that the best thing that anyone could ever want on the ADA was to have a research book that had each provision of the ADA with all of its legislative history right underneath it, so that you didn’t have to look up— I should say first of all, that the ADA has a voluminous legislative history. Besides the fact that it has one Senate report, it has five reports in the House. It also has all these floor statements and floor debates and two conference reports. And so in order to find something on the particular topic that you might be litigating, you would have to read through all of that to really get to know everything that was said about that issue. So my idea was that you would have one book where you could just look at any provision, however small, and find everything that was said about it. I think it was an original idea. I don’t think it had been done, in any statute. I mean, I’m not aware of it. I mean, certainly there have been statutes that have discussed topic areas, but not divided in that kind of way. And so I set out to do that, and it became way, way more voluminous than I had expected.
Maria Blackwell-Straton at the time was working for DREDF. She had been a trainer and a paralegal, and she took on a lion’s share of the organizational work to try to figure out how to get all the parts of the legislative history attached to the appropriate provision. Then I had to kind of oversee the whole—and then someone else we had typing it. I had to kind of oversee the whole process to make sure that, in fact, I thought the divisions were correct and that the appropriate material was being attached to the appropriate provision. Then also I was writing commentary.

I think my biggest mistake in that book, and the publisher’s biggest mistake, and actually something I want to correct now, is that we also tried to make it current with case law. I think that was a huge mistake because I wasn’t really committed to doing this forever, and the publisher wasn’t really committed to doing it forever. I think it should have been a stand-alone book. I think it should have been just the legislative history of the ADA annotated, and I don’t think it should have ever tried to be an ongoing—because there are other books that have all the case law. That was never the idea of the book, and I think it was a mistake to put it in, because now, because it hasn’t been updated, it looks antiquated. It’s not making the sales it should make. Whereas if it was only what it should be, a stand alone book, I think it would do a lot better.

But it is a great book, I mean, people that have it say it is unbelievable how well it works. I mean, I can look up anything. I talk to people on the phone that—just for me—just for someone who works for DREDF and has lawyers calling them—people can call me up from all over the country, a lawyer with a particular issue, and I can fax them a page with all the legislative history within fifteen minutes. And it’s amazing. I mean, they are amazed. So I think it works really, really well for its intended purpose. I think it works really poorly for its unintended purpose, which is to keep you up to date.

Breslin: In 1992 Bill Clinton was elected president, and shortly thereafter there was a move in the community to bring a number of people with an involvement in various aspects of disability into the administration. Were you approached at that point for a possible slot in the administration?

Mayerson: Well, the first thing, I got a call from the White House asking would I be interested in being general counsel of the EEOC, which was really a surprise. I had no intention or no idea about that. That was something that I just pretty much rejected out of hand. I called Eric Schnapper who I had worked with for years from the NAACP Legal Defense Fund, and he said that was a job for a major employment litigator, and also just an incredibly impossible administrative job, and just convinced me absolutely that not only was I not qualified, but that I also just wouldn’t even be able to make a dent. I mean, it was just huge, and kind of a losing endeavor for whoever took it. I think I called him back like the next day or something and said I wasn’t interested. And then I got a few inquiries about being the—not the assistant attorney
general for civil rights, like a person under the assistant attorney general for civil rights—

Breslin: Deputy assistant attorney general?

Mayerson: Deputy assistant attorney general for civil rights. Actually, I’m trying to recall who even called me. I know I was talking to Liz Savage about it, but she wasn’t in any position at that time, and I don’t think Jonathan was there yet. I don’t know who was there in the White House, who was asking me about that. I also talked to John Wodatch about it. He was there, and he was aware. I made some phone calls. I thought about it a lot, so I think it was somewhat serious, because I remember I kind of fretted over it quite a bit, lost a lot of sleep over it. It’s funny, because I don’t remember really how it came to me, or whether I was even scheduled to go for an interview, or—I don’t know how far it went, but in any case, I decided I didn’t want to do it.

Breslin: What were the factors that contributed to that decision?

Mayerson: Well, I don’t think I wanted to uproot and go to Washington and take my daughter to Washington, and my family—my stepson was still living in San Francisco, and I didn’t want to never see him, and I didn’t want my daughter to not see him, and it was because family-wise it didn’t work at all. Then the other reason was—and I think it is funny, because throughout the whole Clinton years, I often said to my friend Diane, “I have no regrets about not taking those jobs—”

Breslin: [laughs]

Mayerson: I think the thing about me is that I am like so intrinsically not a bureaucrat. I mean, it just would never have worked [laughs]. And I think everyone who offered me the job now realizes that too, that—I don’t even know what they were thinking [laughs], because I’m just not a bureaucrat. I just wouldn’t have been able to go with the whole chain of command thing. I think that the thing about DREDF is that every one of us is a maverick in some way, and we don’t really do too well under authoritative systems.

Breslin: [laughs]

Mayerson: [laughs] Which is why we have not had an executive director for the last fifteen years or whatever.

Breslin: [laughs]

Mayerson: I think part of it would have been interesting, but I think part of it was—would have been so incredibly frustrating, not to be able to do what you wanted to do, to say nothing of managing a bunch of people. [laughs] It was not the right job for me! [laughs]
Breslin: It sounds pretty awful to me, but I think for many people it is very seductive, too. I think the possibility of having an impact at that level is one of the reasons that people find those jobs interesting and are willing to try to tackle them. But in the end, I think the potential impact is probably very small.

Mayerson: Well, I think that some people are interested in the prestige and also the validation of it, because it is validating to be recognized in that way. And I think that the thing about DREDF is that you can’t really be after the kind of societal imprimatur—what’s that word—

Breslin: Imprimatur.

Mayerson: Imprimaturs of, you know, success, or—even anything, really. I’ve always thought that it’s interesting because DREDF has made, I think, more of an impact than almost any organization I can think of but never really got kind of cloaked in those—

Breslin: The trappings of—

Mayerson: Prestigious.

Breslin: —those kinds of prestigious—

Mayerson: I mean—yes.

Breslin: Well, the 1990s also brought some interesting and groundbreaking litigation. One case that you and DREDF was involved with is the Holland case. Can you say a little bit about how that came about and what was important about that case?

Mayerson: So now we’re switching over to the IDEA [Individuals with Disabilities Education Act]. Well, what it was about was a kindergarten girl at the time, Rachel Holland, who has mental retardation, whose parents wanted her integrated into a mainstream environment in school, and the Sacramento Unified School District, who decided basically to like lay down on the tracks and do everything, everything possible to stop that from happening. I think they originally probably came to Diane [Lipton]—I don’t know whether Diane got Catherine Dobel, a private lawyer in the community involved, or whether Catherine Dobel got us involved. We became involved in the fair hearing, which Diane and Catherine did, and it was like a thirteen day fair hearing. But afterwards, when the school district decided to appeal, I became involved. Diane Lipton, of course, was very involved, and Sid Wolinsky became involved.

It turned out to be one of only two trials at all the time at DREDF, which is kind of weird, because Sid was a very experienced trial lawyer. He was the lead lawyer in the actual trial in Sacramento. But Diane and I, and Diane in
particular, were lead in substance, like figuring out what the substance of the issues were, and what the substance of the experts’ testimony was. I was able to do one thing in court which I really enjoyed, which was—I mean, I did a lot of things in terms of briefing and preparing witnesses and working around the clock [laughs], but the one thing in particular in court that turned out to be very influential to the judge’s decision, was being able to examine Nina Crone, who was the teacher that Rachel currently had at the private school where her parents had put her, and who was the best witness anyone could ever want, because she was this regular teacher who had no axe to grind whatsoever about special ed. In fact, she had been skeptical when Rachel was put in her class and ended up being a very big proponent of inclusion. So it is just one of these wonderful stories where it was just the reality of the experience itself that convinced her that inclusion was a good thing, instead of being part of any kind of political movement or bandwagon or whatever. And that really came across to the judge, and the judge was very impressed with that.

After the judge in that case, Judge Levy in Sacramento, came out with a ruling in our favor, they appealed to the Ninth Circuit. And in the Ninth Circuit, I think by that time Sid was gone, and Diane and I wrote the Ninth Circuit briefs. Diane argued the case, and she did a great job. We won that. Then they appealed to the Supreme Court, and once again we worked on the briefs to the Supreme Court, and the Supreme Court did not take the case. [tape interruption]

Breslin: What was the implication of the Holland—the whole process of bringing this case up to the court and having the court deny cert?

Mayerson: Well, it was a very important inclusion case at the time. It was not the only one in the country, but I think it was the second of the big inclusion cases, which used the IDEA to argue that kids with significant mental retardation should be educated in regular classes, which was cutting edge and certainly, educationally, but definitely cutting edge in terms of the interpretation of the law. It put us very solidly—put us, meaning DREDF—very solidly at the core of the inclusion legal movement. I think that without having an actual case, we wouldn’t have been so firmly embedded in that core. There were organizations of educators that were very involved, and there was also a bunch of lawyers around the country that were very involved. We got a lot of recognition, and Diane in particular got a lot of recognition around the country as really a groundbreaker in the area of inclusion legally.

Breslin: The case involved a child with developmental disabilities, including some mental retardation, and my understanding is that the school district was vehemently opposed to having her included in a classroom, a regular classroom with nondisabled kids. What was at the heart of their objection to her participation?
Mayerson: The IDEA was originally back in the seventies enacted against a backdrop of incredibly bad public policy on education for disabled kids, including exclusion, and definitely segregation. As a group of educators and advocates developed to change that, it was also a real heyday for developing best practices and being excited about potential, and particularly the educators looking at kids with mental retardation in a really new way. I think again, once more, that the—

[Begin Tape 11, Side B]

Mayerson: The extent to which we were really—or they were really propounding a very fundamentally different way of looking at kids with disabilities, looking at disability, was profound, radical, extreme, amazing. And it wasn’t really—if you are in the middle of it, and if you are one of those people—and we have been, at DREDF, at various points—you don’t appreciate sometimes how deep the grain is that you’re going against. That was true in Holland. In Holland, what was the most profound to me, and what I teach about in my class at Boalt, is how the whole establishment around education of mental retardation, of mentally retarded kids, had been based on so-called scientific principles of measurement, that you could measure someone’s intelligence. If you could measure their intelligence, it would tell you about them, it would tell you what to do about them. And that was considered an amazing advance in science.

So the people that were brought up in the era of—I mean, for decades and decades now—brought up in the era of the “science of intelligence” believed that intelligence could be measured, and therefore addressed according to these measurements. According to the measurements of Rachel Holland, who I think had an IQ of forty-four, to them that meant that this person was capable of X and not of Y. The idea of putting a child of that level of disability, which is pretty severe, in with quote-unquote “normal kids” was folly. It was a slap in the face. It was against everything that they had ever been taught. It was against any idea that you could rely on measurements. So that was very profound.

The difference in the testimony at trial between what was called the California Evaluation Center, something like that, and they were saying, “Well, she has a forty-four IQ. She’s out of it. She can’t read. She can’t comprehend. She can’t this. She can’t that. She doesn’t even know what’s going on around her. She doesn’t follow what the kids are doing. There is no way she could ever be like them. And so why would you want her with them?” I mean, it was just absolutely fundamental to them.

The educators on our side pretty much discarded her IQ. They never even referred to it, because it really wasn’t very relevant to them. What they were looking at is the excitement, the potential, what she had going for her, what they saw her being able to accomplish, and measuring it in very small
increments. Like, the bell rings, everyone goes outside, and she follows everyone outside—but then she is learning something that is actually functional in her life, which is, look around you, see what everyone else is doing, and then do what they’re doing, and then you’re also there with them, and you’re making a step in the right direction. So it was just completely, profoundly different.

So, I think that that is often true in disability, and it is nowhere more true than in education, where the whole scientific basis, the diagnosis basis of disability that professionals rely on, and that distinguish them from any old Joe Schmoe, on the street [laughs] or something, that they think make them educated and knowledgeable, is being threatened, totally threatened. Now they are being told that it is all a bunch of bunk. It is not worth a row of beans. It’s, like, very appalling for people to hear that. It’s also in special ed, it’s always, of all the areas of disability I’ve ever dealt with, it’s the one that is most emotional, because all these people that go into special ed in particular, not only do they have the reliance of their professional skills, but they also feel like they’re really good people. They pride themselves to be people that want to help, and so when they’re told that not only don’t they know everything, but they are also unhelpful, and in fact detrimental, it is very confronting.

Now, the school district also had a director of special ed who was a biased fool. That is a separate issue. [laughs]

Breslin: One of the very interesting outgrowths of this oral history project that you’re participating in now has been an ongoing attempt to define the relationships between the Berkeley branch or wing of the disability rights/independent living movement and the other wings of the movement, including the parent movement, the developmental disabilities movement, and the legal contributions by lawyers that go to the heart of what all of these movements are about. They appear to be deeply interconnected, but that happens to be my personal position. I’m wondering if you could just think about that for a minute? I think it’s important to tie these together if they can be, and if you don’t think they are, then why not. What’s your take on that?

Mayerson: Well, I had two thoughts as you were speaking, which is not maybe my take on the whole subject, but just my two thoughts when you were speaking. The first thought I was thinking, in terms of the special ed educators who have been at the forefront of their movement towards inclusion, which are usually people who teach in universities, they are the educators of the educators. I definitely haven’t seen any regional differences in terms of their vehemence and excitement and their willingness to break all the rules about the things we’re talking about, about scientific determination, etc. What has been interesting, though, I think that that movement has sometimes not paid enough attention to people with disabilities, and even parents of people with disabilities. I think they always lag behind a little bit. They are in front on certain things and they lag behind on other things.
One thing I think is kind of interesting is that this whole idea, like Rachel Holland being in class, it’s like the whole idea of taking a kid with a disability, and having them be the only person with a disability in a given classroom, and not only was that considered desirable, but TASH, the organization that has primarily been at the forefront of the educational reform—not only that, but for a long time one of their big doctrines was that you never have more than the percentage of disabled people in the school, you never have more than that percentage in a class, it’s called natural distribution or something like that. I don’t even know if they are up to this yet [laughs], but adults with disabilities who went through school systems, et cetera, and who are right now very interested in the idea of disability culture are looking at that and saying, “Well, you know, where does the person with the disability get any identity?” They totally have to be wannabees all the time. They can’t ever form their own identity as a disabled person.

I mean, that is just an example of somewhere where I think there needs to be more collaboration between the disability movement in general—Like the SDS [Society for Disability Studies] conferences, I don’t know how many people from TASH go to those, but it would be very good if they did, because I know it is a very important and interesting dialogue to have. The extent to which everyone is on the same page, is this idea of breaking the medical icon, taking people out of a kind of medical model and pathological model and putting people into a more humanistic—basically, just not judging people by what their diagnosis is, what their pre-prescribed potential is. And in that way I think the movements are very much akin.

Also, I mean, the special ed movement is—I mean, parents of disabled kids—and I really think DREDF was at the forefront of that. I mean, you know better than anyone [laughs]. When I originally came to DREDF, which was DLRC [Disability Law Resource Center] at the time, and you were doing the 504 trainings, and the parents, there was an idea of the parents doing an IDEA, or at the time, EHA training. I remember that you guys all had this meeting together, and it was pretty groundbreaking. It was not something, maybe, that had ever happened before, ever, with—I don’t know, obviously, you may have oral history on this from other people, but with parents of disabled kids and disabled activists sitting in a room together deciding what that training should look like. I remember just—not being in the meeting, just being on the outside of that meeting, and people coming out being very shaken by it, that it was a very, very, very confrontive, groundbreaking meeting.

Then DREDF, and I think largely, with your support, but this is someplace where I really give Bob Funk a lot of credit too—Bob Funk always saw the connection. In fact, Julie Landau, who really came as this young kid straight out of college, wanting to start a parent unit at a law center—where she ever got the idea I’ll never know—I mean, he was shining her on for years. She had to lay carpet. She had to build cubicles. She had to do everything. But she
stuck in there, because she wanted that unit. But I remember—so she did pay a lot of dues, and he was ignoring her. But by the time I talked to him, I remember he totally got it, and he supported it. So I think DREDF was one of those first, and still, probably, one of the only places where disabled adults and parents of disabled children, and the ADA, and the IDEA kind of collaborated.

Breslin: Well, it is just an interesting topic, I think, because if you look at the history of the Berkeley independent living movement and its origins at UC Berkeley, and the founding of the Berkeley Center for Independent Living, the period of time where parents began to go to the center and try to find some source of support or some information occurred, I think, some number of years after the center was originally founded. But there’s such similarity and common ground around the issues, that once there was an alliance built, it seems to me they are all of one cloth. But there is disagreement about whether it is the same issues, the notion of talking with parents who were working for school integration for kids with developmental disabilities, is seen as a separate issue than the independent living movement by some. What do you think about that?

Mayerson: I think it is an interesting issue that has always been there about the independent living movement. First of all, one thing that just flashed in my mind is that the two leaders of CIL, Judy Heumann and Ed Roberts both had incredibly active parents who they were very close with and who really paved a lot of ground. So they were very aware of parents playing a big role.

Breslin: [There’s been] kind of misinformation about CIL’s early founding, and who was involved—

Mayerson: But Ed was, right? And then Judy came out later.

Breslin: The issue is who was the first executive director, and Ed was not. He is often credited with being the first, but he wasn’t.

Mayerson: Who was?

Breslin: Larry Biscamp.

Mayerson: Okay. Anyway. Okay, that was an aside. But what I was going to say is, the independent living movement as I knew it in Berkeley, is basically, has always been led by people who are very articulate, smart, powerful, leading people in the world. And the parent movement that we’ve been most familiar with at the CIL and at DLRC and at DREDF have been parents of kids who are very significantly impaired mentally. Their issue on both sides—there’s a huge issue on both sides, because some people in the movement want to believe that every disabled person has the right to self determination and can decide for themselves what they want. Parents of very significantly
impaired—mentally—children, even after they grow up and aren’t children anymore, are very in touch with the fact or they believe very strongly this is not true. And so I see that, at least early on, the tension came from that parents were considered—again, I don’t know a lot of parents of learning disabled kids and emotionally disturbed kids who I’m sure can absolutely make their own decisions, but in our case, DREDF, all the parent work we’ve done has been with the most severely disabled kids. Always. And that is kind of interesting in and of itself, because there are a lot of other parents out there, besides those parents. But those are the parents we’ve always had alliances with.

There was originally a lot of tension around—like, parents are seen as kind of lumped in with the professionals who are making decisions for people. Then on the other hand, the parents feel like, “What, there’s no choice. We have to make the decision.” So that is one place where I’ve seen a lot of tension. I think that the movement has still never really reconciled the idea that people with disabilities, in terms of kind of a doctrine, or the slogans, or the philosophy, the idea that there are always going to be some people who can’t speak for themselves, and who are going to speak for them? If not their parents, who? That kind of thing. That is kind of an ongoing—I see that as something that early on I was much more aware of at DREDF, not so much necessarily with people at DREDF, but in general, in meetings that we went to, and things like that.

As far as, when I said Bob Funk got it, I remember going into his office, and him saying—and we were talking about, I don’t know what case it was, but it was a case of a very severely disabled kid who we wanted to represent in terms of integration. We were going back and forth, “Well, is it wise to take the most severely disabled kid, or should we try to take a kid who is not as severely disabled, or—?” He said, I remember, he just said in his quip way, “Well, if we win for that kid, then it’s going to be easier for everyone else, whereas if we went for a less disabled kid, you just kind of keep on fighting.” [laughs] And I think that is true just generally, in terms of independent living, is that I think one of the things that the parent movement has done is—because a lot of the parents are working with kids who are the most severely disabled, the cutting edge of the parent movement has shown that even for the most severely disabled kid who grows into the most severely disabled adult, independence and autonomy are possible.

Breslin: In the early days of the University of California program, students founded a disabled student union, a disabled student organization, called “The Rolling Quads,” and there is a document in the clutch of papers that are part of the archive that define disability for purposes of that organization. And it’s a very narrow definition applying, I think, only to people with—it’s intended to cover quad spinal cord injured, or neurologically disabled quadriplegic, people with very severe physical disabilities who require personal assistance. That document, I think, was written in 1970, and it runs so counter ultimately
to the evolution of any of the programs that came from UC Berkeley, including Berkeley Center for Independent Living, and DREDF, and many other organizations. I’m wondering if, just in your experience and through recollection, you can think when was there a convergence of influences that may have shifted that perspective? Do you have any insight about that?

Mayerson: Well, my insight from CIL is that Judy Heumann, who was vice-director or something like that, she was always vice-something [laughs] at CIL, was always very interested in parent, or parent and kid education. She was a teacher. Like I said before, she had this incredibly active parent who had played a major role in giving her any of the opportunities she had had, fought all the way along the line for her. And she and Julie [Landau], who was this person, this young kid who was dead set on having a parent unit, became very close and very committed to the parent idea at CIL. So I think that actually—because I had said Bob—and I think that Bob did come along with it, but actually the original, I think, impetus for it was Judy, Judy and Julie. Judy had also gone to segregated classes, and she was just always very, very passionate about the issue. But I think it took time. I remember at DLRC, the parent unit, everyone was in one big warehouse. But there wasn’t a tremendous amount of interaction. It’s not like we were meeting all the time, having these discussions or anything [laughs].

Breslin: Do you think that Judy saw the independent living movement and philosophy as comfortably sheltering the parent issues and the needs and requirements of people with severe disabilities, including cognitive disabilities, at that time?

Mayerson: I think that all that CIL was doing at the time were the special ed issues, not adult developmental disability issues. I think that came way later for people with cognitive disabilities.

Breslin: I meant personally—

Mayerson: Personally that kids, that people could live independently, or that the independent living movement—?

Breslin: The movement and philosophy sheltered those people and their needs as comfortably as her needs, or my needs, or my issues.

Mayerson: Judy went to school with kids with a wide range of disabilities and has always been inclusive, personally and professionally, to everyone. I’m not sure if I know exactly what you mean, but I think that Judy always thought that the independent living movement should include parents and kids. But I think that she was someone who was very resistant, very, very, very, very resistant, and still is, to the idea that there is someone who—not to say she never recognizes it, but resistant to the idea that someone can’t speak for themselves. I think she always thinks that people are capable of doing that. She’d be the last person to assume someone couldn’t. Even with a very severe, severe, severe disability.
Breslin: Do you disagree with that?

Mayerson: Absolutely. I mean, I have just met so many kids who I don’t think can.

Breslin: I think this is a question that she’d have to respond to herself—

Mayerson: Right.

Breslin: —but I’m wondering if that philosophy doesn’t spring from the idea that pretty much everybody has the capacity to express themselves in some way about what is going on around them, and it’s incrementally, it’s at various levels.

Mayerson: Well, I should clarify my own answer. I think I have seen the most severely disabled kids and I think that there is absolutely no kid, no parent that we have worked with who cannot extract from their kids many desires and many preferences, and many indications about how they are reacting to their environment.

I was thinking more in terms of big decisions, and big movement participation, you know, like being coequal members of a movement. If you are not a coequal member of the movement, but you are part of the movement, then someone is speaking for you. And that is an interesting thing that I don’t think other movements have. I mean, if you have a movement that is deinstitutionalizing, and, let’s say, I mean, obviously, we know a lot of people are in institutions that can very well speak for themselves, but let’s say you are taking the most severely disabled people, you are extracting from your own experience and experience of people who are in institutions who can speak for themselves, to the desires of people who can’t. And that is just a given in the disability community that—I don’t think there is probably another community like that, if you think about it. It is a unique aspect. And, it runs counter—the idea of someone speaking for somebody else is so antithetical to the whole concept of the independent living movement but a necessary part of it if people with the most severe disabilities are going to be included. It is interesting.

Breslin: Anything else that comes to mind on that before we go on to the next topic?

Mayerson: No.

Breslin: Okay, well let’s move on to the reauthorization of the Individuals with Disabilities Act, which, again, 1995, you were involved very deeply and intimately, and over, I guess a two year period for that process. It was tumultuous, as I understand it. Could you talk about that?

Mayerson: Well, first of all, I have the worst memory for dates of any human being on Earth, but the funny thing is that I wasn’t involved at all for a really, really
long time. I mean, I just thought that was taken care of. There were all these people that were working on it in DC. DREDF was not very key in that thing at all, until after some really bad language had been established.

Breslin: Why don’t you just give a little background about what that is..

Mayerson: Okay, I don’t really remember when it started [laughs]. It started because the Act has to be reauthorized to get money. A lot of people on the hill considered it, a lot of conservatives on the hill considered it a good opportunity to limit the scope of the IDEA, basically, and it’s requirements, and what they saw as its tying of the hands of school districts. Because of that, and because the buzz in DC was the handwriting was on the wall, it was going to be changed. The Department of Education, which was Secretary Reilly, and the Special Ed Department, which was Judy Heumann, and I think Bobby Silverstein, who was Harkin’s main person on disability, decided that they would jump the gun, be proactive, and come up with what their proposals were for a new IDEA. That original move was extremely controversial, at least by Pat [laughs], Pat in particular, because it did buy into the concept that there was going to be a new law.

I think DREDF’s normal role in these things is to try to second guess common wisdom in DC. I think we’re always the only ones that kind of do that, because everyone goes, “Well, that’s the common wisdom. Everyone knows it is going to be changed, so why not do something proactive?” Of course, we thought that once you do something—we had been up against that before in the IDEA with the regulations, which we probably went over, where we had everyone say, “Well, we know they are going to be changed. We have to start dealing,” and Pat and I said, “Well, why don’t we just say ‘No changes.’” And then everyone laughed at us. Well, it was kind of the same thing again, which is when we lost the ability to say, “No changes,” if we are going for something better. But there were a lot of ideas that there were things that needed to be improved.

The people at the Department of Ed, and Tom Heir was very involved in this, decided that it needed to be improved, and they put in their better bill, which were counteracted with many negative versions. There was—the main negotiator in DC, working with Bobby Silverstein, there was CCD—they had a coalition, the Coalition of Citizens with Disabilities has an education task force, and they basically brought in Kathy Boundy from the Center for Law and Education in Boston. I can’t remember who else, Kathy and—I think Frank Lasky was very involved in the beginning, and people were having meetings in the Department of Ed. Frank Lasky was definitely having meetings with the Department of Ed, with other educators who wanted positive changes.

Breslin: And who was Frank in this context?
Mayerson: I don’t even know who he was in this context. I don’t know what role he was playing, because I don’t think he was still at PILCOP, which is the Philadelphia Public Interest Law Center. He is someone who has been a lawyer who has worked forever in the field of special education and disability rights, et cetera. I think by that time he was already in Boston, I don’t really know, actually. But a lot of stuff was happening, I can’t really—

[Begin Tape 12, side A]

Mayerson: I don’t know when, anyway, at one point, at some point, along the road, Pat hadn’t been very involved either, I don’t think. She got involved in the process and decided that we needed to be there.

I came in. I flew into D.C., and I started to look over everything that had been done, see what I thought were very tremendous flaws in what had been done, pointing them out to Kathy, who was kind of my partner at that point in terms of working with her, but seeing a lot of problems in what she had negotiated, and Bobby had negotiated, and trying to push a lot of changes that they thought had already been negotiated. It was a mess, but I remember feeling—it’s like that kind of being on fire type thing, and really fighting vehemently, working really hard. Pat being very supportive of it. Kennedy’s staff being very supportive of it.

I think that’s what happened, is that at that point we were up in Kennedy’s office doing the work, and it was very hard because Bobby would have to come up there—usually we’d always be with him—and we were basically second guessing what had been done. We felt like we needed to, but it created, for the first time I think, really uncomfortable vibes with Bobby. Kathy and I—I was trying to walk the line of still being colleagues, partners with her, but at the same time being very critical of the deal that had been made, which she then became very critical of also, very critical.

Somehow—and I don’t remember how, but I can think about it for another time—somehow this idea came that all the parties would be involved in a negotiation that would take place over a number of days with everyone involved, that all these parent organizations, everyone who had been involved in the reauthorization, all the lawyers from the school boards to the secondary schools to the superintendents, all their lawyers, teachers associations, two of them, psychologist associations, everyone’s lawyers, and all the representatives from all the parent groups and the service provider groups. This was unbelievable what this was like.

We had a huge, gigantic conference room at the NEA, the National Education Association, where everyone was trying to deal with things downstairs. I came in and I became the lead negotiator for the parents’ issues. Kathy and I were together, but Kathy was working with me, but I, kind of personality-wise, became the lead negotiator. I had all these lawyers from all these groups on
the other side, plus—oh wait. Paul Marchand was with us. And Madeline Will, sometimes. He was with us as the representative from CCD, but not as a negotiator. He was in all of our—.

They’d all be meeting downstairs, we’d all be meeting upstairs, trying to hammer out the discipline issues, which were the hot issues, while they were downstairs trying to hammer out other issues that were supposedly less controversial. Then I would run down and try to figure out what they were doing, and then I’d always have to have things that they were doing that needed to be directed, and I’d run back upstairs and try to do the discipline issue, and have a million balls juggling and a million issues pending and a million written proposals being written. That was a bitch, that IDEA thing.

It was a bitch, and for some reason Pat was not available; she was sick, she was really sick. I was having a lot of trouble getting through to her, and I was like—to say that it was around-the-clock was an understatement. It was so intense. Meantime, there’s all these—the people that had negotiated the original deal were pissed, the people that didn’t want any deal were pissed. The other side was your opposition. Your own side was completely fractured, a million issues were happening at the same time. It was unbelievable.

Then, it culminated in a top-notch negotiation in the Senate, with a room in the Senate, where I was thrown into this room with all the same cast of characters to actually write a piece of legislation. The National School Boards was the main negotiator on the other side. We had a time line. The senators would come into the room and say, “How are you doing?” We had to proceed. It was the most intense thing.

Oh, along the way, when Kathy Bounty was doing all this work and stuff, along the way, the Georgetown Clinic had CCD and Education Task Force as their clients. They were trying to be like the lawyer for CCD, but they didn’t have the expertise or the knowledge. It can’t been done that way. It’s so particular, special ed. I mean, some of the issues are, but that one is so particular.

At this negotiation was me and Kathy, this guy from Georgetown, who didn’t say a word. He was one of the top people there, but he didn’t say a word, because there was nothing for him to say.

Breslin: Do you remember who it was?

Mayerson: David Rapel, I think his name is. He’s a really nice guy, but he was just completely out of his area. It was some fierce negotiation happening. The guys from the other side, I don’t remember. Pat was back into the scene at that time, but outside the room. The National School Boards Association guy was unbelievably difficult. That’s who I had to negotiate it with. Then, Senator Harkin came in and said, “How are you doing?” I think Representative Fish
came in and said, “How are you doing?” I think Kennedy came in and said, “How are you doing?” There was a lot of pressure on us to proceed. We ended up coming up with the final bill. It had to be done like the next day in committee. We finished at, like, I don’t know, 4:00 a.m., and it had to be submitted to the committee at 9:00.

Breslin: Do you remember who was—this was Senate side, the Senate?

Mayerson: It was on the House side; the Senate side had already been done. [pause] Yes. The Senate side had already been done. The cessation of educational services had already been approved on the Senate side before I ever even got involved, I think. When we got involved the big thing was to be silent on cessation of educational services, that there was no way there was going to be an agreement since the Senate side had already incorporated that in the bill, and that means Harkin and Kennedy—that’s what it was—were already on board on that, which was a really bad chain of events. When we got to the House side we had to do this huge, gigantic deal with a million issues and be silent on cessation of educational services. Because there’s no way there was going to be an agreement on that topic.

Breslin: Can you explain what cessation of educational services means?

Mayerson: It’s discipline. I didn’t even give any background for the discipline issue, but the whole issue was that—it was even before all the school shootings and everything. There was an issue that schools had become more violent, and a lot of the violence was caused by—or the violence that was caused by kids that were in special education couldn’t be addressed because the IDEA tied the hands of school districts in terms of expelling and suspending kids with disabilities, which was true. The school districts wanted the ability to be able to suspend and expel kids. In the Senate side, they tried to draw a very thin definition of who could be expelled, that expulsion meant the cessation of educational services. But the IDEA says every child receives a free appropriate public education, and you don’t get a free appropriate public education if you’ve been expelled from school. It was completely contradictory to the whole premise of the IDEA.

I ended up having to come home—it was like around-the-clock, around-the-clock, and it was going on for at least over a week, like ten days or something. It was a very long time. I don’t remember what it was. Then I sent—I’m not going in order. [pause] Because maybe my negotiations were in the Senate. [pause] That last Senate negotiation before committee markup was in the Senate. Then the whole House process started this group growth process. That’s what it was. That’s what it was.

So we were already starting the group grope in the House that definitely was way down, down several notches by the fact that cessation had already been the commitment of Senator Kennedy and Harkin in the Senate. But that’s
what it was. We had negotiated the Senate. Then this whole group process happened. Then I sent Diane in. Diane and Kathy Boundy—that ended up being a big disaster. They just ended up walking out on the meetings because at the very end of the process, when the ground rule had clearly been that cessation was off the table, it wasn’t going to be spoken about in the agreement at all, suddenly they were being told that cessation was back in the deal. Anyway, it just turned out to be a huge mess.

I think I got back involved in the process, and I know Diane thought it was one of the worst experiences in her life, because she really didn’t feel prepared or equipped to deal with it. Kathy had a major cathartic, negative experience over it. I always felt very on track with what I was trying to do, which was salvage, to the extent I could, something that would actually be agreeable, that would actually pass. I didn’t have that hard of time with that, emotionally. It was very interesting, because I can be swayed by all these people’s opinions at times. I wasn’t at all during that process. I just felt like I absolutely knew I was doing the best job that could be done. I still feel that way.

I still feel like we made the best deal possible. I really do feel like we made that with all the criticism, and it was really bad. Tom Gilhool was sending out emails saying that we had—I don’t even remember the words, but way worse than “destroyed.” It’s like we had given every disabled kid a death sentence. It was just some horrible, horrible, horrible propaganda about the deal that was being made. I wish I had the chronology more in order, but I always felt sure. It was one of those times when I guess I was in a zone or something, because I always felt like no one was going to be doing a better job at trying to get the best deal possible, and that there were these political realities to deal with. I still feel that way.

Breslin: Why weren’t you involved in the early stages, which perhaps could have warded off some of these problems?

Mayerson: I think I absolutely felt that it was being dealt with appropriately. I think—Pat was ill at the time. Also, IDEA was a little off her track at the time, too. So we all just kind of thought, “Oh, it’s the CCD’s task force’s.” Kathy Bounty was like the chief negotiator who we all really respected. It just seemed like something that was going to be—I mean, we were definitely having input like—normal input. Not to say we weren’t having normal input, you know, being asked questions, talking to the Department of Ed., etc. We ended up taking the lead role. That was what we definitely did not have before that.

I still feel that way about things. A lot of times I just feel like, “Okay, that issue’s being taken care of.” You don’t have to be involved in everything; you can’t be involved in everything.

Breslin: How do you feel about the outcome given your intervention when you became involved.
Mayerson: I think I felt really good about the outcome. [pause] I actually don’t remember. I think the cessation of educational services is very negative, very bad. I never felt like I had any control over that in the Senate since it was agreed to by Harkin and Kennedy beforehand. Other than that, the discipline section became much stronger because of my involvement. I feel it was the best it could be.

There’s a lot of other things about the Act that I think—I never thought that it should be changed. I never went with the premise. A lot of the issues that were of burning importance to people, I still don’t agree with, I still don’t get jazzed up about, like disabled people being part of standardized testing. I can’t get there, even though one of my best friends in the world, Julie Landau, that’s one of her top issues. I just can’t relate to it that much. So I think I feel good about it. I feel like it was very helpful to be involved.

Breslin: How long was the process overall and when did it conclude?

Mayerson: I actually feel like I had a lot of—it was one of those times where I felt like not only was I thinking very well, negotiating very well, but I also was able to communicate to people very well inside. I remember there was one issue that Gilhool and Judy Gran alerted me to, something that was a really good point. It was like at the very last minute, and no one would have been able to get that changed at that point other than me or Pat or someone, and I was able to make a phone call and sure enough—I mean, it was already being marked up and we got it changed. There were a lot of members to deal with at the time, and I’m pretty much blank on it, which is really sad.

Breslin: When did the process conclude?

Mayerson: Well, it’s the amendment of ‘97, so I guess it was in ‘97. God, I’m just really bad at dates.

The act doesn’t read beautifully; it’s convoluted. It’s like if you read the discipline section it’s so convoluted. It’s so not precise language, which is what I really pride myself in. That’s because anything that’s a part of a negotiation process becomes like a Christmas tree, with ornaments hanging from it. Part of the kind of back-door strategy around that was: if it’s complicated enough maybe people won’t bother trying to expel anyone.

Breslin: What is the implication of cessation of services for kids now, as a practical matter.

Mayerson: You know what? I’m just realizing as we’re talking about this that I really don’t know. I really need to check up on that.

The GAO [Government Accountability Office] just finally came out—what we ended up negotiating in that room, wherever I was, Pat would probably
know, when the senators or congressmen, whoever they were, kept on coming in—I know Harkin came in—was that the best I could do, the best we came up with, was that the GAO would do a study. [pause] We wrote out the terms for the study. I think that was something, actually, that Georgetown helped with. The study has been released within the last couple weeks and I haven’t read it. It’s good though. This was very good.

Breslin: The idea that districts could stop providing education services if a kid presented a discipline problem, was that the ultimate decision that was reflected in the language?

Mayerson: It wasn’t that they presented a discipline problem. It was always negotiating back and forth about the language, like “severe bodily injury,” “imminent.” We were always trying to add as many words as possible to try to narrow down as much as possible. And no matter how much you try to narrow it down, it’s always still not satisfactory, because what’s violent to one person, what’s imminent to another person? It’s still very difficult. It was never someone with a discipline problem. It was always trying to take cases that were of the most imminent danger. But it came out that kids could not be expelled if the behavior was related to the disability.

Breslin: Well, we can revisit it again. Is there anything else you want to say on that generally or on that process or about that topic before we move on?

Mayerson: I think it’s just the whole issue of working—I think DREDF is very unique, because I think we push the envelope really far, but we also are willing to deal. I think it’s been perplexing to people; I don’t think people really get DREDF, because on one hand we’re like in that role, like Gilhool and what they were doing, was important, I guess. I don’t really know if I even agree with that in that particular context, but in general, having a very radical stance, and refusing to deal, and rallying the forces is extremely important. I don’t think it had an impact on that instance, but generally it’s important. We are on the left of the insiders, but we’re still willing to be an insider, and that was the extreme example of that. Being an insider you take a lot of shit.

Breslin: It’s a good place to stop, I think.

Mayerson: Stop completely? I have fifteen more minutes, if you do. [tape interruption]

The only clarification I need is that the Senate negotiation happened first before the Senate markup, right before. It was Pat who made that happen, because they had all been done in Harkin’s shop, and somehow she starts getting—she was involved with Kennedy’s staff and we wanted to make it better, a lot better, and make a lot of changes. Kennedy forced that negotiation to happen before the markup. In the negotiation, we were put in this room, and it was—parents were—representatives were there, and it was very important, actually, that I wasn’t just in the room by myself. We wanted that for political
cover and also for political input, obviously—for actual input, obviously. It was Madeline Will, Patty Smith, and Paul Marchand, and Kathy Bounty, and me, were all in the room together. They had the National School Board Association, and I don’t remember who else. We negotiated the Senate side, and that was a real—that was difficult, because the Senate side did include cessation, but that was not part of the negotiation, because that had already been committed.

When we got to the House side, we said, “No way, we do not want to be associated with anything that has cessation.” That was a big, important thing for DRED to clarify, that no, we were not part of it, we did not endorse it, we would oppose any bill that had cessation.
Breslin: Arlene, the last time we concluded with your recollections of the reauthorization of the Individuals with Disabilities Education Act. Subsequent to that taking place, a series of ADA issues arose that you were involved with, including several cases involving juvenile diabetes and other, kind of, second-generation enforcement issues. Can you talk a little about those?

Mayerson: Well, the overarching theme I would say of those cases is, "What is a medical service?" The reason why I thought that was so interesting is because I think it coincides with the whole disability rights movement, and declassifying things as medical, and—for lack of a better word—more normalization of things that just are required for people to live their lives.

That is why I was so interested in this whole topic, but it came up in the context of—a mother from Ohio had called to say that her son was being refused care at KinderCare, which is the biggest chain of day-care centers in the country, because her son had diabetes, and in order to be in preschool safely, needed to be tested for blood sugar levels a couple of times during the time he was there. They refused to do that, because they said they don't do medical procedures, and they were not a medical facility.

And we decided to look further into that. What we found was, of course, that the procedures for determining blood glucose levels are in fact very simple. There are kits that are sold, monitors that are sold at drugstores where basically anyone who is not a preschooler can do it themselves—which is to prick the finger, to put the blood on a little piece of a strip, and to insert the strip in the little mechanism. The mechanism gives you a digital reading, and from that reading you can tell in fact whether your blood sugar is high or low. The response to that is also very simple, which is that if it is low you might have some juice, and if it is high, you might have some water, or maybe some exercise. If it is dangerously low, of course, then that would be a time when maybe you would call the doctor.

At the time, that is what we were dealing with, and so we decided to pursue this case. We got in touch with the American Diabetes Association to ask them if they would be interested in being a plaintiff in the case. They, through a series of procedures, decided that they would, in fact, be interested in being a plaintiff in the case.

So, all of this was very important for a variety of reasons. One is just to get a big kind of disease-oriented national disease group involved in a civil rights case as a plaintiff. They and others of them had been involved in some legal issues as maybe amicus in court of appeals or Supreme Court cases, but as far
as we know, none of them had ever actually joined in as a plaintiff in a civil rights case.

So that was a very important step in the right direction, for these groups to recognize that along with a cure, and along with the medical treatment, came the need for integration, civil rights, and that they work hand-in-hand.

As far as the legal issue, again, what was interesting about it is that of course the school wasn't saying, "You can't come at all." What they were doing was refusing to provide them a service. That service maybe sometime in the past had been legitimately "a medical service." But by the time, and way before the time that the case arose, it had become something that was an everyday part of the lives of people with diabetes, and nothing that required any kind of trained intervention other than reading the directions, basically, or having someone maybe describe how it worked. And having a doctor—the role of the doctor in those cases was to say what the ranges for the particular person would be considered high or low.

So it was interesting for this reason of trying to debunk the idea that procedures that are required for daily living are medical procedures. And it was interesting to me, because it so much followed the course of the origins from DREDF of the Independent Living Movement—where it used to be that you needed attendant care, you had to be in a nursing home, it was considered a medical service. So it just seemed to follow very nicely in the track of taking things out of the hands of professionals, medical professionals, etcetera, and just putting them back where they belong—where they already were, which is with people who were directing their own lives.

We filed a lawsuit in that case with a law firm in Ohio, as well, because this case was in Ohio, and we ended up entering into a nationwide settlement, which—KinderCare had first kicked and screamed, and there was no way they were going to do it. Then, through the process of settlement negotiations, I think they learned that, in fact, something that they had probably thought was very latent with risk was really a simple procedure. And they agreed to do this procedure and to have protocols in their day-care centers where kids with diabetes could come in, and there would already be in existence a procedure for making sure that they had blood levels checked. We developed in the course of the settlement all the forms that would be required, and the protocol.

That really caused a spark to go out throughout the whole community that we really had nothing to do with, previously, which is the diabetes community. Because in fact, in turned out that, of course, parents of kids with diabetes all over the country were experiencing this exact problem. From there we started to get just, I mean, a ton of calls. At least, I mean, ten calls a week type of thing, from parents of kids with diabetes. We became kind of a diabetes center.
I ended up getting an award from the American Diabetes Association. I said we were going to change our name, that DREDF stood for Diabetes Legal Defense Fund, because we got so many diabetes calls. But it just showed how much of a need there was in a community that we wouldn't normally have been aware of.

From that we ended up getting another case, which was the second largest provider of child care in the country, called La Petite Academy. That was in Denver. We ended up doing a case there in Denver, and having a nationwide settlement with them as well.

And then with that spark is, I think, a change in the child care industry, generally about kids with diabetes. But also other people, parents, with kids with other kinds of needs, started to call us. And then we started doing some of those cases. So it really became like a whole area that we sparked.

I think the next thing we did was kids who have allergic reactions to, particularly foods like peanut butter, or peanuts, and other things as well. They can go into shock, anaphylactic shock, and it is extremely important that they be administered—it's basically adrenaline, which is administered in an epipen. You just kind of hit the top of it like you would a ballpoint, and you can inject someone with a medicine that can make the difference between life and death in those moments. It is just enough time for the 911 to get there and for the child to be treated by paramedics.

The day-care center, I think it was also La Petite Academy, was saying that there was no way they were going to do that. And then we ended up bringing a case on that, and having also a nationwide settlement that they would have available epipens in day-care centers, and that they would administer the epipen in day-care centers. Laura Einstein co-counseled the case with us and another wonderful woman lawyer from Maryland. I can’t remember her name.

And then we found out that there was a big issue in California and other places where kids were not allowed to use nebulizers in child care. We got very involved in that issue in California, to change the regulations, state regulation, so that nebulizers could be used.

What I had forgotten was, in California, after we did the nationwide settlement for KinderCare, we had clients who came to us that say, "Well, that is all well and good, but in California there is a state regulation against child care facilities being able to administer finger prick tests." And in fact there was that, it was considered a medical procedure. So we went through a major class action lawsuit in California, which resulted in a change in the state legislation to take finger pricks out of what was considered a medical procedure.
What was interesting about that whole issue, is that—and this has happened in other areas in disability—that I started on an issue with one remedy in mind, and then time changes, and the consciousness builds from the work that we in fact are doing, until we want a different remedy. [laughs]

So sure enough, after we had changed the state law to say finger pricks were okay, and had the backing of the American Diabetes Association, within a couple of years parents were starting to say, "Well, what about insulin shots? And what about glucagon?" And at the time that we started the initial case in California, the American Diabetes Association policy was not to allow nontrained people to do insulin or glucagon. By the time, a few years later, when this issue came up, the American Diabetes Association had been very involved in the advocacy efforts, and was also getting much more associated with the civil rights aspects, and ADA aspects—and in fact, through these processes, changed their own policies. By the last case we did, we were arguing that they had to do glucagon and insulin as well.

We were involved in a case in Virginia, I think, it was somewhere in the South. We worked with the Department of Justice to change that state legislation to include insulin as well. So the ante kept on being upped in terms of, "Well, this isn't a medical procedure," and starting people thinking about that, and how much more could we add on that was also not a medical procedure.

We had gotten some calls also from people in Oregon who were disabled activists, who were fighting this with their state legislature about what attendants could do. There was a big issue about whether an attendant could even give someone, who could not themselves administer medication, oral medication. And the law in Oregon said that an attendant could not do that, could not put a pill in someone's mouth, because that was administering medication. The issue comes up all over the place in a variety of—like for elderly people with disabilities, in terms of what kind of facility they can go into if they need, well, certainly finger prick tests, or if they need various things for diabetes, or even if they need things like enemas, they are restricted from going into the least restrictive settings, because they are considered medical procedures, and they need medical care. So it is a huge area, and I think we started the initiative. I have always wanted to complete the initiative, and we have not done that.

It has been interesting though, because in the federal legislation [MCASA] that was being passed for attendant care legislation, I at some point brought to the attention of ADAPT and other groups who were working so strongly on that, that they could go ahead and get federal attendant care legislation; but in fact, most states were probably going to limit severely what the attendants could do. So actually, it is a project that still needs to be done to really try to figure out what all the various barriers are around the country.
Breslin: Do you think that the medical professionals are opposed to the demedicalization of these kinds of procedures, or do you think that they welcome the work that you did in these cases and hope for more?

Mayerson: That was always very interesting about the American Diabetes Association being involved in this, because they are basically—I mean, they are an organization made up of medical professionals. They have a constituency, but they really serve the doctors and the other health professionals that deal with diabetes.

The person we were working with on the state legislation, whose name was Fran Kaufman (who is a doctor, an endocrinologist, and was president of the board of the American Diabetes Association, or something like that), was shocked to find out in California that the Nurses Association opposed the legislation to allow day care workers to assist children with the finger prick. And that was because they are—we were fighting against a bigger trend which we really weren't aware of when we first came into—we weren't aware that this bigger trend would come through in our issue—the bigger trend being that the HMOs and the managed care are trying to demedicalize a lot of things that people object to being demedicalized, because the HMOs don't want to pay nurses to do them. And so, even though in our issue it made absolutely no sense, because no nurse is going to go out to a day care center and administer a finger prick—it would be unmanageable, it couldn't happen—even though it didn't make sense, it wasn't logical, these people were rabid about not demedicalizing things, because their role was getting diminished, in the bigger trend.

I think it is important to be vigilant, to make sure you are not kind of feeding into that; that people are going to lose services that in fact should be provided by medical professionals because of cost-cutting measures—versus what we are interested in, which is it not being considered medical so that it can be provided so that you can live your life. And I think that—this conversation is making me realize that I should check out to see what is happening in the federal legislation on that.

Breslin: You mentioned that KinderCare, once they understood how in fact simple it was to administer a fingerprick test, they embraced—they may not have gone that far—but they were open to the idea of incorporating a plan and a procedure for allowing a child to do that, or having a staff person do that within the KinderCare system. What do you think about that process, in terms of education in general to solve some of these problems? We tend to think education is sort of an overused way of suggesting solutions to these very complicated problems. But it sounds like in that case, that was really a matter of getting them up to running speed on the technology and the information about the condition.
Mayerson: It is interesting, because I also believe that if we had not had litigation pending it would not have happened. I mean, we could have called them and offered them 500 seminars on the technology of diabetes, and they would have been rejected, they wouldn't have been paid attention to, they would never have gotten to the highest ranks.

When you are dealing with litigation, he has to be dealing with the CEO, because he has to have his decisions authorized by the CEO. And so I still believe that you have to have the big stick. But with litigation, once you have that big stick, the best litigation is when there is buy-in, I mean, when the other side is actually kind of—has some change of heart during the process. And that we see in implementation of all kinds of things, like in special ed., you see that all the time. If you have administrators who just feel that they had the big stick, but they never had any buy-in, you're going to have implementation problems the second you sign that decree. You know, it is just going to be a constant headache. So, I mean, that for instance, that is the case in East Palo Alto. They were forced into settling, they came kicking and screaming, and now they are not implementing.

Breslin: Since you raised the issue of East Palo Alto, why don't you say a little bit about what that case is about?

Mayerson: That case is a DREDF case, but it is with Diane Lipton. Our office is the primary lawyer on that case. That was a case where an East Palo Alto school district, which is something like, I don't know, 95% minority students, had basic total noncompliance with special ed., I mean, the basic first generation issues, like getting assessed, to even be identified as special ed., to getting any services at all, to waiting lists for services, which are illegal.

And so Diane, and Rony Sagy, a private counsel, and the East Palo Alto Law Center brought a case against East Palo Alto and the State of California. They settled the case kicking and screaming, and since then—the stage we are in right now is contempt of the settlement agreement, because they are just not complying.

But in many instances, I've seen in litigation that when a school district or defendant is forced to do something, and then they see that it works—the next thing you know, five years later, you are at a meeting, and they are on the panel, talking about how great this thing is, and they become a model, and they become very proud of it, and own it.

Breslin: That has not been the case with East Palo Alto, though, has it?

Mayerson: No. East Palo Alto—right now we are in court on contempt.

Breslin: Can you describe a little bit what it was like dealing with the administrators there in terms of settling this case?
Mayerson: They have never been at all receptive to special ed., which is what gave rise to the problem to begin with. They were really never receptive to the litigation. Their lawyer, I think, at some point just kind of saw the handwriting on the wall from the judge, and did enter into a settlement.

Just like I said, the lawyer's entering into a settlement did not filter down to change the culture. And we have a court-appointed master in that case, whose job partially it is to try to make the cultural changes. And he has also just recently filed a report saying they are not even close to the timelines.

Breslin: What steps do you think need to be taken to push that case forward in terms of a resolution that actually benefits kids?

Mayerson: I think if the case went to court on contempt of the settlement agreement, and the judge just raked the school district over the coals. The judge has set up very stringent procedures for monitoring everything they do and for them reporting back to the judge on everything. So they basically, I mean, it is almost like, the school district is not in receivership, but it is a similar kind of concept. The judge wants to be informed very often and in a very detailed way on exactly what that school district is doing.

Breslin: Which judge is this?

Mayerson: Thelton Henderson, who is a federal district court judge, who is very good.

Breslin: Is he sympathetic to these issues generally?

Mayerson: I don't know. The first time around, when we first went to court on that case, he ruled against us. He kind of didn't get it. And since then, I think he is very committed in this case. I wasn't at the hearing. Diane said it was amazing. He just was furious at the school district. He is a civil rights judge, I mean, he comes from a civil rights background.

Breslin: Just one more thought on this case. What has been the role of the state in helping to enforce IDEA, or move this case forward, or not move it forward?

Mayerson: Well, the case against the state in the East Palo Alto case was that complaints have been filed over the years about East Palo Alto, and that they basically have done nothing. So part of the case was to get the state to improve their—enforce—their monitoring and enforcement procedures on a statewide basis. They agreed to do a lot of things about that, but now it is still in a dissatisfactory state, and it is still not being done—even though they increased their staff, which we needed to be done, and even though they instituted some of the—well, the things that were in the settlement agreement.

So now, actually, we are working on developing a statewide case on the lack of state enforcement. It has also given rise to a bigger issue, which is
monitoring by states, and also by the federal government, of special ed. compliance. I think it is a very tricky issue, because once you are dealing with bureaucracies—it is kind of like inefficiency, I believe, is built into it—and because there is so much politics between the state department and the local school districts, and between the federal government and the local school districts, and the state superintendents—basically no one ever really gets called to task. And the federal government issue—we have like, you know, one of our own, as the head of special ed. And I don't think there was as much progress as she hoped, even with someone who was totally onboard politically.

Breslin: Who is that?

Mayerson: Judy Heumann. Because there are so many built-in barriers in a bureaucracy to getting anything actually accomplished. So the only time that they had the wherewithal to actually bring cases against states were when the state absolutely refused to do something. Those were cases such as refusing to provide services to someone who had been expelled from school, and refusing to provide services to kids that were in prison. And so it turned out that the cases that were litigated were the hardest issues—and also maybe not the most—well, not the most sympathetic, but also not the most—not with the biggest impact on the greatest number of kids. I mean, important issues, but it is almost like a state has to say, "No." As long as they say, "We're trying," or "We're working on it," it is really hard politically for these bureaucracies to function.

So that is something that DREDF has dedicated itself to in the last couple of years, is trying to figure out how can either the federal government or the state governments be effective as monitors, given all of these kind of inherent barriers.

Breslin: In the last couple of years, there have been a number of cases that have been ruled on by the US Supreme Court in regard to the ADA. Some of them are posing some serious problems. Can you say a little bit about those cases, and what your involvement was in them?

Mayerson: I'm trying to think if the first case was *Abbott*, which was a case involving a woman with AIDS, who had gone to a dentist to get a routine procedure, and the dentist, when she put down that she had AIDS, had refused treatment. That case was being handled by an AIDS organization. So what happened was it went up—the issue being, was she a person with a disability under the ADA and was it discrimination for the dentist to have refused to serve her? I was part of a big coalition of disability rights groups that wanted to promote the issue that AIDS was a disability in an asymptomatic form—that was the critical point, legally—and also of course, that people with AIDS should be served by a dentist.
But on a broader scale, DREDF's interest was the definition of disability. I wrote a brief on behalf of members of Congress, which is a kind of niche that DREDF had carved out for itself. And I think I said this in another—maybe we did discuss these, I don't know—but I think I said in a different context, that I am not sure whether that was something that we were following in the footsteps of some other civil rights group, or whether we made it up. I've never really known that.

And that case was won, but in a very narrow kind of bizarre way, which was, basically, that she was a person with a disability, because she had said that she had made a decision not to have children because she had a risk of transmitting AIDS to her child. It was kind of an awkward posture for a case on AIDS, when there are so many obvious reasons why it should be considered a disability. But the technical reading of the statute required her to be substantially limited in a major life function, and since she wasn't symptomatic, this was kind of grabbed at as a reason. So it was a win, but it was an awkward kind of win, in terms of the definition.

After that, I think we became involved in three cases that involved the definition of disability. One of them, the *Sutton* case, was a case involving twins that had severe myopia—like 2,400, but corrected, 20-20 vision—and United had a rule that pilots could not have uncorrected vision of less than, I think it was 20-40, or 20-30, or something like that. That case wound its way up to the Supreme Court.

It was interesting, because the entire time we were doing the ADA, every single night, we would go to bed and go, "I hope no one asks about eyeglasses tomorrow." And sure enough, throughout the entire process, in the hundreds of questions that we talked about being asked, no one ever asked about eyeglasses.

And then it turns out to be basically the first case that the Supreme Court takes on disability, so we were not happy. We were not happy to have to defend the whole ADA on that basis. This also with a backdrop of having a lot of very, very negative press on who was covered in all the fringe cases, and all the cases that the press thought were kind of ridiculous.

So we had that case, which—they took the three together, then there was another case with someone with high blood pressure who wanted to be an auto mechanic, but—for a company that required their auto mechanics to test drive their vehicles, and therefore having to get a Department of Transportation license. That was UPS, because they were trucks, they had to have a DOT license for driving trucks. And then the other one had to do with a person with monocular vision. So we got—
Mayerson: So we also filed that brief on behalf of the members of Congress, I believe, and were involved in the preparation for the [new?] courts, the preparation for the oral arguments, which basically were disasters.

Breslin: Why?

Mayerson: I think that the lawyers were not up to the task, and even if they had been, I think it would have been very, very difficult. The justices, several of them were very hostile and posing very difficult hypotheticals. But the lawyers were all people who probably did a great job at what they did do normally but really weren't prepared for a Supreme Court-type argument. I don't know who would have made any difference whatsoever, because the next case we got involved in, with the Garrett case, where we had a fabulous Supreme Court lawyer and argument person, and it didn't make any difference, because they were on a track, and that was the track of state's rights, and curtailing the right of Congress to pass legislation that was applicable to the states. This particular case involved the ADA.

That was a case where there was just a lot of coordination between the lawyer groups that usually are involved in the ADA, and grass-roots was very involved in this issue—of whether the ADA was constitutional as applied to the states, at least as far as the area of employment was concerned. The briefs were fabulous. I mean, they were amazing briefs filed, amicus briefs filed by a variety of groups. We decided in that case that our best effort should be put in trying to co-counsel the party brief, which we did do, and basically trying to bring before the court the justifications for recognizing the ADA as Fourteenth Amendment legislation—and interesting, because when DREDF first got organized, when we had that first civil rights conference, one of our papers was on the need for Fourteenth Amendment authorization, whether our statutes and our issues could be justified under the Fourteenth Amendment. That was way before it had become a legal standard by the Supreme Court. The Supreme Court answered that question as, "No," finding that there wasn't sufficient employment discrimination proven by states against people with disabilities. So it was a very big blow.

Legally it didn't have that big of an effect, because ADA as applied to states was basically a replication of 504, which we already had, but from a historical and conceptual point of view, I thought it was a very big blow, to have the Supreme Court say that people with disabilities had not really established discrimination by states. I think that if there was ever a case made, that we made it. It was definitely not one of those situations where you could go back, and go, "Oh, we failed to do something that would have changed their mind." So that is why in some ways, even the other definition cases, I am not sure it would have made a huge difference who was arguing the cases.
Now we are involved in, there are two more cases in the Supreme Court—

Breslin: Let me just ask you a question about Garrett; the court is clearly leaning towards a state's rights position. What do you think their take is on disability, generally, because obviously those definitional cases were some of the more complicated ones to look at if you are just starting to think about disability. What do you think their viewpoint is in general?

Mayerson: Well, I think two things—that as far as the state's rights issue, I think is very indicative of their view of disability from a historical civil rights perspective, because it is the Fourteenth Amendment. And I think from the Fourteenth Amendment perspective—equal protection under the law—that there is a real lack of understanding, or lack of acceptance that there is a similarity between race, sex, and disability.

The thing that really hangs them up a lot, is that race and sex are both, as far as they are concerned, irrelevant characteristics. As soon as a characteristic becomes relevant to them, it no longer falls into the same ballpark. And I think that is something that in our development of disability as a civil rights issue, politically, and with Congress, etcetera, I don't think we ever really—we never really grappled with that issue. While there are a lot of similarities—of course, we were capitalizing on the similarities—we weren't really grappling with the kind of basic difference that the court would see.

I think that is the thing that is the hardest in disability, from the court's perspective, the fact that people with disabilities may sometimes legitimately be treated in a different manner than everyone else through legislation makes them feel like it is a legislative decision. As opposed to race or sex, where anything that the legislature does differently for race and sex, they are going to look at it and go, "Why would they do that unless they have a bad motive?"

So I think that is their hangup there, that is a big hangup there. But because of that—I think that—that I really understand about their prior decision on the Constitutional status of people with disabilities, Cleburne vs. Cleburne. This decision seemed much—that I see actually as even a legitimate topic for discussion, for exploration. This decision in Garrett seemed to be much more hostile, because they weren't just using that basis, they were also using this basis that we hadn't shown enough discrimination, and I think that wasn't true.

Breslin: I wonder if they didn't really accept that—or some of the examples that were offered to show discrimination were examples that they didn't agree with, like, institutionalization they may have viewed as a necessary by product of disability and an appropriate service at the state's discretion.

Mayerson: We grappled with that a lot writing the briefs, like, what would be something they would recognize as discrimination? We tried to focus on cases where there was an outright exclusion or a rule against hiring certain kinds of people,
or where there was a lot of background, like an institutionalization of, like, bad motive. The things like architectural barriers were real stumbling blocks for us in terms of even how to characterize those, and how to even make an analogy between that and race. That was really difficult, and there were some really hard issues there. But I think that even on the most outright cases, I'm not sure they even bought those.

Now, after Garrett, the community is very vigilant to say that it only covered employment. In fact, most people think institutionalization is our best case, and it hasn't gone up yet. That is because there is just so much bad motive involved in it. That bad motive sounds so much like other kinds of discrimination, that at least it is one area in disability where—I don't think there is any other area in disability where you actually have documents saying, you know, these horrible, terrible, miserable people ought to be locked up. But there are problems. They are not impressed with things that are too far in the past. They want to see very current examples, and of course, everyone has gotten their rap together much more now.

Everyone is, like—Can I go to the cases that are now before the Supreme Court? Or you wanted to talk about Garrett?

Breslin: I just have one more question. You had mentioned, as you started to talk about the definitional cases, that the press had been focusing on marginal cases, or questionable cases, and most of the press on ADA and employment has not been good. To what do you attribute that?

Mayerson: Well, I think it is attributable to the nature of journalism. I mean, partially, it’s that flaky cases are also kind of the most interesting to read about, in some ways, to some people, obviously. I think that in the best of all worlds, if you could really control what went up, what even became a case, we would also probably not have necessarily wanted some of those cases to be the first cases. Some of the things that people—who they were, and what they were asking for, fed into, certainly, a trend of the conservative press, that all the kind of rights-based legislation is just a way for people to continue being pains in the butt. [laughs] And so, I mean, it followed in a bigger trend. A lot of the people—and this was an analysis that I think was done, actually, for that whole conference—I actually never read this, but—I’m not sure they actually ever looked at, but they should have looked at, you know, if you look at who were actually writing the pieces, they were probably pieces that were written by people who were already on a bandwagon.

But the ADA, unfortunately, has provided some pretty good fuel for the fodder, fodder for the—for whatever—fuel for the fire, because some of the cases sound ridiculous to people. I also think, though, that there is another problem that it reflects, which is that the ADA EEOC filings are primarily cases that are mental disabilities, and like back-injury kind of disabilities, and/or industrial ramification kind of disabilities. And it hasn't—somehow
you don't see large numbers of cases involving more traditional disabilities. That is an interesting thing, and that is something that I think, again, like talking about this, makes me think that is something that could be—there has never been like a big class-action lawsuit that makes a big splash in the papers, where people with a particular disability, that everyone recognizes as a disability, are being excluded.

Breslin: Well, some of the access litigation involved a large enough class that it could meet the requirement that you just said, it just didn't necessarily get the press attention that could have offset some of the bad press attention. I was thinking about the Colosseum case, for example, as one—it's an access case, so maybe it is considered compelling, but there was significant exclusion of the class, of people with a variety of disabilities that are traditional.

Mayerson: Well, yes. When I was speaking just now, I was thinking mainly about employment. Employment is the area where I think most of the bad press is generated, the area where—the most dubious of all the ADA areas in terms of its effect on people with traditional disabilities getting into or advancing in the job market. I think employment is the trickiest area. Employment is definitely one of the primary aims of the ADA. Access is more straightforward. I don't think there's—not tons of bad press. I think there was recently one about Cupid's Bow and Arrow. You didn't see this? Oh, my God, it was such bad press. It was like in, you know, Mattierre and Ross?

Breslin: I thought it was San Francisco.

Mayerson: It was so bad it was unbelievable. There is a park that is being designed after this famous Japanese painting called Cupid's Bow and Arrow or something, I mean, I don't have it right. But they're doing a replication of, they're making the park like the painting, and in the painting there is a big bow and arrow, like Cupid's bow and arrow.

The whole thing has revolved around approving the permits for this thing, and the whole thing has revolved around making the bow and arrow accessible to people with disabilities. It was going to be in the middle of the grass, because it is in the painting. They were saying, "Well, it is in the middle of the grass, and people with disabilities can't get to it." And anyway, so they made this whole big article about how ridiculous this was, and Richard Skaff, who is the one who is enforcing the issue for the city of San Francisco, is saying, "Well, don't blame me. It is just the law." It is kind of, like, you can put in parentheses, "The (stupid) law."

Anyway, so then they decided that the only way to solve the problem was to make the bow and arrow inaccessible to everybody, by digging a ditch around it or something, so that no one could get there. [laughs]
Okay, but other than that, I haven't seen that many really bad articles about access. I guess there was one restaurant that sued in the city that ended up closing, because—

Breslin: Yes, Max's.

Mayerson: Max's. They just decided to close, because they just couldn't make their elevator and etcetera work, and in an economical way, or at least that is what they said. But mainly you don't see really bad press on access cases, I don't think, except for when people, like—something like someone who is a quadriplegic wants to be in a dance class. Those get kind of ridiculed kind of fast.

Breslin: The Clint Eastwood case—

Mayerson: Oh, that was huge.

Breslin: —got probably the worst national press of all, in relation to the ADA.

Mayerson: The Clint Eastwood case, that is like the ultimate bad case. [tape interruption] Anyway, Clint Eastwood—the problem with that case was that it was Clint Eastwood, mainly, and also that—from what I understand, it was just a complete misrepresentation of the access there. I mean, Clint Eastwood said the whole place was accessible, and I just saw the lawyer again, Paul Rein, the other day, and he swears to God that the place is not accessible.

Anyway, I don't know. The facts are largely in dispute. The country hated that case, because—actually, that's not—I take back what I said about bad press on access, because there was also that whole Stossel thing.

Breslin: Stossel.

Mayerson: Stossel piece. Actually, there has been bad press on accessibility. Anyway, so Clint Eastwood—that got very bad press. A lot of people, actually, I think there is a backlash on accessibility, now that I think about it, because you also hear a lot about people talking about some of the excesses, or they think they are excesses, of accessibility features.

It is interesting. We are on a second generation on access issues, also, I think, that is just beginning to emerge in some of our cases, and other people's cases. I think that will also cause a whole other level of maybe not-so-great cases. I mean, the first cases were, you know, you can't get in the door, and it is clearly a violation, and there is nothing really to debate about it, and that is why most of those cases settled. Now, for instance—and like we've brought all of these cases against gas stations for not having accessible pump payment procedures—and now the issue in those cases is the convenience stores, and to what extent do you have to basically not have the merchandise in order to
accommodate people with disabilities. And those are the types of things that we could definitely get backlash on. Now I saw that DRA [Disability Rights Advocates] is bringing a case against the extension of the curb cut cases, that—not to have any tables and chairs on the outside sidewalks, where people love to sit, and—but they are barriers. Those kinds of cases could definitely challenge people's consensus.

I think, in general, people think, "Yes, it's great, buses are accessible." But when it starts to affect what they can have, or what money they can make, or—

Breslin: Let's move on to the current crop of cases that are going before the Supreme Court, or have gone before the Supreme Court, that you are involved with. Can you tell us about those?

Mayerson: I am involved in—the two cases that the Supreme Court has recently granted cert. on, one involves the issue that we were also trying hide behind the curtain, which is, what happens when there is either a collective bargaining agreement, or an employer-generated policy that gives seniority based on time you have worked at a place, and different kinds of job shifts, benefits, etcetera, are based on seniority—and a person with a disability needs to have a particular job because of their disability that someone with more seniority feels entitled to?

One of the issues before the Supreme Court right now is someone with a bad back—which is already not good news, PR-wise—got a job because of his bad back at US Air that someone with more seniority wanted, and had a right to, according to the seniority policy. The question before the court is, what role does reassignment and reasonable accommodation play in the context of bona fide seniority system? In general, in the area of civil rights, bona fide seniority systems have this high level of deference, and they are sacrosanct.

The thing that gets like the mantra of the unions is, "Seniority is the most importance thing. It is the only thing that guards against favoritism, abuse, etcetera." So we didn't want to deal with that issue. We wanted to deal with the issue of reassignment. We wanted to deal with the issue of people being able to be reassigned regardless of seniority—or at least we didn't want seniority to be a total bar to people being reassigned. But what we did—well, in the legislative process, is—and I think that I added reassignment into reasonable accommodation, but then we also had to write legislative history, which basically said seniority can be a factor in determining whether someone gets reasonable accommodation, which of course is just passing the buck, a strategy which is passing it to the courts. Now the courts have it, and how do you make it a factor? In some ways you can see how a court could make it a factor. They could consider everything—but how is an employer supposed to make it a factor?
So it is two reasons why it is not good for this case to be in the Supreme Court. One is that it involves a seniority issue. The other is that it involves something that is the biggest criticism of the ADA, which is that it is not explicit so that people can follow the rules, like, "Are you allowed to have asbestos in the walls?" "No." I mean, they want to know what is the answer to the question. And this is one of those areas where there is no answer, other than a weighing of a variety of factors in an individual workplace.

So that is difficult, and that is a very difficult case. I am involved in that by—mainly what I did is, it is Claudia Center's case, from the Employment Law Center. I got her in touch with Eric Schnapper, and they are working on it together, and I am just talking to them basically. But I think they'll be working together on that.

The other case involves the issue of whether a woman with carpal tunnel syndrome and repetitive stress disorder, who worked in the factory at Toyota, is a person with a disability. That is a very difficult issue. Everyone that I have talked to on these conference calls is extremely down on the facts of the case. I personally don't think they're that bad, and I think that the Supreme Court could very easily say it is an individual determination, and there was enough to go to the jury. But I seem to be in the minority on that.

It is one of these newfangled disabilities, which some people I think still consider to be bullshit, like whining, which is really too bad. I really don't think that, I mean, personally I don't believe that. So, hopefully we can get the court to buy the fact that it is a legitimate thing, and to be in pain all day long is a problem. I mean, it is a disability, it something to be recognized. But, on the other hand, we've just gone through this whole ergonomics rule in Congress, where the employers basically said it would bankrupt the capitalist system to have accommodations. So it goes hand-in-hand. Even though accommodation isn't in the case, the court, like anyone else, is very aware of the fact that once you recognize something as a disability, then you have to accommodate it. The employers are saying that all these employees want accommodations for all these things, and that it is all going to take one more step away from employers being able to decide how to run their shop. Unfortunately, it is probably a majority of the Supreme Court that is very sympathetic for that.

Breslin: What do you think your role will be in either of these cases as they progress?

Mayerson: I don't know. I would like to be involved in a definition case as co-counsel, but the counsel right now has not agreed to having a co-counsel. Actually, that was something I was going to bring up at the management meeting, about whether we would be interested in writing a disability brief, just to get back involved in that whole process.

Yes. Is there something else?
Breslin: Well, do you have any other reflections on those two cases in terms of their potential impact on the ADA, and whether they represent trends in general?

Mayerson: I think it is unfortunate that the accommodation case scares me to death, because the court hasn't had any accommodation cases, and it has to take the one, of course, that would be most unpopular with the public, absolutely, and that would strain the issue to its farthest degree that we didn't even end up being explicit on. Unfortunately, what I am really worried about about that case, is that the trend that it reinforces is this trend that the ADA is not really a civil rights but a benefits statute, that the people with disabilities are getting something that other people don't have. It is not the best example for describing why reasonable accommodation is part and parcel of nondiscrimination. What I am afraid of is that the court is going to characterize all of reasonable accommodation as something that is not required if it infringes upon what are considered the rights of others. That is what I am really worried about, and this is a bad context for that to come up, whereas something else could, in fact, be a great context for it to come up in. So I am very worried about that trend, about the ADA, you know, is not a civil rights statute. And that follows their trend with the Garrett, etcetera.

And then with the carpal tunnel syndrome, the trend that it could very easily follow is that the ADA is not benefiting the people that Congress intended but rather all these people who want to bring worker-type complaints against their employers, and that it is really more like an industrial relations statute than a civil rights statute. And that yes, employers should do something about people with carpal tunnel syndrome, but that is not a civil right, that is an industrial relations workers' right. I mean, what it could do, and what I actually am hoping that it will do, is bring us closer together with the unions on the fact that workers' rights and civil rights are very meshed in these contexts.
Breslin: This is Mary Lou Breslin interviewing Arlene Mayerson. It’s December 19th, 2002. This is Interview #8, Tape #14.

We just were talking before we began about where we left off the last time and kind of what’s transpired in terms of the major national disability policy developments, especially with the ADA. Can you say a little bit about the state of things now with respect to the ADA particularly in the Supreme Court?

Mayerson: Can I just look, because I don’t want to repeat myself, and I don’t—

[Tape interruption.]

Breslin: Okay, Arlene, we’re picking it up again. I asked you to talk a little bit about your analysis of what’s going on with all the negative outcomes from the U.S. Supreme Court in all the ADA cases.

Mayerson: I think that last time, a lot of the negative cases had been decided on the definition issue, the constitutional issue, and it looks like two cases that were still pending at the last time we talked were Garrett and Williams, so I’ll talk a little bit about those cases, and I think those were the last bad ones. We have another constitutional case right now that the community is grappling with, and then we also have a lot of meetings going on about what to do with these Supreme Court cases, so I’ll talk about that. And then maybe after that, like, a more general, not having to do with the court kind of impressions.

Breslin: Good.

Mayerson: The cases that at the time we were working on last time we talked, Williams [Toyota Motor Manufacturing, Kentucky, Inc. v Williams] was the one that I was most involved in. I worked very closely with the plaintiff’s counsel, which was a practitioner from Louisville, Kentucky, who was very resistant to the disability community’s desire to take the case over from him, so resistant that in fact he refused, and I was the only one that kind of basically stayed in touch with him throughout the whole process because, since he was our horse in the race, and the only one we had, we figured we had to keep in touch with him.

At the same time, I also did a brief for the National Council on Disability. The facts of the case were basically that Ella Williams had worked for Toyota Motor Company for several years and had developed carpal tunnel syndrome and tendonitis and muscle pain and neck pain and et cetera, from repetitive motions that she had to do at her job.
She brought both a previous workers’ comp case and ADA case, and as a result of those was in a modified job environment, where her group in the plant did four different functions, and she was only required to do two of those functions.

Breslin: I have to interrupt you just one second. I’m really sorry to do this.

[Tape interruption.]

Breslin: Okay.

Mayerson: Go?

Breslin: Yes.

Mayerson: So Ella Williams had been doing two functions in a group at the factory that involved four functions, and the two functions were restricted to what she could do, given her disabilities. At some point, Toyota changed its mind and decided everyone in that group had to do all four functions, two of which she couldn’t do because they required repetitive motion.

The case wound its way all the way up to the Supreme Court, and what was interesting—I’ve mentioned that the attorney who actually represented Ella Williams really wanted to keep the case and do the oral argument, but before we got to that point, there were a lot of discussions with the people—lawyers, mainly, who are very involved in Supreme Court litigation on disability. A lot of group calls about how to approach the case and et cetera, who would do what.

It was interesting to me that what I picked up was basically that most of the people on the call also did not really think that she had a worthy ADA case—

Breslin: Is that right?

Mayerson: —or, like, a real disability, and that everyone just assumed from the get-go that it was really bad facts. While I thought it was potentially bad facts for the Supreme Court, what I was picking up was more than that. I was picking up that people personally questioned whether carpal tunnel syndrome or those kinds of disabilities are real disabilities.

I felt strongly that they are, partially from personal experience with people that I know that have had these disabilities, one of whom committed suicide because she was in so much pain. I’m sure other reasons as well, but—

Anyway, so I thought that was really interesting. So the question became how to present the issue to the Supreme Court. Because of the prior case law on definition boding very poorly in terms of the court recognizing non-traditional, or conditions that aren’t commonly thought of as disabilities under
the ADA, people were particularly concerned about her having carpal tunnel syndrome.

What was precedential about this case, as opposed to those other cases—those other cases decided mainly the issue of do you determine whether someone is substantially limited in a major life activity, with or without their mitigating measure, which I’m sure I spoke about earlier. This was a case where there wasn’t a mitigating measure that was relevant; it was just how substantial is “substantial”?

That involved the question of how much did the disability have to affect you and in how many areas of your life. For instance, would it be enough that it affected her in her work life? People were very pessimistic about that particular argument, given the Sutton [v. United Air Lines, Inc.] case, because the Sutton case said, well, you had to be—it didn’t really decide the issue, but it had language about substantially limited in working, meaning in a class of jobs or a broad range of jobs in various classes, and then made it almost impossible to prove.

I thought Ella Williams’ case was a really good case to illustrate kind of the foolishness of that kind of ruling in someone’s real life, because for Ella Williams, factory work was the only work that she had ever done. She lived in a rural environment where factory work was the economy in which she lived. And so for her not to be able to do her factory job at Toyota, you have just undermined her ability to be in the economy, in such a major way.

So trying to analyze whether it affected her in a class of jobs or a broad range of jobs just ignored the reality of this woman’s real life in this environment where she worked, and what she had the skills to do, and what she had the opportunities to do.

And so then the question became, well, how good was the record on how it affected her in other areas of her life? People were looking through the record, feeling very pessimistic because what Ella Williams had done was what most plaintiffs do, which is try to underplay their disabilities in a lot of contexts, to show that they could still do what’s left of what they are doing at work.

And also the lawyer, who was a private lawyer in Louisville, hadn’t really built a record so much about what she couldn’t do outside of work, just thinking that it was mainly a work kind of case. So we were left with a record where the defendants characterized her as, you know, the only thing that’s wrong with Ella Williams is that she can’t do these two particular functions of a job at Toyota Motor Company. They tried to minimize so much how her disability affected her. So they said that can’t possibly meet the “substantially limit in major life activity” test.
Well, the flip side of that, what we were arguing, was that it affected her in a variety of ways in her real life, but that Toyota’s argument, by its very nature, didn’t make any sense because it wasn’t that she couldn’t only do two functions; it was that she could only do two functions. And it was just, to me, again—I keep on having faith that the Supreme Court, even though I know it’s very politically motivated, is just basically smart enough that—the only two things she could do were these two functions that basically required her to look at the cars, to see if she could see flaws, not using her arms or hands at all. In other words, no repetitive motion, which is most factory jobs.

She couldn’t do any other jobs that required manual dexterity or repetitiveness, basically. And those were all the other jobs at the plant, because otherwise they would have assigned her more tasks. So it seemed to me, and our brief for the National Council on Disabilities and how I encouraged the plaintiff to write his brief is to emphasize, Wait a minute. She can only do two functions that require not using her hands. If you are a factory worker and you can only do two functions that require not using your hands, you’re very, very substantially limited.

Well, the court read it exactly the opposite, as that her claim was all about not being able to do this particular task that they had assigned her at Toyota Motor Company and that as far as the rest of her life was concerned, she had conceded that she could do her laundry, brush her teeth, and take a bath, and so how substantially limited could she really be?

The court developed the test to say that in order to be substantially limited, you had to be severely limited in the essential daily activities of life and specifically said that “substantially limited in major life activity” was put in by the legislature, by Congress, to establish a very strict and high standard for being considered disabled under the statute.

Breslin: While you’re pausing there for a second, who was the attorney that you worked with?

Mayerson: Leslie Rosenbaum. [Opposing counsel was John Roberts.] The interesting thing about—what I just described as the court’s holding was the same thing the defendants had argued in their brief, so we had an opportunity to respond to it in our brief. It was really interesting because what the defendant, Toyota, said in their brief was—

Well, stepping back for a minute, sorry. The Circuit Court of Appeals that had held in Ella Williams’ favor had compared her to someone with missing or deformed limbs, and what Toyota said about that—they characterized the Court of Appeals—they said the Court of Appeals compared her to someone with missing or deformed limbs. Well, obviously, that couldn’t be true because someone with missing or deformed limbs wouldn’t be able to do their laundry, brush their teeth, or take care of their daily living activities.
So we kind of jumped on that and tried to emphasize that therein lied the problem with the whole argument the defendants were making, is that the whole idea of ADA was that people with a variety of different kinds of disabilities could in fact do everything they needed to do in their daily lives, but that didn’t necessarily mean that they didn’t need to be accommodated once they were at work, and that oftentimes the reason they could do the things in their daily lives is that because they had made their own accommodations, and then at work they were asking for an accommodation.

We used the example, particularly, of people with no limbs. There’s all kinds of news stories about people with no limbs that are not only doing their laundry but are winning derbies as jockeys and spectacular types of feats. But the main point being that if you looked at the ADA as only covering people that were substantially limited to the point where they couldn’t basically live independently, it was a whole different vision of what it meant to be disabled than what the ADA legislative history and speeches and et cetera, and people involved in the passage of the ADA were all about.

So I felt like Williams was the biggest blow in terms of just showing that it [the current ADA definition of disability] is not going to work. They just don’t get it. I mean—

Breslin: What was the ruling in Williams?

Mayerson: What’s that?

Breslin: What was the ruling in Williams?

Mayerson: Like I said, they questioned—they didn’t decide; they did send it back—whether she really could make out a case of substantial limitation, given how she could do these things in her life. But the main importance of the Williams decision was their specifically saying those two things: that Congress intended it to be a strict bar, and that the strict bar they were interpreting as meaning you had to show you couldn’t do the daily life activities important in most people’s daily lives.

So after Williams, I felt like, you know, the term “disability,” even though we’ve tried to establish a three-point definition and tried to explain it as not a medical model and that it wasn’t just covering traditional disabilities and et cetera, et cetera, et cetera. Something was just not translating in terms of the vision that I believe we had as a community in the ADA and what the court was doing with its decisions.

Since that time, it’s been kind of interesting because actually I’m not as sure as I was before that it is totally widely and unanimously accepted in the community that someone like Ella Williams is disabled. But at least for those
of us who were actually intimately involved in the process, we believe she
was, and we believe the statute was written in a way that would include her.

The problem was that we inherited and adopted these words from the previous
504 definition, that had never ever been interpreted under 504 so restrictedly,
and the Supreme Court never decided at all. So the definition is huge now, in
terms of what next.

Breslin: The definitional issues.

Mayerson: The definitional issues.

Breslin: Why do you say that you are uncertain what the disability community’s view
of her condition is, in terms of whether it’s a legitimate disability or not, and
why do you say that?

Mayerson: First of all, it’s interesting just in terms of language that we’re using. Who is
the disability community? And that’s another thing that’s really confusing
me, because so much now of who I’m involved with are these lawyers, and
lawyers that have now brought in, particularly for Supreme Court work,
Supreme Court experts. So the calls I actually have, the conference calls that
involve Supreme Court cases, are generally organized by Ira Burnim, who’s
executive director of the—actually, he’s not; he’s the legal director of the
Bazelon Center in Washington DC.

There was Chai Feldblum, who teaches at Georgetown [University] but who
was very involved in the ADA writing. And then a whole slew of lawyers
from private firms, who are committed to ADA and are taking a lead right
now. But for me, I don’t know if it’s really fair to characterize them as a
disability community. They’re people who care about the ADA.

Not all of those people are from necessarily the viewpoint that people like Ella
Williams should be covered.

Breslin: Why wouldn’t they have that viewpoint? In light of—they represent diverse
constituencies. Sometimes in private practice they represent businesses, I
assume. I don’t know who they represent, but why would they not consider
her a person with a disability?

Mayerson: [No immediate response.]

Breslin: I mean, some of these are progressive names in disability-specific aspects of
the disability movement.

Mayerson: I think that you’re equating, which I always have too, progressive with
viewing the ADA as a statute that doesn’t really carve out a class of particular
people but rather looks at how people are treated, and I’m actually not sure
that that’s necessarily, by some people, agreed as a progressive view. I mean, I would agree that it’s progressive not to believe that it’s limited to the very traditional disabilities.

Well, let’s move on. I’ll give you an example, but it requires moving on to what’s been happening since that decision, is there’s been a lot of talk about an ADA restoration act or, independent of the ADA restoration act, just working on the definitional issue and just putting that in. “In” meaning into Congress.

In those meetings, there’s a whole different set of players than the ones I just mentioned. Some of the same, for Bazelon Center, of course, and from NAPAS [National Association of Protection and Advocacy Systems, Inc.]. Again, same players, same organizations. In Bazelon, different people. The National Council on Disability [NCD]—Jeff Rosen is a deaf lawyer that works there. They still rely very heavily on [Robert] Bob Burgdorf, who was the person who wrote the original ’89 ADA, the 1988 ADA, for the National Council on Disability.

NCD directors have always been disabled people: Marca Bristo and now it’s Lex Frieden. The [American] Diabetes Association is now a big player because they were hurt very badly by the mitigating measures cases. Epilepsy Foundation is very involved now because they were also hit very badly. There’s a new organization called ADA Watch, where [James] Jim Ward is really trying to be a coalition builder in developing the disability community again, the grass-roots constituency. Various other people are involved in this restoration effort.

There’s been a tremendous amount of debate about if we were to redo the definition, what would it say? Some of the controversy surrounds, well, would a rewriting really be just restoration? Would it restore the original intent of the ’90 act, or does it really go beyond? Part of it is, is it really doable, because we have a Republican Congress and et cetera?

But I do believe that underneath that there is also a resistance by some people, and I’m going to give you an example in a second, really accepting that there is no real such thing as a disabled person outside of the concept of how society is treating a person. It really rubs people the wrong way. So to be more concrete, we at DREDF had originally proposed a definition that would basically say something like a person with a disability is a person who has been subjected to the discrimination that is prohibited by the ADA. I mean for the purposes of the ADA, a person with a disability—obviously, in other contexts, a person with a disability is other things. But in that context.

So that generated, number one, the criticism that it wasn’t restorative, that it was an expansion; number two, that it was outrageously undoable; but also that it was backwards, that we had to start with a group of people and then go
to the discrimination, not define the people by the discrimination that they encountered.

So then we moved—“we” meaning I ended putting another proposal in the hopper with Claudia Center, which just said, okay, a person with a disability is a person with an impairment, a record of an impairment, or who’s been regarded as having an impairment. So just make a broad definition of disability, and then define everything in the act as discrimination on the basis of impairment, or disability, but it would really be impairment.

The reaction was mixed. Immediately, examples were given that seemed trivial, like what if someone got fired because he or she had a mole? So that could be considered an impairment, and that person, the way you’re defining the ADA, defining disability just to mean impairment means that that’s a person with a disability. The resistance was so high to that notion.

Breslin: The idea that it would trivialize the disability experience and the gravity, the gravitas of “real,” quote unquote, disabilities.

Mayerson: It depends on perspective. For example, one of the key people in the NCD meetings was Bob Burgdorf. His disability is, to a lot of people, visibly at least, mild. He would be the kind of person that would not be held as substantially limited. I mean, he just has kind of like a [former U.S. Senator Robert Bob Dole hand, maybe a little bit of a gait issue, but it’s interesting to me because people who are more severely disabled than he is could look at him with the same point of view, like, well, what’s your problem? But, in fact, Bob Burgdorf has experienced discrimination in his life and pretty hurtful discrimination, actually, because he grew up in an environment where manual labor was very important, and he could do it, but he was assumed not to be able to do it.

Breslin: And where sports was very important.

Mayerson: And sports, I didn’t know about. People also had really strong reactions to a broad definition of disability because of the fact that it would allow you to claim a right to reasonable accommodation. And somehow it wasn’t just that, “Well, the employers will hate that.” There was more to it. I think the people really felt the employers would hate it, obviously. But I think people really kind of felt like, “And yeah. Why would we want that?”

So it’s been really interesting, on the rework.

Breslin: You said you had worked with Claudia Center on the second proposal. Who is she, and what is her viewpoint?

Mayerson: Claudia is interesting. I actually was going to back up and talk about the Barnett [U.S. Airways v. Barnett] case. She actually is a lawyer with the
Employment Law Center who specializes in disability cases and is also a person with a disability. She has bipolar, or she is bipolar, whatever. She actually was a student of mine, at Boalt, like in the late eighties. She has become more and more a player, I think, because of her work and also because [Andrew] Andy Imparato, who I didn’t mention in the mix before, which I should have, who’s the director of the American Association of People with Disabilities, is very close to Claudia and really wants to promote her in terms of a national role.

She’s progressive, and she has a very, very broad view of disability. And she’s worked also, I should say—she is very, very involved in the change of the definition in California after all these bad decisions, which is a whole other story.

In any case, Claudia actually—the reason I met with her to do a different definition is because there was this, I think, a meeting coming up, and Andy and Claudia had written an article on the definition of disability and made a proposal for a new definition. So Andy wanted DREDF and their article to be at least reconciled if there were differences, et cetera. And we did, too.

And Claudia’s local, so that’s how it turned out to be Claudia.

So the National Council on Disability was convening a meeting to actually discuss what the proposal should be, because their intention is to put together an ADA restoration act like they did on the first ADA. They want to continue in that role. It’s DREDF’s point of view, and it’s also other people’s points of view, that we should go for a very, very broad definition, and if we can’t move completely out of a protected class, to at least move so at least the class is very broad.

[Robert] Bobby Silverstein very vehemently—he was the person who was the chief counsel for [Senator Tom] Harkin at the time the ADA was being written, has a lot of ownership, and deservedly so, about the ADA—argued that our definition would not be a restoration act because the original ADA really was intended to restrict the people that could claim coverage or claim protection.

It’s been fascinating for me because Bobby and I worked so closely together on the ADA, and we really and truly do have a different point of view. I mean, I don’t know if he really believes me when I say I truly believe that the broad definition is restorative. And he comes back and goes, “Well, Arlene, how can you possibly even make that claim when the ADA definition, which is exactly what you’re now proposing, that disability be defined as an impairment, was explicitly rejected in favor of adopting the 504 definition, which had substantial limitation, and the ADA definition was specifically to model the 504 definition. How could you possibly claim it was restorative?”
My answer to this is it’s restorative—I believe it is because the reason we adopted it or were willing to adopt the 504 definition is because we didn’t think it would restrict us in the ways that it currently has. We didn’t have any reason to believe that it would because right before the ADA, there had been a very positive Supreme Court decision, the Arline [Arline v. Nassau County School Board] decision, which spoke a lot to the fact that prejudice played a big role in deciding what the life of someone with a disability was like.

It says the myths, fears, and stereotypes are as disabling as any condition itself, et cetera. And we had adopted a definition that included “regarded as,” which was supposed to be a catch-all, so that if anyone wasn’t a person with a disability but had the same experience, based on their impairment, they would be covered by the “regarded as.”

So I did believe in ’90 that anyone who experienced discrimination on the basis of an impairment would be able to seek the ADA’s protection. To the extent that there was an exception—and this is what I tried to point out at the meeting, to Bobby—on substantial limitation, even in the first prong, where you actually have a disability, what we put in the legislative history is someone with an infected finger. That’s as far as we were willing to go.

And what we put in the “regarded as” prong—because there was a big, big push by [Christopher] Chris Bell and Evan Kemp, who I’m sure I’ve talked about previously, to restrict the “regarded as” prong. And the only thing that they got in legislative history was the example: if the only thing a jet plane painter can’t paint is a particular kind of jet that used a particular, unique paint that wouldn’t be used on any other jet, that that person would not be regarded as disabled in working. An effort was made to make sure anyone facing discrimination was covered except in the most trivial or esoteric situations.

That sounds kind of confusing, but in other words, to the extent there were restrictions, they’re supposed to be so on the outskirts, waaaay on the outskirts of the esoteric case, and when you start to get people with diabetes, epilepsy, cancer, carpal tunnel syndrome, et cetera, to me you’re not on the outskirts.

So I actually really believe it’s restorative, and I think that Bobby finds that hard to believe, given, I think, his argument. It sounds strong on its face, if you weren’t really there, which is: wait a minute, how can you say it’s restorative when you’re restoring something that was rejected? So there’s very strong feeling on that regard.

Bob Burgdorf actually threw something into the hopper which I thought was interesting, which was he wanted to really bolster up the “regarded as” prong, which I love. I love the “regarded as” prong. But keep the other two prongs, because he still does think that someone should be called disabled. But he or she shouldn’t be called a person with a disability, unless they actually have one.
I think he thinks that people who are not substantially limited should be covered by the act, if they’re discriminated against, but there’s something kind of inherently offensive about being called a person with a disability, if you don’t really have a disability.

Breslin: Or inherently inaccurate.

Mayerson: What’s that?

Breslin: Or inherently inaccurate.

Mayerson: Or inherently inaccurate, yes. And it is kind of interesting, because on one hand—I think it’s just so fascinating, the whole issue, and it is really more than a half hour, the whole issue, this whole question of the definition, and I know a lot of things are happening internationally on it. When I said at the meeting we recently had, I said, “Do we really want to have a less progressive definition than Ghana or Zimbabwe?” I said, “We were the leaders. We stepped out, the United States, doing the ADA. If you look at the definitions around the world, a lot of them are narrow or diagnosis-based, but there’s a lot that are way more progressive than ours at this point, and they’ve totally recognized that disability is caused by societal barriers.

So, you know, let’s look around this. I mean, are we investing in the future? This is my speech at the meeting. “Are we investing in the future of where we think the disability paradigm should go, or are we holding onto an old model based on old ideas?” I mean, I understand that if it’s restorative, we should have an argument for why it’s restorative.

But it’s just been a very interesting process, that really we can’t agree. Jim Ward, the day after the NCD meeting, called a meeting of the ADA Watch, where he says to the lawyers, everybody who had been at the meeting the day before, “Okay, so here’s the deal. Can the lawyers get together and just come up with a definition? Because we need something to organize the masses.”

And we’re all looking, like, we are so far apart. We don’t agree. And everyone is really entrenched, okay? At this point, I know I made an impact on Bobby at the meeting, because I had an e-mail from today or yesterday that I haven’t read yet, where he said he had edited some of the language, only for a preamble, though, about how disability is socially constructed, et cetera.

And I am considering—like, if Bobby and I wanted to, we could merge our definitions in a second, but I just don’t know if I want to. I mean, I don’t know if we should, is what I mean, because the truth is that there is one part of me that’s influenced by you, for instance, and the forward thinking of, like, where are we going conceptually? But the other thing is we have to get something passed, if we’re really doing this for real.
Breslin: There’s a practical problem that really does need to be resolved.

Mayerson: And it’s just killing me that the idea of kind of setting some kind of framework, which I so totally believe needs to be done, for thinking about these issues differently, might have to be sacrificed to this political reality, which just re-entrenches something that’s a big problem for the future conceptually.

So, like, wearing two different hats in this process has been very, very frustrating because I really just hate re-entrenching something. I just don’t think disability, that word being so laden with the baggage it is, I can’t imagine it really translating unless there’s some kind of change that is very recognizable as a change.

But, you know, I’m actually thinking more and more recently that maybe we can really explain what we’re doing in the preamble and really try to change the language in a more technical way, which Bobby wants to do, and convey a new message. But it’s just a recent thought.

Then the other part of it, of course, is we have a political reality, which is that most people—I don’t know about most people—a lot of members and the press have played the ADA as being too broad already. It’s like you get something. And we always say it’s not benefits. You’re not trying to get cash. And now I’m realizing more and more, in these meetings that we’re having, it’s like you get reasonable accommodations is what you get.

And the truth is that reasonable accommodation is seen more and more like a benefit than a civil rights protection, because you’re getting something, or you’re sometimes getting something that other people want, and don’t get.

Which leads me to this other case for a minute, which is the Barnett case, which Claudia Center actually argued before the Supreme Court and, boy, do I give her credit, because this group of Supreme Court experts, et cetera, and Ira Burnim, in particular, just really believes that someone with a lot of Supreme Court experience should be the only one arguing disability cases, or any case. And Claudia got onto the case, and she didn’t give it up for oral argument, which really took a lot of nerve, and my hat is off to her on that. I wasn’t at the oral argument.

The case was about someone, Barnett, who had injured his back and was working for U.S. Airways, which had an employer-generated seniority system, as opposed to a collectively bargained, union seniority system. He had changed from a stockroom kind of position to a mailroom position because of his back, but every position there apparently remains open for bidding, and someone with more seniority wanted to bid for his mailroom job.
He couldn’t go back to the stockroom job because he had the disability, and he couldn’t do the work. So the question came up whether he could stay in his mailroom job as a reasonable accommodation under the ADA. The reasonable accommodation requirement of the ADA came up against, like, the most revered labor protection, which is seniority.

The decision was, I think, actually written by [Associate Justice Stephen G.] Breyer—yes—came out to say that seniority—you know, it’s going to be presumed that seniority trumps reasonable accommodation, unless the employee can show that it’s not really a bona fide seniority system in the sense that it doesn’t really guarantee anything for anyone but is just used by the employer.

But the issue that gets raised there is, okay, there’s an example of where there’s two competing interests, and it’s a big benefit to get reasonable accommodation in that situation. Actually, just to be accurate for the record, he’s not going to end up losing because it turned out that it’s a bogus seniority system.

Breslin: What do you mean, bogus?

Mayerson: I mean, U.S. Air went all the way to the Supreme Court to say that their seniority system should trump the ADA, and the decision says there’s a presumption that seniority is valid and that it’s not reasonable—which I’ll get into a second—that it’s not reasonable to have reasonable accommodation trump a bona fide seniority system.

But it does leave an opening for an employee to be able to show, well, it is reasonable because in fact there’s a million exceptions to the policy, the employer doesn’t always use it, it’s not used consistently, et cetera. Well, U.S. Air actually has, in their policies, paragraphs stating that it will not enforce any of the seniority provisions. So in fact, if the more senior employee who got Barnett’s job had wanted to bring a case against U.S. Air to get that position, he wouldn’t have had an enforceable right.

Breslin: I see.

Mayerson: So it’s a bogus system, basically, whereas if it’s a collectively bargained system, senior employees have an actual, contractual right, and that’s a whole other issue that we have to deal with: what are we going to do about that in terms of the restoration act?

The most important part of that case is that—I might have talked about this. No. When the ADA was drafted, again from 504, taking the 504 language, reasonable accommodation was meant to mean what’s effective to allow the person to do the job, and undue hardship or undue burden was the employer’s defense: Well, I can’t do that because it costs too much or it would be
administratively unfeasible, et cetera, et cetera. And it was based on the size and the resources of the employer.

So when this case came up, and cases before this case, in lower courts, came up and said, well, undue hardship really doesn’t work because in the seniority context, it’s not really an interest of the employer whether a more or less senior employee has the job. I mean, what’s it to them whether John or Joe has the job?

Breslin: Right.

Mayerson: And so the court said, well, undue hardship has to do with things that involve the employer, but when there are competing demands in the workplace and other things like that, that don’t fall under undue hardship, they should be analyzed basically: are they reasonable accommodations? Are they reasonable?

So “reasonable” took on an independent meaning, and became an independent defense. Undue hardship was very hard fought, negotiated, has very, very specific factors. I mean, it’s not definitive by its own terms, but at least the court knows what factors to apply. “Reasonable,” no one ever even discussed for five seconds throughout the whole legislative process. “What standard of reasonable would this be?” Because it wasn’t considered in that way. So that’s a big deal. Two bites at the apple.

And there was one more case, actually, that I don’t think we’ve covered. I don’t think we’ve covered the Chevron case, did we?

Breslin: No.

Mayerson: With direct threat?

Breslin: No.

Mayerson: There’s a case called Eschazabal v. Chevron [USA], and that case involves someone who had hepatitis C, who had been working for Chevron for many—like, for twenty, thirty years, in their refinery. He had actually been working for a contractor. When he applied for a job to actually work for Chevron, the company itself, they did a medical test, found out he had hepatitis C, and said, “Oh, by the way, your job is too dangerous for you. You can’t work here.”

So the question there became can an employer use the fact that the employee poses a threat to him- or herself as a reason to not allow the person to work in the environment? Again in 1990, those of us who were involved in the ADA had put a specific provision into the law that said “direct threat means”—which is a defense, a valid defense—“means direct threat, significant risk of injury to others.”
The courts below, too—not in that case, but other circuits—decided that it means a threat to the person, him- or herself. It’s one of those things, again, where you go, like, where did they come up with that? I mean, how can we have been clearer? Well, sure enough, it wasn’t clear enough, because the court decided that’s a very legitimate business concern whether an employee poses a direct threat to him- or herself because, you know, something might happen to the person, and then they might get bad publicity or something. You know, various things like that.

And so the court decided that the statute, which I thought was explicit on its face, in fact does include the direct threat to oneself as a reason to be excluded, which is also very controversial in terms of the restoration act because, on one hand, people think it’s like the ultimate offense to basic disability rights principles, to be excluded because of a threat to yourself. And on the other hand, people think, well, of course courts aren’t going to let someone work at a place where they—they always give the example, like, work with machinery and cut off their arms and legs. What are they going to do? Chop up their whole body and let them work there? You know.

Anyway, that’s an update on the Supreme Court cases. The restoration act efforts of NCD, National Council of Disability—they intend to come out with some kind of draft. The ADA Watch hopes to have some kind of vehicle to organize the grass roots, to get a movement going again, to get people motivated, to bring out the troops, to be able to carry any legislative proposal in a very unfriendly climate. So that’s all happening.

In general, the times are not good. I think the Supreme Court has been very, very negative on the ADA overall. I mean, there are a couple of good decisions in there. It’s been demoralizing, I think, certainly for those of us who actually work in the disability law field.

I think the ADA has a pretty bad rap in terms of how effective it’s been and how incorporated into the culture it’s been in these employment ways. It’s been maligned, extremely and well deservedly so, in those ways. And I think, again—and we might have talked about this before—but its transformation of the landscape of America has not gotten as much credit as the discredit that has come with these other issues.

But interestingly, the court has a way of picking the worst case scenarios to decide our issues, and the access case hasn’t happened yet.

Breslin: Are you concerned that it might?

Mayerson: I’m very concerned that it might. If I had the time right now—I’m working very, very hard on a lot of different things at work that aren’t necessarily satisfying—if I had the time, I could rethink everything I want to do. One of the things I would love to do is respond every time I see these, like, negative
media reports. But right now, access requirements in the ADA are being characterized over and over again—I hear it on all kinds of different forums—by this lap-dancing case.

Breslin: Right.

Mayerson: Every time I hear it, it kills me. Not that I don’t think someone should get into the lap-dancing place, but I just think it’s so sinister for the media to pick up on that and over and over again—I mean, I have heard it come off—it’s a little teeny, one person’s case. It doesn’t characterize anything.

Breslin: What are the issues in the case?

Mayerson: The guy couldn’t get into a lap-dancing bar or something.

Breslin: It’s a person who uses a wheelchair?

Mayerson: Probably, I guess. I don’t even assume—you know. I don’t even care. It’s not a relevant, big case. It shouldn’t be talked about by everyone, but there’s only reason to talk about it, which is to kind of trivialize and turn people against the ADA. The most recent thing I heard about it that I really—it was, like, in my car, wanting to have a pen and paper—was on NPR [National Public Radio] by a woman that was young and very progressive—you know how they do those, like, someone writes something, a very well written piece, and then they say it themselves?

Breslin: Yes.

Mayerson: This was not like “In Her Own Words” or whatever it’s called, but something longer than that. This one had music behind it, like a kind of individual piece of—and the whole thing was, “All you civil rights wanna bes, don’t compare yourself to Rosa Parks.” And it went on and on about how sickening that was, that all these people are comparing themselves to Rosa Parks.

And sure enough, she gives the example of the lap-dancing club, and the whole disability movement and everyone in the disability movement was boiled down to the guy who couldn’t get into the lap-dancing club and characterizing these people as—what’s it called?—imposters of Rosa Parks’ memory.

[Tape interruption.]

Breslin: Okay. Well, we’ve been talking about the last three Supreme Court cases and sort of the state of things in terms of any kind of ADA restoration. The story about the Rosa Parks radio piece is extremely frightful and upsetting. Do you think that that really represents the general point of view about the ADA and people with disabilities?
Mayerson: That’s not what all the surveys say. I’m not an expert on those surveys, but apparently there was a Louis Harris poll; people think the ADA’s a good thing, and blah blah blah. That’s not what you hear. I don’t, anyway. I don’t hear that much about what a great thing the ADA is. But apparently the polls are pretty positive.

Breslin: The polls are of people with disabilities.

Mayerson: No, I think this latest poll is, like, what do Americans think: Do you think the ADA was a good thing?

Breslin: I see.

Mayerson: I think the percentage of people that said, “Yes, it’s a good thing” was very high. And, “Do you think people with disabilities should have access to public buildings?” “Yes.”

But people are very pessimistic about even maintaining a lot of the ADA, at all, period. That is, with the new federalism.

Breslin: What people?

Mayerson: There’s a case right now pending before the Supreme Court on whether Title II is about enactment under the Fourteenth Amendment of the Constitution. But what people are talking about is not only do they believe that after Garrett the court will decide it’s not, but that the other potential congressional authorities for enacting might also end up being cut back, by what the court’s current jurisprudence is.

I’m not that pessimistic as some people are, but it’s looking like—you know, obviously there’s a retrenchment in that whole area. So some people think, like Steve Gold, whom I talked to the other day, that organizing is where it’s at. I didn’t talk to him long, but he’s kind of like feeling he’s sick of the court, and maybe it’s all about organizing, and maybe that while the law focus was an incredibly important focus—I’ll never ever believe it wasn’t—maybe that’s not the best focus right now.

Breslin: Do you think the disability community defined broadly, not in the kind of rarified Supreme Court context but in the somewhat broader community context, understands the extent to which these threats could actually have an impact on their lives?

Mayerson: That’s also—I’m sorry, because I meant to say that when we were talking before about who was the community and who does or does not believe that it’s progressive to think that the definition should be broad and everyone should be included. It’s all kind of confusing because what we were told at the NCD meeting is that ADAPT, which is considered the total left wing of
the movement, doesn’t want a change in the definition. And ADAPT is also generally representing people with more severe disabilities.

So a question is, Do people, like ADAPT people, think that it’s a good idea for the disability community’s efforts and energies to be drawn toward the people that they do not believe are experiencing the worst types of discrimination? And then the question is, Well, who’s directing our energies there? It’s a responsive thing. And so maybe a lot of people in the organizing community are thinking just being responsive—then obviously the negative decisions, et cetera, define your agenda constantly.

And I think we’ve been a bit in that mode for quite a while, which is why people, even, like [Patrisha A.] Pat Wright are now moving towards, Let’s just get any piece of legislation, and let’s motivate a new movement. She always thinks maybe we’ll win it, but something’s got to happen to get people energized and motivated and unified.

Breslin: Are you personally pessimistic about the long-term outcomes, or optimistic?

Mayerson: Everything looks down to me about the courts. Like, for instance, *Olmstead v. LC*. It was considered the one major victory in the Supreme Court, and it stood for the proposition to the disability community that ADA said that the least restrictive environment meant that you couldn’t institutionalize someone who could live in the community.

The case actually said a lot of other things that really restricted that right, and what’s happening now is that we are losing over and over and over again in the courts that are actually applying the *Olmstead* case. And if anyone actually reads the decisions, they are bad. They are so bad that I can’t even sometimes read these things because I just feel like it’s like any gain you make, there’s always a way to undercut it.

Just today—I mean, this is really recent news—I just said to Ira Burnim, who’s been very associated with that *Olmstead* decision, had worked on it, set up [Michael] Mike Gottesman to argue it, et cetera—I said in all this restoration talk, no one’s mentioned *Olmstead* because it’s still a sacred cow. We’ve gotten so much political mileage out of so-called, quote unquote, “winning” that case. So when do we recognize the reality that it’s not working? When do we admit it?

Part of our whole win of that case, part of the importance of that case has been that it has been a mobilizing tool, where these grass roots, these ADAPT, these people in the world believed that there was a major victory that established fundamental human rights.
Breslin: And states are taking actions based on what they think the implication of the decision is to generate policy changes and community activities to integrate people. There’s been momentum built.

Mayerson: There’s a momentum built. And so I don’t know—maybe there are some real success stories, actually, of states. There might be. Unfortunately, I’m getting more and more pigeonholed into this whole legal arena, where all I see is the cases, and the cases are unbelievably bad. What they’re saying basically is yes, that’s what *Olmstead* says, unless it costs anything or unless the state doesn’t want to do it.

Breslin: Or unless the professionals say it isn’t going to work.

Mayerson: Oh, if the professionals don’t think the person can go in the community, you don’t even go to first base. But even when the professionals think they could go in the community, you don’t necessarily win—the best argument we ever had, which is for a particular individual like Joe Shmoe. Joe Shmoe is going to cost less in the community than in an institution. The court said, “No, that’s not how we’re going to analyze costs. How we’re going to analyze costs is if some Joe Shmoes are going in the community, but some Joe Shmoes are staying in the institution. It doesn’t reduce costs because it’s a double cost. And so as long as you still are maintaining the institution, even when people go in the community, you have those costs because you’re still maintaining the institution, and perhaps at higher costs.”

It’s like wait a minute. How do you win these cases? We don’t have a right to close down the institution as an argument, just completely totally close it down; it has to be the people that the state has chosen to believe can be in the community. And then you go, okay—and then they’re still not going to the community. And you can win their right to go to the community, but if they have to maintain the institution at the same time, it’s not going to cost less overall for the system, and so therefore you lose? Okay, well then, how do you win? Now, seriously. I honestly, sincerely don’t get it. How do you win?

The other thing is—I mean, I could talk longer. We can’t talk forever, but the other whole thing is special ed, which I haven’t even touched upon. You know, there’s all this focus on monitoring now, focused monitoring. DREDF is involved in a case in Palo Alto, where it’s been five years since a comprehensive consent degree, and there is not a real, appreciable change in the district. And the state is monitoring.

So I’ve become familiar with all the consent decrees around the country. The question definitely arises, can you achieve compliance through the law? It’s certainly a helpful vehicle to have, but system change is hard to accomplish through a consent decree. You need buy-in. The question is whether it is before or after litigation.
I still think you need to clobber them over the head, but actually someone’s got to be working on the buy-in part, because the clobbering over the head works for individual cases perfectly: you have to hire the person, you have to hire the person. You have to integrate the individual kid, you have to integrate the individual kid. But for system change, without having system mind-set change, it’s really hard.

I’ve actually told—in the conversation I had today with Ira Burnim, actually the same conversation—I said to him, “I actually want to call a meeting on all the IDEA [Individuals with Disabilities Education Act] consent decrees in the country, put them up on boards, look at them, analyze them, try to figure out what does actually work. That’s really a meeting I want to hold.” And on IDEA we’ve done okay, by the way, in the Supreme Court. We haven’t been clobbered on that, and the integration case, thank God, has not gotten there.

Breslin: That’s probably why.

Mayerson: And if that happens, that’s it. I mean, if it goes to the Supreme Court and they say, well, of course we didn’t mean a retarded should be in a regular class, which I have no doubt they would say, that would be a blow that would be unbelievable. So I don’t know. I want to sound more optimistic. We’ve talked about this. I’m optimistic about the international stuff. I think it’s amazing. The movement internationally is the most exciting thing happening. More people being aware of disability issues is very cool. More access is cool, wonderful.

Breslin: More access is [cross-talk; … …].

Mayerson: Oh, and also, actually, someone told me that actually in the personnel offices, the HR [human resource] offices, which I’m certainly not an expert in, there actually is day by day, every day, stuff being done to accommodate disabled people, and I just have to take the person at face value, because I don’t know anything about it. But you never really see behind—it’s just like you don’t see what’s happening on the everyday—it’s not litigation, it’s just the HR office knowing now that if someone comes to them and needs X, Y or Z, that they’re probably going to do it.

Breslin: You don’t see the voluntary compliance that doesn’t result in a conflict—

Mayerson: Yes.

Breslin: —that has to be resolved legally, and that’s the measurement. That measurement probably would be a shot in the arm if we understood it a little better.

Mayerson: Yes.
Breslin: Let me just stop right there and change the tapes.

[Begin Tape 15]

Breslin: This is Mary Lou Breslin continuing with Arlene Mayerson. It’s December 19, 2002. This is interview number eight, tape number fifteen. Arlene, why don’t you reflect a little bit on your career as a disability rights attorney and your aspirations for yourself and for the movement in the future?

Mayerson: Well, something I’ve been thinking a lot about, and I, sometimes, get on a very like dark side of it because—well, right now, I’m doing, because of the situation at DREDF, that we’re down to two lawyers with experience and one with no experience but very much promise, I’m doing a lot of litigation. Actually, it’s really dragging me down, and I’m realizing that my best skills at this point, I think, are really, as kind of like a thinker and a consultant, and a kind of an emeritus?

Breslin: Emeritus, yeah.

Mayerson: Someone who has thought about the issues about, and actually has a lot of good insights. I think I have really good strategy insight. I think I have really good legislative drafting instincts. I think I have good visions, how to put things together. I think I’m a good strategist, that kind of thing. I don’t like doing litigation, I don’t like doing litigation in a field that I don’t even know, which is what my current situation is, doing kind of like Medicaid litigation, which I’ve never ever read Title XIX.

We kind of committed ourselves at the beginning of DREDF to do ADA, 504, and IDEA, and I feel I have an amazing amount of expertise in that. I think it’s wonderful that those issues have merged with the Medicaid issues. I think it’s the more important and fantastic development, which is to say, the implementation of *Olmstead*, basically, and the fact that these Medicaid systems, that have to do with the medical model to its utmost extreme should be integrated with an integration model. It’s a very exciting development. What I’m realizing is it’s not the development where I can in fact be a real leader or contributor, in the way I want to contribute, except for in the ways I just described, in terms of kind of thinking. So, sometimes I feel like I’ve become an old used car, put out to pasture, or sheep, or cows, or whatever it is you’re supposed to put out to pasture [laughing].

The idea of Protection Advocacy is totally different from when we first started. I mean, they are litigating cases, they’re upfront, they’re getting experienced lawyers. I think all that is great. It’s been very hard for me to lose leadership in the Supreme Court work, where for the first ten, fifteen years, I was a coordinator for the Supreme Court work. It didn’t even occur to me that I wasn’t capable. I had to get a Supreme Court lawyer. That was stupid of me, but you know, to work with the plaintiffs and to work as
counsel, to write briefs that I’m very proud of. Now, really, the coordination of the Supreme Court and the players have changed dramatically. That’s also a good thing, because there are a lot more people interested in doing Supreme Court work, and the caliber of people is very high.

It’s like one of those things, like when your child grows up. It’s a wonderful thing, but it’s also kind of sad. I had always wished in the past that there were more people to do the stuff that I was doing, because for many years my life was not in balance, because work was so much the main part of my life. Ironically, I’m going that way again, but for other reasons. I mean, unfortunately, I don’t love teaching. I still co-teach a class at Boalt with Linda Kilb, but Linda Kilb is doing a lot of working with the students. I don’t love teaching the issues that are basic. What I’m thinking now is that I would probably like teaching kind of an advanced seminar. I suppose I’d like that, you know, for people that would want to sit around and brainstorm every week. I think that would be interesting. I think I would really like that, and have more time to think about those things. I didn’t realize until recently that it’s not really the teaching I don’t like, it’s like I don’t like teaching 101, because I’m not interested. This is all about me, but I think you asked me somewhat on what I was thinking about my future.

So, I want to hold on to what an unbelievably amazing experience the whole thing has been. I’ve been so aware the whole time of what an incredible privilege it’s been to be able to have work that you care so much about, that makes such a difference. You get to work with such amazing people, like you and Pat. It’s getting harder to hold on to it though. It’s like ADA—everyone used to fight about who wrote it. We were all so proud of it. Now the words aren’t fulfilling their promises.

Breslin: Can you objectively relate these turns of events to experiences of other groups, as their movements and legal advances sort of become elevated and scrutinized and come under fire, and as the movement grows and changes, and new demands are come forward—can you relate our experiences to those experiences, or do you see them as substantially different in some way?

Mayerson: I think, actually, that’s a really good point too. Actually, you know a lot more about this than I do. I still haven’t read the Critical Race Theory book [ed. by Kimberle Crenshaw et al (New Press, 1995)], but Brown v. Board of Education held a promise for two decades, at least, and there’s been a tremendous amount of despair and disappointment with that. So, the rethinking, I’m not positive that the same people that did the original thinking should be doing the rethinking, totally. I mean, I really do believe that new leadership can be really really helpful—and the younger people.

I feel—again, I’m going to be on the negative side—I feel my biggest failure, truly, has been that I’m just not a capacity builder. I just don’t know how to do
I just was busy doing the work, and I feel really sad about that. I don’t think we did build capacity.

I think we have a couple great prospects right now, but I’d love to see more leadership coming up, because I think that just like in the Civil Rights Movement the people who devoted their lives to Brown v. Board of Education could contribute to the dialogue of how to reshape the future, but they’re not the leaders of that new future. I don’t think, I absolutely don’t think the new leadership should think they can’t learn from the people who went before them. I think both are important. I don’t know how to get out of the paradigm we’re in. I think one of the things is, what I’ve been doing is, I’ve been putting a lot of stake in the definition issue, as a way to do that, but maybe that’s just not the right way. I’ve really tried to think about a new paradigm. I use that word reservedly because I always thought it sounded pretentious. The whole civil rights— we’re a product of the seventies, sixties. The whole civil rights—it’s definitely right, but it’s more.

Breslin: Has the movement in the international area expanded your thinking at all on the domestic issues, particularly the civil rights model versus—

Mayerson: I don’t know enough about the international. It’s interesting. Again, I think it’s amazing what people are doing. I think it’s amazing what people are doing here. It’s funny because I haven’t been interested in doing a lot of it, but it’s the same thing as the teaching. I’m not that interested in talking to people who really are just starting to—I think it’s wonderful to talk to them, but I personally am not interested in talking to people who are just starting to think about issues. But the idea of having some kind of getting together people who are really thinking about these issues internationally—I know there’s a lot of forums where that’s happening—that’s of interest to me.

I think that the ADA is supporting so much action and thinking around the world. It’s interesting because the very first thing I did, when I wanted to get together a new definition to propose, so that American disability community, or legal team, or NCCD, however you want to characterize it, the very first thing I did, I asked Silvia Yee, who is one of our bright new stars, “Best international definition? Give me those.” And that’s where I started. I mean, I didn’t find perfect either, but boy, there were some interesting thoughts in there. It’s interesting, because when Claudia Center and Andy Imparato did their article, they actually did it for the Stanford Law Review. Part of their papers are devoted to international definitions. The interplay is becoming unbelievably vibrant. I think that is really an amazing phenomenon. That idea that we would now be learning about the definition disability from a small African country that had an expansive definition is amazing.

Then, the other thing, about me, again—going back to me—is, you’ve always asked me if I’m interested in writing. I’m really not interested in writing, other than small things. I don’t want to write a treatise, but I can think of a lot of
interesting writing that’s happening, and that was totally not happening before. I think it’s been an amazing twenty years. I mean disability studies [is taught] in many, perhaps most, major universities, in some form or another.

Breslin: We should probably wrap up your vision for the movement in the future, but also, your thoughts on the incredible impact that your work has had, on all of these developments, regardless on the depressing state of things this minute, which I think is part of the evolution of the many facets of the movement—any movement, not just this one. The state of things, in the best sense now, is a direct result of the movement in the United States, and a very significant part of that is your accomplishments. You have played a major role in those accomplishments. Can you look objectively on those accomplishments?

Mayerson: I think that it’s interesting because this thing that happened, basically, with you, me, Pat, Diane, getting together in the same place for that many years, but at that period of time. When I think back—and I don’t think people know this—when I first got involved in the Supreme Court case, it was Con Rail—Consolidated Rail Corporation v. Darrone. Sy Dubow, who now I think is a clown, literally, I mean, I think he became a clown—

Breslin: Do you mean a clown? He—

Mayerson: I think—

Breslin: A clown act—

Mayerson: A clown act. He used to be the head of the National Center on Law and the Deaf. Something like that. A local lawyer from Scranton had that case in the Supreme Court. There was no one else. We—I should say I—I went and recruited Eric Schnapper from the NAACP Legal Defense Fund. No one had put disability on NAACP agenda before. The next thing you knew, we had a whole decade of writing briefs together for the Supreme Court cases. There wasn’t anyone else. It’s kind of funny because every once in a while, I think, well, you know, we won all those cases. But you know, we also had a different court, so I don’t know how much credit I want to take, but the fact that it needed to be done, and needed to be shaped, and that we had the actual opportunity to do it, is pretty amazing. To say nothing of, how much we really developed the access to the highest levels of government, which now more than us enjoy, which is fantastic.

It’s an insular view, probably, and probably debatable, but I strongly believe that DREDF played a large part of putting disability on the path. In this country from a legal point of view, public policy point of view, legislative point of view, power point of view, I would truly believe that. Now there’s a lot of people interested, again, of the highest caliber, in the work that we were doing. That, actually, is a major accomplishment. Not necessarily a direct result of us doing the capacity building in DREDF, but just the fact that,
somewhat or another, it was something that we were there doing it before the crowds were there, and now there’s a lot more people doing it, and it’s fantastic. Mainly, I think it was an amazing opportunity, a privilege, and a rare mixing of people, and place, and time, and maybe some talent. [laughs]

Breslin: Let’s hope, some talent.

Mayerson: Just so many things. Least restrictive environment for disabled kids, not many people were doing that. Not many people knew it even existed, or wanted to do it.

Breslin: All of that really represents such a significant piece of social engineering and social reform, if you can stand back a little bit and view it [historically], outside of your personal day-to-day issues. It seems to me to be a really interesting set of accomplishments.

Mayerson: Well, I think it’s really interesting how when you are in the midst of it, I certainly was not thinking of it as history, but I can look at it now—

Breslin: But now, objectively, twenty-five years later—

Mayerson: I can look at it that way. Partially, mainly with your help, and really trying to make that very clear. Yeah, I kind of feel bad about that in a way, because I’m the one with no documents and no records and nothing to—which I would now realize would be very valuable to this history that’s developing. But, wow, I think that it’s profound, what happened during those years. Not many people get to be part of history.

Breslin: Okay, is that the final word?

Mayerson: Yeah, that’s a good one, isn’t it?

Breslin: Okay, thanks very much.
Appendix: Interview conducted by Susan O’Hara, May 27, 1998

The appended interview with Arlene Mayerson conducted by Susan O’Hara on May 27, 1998, focuses on Ms. Mayerson’s observations about Mary Lou Breslin, with whom she had worked closely at the Disability Rights Education and Defense Fund [DREDF] for many years. At the time of the interview, Susan O’Hara was concluding an oral history with Mary Lou Breslin. She thought it was important to record Ms. Mayerson’s perspective, as a close colleague for many years, on Ms. Breslin’s role in DREDF and in the disability movement, and she was aware that Breslin, as interviewer, would not elicit this perspective in her sessions with Arlene Mayerson.

Selections from the oral history with Mary Lou Breslin are available on line at http://bancroft.berkeley.edu/collections/drilm/collection/items/breslin.html, and the complete transcript is in the Bancroft Library.

Ann Lage, project director
Interview 9: May 27, 1998

This is a special interview of Arlene Mayerson. It's going to be part of the larger interview series that Mary Lou Breslin is doing [with Arlene]. This is Susan O'Hara, and the date is May 27th, 1998.

Do you remember when you first met Mary Lou?

Mayerson: I was hired to be a lawyer at the newly formed Disability Law Resource Center [DRLC], which was an adjunct to CIL. We had a building across the street from CIL that was like a big, huge warehouse.

O'Hara: This is on Telegraph?

Mayerson: This is on Telegraph. The first day that I came into this big building, there was one office that had been sectioned off, and I saw Mary Lou there with someone. I remember this impression of seeing her so much, and I don't really know why. She was with this woman, who was, I think, her assistant at the time. I think her name was Jan. And the whole time I worked at Disability Law Resource Center, I was mainly always viewing Mary Lou from afar.

I didn't really get to know her, but I was aware of what she was doing and I was aware of the energy coming from that section of the office, and I was aware of her position. But I was very intimidated by her.

O'Hara: Why?

Mayerson: Because I think that—I found over the years that I'm not the only one that is, that a lot of people are intimidated by Mary Lou. And now that I know her so well and I know what she is really like, I know how strange that must sound to people who are near and dear to her because she's such a wonderful and welcoming and understanding person. But I think she comes off very foreboding. I don't even know—I mean, I'm not even sure she is very aware of that, although we've told her a lot.

O'Hara: You were a lawyer—

Mayerson: I came in as a lawyer.

O'Hara: —at the Disability Law Resource Center?
Mayerson: What it was is at that time there were all these different, separate grants. Her grant was, I believe, from HEW [Health Education & Welfare], to do these trainings around the country in the 504 regs. And my grant was from the Legal Services Corporation, to do a model program on serving people with disabilities who were poor and in need of legal services.

O’Hara: But you didn't interact much at that point?

Mayerson: We didn't interact that much at that point because our projects were very separate.

O’Hara: What was the energy coming from that corner of the office?

Mayerson: Well, it was the most funded project, and so it had the most staff, and also they were always on the go, so there was always, like, a lot of hustle and bustle to get ready for the next trip, and then there was always a lot of people getting together for the trip. So it had a tremendous sense of productivity first of all, but also just kind of excitement because they were always about to go off someplace. As anyone who has done that kind of work over the years knows, it's always a frantic mess at the end.

But Mary Lou just had—I don't know. I think just that persona. She has a lot of stature. She was the head of that project, so she had a lot of stature in DLRC. As far as people who actually worked with her on that project—I don't know if you've interviewed any of them that actually were her trainers? I don't know how she interacted with them, but it would be interesting to know.

O’Hara: She mentioned in her interview that you worked on the floor and that you didn't even have a desk. Is her memory serving her well?

Mayerson: Well, I came in at the time when that office was already an office, and other than that, the place was just under construction, basically, and people were just trying to lay carpets and put desks places and so, yes, I basically had nowhere to be. There's a whole history to Bob Funk, which is a different interview. He had a tremendous, great role, obviously, in starting DLRC and et cetera, but he wasn't a real hands-on supervisor [laughs], so basically you came in and you were on your own, to make it or break it. So I came in—yes, basically, with no place to be.

O’Hara: I see. And you reported to him, if you reported at all.
Mayerson: Well, I actually had a boss. His name was Paul Silver. He and Bob had actually applied for this Legal Services grant. Paul was also kind of the same way in terms of letting you go, which can be very bad for some people but worked very well for me. Eventually [laughs].

O’Hara: So even though you didn't know her very well in those days, you did say to me two or three months ago that you felt like the impact of the 504 training and her in particular were great.

Mayerson: That's based on my knowledge, since that time, of just talking to so many people who tell me that the trainings, first of all, were a turning point in their lives but also very much associating that with Mary Lou, herself. I think I told you that—oh, I'm blanking on his name. Phil Calkins. That's his name, I think. Phil Calkins is a disability activist. He lives in Washington, D.C. He had been a vet[eran], I think. It's how he got his disability. Since that time he's done a lot of different activist roles in the movement. He told me very specifically that, you know, Mary Lou changed his life and that he describes her trainings not so much by the substance as by her advice, her mantra to the people in the audience, which is that they should develop a rights-bearing attitude. I think that is the part that I've heard from him and other people, that they remember about those trainings and about her as someone who personified that rights-bearing attitude.

O’Hara: Was he one of the trainees?

Mayerson: He was a trainee, yes.

O’Hara: And he went on, then, to work in the disability—?

Mayerson: He went on, then, to work—I mean, the last I know, he was working for the EEOC [U.S. Equal Employment Opportunity Commission]. I'm not sure if he still is or not. But he's been very, very active in the movement.

O’Hara: Any other individuals that you recall, not necessarily by name but with similar comments?

Mayerson: Oh, definitely. I mean, I've had people make those kinds of comments about Mary Lou all the time. I think she is some kind of symbol for people, and maybe it's because they met her at the trainings, that she was a
symbol of that event. But I think she has this tremendous amount of respect that she has no idea she has generated over the years.

O’Hara: And the symbol is of what?

Mayerson: Well, I think that in the sense of the trainings, I think it was someone who was—well, I guess what I said, is that it's more than just giving the substance; it's kind of that attitude. And I think for a lot of people that were trained, she symbolized a different way to be, which is more important, probably, in the long run than just everything you learned about the law. But for people in the movement, many of whom were trained by her, but also people who just know her through the movement, I think she symbolizes someone who is like a very, very smart person who has always been there and has always played a leadership role but hasn't gotten much recognition, except that people individually, I think, recognize her.

O’Hara: Are you able to identify the long-range impact of all these people who were influenced by her? I mean, did it lead to a network that had impact on passage of legislation, say, or is that just pushing it too far?

Mayerson: No, I think that's exactly true. The first thing that DREDF did that was on a national scale was we went to Washington to try to stop President Reagan's attempt to what they called "deregulate" Section 504, but it was an attempt to very much water down the 504 regulations. We went—Pat Wright and I went, actually—to Washington together to try to stop that. In order for us to be effective in Washington, we had a variety of things going for us at the same time. One of them was that Evan Kemp was very good friends with George Bush's counsel, Boyden Gray, so that gave us a lot of access to very high-ranking officials in the administration, which was very good in terms of being able to say our bit, to make our arguments, and to get some kind of personal rapport going.

But I don't think any of that would have amounted to a lot if we didn't have the network behind us, that we could show there was some kind of political force. It was through the 504 trainings that that network developed. That was the DREDF network. I’m sure other organizations have other networks, but for us, that was our network. And not only all the relationships that Mary Lou had kept going over the years with people who were key people in the states, such as Ron Mace, for instance, who we had come in several times to Washington to actually explain architectural issues to the administration during that deregulation effort,
but also just all the people that had come to believe that 504 was something they should personally care about.

I think it is really pretty much unprecedented in Washington for a law such as 504—your law, your regulations—being watered down to get that much of a community response. And what we did was we would get information basically leaked to us from the administration, and then we would send that information to this network, and then this network would respond. It responded in such tremendous numbers. Mary Lou and I were talking the other day. We went to one meeting at the White House where they had said they had gotten 40,000 letters from people across the country. Mary Lou and I were both saying, like, it's almost impossible to believe that's true. We were wondering if it was our own mythology [laughs] because now we know how hard it is nowadays to get 40,000 letters. Almost impossible.

But then, you know, if you look at the chronology of it, it was pretty much right after all these trainings had taken place. It was pretty much right after the first civil rights regulations had been issued, that they were trying to take them away; and people felt very personally attached to them. But I think it's also just an amazing example of government funding that was funding a community organizing campaign, which I think even Mary Lou probably didn't totally realize at the time.

O'Hara: Going back to establishing this network, you said other groups had other networks, but in fact wasn't this the powerful network?

Mayerson: This was the network—I mean, this is a political network, I think. What I meant by other groups, I was thinking of, like, United Cerebral Palsy, for instance, probably has a membership of—I don't know—a hundred thousand or more—a lot of people. But we weren't really tied into any of those traditional mailing lists. So we were really relying on basically grassroots people around the states who were this emerging disability rights movement.

O'Hara: Can you recall specific instances—this is a new subject, basically, but marching on through the eighties—of Mary Lou's role in any of the cases that you were working on? My understanding is that you and she talked a lot about a lot of the issues that you were working on, and I'm just wondering what her role was in those, either generally or specifically.
Mayerson: And you're talking specifically about cases right now?

O'Hara: Well, let's say policy formulation. You could take it however you want to. Unless that's too broad.

Mayerson: Basically, we have cases and then we have legislation and policy just generally having to do with responding to—

O'Hara: Implementation?

Mayerson: Right. And responding to agencies. I know that—I mean, this will come from Pat's [Patrisha Wright’s] interview. Pat literally talked to Mary Lou every single day.

O'Hara: For?

Mayerson: For years and years and years and years. I mean, she missed a day. I shouldn't say every single day. But mainly it was a daily contact. Every day when she came back from work, she would report to Mary Lou what went on. There was only one reason, and the same with me, which was—I mean, we had no requirement to report to Mary Lou. It's a very anarchistic organization. But it was only for one reason, which is that her input is extremely, extremely valued.

I think that was for two reasons. One is that she's extraordinary smart, and there isn't really much of an issue that you can describe whether it's legal or anything else—mechanical [laughs], but I don't get into that—that she doesn't get. The other thing is she has a very good instinct towards movement issues. I mean, she has a very good instinct towards things that don't necessarily involve her concerns. In particular, I think—actually, one of the things that I think happened at DLRC, even though we were there a very short time, is there was a parent project there as well. And Mary Lou, I think, grew a lot and faster than a lot of activists around the country in understanding the issues of kids—and adults, too, but at the time, it was presented as children with severe developmental difficulties, cognitive disabilities. And I think she was one of the first to really understand that those were critical issues, and definitely critical issues.

And Bob Funk did, too, actually. I think DREDF—DREDF’s disabled activists were among the first in the country to recognize the importance
of those issues from a legal point of view and a policy point of view and a strategic point of view. So she was always able to see the bigger picture.

O’Hara: When you say she was the first to recognize that as distinct from what?

Mayerson: Traditionally, there has been—and it manifested itself at DLRC for a short time, too—two separate tracks going with the parents and their advocacy efforts in their organizations and their movements and the disability movement. Really, I really do think that DREDF was one of the first organizations in the country to see a connection between the two and to have both under the same roof, in a way that the people ended up having to talk and meet and discuss their issues.

Again, someone else would be better at telling this story than I would, but along with the 504 trainings, they decided to do a training on the education law, so that was the first time that Mary Lou—because it was still her project—came in contact with working with parents of disabled kids, in a very intense and ongoing way, to plan this training. There was a lot of tension at first, a tremendous amount of tension at first.

O’Hara: Between?

Mayerson: Between the parents and Mary Lou.

O’Hara: Was that part of that grant, or did she just decide to do a training on that?

Mayerson: I think it was part of the grant. Or I think—let's put it this way—I think it was within the grant possibilities to do a training. But it might have been an idea.

O’Hara: Why was there tension?

Mayerson: Again, there's others that could report. There's just one meeting in particular, and there are others that could report it better. But I think that there's been some—it's kind of like, Who speaks best for these children, their parents or other disabled adults? And also this idea that a lot of disabled adults have had experiences with parents who have been overly protective and rejecting in some ways. So I think there was just a basic trust factor, also, and that there was this issue of disabled adults being very much in control—
The whole idea of CIL, was that it would be run by, governed by, served by, served for—everything—disabled people. So almost one hundred percent of the parents that worked on our project were not disabled, but their kids were. So it was a very interesting thing to work out.

O’Hara: And it did work out.

Mayerson: Oh, I think that it worked out incredibly because Mary Lou became a real champion of the rights of kids with retardation generally, but also in DREDF really pursuing that as a very primary focus. In fact, she became so compelled with it that she would sometimes kind of, you know, what was I going to say? Kind of ho-hum on the access issues. She became so compelled with its importance and what she's interested in, which is kind of a whole new way of living and thinking about things.

O’Hara: Were there particular crises around that, or moments that stand out in your mind in terms of [inaudible] kids with that a cognitive or developmental disability?

Mayerson: Well, early on, I think when we started—it's hard for me to remember exactly the chronology of things, but we started being interested in the integration issue, and we started being interested in integration involving the most severely disabled kids, with cognitive disabilities. Now I'm trying to remember how it happened. There's this group of families in tri-county, like, southern Alameda County, that I was representing, and someone—now I'm trying to remember how—she got very involved with all the families, also.

The other lawyer here at the time was Kim Swain. They did a party when we won the case, and it was—our award outside you can see. It's for me, Kim and Mary Lou, which is unusual because—

O’Hara: Mary Lou was included?

Mayerson: Yes. She was very much associated with the parents, very much so, in a piece of litigation which now, when I think about it, I think it's unusual because a litigation can happen very much independent other things that are happening here. And the parents were all the way in south Alameda County, so it's not like they were all in the office every other day, either. I think that she just got involved in going to the meetings, meeting with people, meeting their kids. I don't know.
She was also very involved with Rachel Holland and her family, which is a big integration case that we did, that went all the way to the Supreme Court. And all the parents. I mean, again, it's like everyone who comes in contact with her has this very big impression of her.

O’Hara: What was her involvement in that case?

Mayerson: I don’t know, other than just, you know, very much being up on everything, always. But I think that was because, again, we would just tell her everything, just to get her feedback and just to get her hit on something. And, you know, in an organization, it matters a lot whether you’re getting support for the work you do. It mattered a lot in an organization that started as an adjunct to an independent living center. To be able to start doing this work on behalf of kids, was a very, very big thing.

If Bob Funk also had to—I mean, he went through, you know, a step in recognizing that it was okay for a disability rights organization to have a focus also on children. Once he had that realization, he also was very supportive.

I guess it's kind of intangible. And that's why she always belittles her own role. I mean, I don't know if she says this to you—what?

O’Hara: She does belittle her own role.

Mayerson: I mean, I don't know if she says it to you. She would always say, "Yes, all I do is buy the toilet paper." You know? And that was never how any of us saw her. Because what she would do is she would do all that boring, horrible stuff that she hated, at the same time as she was—I mean, in addition to, I should say, all the substantive work, which meant she would just work all the time.

O’Hara: So as a leader, how would you describe her? What kind of a deputy director was she?

Mayerson: Well, I think that when she took the directorship after Bob left, that it was really just an act of sacrifice. I mean, she didn't want to be a director, and she loves doing the real work, and she loves being with the real people, and she loves doing the real substance and thinking things out and writing and thinking and talking and, you know—all those things are what she
loves. Everything she had to do as a director, I think, were basically things she hated.

O'Hara: Like fundraising?

Mayerson: Fundraising and all the personnel stuff. [whistles] That really got to her. It was just a sacrifice. It was like watching someone over years and years and years, just sacrifice—and feel diminished by it because even though she was still the main confidante and main person that we would consult with and want advice from, the people who were doing substantive work, she was being eaten up with all this other stuff that she really had no interest in dealing with. So I think that it was very much Mary Lou deciding that it had to be done and that she was the one to do it, because no one else would [laughs]. I mean, she really, really, really was—I think it was a complete sacrifice. She doesn't have a lot of personal—there was no personal ambition to be a director of an organization, at all.

O'Hara: And was she good at it?

Mayerson: I think that Mary Lou was really, really good at getting support for DREDF. For instance, she started the original Partnership Board, and the people that joined it were very impressive, and the people that joined it only joined it because of her, because they met her and were very impressed with her. Like Robert Maynard, who was the editor of the *Oakland Tribune*. He was a very, very busy man with many commitments. He was a black man in Oakland who was very well respected and very politically connected. He didn't need another organization to be tied in with, and he did it because of complete devotion to Mary Lou. There were a lot of people that did it for that reason and that reason alone, and dropped out after she was gone, basically.

So she was very good at that. She hated the personnel stuff. I mean, she just hated dealing with it. I suppose she wasn't that good at it because she hated it too much. She's personally empathetic, really. It's hard to do personnel stuff and criticize people.

And fundraising. I think she was very good at it to the extent that she had a chance to meet people and people had a chance to meet her, but she's not someone who will go out and hobnob. So that was that. I mean, that was something that, I guess, an executive director doesn't have to do it if they have a fundraiser, but she didn't have that either. She didn't have an
assistant. So if she had had all those things, it would have been a whole different thing. And there isn't any director of an organization the size of DREDF that hasn't had any of those things. She had none of those things.

O'Hara: Was that strictly a funding decision?

Mayerson: I think it was a funding decision, or I think it was also Mary Lou's—I do think she has [sighing]—she has—it's funny, because I think she does have a problem standing up for herself, in a very personal way. I mean, not out in the world kind of way, but she's very devoted to DREDF, and I think she felt like she should just work harder and harder and harder and harder, instead of demanding the kind of assistance that she needed. It's not like the money was overflowing, but on the other hand, I know I have a lot of regrets, and I think Pat does, too, that we never insisted that she have the help.

O'Hara: Staying with the eighties for a minute, I'm gathering that it's a rather intangible thing that she did in regard to any particular issue you were working on. That there aren't specific "aha" moments [laughs] that you can remember, but it was a constant support and brainy attack on the issues? I mean, I don't want to put words in your mouth, but—

Mayerson: It's funny because I don't have those specific moments, but I also don't—about myself [laughs]. You know what I mean? I just don't—I don't know what's wrong with my mind, but I don't have those kind of—I don't have very concrete memories, about myself either or her or Pat. Really. I mean, a few things in the ADA are very memorable that happened, that I was involved in, for me. But in general I have a much vaguer kind of—

O'Hara: That's funny because she had some very specific examples of when you had an "aha" experience, in her interview.

Mayerson: Well, she's probably better at that stuff. I mean, I wish I could think of something, and I probably should have thought of it before you came.

One thing I know, but I can't think of a concrete example, is what we would do is when we were working on the legislative history of the ADA, there always had to be specific examples, so we'd just call Mary Lou. We'd say, "This is the concept. Think of an example." And everything is happening very quickly, so she would just come up with an example. You know, "This is what we're trying to explain. What's a good example of
this?" A lot of times it came from the personal experience, of something that had actually happened, either through her friends or community or her work here.

[Begin Tape S1, Side B.]

O’Hara: Mary Lou described herself in any of her workings at DREDF, with you and Pat particularly, as the one who gave moral authenticity to the work. What she meant by that was she was the one who had the disability.

Mayerson: Yes.

O’Hara: Does that strike you as her role?

Mayerson: That strikes me as right. I mean, I wouldn't put it as only that she was the one with the disability, but she was the one with the disability and the kind of biggest vision on disability.

[Tape interruption]

Mayerson: Do you think you got that?

O’Hara: So she had the biggest vision on disability.

Mayerson: She had the vision of—yes. It wasn't just that she was a person with a disability so we had to call someone with a disability so that was it, and it was her, because I don't think that would have worked too much.

O’Hara: [laughs] Well, it might also be an example of her, in certain ways, belittling her role.

Mayerson: I think there's something very true and very big about that role, which was that she was kind of the integrity of this organization. I do think that's true, and I think that's a very important role, but it wasn't just because she had a disability. It was because she had a disability and she has a very, very deep, clear vision that has a lot of integrity in it.

O’Hara: She also talked about the synergy between you and Pat and herself, and she also told me that a woman in Washington, I think it is, interviewed the three of you because she had some recognition that this was an important—
Mayerson: The woman was doing something on women—I don't know whether it was women in organizations or women working together, what happens with women working together.

O’Hara: What is your take on that? Was there a particular synergy that made the work of DREDF very effective?

Mayerson: Well, first of all, I feel that I would not have done anything that I did without the support that I got from them. I mean, I really feel like that support was everything to me. First of all, I don't think I had the capabilities that either one of them think I do, but them thinking I did made me act more like I did.

O’Hara: [laughs]

Mayerson: And I really, really, really believe that, because the thing about Mary Lou that's just amazing is that she is extremely loyal to the people that she's loyal to, and that sense of loyalty was—among all of us, I think—extreme. It wasn't something that you find in a lot of workplaces. I think that had a lot to do with being able to work all those years together so well because there was so much life support.

I feel like, for me, I think that really does ring true, the moral imperative or whatever. I believe that if Mary Lou thought I should be doing the work and that I could do the work, then it was okay.

O’Hara: She does think that you are extremely capable.

Mayerson: I know, and that's why.

O’Hara: She made that very clear.

Mayerson: I know, and that's why I've done anything that I have done. I mean, they are totally blown about it, but I think it's kind of like—it has enabled me, you know? Totally. Because I was really, from the get-go, doing things that really I had no business doing. I was filling a gap, for one thing. There weren't a lot of disability rights lawyers. Now there are a lot more.

O’Hara: So she actually had the same effect on you that she had on all these people that she was working with in the eighties in the training, enabling—in the good sense of the word—
Mayerson: [laughs] Right. I guess that term now has a negative connotation. Well, obviously, I got more of it because I was really working with her on such a daily basis. I don't remember her ever really telling me I really fucked up, which, you know, I'm sure I did. But she's also very—she can be very—what do you call it? Kind of intense and brusque also. I mean, she's not always dealing with you with kid gloves, either. Not like that.

O'Hara: Do you have any other observations that should be included, let's say, in the long historical look at Mary Lou?

Mayerson: You know, I would hope that—I think Mary Lou has much more—I don't know. To me, she's the only person that has it all. Really, really has it all. She has the political, the intellectual, strategic—I mean, she has it all together. I think she's always one step ahead. And I would hope that at some point this comes out more. Like, even with the SDS [Society for Disability Studies] stuff that she's very involved with now—she's very involved with the disability studies—I mean, reading things—she's still kind of one step ahead, I think.

O'Hara: I wasn't aware that she was doing SDS stuff.

Mayerson: Well, I don't know about SDS in particular, but, yes, she's got—oh, I mean—she's like reading every single book that has come out on the issue. But at the same time she's reading that, she's reading all the cutting-edge literature that is coming out of the African-American community, and she's kind of putting it all together into one economic analysis, race and—I mean, she's always at the next step.

O'Hara: Her meeting with Cornell West sounded like a pivotal moment.

Mayerson: For her—

O'Hara: Thanks to you, I think.

Mayerson: Why? Oh, because of the tickets, right! Yes. She's just always right there, and she doesn't really know it. Even the people that are most recognized now in SDS. They don't have the law angle, the law reform angle that she has.

O'Hara: You're talking about scholars?
Mayerson: I'm talking about all those scholars that are also now kind of the most vocal activists in a way. You know, in terms of this whole concept of disability and restructuring the concept of disability. I think Mary Lou—to me, she's still kind of one step ahead. But unfortunately, she doesn't really see herself as a writer.

O'Hara: I hope she tries.

Mayerson: I hope she tries.

O'Hara: Is there anything we've left out? Anything you were thinking about that you thought maybe I'd ask, especially since you didn't have an outline?

Mayerson: We didn't talk about her leaving DREDF.

O'Hara: No.

Mayerson: But I don't know what there is to say about that.

O'Hara: What was the impact?

Mayerson: I think it has been a big, empty hole. I think the work kind of continues, but it doesn't have the same sense of cohesiveness, I don't think, without her. Even after she left as a director, she was still the president of the board and we could always still think of this organization as hers. The further she gets away from it, the more I feel there is a gap. And maybe there is that kind of moral imperative gap.

O'Hara: Now, she left the presidency of the board not too long ago. Wasn't it a couple of years ago?

Mayerson: Yes.

O'Hara: That sounds very significant, to leave that kind of a hole.

Mayerson: Yes. I think that it's still her baby, but it's like she felt like she had to move on. I think the directorship part was just really—just really wore her down. In every way.

O'Hara: What else do we need to say about her leaving?

Mayerson: Probably not much.
O’Hara: She is reluctant to discuss why she left. Is this something you can shed some light on for the sake of future historians?

Mayerson: Well, we had a particularly negative incident that happened with someone who had come here as a lawyer, who basically started his own law firm, and no one knew, and all that. But the way it all happened was just the tip of the iceberg, I think. I'm just talking off the top of my head, but for someone who is so loyal and does believe so much in cohesiveness as a group and loyalty, I think that it just felt like [pausing] she was involved in a situation that wasn't really her, that she didn't want to be involved in. That all the stuff that was important to her about DREDF was not at all what she was spending her time on, and the other stuff was really eating away at her. I think since that time, she's developed a more philosophical attitude about that time and also the people in that and also people in general [laughs]. But at the time, she took things extremely to heart and personally.

The thing about Mary Lou, I think, is that she—it's not like a facade but it is, in a way, a facade that she has this kind of—she really has pretty thin skin in many ways, and that whole situation, the situation with all the personnel upheavals, etc., I think requires someone with really thick skin.

O’Hara: [laughs] So, basically it was personnel issues.

Mayerson: I think it just drove her to the ground. It wasn't just that one incident, but I think it just drove her to the ground. I think it was just too much. Then there were a couple of other things that happened also that were extremely disappointing to her. She had at one point planned a surprise at our annual dinner for me and Pat to just get some recognition from Steny Hoyer, who was our speaker and who was the chief congressman on the ADA. Then it turned out everyone was, like, pissed off that we were getting recognition, and that just hurt her so much. So, things like that happened that just kind of really hurt her.

O’Hara: Well, rather than end on a down note, do you want to look at the overall history of your knowing Mary Lou and her work in DREDF and maybe broaden that disability policy, and just summarize her contributions?

Mayerson: Well, I think of Mary Lou as someone who's always on the cutting edge of what's happening in disability because she's so smart [laughs] and because she sees things in a broader way. She doesn't have a lot of personal
ambition, so that's never really been her motivating force, and so it's almost like someone who has, like, a true love of an art or something. She has a true love of this whole movement and the issues. She pursues them in a way that is very farsighted. I think that probably if you have personal ambition, you end up losing the farsightedness sometimes.

O’Hara: Great. Thanks.

[End of Interview.]
MARY LOU BRESLIN

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Regional Oral History Office

Disability Movement History

Mary Lou Breslin has been a disability rights law and policy advocate for over thirty years. In 1979 she co-founded the Disability Rights Education and Defense Fund (DREDF), the preeminent national disability rights law and policy center, and has served variously as DREDF’s deputy and executive director, and president and chair of the board of directors. She is presently a senior policy advisor with DREDF directing the organization’s research, and international law and policy initiatives.

During her career she has served as a policy consultant, trainer and lecturer on diverse disability and related civil rights topics. Ms. Breslin has taught graduate courses at the University of San Francisco, McLaren School of Business, and an undergraduate research seminar at the University of California at Berkeley. She also has served as advisor, interviewer, and researcher with the Disability Rights and Independent Living Project of the Regional Oral History Office of the Bancroft Library, UC Berkeley. In 2000, she directed From Principles to Practice, the first-of-its-kind international disability rights law and policy symposium attended by attorneys and policy advocates from fifty-eight countries.

In 2002 Ms. Breslin received the prestigious Henry B. Betts award for improving the lives of people with disabilities. She also received the Paul A. Hearne Award from the Physical and Mental Disability Rights Committee of the American Bar Association in 2000, and a Mary E. Switzer Merit Fellowship in 1995. Ms. Breslin had polio as a teenager and uses a wheelchair.