ORAL HISTORY OF JAMES J. SANDMAN, ESQ.

Tenth Interview - January 24, 2022

This interview was conducted on behalf of the Oral History Project of the District of Columbia Circuit. The interviewer is Bill Marmon and the interviewee is Jim Sandman. The interview took place at Bill Marmon's apartment in Chevy Chase, MD on Monday, January 24, 2022. This is the first interview of the second set of interviews (the tenth interview overall).

MR. MARMON: We're in Bill Marmon's apartment and we're here to resume the oral history of Mr. Jim Sandman, who started his oral history some time ago and finished nine interviews on October 15, 2010. At the time Jim was 59 years old, he was winding up his job as the general counsel for the DC Department of Education. His kids were both in college: son Joe was a junior at the University of Michigan and daughter Elizabeth was a freshman at Mount Holyoke. Wife Beth was leading an environmental nonprofit, and Jim and his family lived in Chevy Chase, DC. So, Jim, what we need to do is to understand why you decided to hold off publication in 2010, and why you're resuming now!

MR. SANDMAN: I've always been a somewhat hesitant participant in this project; I don't think my life warrants an oral history. I know people whose lives have had historical significance, and I don't count myself among them. When we left off, I was in the process of changing jobs, and I had a lot going on. When I moved from the DC Public Schools to the Legal Services Corporation, I was overwhelmed by the volume of work I had in my new position. There were a number of vacant senior positions at LSC; I had to do other people's jobs in addition to doing the job of president. Over the course of my time at LSC, I was constantly on the road; I visited 47 states

in the course of my term as president of Legal Services Corporation, so I was very preoccupied with my work. I'm resuming because I have more time now and because I adore Steve Pollak. Steve wants me to do this, and that's enough for me.

MR. MARMON: [laughs] I don't think you actually had made the move into Legal Services at the time that you stopped, so why don't you tell us about how that happened?

MR. SANDMAN: I got a call from Ron Flagg, who was then I believe in his term as President of the DC Bar, and a partner at Sidley Austin, and from Linda Perle, who was with the Center for Law and Social Policy. They told me that LSC was looking for a new president. They said they knew I was very happy in my position at the DC Public Schools but wondered whether, because of the change in mayoral administrations in DC, I might consider making a move and applying for the job at LSC. Mayor Fenty had just lost the Democratic primary. I was interested. I knew that Michelle Rhee would be leaving DCPS. She had hired me. I didn't know who her successor would be. Her successor turned out to be her deputy, Kaya Henderson. If I had known that, I might have stayed, but it took about a year for Kaya to be named officially as the new chancellor; she served as interim for a year, but the situation at the DC Public Schools was very much in flux at the time Ron and Linda called me, and I was open to considering another option. I was intrigued by the position at the Legal Services Corporation: it offered, I thought, a wonderful combination of a

mission I could be passionate about, and a job that would be interesting for me. I don't think there's a more important issue facing the American legal system than the inaccessibility of civil justice for people who can't afford a lawyer, and I thought that the job would draw on my prior experience as managing partner of Arnold & Porter and president of the DC Bar and might be a good fit for me.

MR. MARMON: Why don't you tell about the actual selection process?

MR. SANDMAN: The process was run by the board of directors of the Legal Services Corporation. The Board is appointed by the President of the United States and confirmed by the Senate; it's eleven members and required by law to be bipartisan: no more than six of the eleven seats can be filled by people of the same political party. A new Board had come in with the Obama administration, and the prior president had left at the end of 2009. There was an interim LSC president in 2010, and the new board decided that their first order of business, their most important priority, was to hire a new President. They hired a recruiting firm to do a national search, and set up a search committee that was comprised primarily of current board members, but included a couple of former chairs of the board, in addition to an advisory committee that included some grantees of the Legal Services Corporation. So I applied, and I had my first interview.

MR. MARMON: With whom?

MR. SANDMAN: The people I remember were John Levi, who was and still is chairman of the board; Martha Minow, who was vice-chair of the board and at the time

was Dean of the Harvard Law School; Frank Strickland and Doug Eakeley, former board chairs; Charles Keckler and Laurie Mikva, board members; and several others. John and Martha were the primary people tI dealt with.

MR. MARMON: And how soon after the interview were you selected?

MR. SANDMAN: I had a second interview. The first interview gave me some misgivings. As I recall, most of the questions had to do with my political experience, my experience working on Capitol Hill, dealing with Congress, because the Legal Services Corporation gets all of its funding from an annual Congressional appropriation, and Congressional relations are an important part of the president's job. I had virtually no experience on Capitol Hill, and I told them that. I had represented one witness before a House subcommittee in the second Clinton administration; that was the only Hill experience I had. I came away from the first interview with the impression that legislative experience was a critical criterion for the job, and I didn't have that. I knew the job required lobbying--I was willing to do that because I was interested in the job, but that wasn't an attractive aspect of the job to me. So after the first interview the recruiter that they'd hired asked me what I thought. I said I hadn't realized the job was so political, that's not my background, and although I thought I could do that, that was not the primary reason I was interested in the job.

It seemed like almost immediately thereafter I got a call from John Levi, who had obviously received a report from the recruiter, and he said,

"I hear you're concerned about the political aspects of the job." He said, "Let me tell you about my father." His father was Edward Levi, the Attorney General under President Ford who was widely credited with having restored the integrity of the Justice Department after Watergate. And he said, "My father came to Washington from the University of Chicago, where he'd been president. He had no political experience at all. No experience in Washington. And he thought that he would find it distasteful. But he did it, and he did it well, and he enjoyed it. And I think you can do the LSC job, and do it well, and I think you'll enjoy it. So don't worry about that."

Then I was invited for a second interview, in Chicago, at the offices of John's firm, Sidley Austin. It was a snowy day. I arrived late, because of the snow, and that interview went very well. When I flew back to Washington and landed at National Airport, as I was standing in the aisle of the plane to get off, I noticed that I had voicemail message. I listened to it, and the message said, "This is John Levi. I'm tracking your flight. I know what time you land, and I want you to call me immediately when you get there. The search committee voted and unanimously wants you to be president, and we plan to recommend that to the board of directors." And he said, "If you need me to come to Washington and talk to your family, I'll do that." [laughs] John is a force of nature. I called him, and he repeated what he had said in the voicemail.

I did think about it a little bit. I had another offer at the time, to go to the University of Pennsylvania Law School, my alma mater, to head a new program that the Dean wanted to establish, to provide more opportunities for law students to get practical experience, and to be trained in the skills lawyers need to hit the ground running when they enter practice. I was very interested in that position and attracted by the possibility of going back to my law school. I called Martha Minow, who was the vice-chair of the LSC board and a member of the search committee, to seek her advice. I said, "I know you have a bias. I know your job is to get me to accept the LSC position. But I'm curious. I have this other opportunity, and I'd just like to hear what you have to say about how the two compare." She listened to my description of the position at Penn Law School, and then said, "This is easy. You should go to LSC. Every law school in the country is looking to hire someone into a position like the one that Penn Law School is creating. There's nothing unique about it. If you take it, you're going to be very frustrated, because your work will not intersect with the work of the tenured faculty. You won't have their attention. You'll constantly feel like you're nibbling at the periphery of the law school experience, you'll feel like an outsider. Whereas the job of president of the Legal Services Corporation is the only job of its kind in the United States. There's no other job like it. It gives you a platform to have an impact on access to justice like no other. I think everything in your career to date has pointed you to that position. Take it."

I listened to her, and as I said I knew she was biased, but I thought she's right. What she said made perfect sense to me. So I said yes.

MR. MARMON: And so when was this, Jim?

MR. SANDMAN: That would've been December of 2010. My election then had to be voted on by the Board of Directors and was in early January of 2011.

MR. MARMON: So when did you actually start at LSC?

MR. SANDMAN: I started officially on January 31st of 2011. The prior week the LSC Board of Directors met in Washington, and I attended their meeting as an observer, to try to get myself up to speed. But I had an intervening development, between my acceptance of the offer and the time I started. In early January, I got a cancer diagnosis. I had prostate cancer, and I needed surgery. I had to call John Levi before I had started at LSC to tell him that the person they had just hired as their new president had cancer and needed surgery. This is a call you do not want to have to make. When I called John, out of the blue, and told him my news, his response could not have been more perfect. He said, "We want you. This doesn't change anything." He said, "Tell me how much time you think you might need off and we'll build it into your contract. I don't want you to have to worry about this." He was completely supportive, and understanding, and encouraging. I'll never forget that. I thought it was a demonstration of his character that, with no preparation, that was his spontaneous reaction to my call.

The Friday before I started at LSC--January 31st was a Monday--I went up to Johns Hopkins, and met with a doctor there, Patrick Walsh, who was regarded as maybe the leading expert on prostate cancer in the United States. He had treated my brother, who had had prostate cancer. My brother had been general counsel of a medical device manufacturer and was very well-connected in health care, and he told me, "You need to see Patrick Walsh." So I went up there and spent about an hour with him. He had the best bedside manner of any doctor I've ever dealt with. I walked out of his office that day with a smile on my face, thinking, "I'm in good hands, this is OK." He wasn't able to schedule me for surgery until June 1st, four months later. When you're told you have cancer, you have an instinctive reaction to want it out of you right away. But he told me, "This cancer probably started growing about fourteen years ago. Prostate cancer is very slow-growing. It's not going to make any difference whether you have surgery next week, or whether you have it on June 1st. If you want, I can schedule you with another doctor, or if you want to go to somebody else, that's OK with me too." I said, "I want you." So I started work on January 31st with none of my new colleagues knowing what my personal situation was. I had a lot going on at the time.

MR. MARMON: That's fascinating. OK, now, we were discussing how to structure these subsequent oral histories. We decided that in our first session you would talk about your thoughts on the societal issues that were raised by our

legal system, where being represented by a lawyer in a civil matter is reserved for a minority of citizens.

MR. SANDMAN: Yes. I knew that the absence of legal assistance for low-income people was a significant problem, I had heard about repeated surveys that showed that 80% of the civil legal needs of low-income people go unmet, and that was what drew me to LSC, the opportunity to have an impact on that. But I did not understand the magnitude of the problem until I got there. It is an invisible issue in our society, even in the legal profession. The magnitude of the problem is just not understood. The National Center for State Courts estimates that both parties have counsel in only 24% of civil cases in state courts. Less than one quarter. When lawyers hear that, they're shocked. They don't know that today the case where lawyers are representing parties on both sides is a freak. It's by far the exception, rather than the rule. And the problem affects not just low-income people, not just people who are financially eligible for Legal Aid but can't get it because funding for Legal Aid isn't adequate; it affects people of moderate incomes, too. They don't have any prayer of Legal Aid, because they're financially ineligible. Right now today, in 2022, the typical financial eligibility cutoff for an individual seeking help at a Legal Aid organization funded by LSC is an annual income of $16,100. If you make more than that, you're not eligible. If you're a family of four, the eligibility cutoff is an income of $33,125. There are people who make double and triple those amounts who can't possibly afford a lawyer for a significant matter, and no one knows

this. Surveys show that most Americans don't realize that you have no right to a lawyer in a civil case. In fact, most people think you do have a right to a lawyer. My guess is that people get that impression from TV shows, which are usually about the criminal justice system, not the civil; they hear the *Miranda* warning, and the part about having a right to a lawyer, and one being appointed to represent you if you can't afford to pay for one, with no understanding that that doesn't apply in a civil case. Most people don't understand the difference between a civil case and a criminal case. Why should they? That's a lawyer's distinction. So one of the biggest challenges, I realized, was educating people, and particularly decision-makers in Congress, about the magnitude of the problem, and why they should care about it. How can you frame the pitch for funding in a way that will resonate with people, and resonate with people on both sides of the aisle, not as a partisan issue, but as an American issue? So that was one of the first challenges I realized I was going to have, to think about how to communicate, and how to reach audiences, that needed to know about the magnitude of the problem and didn't.

MR. MARMON: What are the implications of this situation?

MR. SANDMAN: Civil cases can have an impact on people as profound as a criminal case. Civil cases can involve the most basic of human needs. Needs like shelter, the roof over your head: evictions and foreclosures. Personal safety: protection orders against an abuser. Seeking a protection order against an abuser is a civil case, not a criminal case, and the victim who needs

protection has no right to a lawyer if they can't afford to pay for one. Family stability: child custody, child support, guardianships, adoptions. All those require lawyers, and most family courts today are largely lawyerless. And then just other necessities of life: access to public benefits for people who may be eligible for them but are inappropriately denied.

The lack of legal assistance has a huge societal consequences. When the system doesn't work for so many people, it shakes people's faith in the foundations of our democracy. It makes them think that the system is stacked against them, that it's a system for rich people. And that sense among the public threatens the rule of law. I think it's a very, very serious matter. When I was attending that LSC board of directors meeting the week before I started officially, I recall that someone quoted the first line of the Constitution. The first line of the Constitution reads, "We the people of the United States, in order to form a more perfect union, establish justice . . . ." In the original manuscript, that's where the first line ends. "Establish justice." I'd never known that. I was a history major, but I had never heard that before. And I thought, "That's fascinating, I can work with that. That gives me something." I thought it was very telling that the Framers put establishing justice so high up on their list of priorities. The Framers listed it before providing for the common defense, they listed it before ensuring domestic tranquility. I don't think their ordering was an accident. I think they recognized that a well-functioning system of justice, an accessible system of justice, is essential to societal stability. It's about

the rule of law. I think this is what Judge Learned Hand meant when he said, in addressing the Legal Aid Society of New York in 1951, "If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice."

And so I began to do some research about the views of the Founders of our country and the Framers of the Constitution about the place of justice in the order they were creating. I was surprised, pleasantly, to learn that justice was their number one goal. Alexander Hamilton said, "The first duty of society is justice." Thomas Jefferson said, "The most sacred of the duties of government is to do equal and impartial justice to all its citizens." James Madison wrote in Federalist No. 51, "Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit." These are stunning statements about the importance of justice, and an originalist argument about American values. Conservatives on Capitol Hill had a long track record of opposing funding for LSC, and on several occasions trying to eliminate the Legal Services Corporation. And I thought, if I can get meetings with them, and present my argument, an argument about the most fundamental of American values, maybe we might see a new day. Maybe we might be able to turn some people around. So that became my mission.

I saw some other practical problems related to that. As I said, I thought job one was public education and outreach, particularly to people

in positions of power, most particularly funders on Capitol Hill. But I also realized that the world of access to justice, the world of legal aid, is very insular -- a lot of the same people talking to themselves, all agreeing about the problem and the need to do something about it, but not building bridges to potential allies, building relationships with people outside their orbit. So I thought it was important to reach out, not only to conservative Republicans as well as liberal Democrats, but to reach out to other allies. People in the business community, for example. To academics outside of law. To entities that had related interests, to enlist them in the cause, so that it would not be heard as just the pitch of aging hippies who had gotten into this movement as part of the War on Poverty decades before.

And there was also other fence-mending to do. When I got to LSC, I faced a laundry list of recommendations, more than twenty, from the Government Accountability Office--GAO, which had come in and done investigations at LSC and identified problems that needed remedying. The GAO reports were sort of a black eye and not helpful to our efforts to lobby on Capitol Hill. When I went to Capitol Hill, I would hear from friends, from supporters, that their job in advocating for LSC was made more difficult by this list of problems in LSC management from the nonpartisan Government Accountability Office. So I made it a priority to implement those recommendations as quickly as we could.

And the management of LSC had had an adversarial relationship with LSC's Inspector General, who reports directly to Congress. An

adversarial relationship between management and an Inspector General is not helpful, so I worked at building a positive relationship with our Inspector General. The Inspector General told me on my first day there that his job was to promote efficiency and effectiveness and to root out waste, fraud, and abuse. My reaction was, "That's my job, too. I think we share a mission. Let's work together." Thereafter we would meet every two weeks, and I would sometimes refer matters to him that I wanted him to look into, if I thought something wasn't right, or might not be right, and worked at improving that relationship. I had a lot to do when I first got to LSC. [laughs]

MR. MARMON: Yeah. How do you address the argument, though, that we have an over-lawyered society--too many lawyers, too much legal--lawyers just make things more complicated and difficult for people?

MR. SANDMAN: It's not true. We don't have the lawyers in the right places. I just saw a bar graph this morning that showed what percentage of the legal profession's services are devoted to serving people--individuals--and what percentage is devoted to serving businesses. Over time, the work of the lawyers in the United States has moved markedly toward serving businesses and away from serving people. The mix is currently maybe about 70% business, 30% people. So there may be lots of lawyers out there, but there aren't nearly enough lawyers where they need to be, serving people who have very significant legal needs but can't afford them. It's simply not true.

MR. MARMON: And why, again, just to pursue this as a devil's advocate for a moment, why does somebody need a lawyer in a civil case--say, when he's faced with an eviction?

MR. SANDMAN: The legal system was created by lawyers, for lawyers. Everything about the system, from the language of the law to the forms that are used, to the rules of civil procedure, to the rules of evidence, all were created with lawyers in mind and based on the assumption that everybody has a lawyer. That assumption is false. The system doesn't work for the lawyerless. It's a system that is complicated and arcane and incomprehensible to people who don't have lawyers. Often the people who don't have lawyers not only lack a JD, they often don't have a college degree or maybe even a high school diploma.

The system doesn't need to be as complicated as it is, but as long as it remains the way it is people need legal help in navigating it. I hear people sometimes say, "Well these people, they didn't pay the rent, they don't have any defense, what difference does it make? They're going to lose." Things are much more complicated than that. There can be negotiated solutions. Studies over and over again show whether you have legal representation or not makes a difference in outcomes.

MR. MARMON: Interesting.

MR. SANDMAN: I went to Johns Hopkins for surgery on the 1st of June in 2011, and was there for only one night. I realized something that I hadn't thought about a lot previously. When you initially get a cancer diagnosis, that's not good

news. If you're going to have surgery, you get a second prognosis after the surgery. The doctor is going to tell you what he found and how the future looks. And I had gotten used to the first message I'd received, but I needed to prepare myself for whatever the second message might be. The second message turned out to be good. My cancer appeared to be entirely contained within the prostate. Dr. Walsh removed a number of lymph nodes and ordered biopsies. It was some days before I got the biopsy results, but they were all negative. There was no spread, and I didn't need any kind of follow-up. I had a very quick recovery; I had planned to take three weeks off, but I was back at work after ten days or so. I've never had any recurrence. Prostate cancer can be devastating if it's not caught, but if it is caught early, it's treatable. And once again, when I needed to take time off, John Levi and the Board of Directors, and my LSC colleagues, were amazingly supportive. That episode is happily now long in my past.

MR. SANDMAN: It was very hard on my family, particularly my children, when I got a cancer diagnosis. When your kids, no matter what their age, hear the C-word from you, it devastates them. They were very, very worried about me. That was one of the hardest things I had to deal with – their fears for me. They were very happy with the outcome. I hadn't realized just how hard a parent's cancer is on kids, and how hard that then also becomes for the person who has the diagnosis.

MR. MARMON: Interesting. I think we can conclude for today.

MR. SANDMAN: OK.