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## Conversations in Legal Education: Laura Berend, August 29, 2006

Laura Berend

*University of San Diego School of Law*

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# CONVERSATIONS IN LEGAL EDUCATION:

ORAL HISTORIES OF THE FIRST HALF-CENTURY OF THE UNIVERSITY OF SAN DIEGO SCHOOL OF LAW

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Narrator: Professor Laura Berend

Interviewer: Ruth Levor

Recorder: Ruth Levor

Date: August 29, 2006

Accession No.: OH-LRC-Berend-2A

TAPE 2A: SIDE A

RL: This is an interview of Professor Laura Berend for the project Conversation in Legal Education. Oral histories of the first half century of the University of San Diego, School of Law. The interview is being conducted by Ruth Levor at the University of San Diego, Legal Research Center on August 29, 2006. This is the second session of this set of interviews. Tapes and transcripts of this interview will be archived at the University of San Diego's Copley Library.

RL: Well our first interview was over four months ago and we haven't had an interview since then. That was in April, this is August so we're going to have to get ourselves back in the mindset of Laura Berend's story and I noticed that in coming in today to do that, that you brought with you a transcript of your law school career. Which was interesting for me to see. First of all, why don't you mention why you happened to be looking at this transcript, now at this time.

LB: I'm going to be on sabbatical in spring, spring semester and my sabbatical request to take classes in the undergrad division was granted. So before I knew I didn't need one the application calls for, not only providing a law school transcript, but high school and college. Which would be pretty much insurmountable, but the law school transcript I could put my hands on. So it wasn't necessary but I submitted whatever it is for a certified copy to the undergrads and I kept the uncertified one.

RL: Let me take a look at it. What courses are you going to be taking during your sabbatical?

LB: I want to take a particular class in World Religion from our Buddhist man who is on campus and maybe a couple in Sociology, but I can't get a course schedule out of anybody yet.

RL: Well, welcome to the world of the students.

LB: Apparently so. I've been told to sign up on day one, so I guess I will be in line with everybody else.

RL: We don't have online sign up yet in our undergraduate school?

LB: We do not apparently.

RL: I will mention that the year is 2006. Laughter.

LB: Yep.

RL: But back to the transcript, so what kinds of memories did looking at your law school transcript bring back to mind?

LB: The first one is a general memory of nothing in particular related to a class and that is it brings back how a wash I was in the first year, compared to the second and third year. I came from UCSD, which was a very warm and welcoming, nurturing place with a major in existentialist philosophy that didn't lend itself really to detailed outlines. It was more of a thought process than anything else and nobody that I recall, at least, nobody who I can remember, talked about preparing for law school classes in terms of the linear process and the necessity of outlines and whatever, in my first year. It certainly reflects an inability to organize that was fixed in the second and third year. Thanks to two of my classmates more than anybody else. The first year is coming back as a very, very painful experience.

RL: Who are these two classmates?

LB: Oh, Jackie Becker, who is now Jackie Horton, who did graduate as our valedictorian and Steve Denton who had an equal amount of trouble with me getting organized in his first year. Steve and I struggled along thanks to Jackie's tutoring and caught up eventually, after the first year. She had had a reporter's background so she had a different mindset than either Steve or I. The three of us were study partners.

RL: I think that was probably pretty universal, that's my memory of law school, ten years later, that didn't have a lot of help with understanding the process. You were told you could read the book, *One L*, if you wanted to by Scot Turro, which was, I think the basis for the paper chase movie, but other than that, that just told you that it was rigorous and that people got pleasure out of being unpleasant to you, but it didn't tell you what the thought process was. I think that now we do a better job of preparing students and I think that we are a kinder, friendlier, gentler place than we were back then. I guess it took the experiences of people like you to bring that out and to show that the need for that. So what else? That was a general memory. What else, what courses leap out at you as memorable?

LB: Well on the good side, I remember Civil Procedure because the professor was a very kind gentleman, Bob Simmons and he was my professor while he still had his sight. That was a nice class to go to, which really stood out in sharp contrast to the other places, where at least some of the professors told women we weren't welcome. So he was on the contrary quite welcoming. So that was a good thing. I don't have actually for Bob Spring my grade improved considerably it looks like and that was probably because of Jackie's help and because of Simmons' attitude. He helped overcome some of the culture shock, just by being kind.

RL: You have mentioned that, and that was certainly my impression of him when I first came to the law school, which was after he had lost his sight. And I think you also talked about, do you remember who taught Torts?

LB: John Roche taught Torts. He'd never taught Torts before and was filling in for some reason, I don't know why. He made it clear that he never taught Torts before. I have to say the class was a disaster. He had no more knowledge of Torts than a lot of the rest of us, I don't think.

RL: Well his expertise would have been in Criminal Law as well.

LB: Criminal Law, exactly, he should have taught Criminal Law. Instead the professor I had for Criminal Law skipped the entire middle the case book, because it dealt with sex crimes, and he thought that was an inappropriate topic for mixed company. So we dealt with assault and battery and then went straight to murder.

RL: Wow. Who was that?

LB: Joe Darby.

RL: I see. Now there was someone you mentioned to me, and I should remember because I just listened this morning, you thought was very passionate in his teaching. I guess it's not fair to ask you about that.

LB: Oh, Lou Kerig.

RL: Yes, I think that's right.

LB: Lou Kerig and Bill Wong. Not first year.

RL: um hum.

LB: Those are my two favorite professors. They were absolutely wonderful.

RL: And we talked about how funny Bill Wong was and all of his recommendations and everything.

LB: Yes. To this day I still have an umbrella policy, thanks to him.

RL: Yes. You did talk about that.

LB: Yes. We all had to go out and get one immediately.

RL: And I see that the class that you really aced and got an award in was Labor Law.

LB: Yes. Interestingly enough. That was a great class. It was taught by an adjunct named Prochazka. I don't remember his first name. I do remember interviewing with him for a job after

I graduated and before bar results came back, and that was a shock, especially given the subject matter. He was very nice and his main concern was knowing that I was married at the time. He insisted on knowing what kind of birth control I used to make sure I wouldn't have children on his watch.

RL: Well those stories are all too common in our generation.

LB: I think so.

RL: So I'm probably not as shocked as I hope that some of the listeners to this interview will be by hearing that but those things happened all too commonly, and as you said, knowing labor law inside and out, he not only should have but would have known better. What I often found was that it was your word against theirs anyway. So there really wasn't much that you could do about that on your own, by yourself.

LB: Oh, I had no ideal about who I'd complain to.

RL: I wouldn't have known either.

LB: And I don't know what the law was back then anyway. That wasn't any typical interview.

RL: No. And did you take a job, the job he was interviewing you for? Was it offered to you?

LB: It was not offered. My impression was he didn't want a married woman. He didn't want to take that risk.

RL: Now you did work for Defenders Inc.

LB: I did.

RL: After law school and we had talked briefly about that at the end of our last conversation. Before, I go on to that though, I guess I should go back to the transcript and just see if there is anything else that brings to your mind before we move on to some of your other work.

LB: Nothing really stands out. There were some really good professors. I think the second and third years weren't as much of a shock in terms of feeling unwelcome as the first year. That was clearly, that was by far the worst, by the second and third year there weren't many women left either. Several in my section left after the first year. It was just too much.

RL: One that you had mentioned was ...

LB: Judy Bashum.

RL: Yes, right.

LB: I'm sure there were more but I really didn't know very many outside my section.

RL: And now of course, just as a note, more than fifty percent of the student body is female.

LB: Right. I know Bert still knows how many women were in my class. For some reason he remembers that.

RL: I see. I see. What did he think about women being in your class?

LB: Uh, he thought that we shouldn't have been there. We were not welcome at all.

RL: Well then, back to you work after law school with Defenders Inc. Do you remember any of the cases that you dealt with? I know that's a while back. Were there any that were really memorable? That taught you a lesson maybe the hard way? By making a mistake.

LB: Those are the ones you don't repeat. You learn the mistake once and that's all you need. I worked at Defenders a year before I graduated.

RL: Yes.

LB: And I remember one before I graduated I was working as a law clerk with John Reddy who was a wonderful human being. I don't know if he is a USD grad or not. I know his wife is. His current wife is. And it was an assault with a deadly weapons case. We thought the defendant was ill and there was no hospital ward in the jail at the time so we requested a court order to get him transferred to UCSD. That still takes care of indigents and the jail population. And he got to UCSD hospital and made a miraculous recovery because he escaped.

RL: Was he ever recaptured as far as you know?

LB: I didn't hear that he was, he couldn't of been that sick.

RL: Were there any repercussions to you directly?

LB: John and I got yelled at by the judge who signed the order.

RL: I see. I see. That would make sense.

LB: Um hmm.

RL: And what about after law school? Were there any, what kinds of cases were you doing?

LB: Well the cases were not self-selected. I worked for Stan Connant who was a marvelous human being. He only hired one woman at a time at Defenders and would not hire another woman until the woman spot was vacated by the current occupant. And I was woman number four. So there were three ahead of me.

RL: Do you remember who they were?

LB: Arty Anderson, who was on the trial bench for a long time after she left Defenders. Judy Keep who went into private practice then was the youngest woman appointed to the Federal bench. She died in the last couple of years. Carol Frestoe who was in the class ahead of me, she was in that position for a year until I graduated and left shortly before I passed the Bar. And then a spot opened up when Norbert Erinframe was appointed to the Bench. I took Norbert's spot because they had already hired a man to fill Carol's spot. So I was the occupant of the woman's spot and Stan felt one woman was enough. He also thought that some cases were not appropriate for women so my case load was tailored by him.

RL: In what ways?

LB: No sex crimes for a while. I don't remember if I ever did any sex crimes while Stan was in charge. Actually my first assignment was to be sent up to Oceanside, along with Tom Penfield and Stan Eller, where we did misdemeanors. But it was pretty clear that I wasn't supposed to be doing sex crimes. So the three of us parceled out the misdemeanors that Defenders was appointed to. And I was up there a year before I came downtown and started handling felonies from start to finish. That was fun. Oceanside in some ways was fun. It was exhilarating. I was the only woman defense lawyer in the entire North County so I didn't have anybody except men to talk to. Some of their advice was given to me for selfish reasons. Particularly in the clothing department as opposed to whatever would be good for me. There were no business clothes for women at the time.

RL: So what did they suggest?

LB: Miniskirts.

RL: From their point of view, they didn't take the john team old boy dress for success point of view.

LB: Oh no.

RL: But that you should use your gender...

LB: Absolutely.

RL: ... in the way of feminine wiles.

LB: Yep. I have to tell you it worked. It worked like a charm.

RL: How do you know it worked?

LB: I got the best deals of anybody in North County with the DA's office. And Stan and Tom used to send me in there, into the DA's office to do the negotiating, so something was working.

RL: Hope it had something to do with your negotiating skills as well.

LB: Laughs. Maybe, but it was certainly a good way to open the door. So that was fun.

RL: When you came down and started doing felonies did you have some really dastardly cases?

LB: Well I must have. I was doing assaults with deadly weapons and robberies and whatever by that time. I don't remember, I remember one in particular, not because it was a horrible case, it was an assault in the jail. Battery in the jail. Assault with a deadly weapon. One he made on another and the inmate victim at the preliminary hearing did not show. He'd been released from jail by that time and did not respond to a subpoena. I was in a department where the judge was notorious for bad behavior in the afternoon, because of alcohol consumption at lunch and I didn't know that. My office hadn't told me not to go in there in the afternoon. So I did and the DA who was also notorious and I wasn't warned about him either realized he didn't have a witness so he called the defendant to the stand. I knew enough to assert privilege and knew enough to insist that the defendant not move and the judge told me to shut up and sit down and have no further conversation with my client. Who was still in jail and my client took the stand and the DA tried to examine him. The client took the fifth. I guess he got the message and the judge threw the case file in the direction of the counsel table. Just threw it from the bench directly at us. Stomped off the bench, screaming.

RL: Wow. So it wasn't a difficult case.

LB: It was a crazy judge and a crazy DA. Who told me I'd be charged with obstruction of justice by the end of the day.

RL: Wow.

LB: I wasn't.

RL: You hadn't obstructed justice.

LB: I went back and told my boss Stan who just laughed and said welcome to those two.

RL: And the case was dismissed?

LB: Dismissed. Yeah, of course. I was a little shook but ...

RL: I would have been very shook. Wow.

LB: Mostly the judges, the judges and the lawyers doing, behaving badly. It was more of a surprise than the case load.

RL: Was it generally of that nature? Of people drinking or ...

LB: There were a few judges who drink at noon. There were some who still didn't think that women should be in the court room at all. There were some who refused to let a woman say

anything unless she was wearing a dress. Pantsuits were an issue. There was actually a fourth district court of appeal case on pantsuits with the woman that was hired after me I guess took up to the court of appeals. She was barred from a courtroom until she changed her clothes and she refused to. And I guess she must have been held in contempt. I don't know why else there would be a recorded decision. So it was usually on that order. There were some were obvious sexual harassment back then there is today. I think there are enough statutes on the books so judges pay more attention.

RL: And many of them are women.

LB: Yeah, and many of them are women. I can remember some just astonishing overtures by judges that I still can't believe today.

RL: Such as ...

LB: I was sent out to one judge, who has since retired, who also turned out to be notorious but nobody had bothered to tell me. I think my office had decided I'd just learn the hard way. I got sent there to do, I think a trial, it was a robbery case I remember and the judge looked at the prosecutor when we got to his department. Told the prosecutor to sit at counsel table and ask me to come back to chambers. And I thought, well this is a little odd but maybe this is the way they do things downtown. I was still pretty new from Oceanside. And he pushed me down on the couch and said we need to work this case out. I'm sure we can come to an understanding. He was married. I was married. And I managed to get out from under him and get back to my office. Went back in to talk to Stan. Who hadn't anticipated that since he hadn't had that many women working for him. So I don't remember the ultimate resolution.

RL: Do you think that someone else took over the case? Someone else from the office? What do you think?

LB: Either that or it got transferred to a different judge or something. But I dealt with that judge regularly for years after that but I wasn't caught by surprise again.

RL: Um hum.

LB: I think that was the biggest disservice. Not warning the few of us who practiced downtown what we were in for and we developed, actually we formed the women's criminal defense bar in self- defense.

RL: Um hum.

LB: There were probably half dozen of us ultimately. Not very big.

RL: And did you provide sort of a support system to deal with that kind of behavior?

LB: Absolutely. Well at least warn each other and sort of talk about what to do to keep things on a professional level.

RL: And in that case, what could you have done? Would you have declined to...

LB: We should have refused to go back into chambers. Is what they should have done. But I didn't know what I was in for.

RL: Sure. How could you?

LB: So he was notorious for that sort of behavior. It would have been nice to know.

RL: Um hum. It sounds like those kinds of issues were more challenging to you then dealing with the criminal defendant population.

LB: I liked my clients. I had problems every once in a while but ultimately represented many hundreds of people. I liked just about everybody.

RL: Now there is this understanding that a large percentage of a defense attorney's clients are guilty. That's sort of a non-clear statistic that is thrown around, what do you think about that?

LB: I think that there's obviously a reason for the charges the majority of the time assuming the right person is being charged. Which is a dangerous assumption. The reality is that most people, if they are charged correctly are provably guilty of something. But that something develops over the course of the case, as opposed to the time they are charged. So what the defense lawyer's job is to determine quality control. You know the little tags you see in your pockets, inspected by number eleven, that's what defense lawyers do. It is a quality control mechanism.

RL: For the system.

LB: For the system. Absolutely. Make sure they have the right person. Make sure the charges are good. Plea-bargaining twists that considerably and is now twisting it more than it used to be true because of the heavier penalties. But that is the function.

RL: When you interview your criminal clients, do you usually interview them in jail? Or always interview them in jail?

LB: Not always. The more serious the case, the more likely it is that they will be in jail or if they are not documented they are going to be in jail.

RL: Um hum.

LB: With an immigration hold. So yeah, I did lots and lots of jail time.

RL: Laughs. Did you ever feel or experience physical danger when you were alone with a client?

LB: Once. And the jail staff knew that the person was dangerous. It was a homicide case. He killed his wife. We went to trial and he was convicted so I can say he killed his wife. In the interview I was put in one of the glassed in interview rooms that was right up front so the control booth could look directly into the interview room. Ultimately I wound up bringing a male attorney with me just because the defendant wouldn't talk to me.

RL: I see. Did he threaten you?

LB: He did.

RL: Did he harm you in any way?

LB: No. No. He is still in state prison from what I understand. Many years later.

RL: Were most of your clients male?

LB: Um hum. Yes.

RL: Do you remember female clients?

LB: Yes, there were a few. Certainly not a majority. I spoke Spanish. I was one of the few Spanish speakers in the system. So that skewed my clientele a little bit. I had a lot of Hispanic men. Just because of the language issue. But yeah there were some women. And a lot of mental health clients. The men in the office didn't like doing, they wanted to do fact based cases. They didn't want to do mental health issues. Intent was not something they were interested particularly. And I really liked the people who had mental status issues. I liked them as clients. I thought they were really interesting. So I did a lot of those.

RL: But those were not um, guardianship kinds of things? Those were still criminal defendants?

LB: Absolutely. Competence, insanity issues, diminished capacity. Sure. Yeah they were ... yes they were criminal cases.

RL: Um hum. Then you practiced on your own for a little while, is that right?

LB: Two years. I was in private practice.

RL: Were you in with anyone else? Did you share an office with someone?

LB: I rented space from Grimes and Warwick, along with a bunch of other people. They still have the same office building and it's portioned off into little offices. I think Bob Grimes is a USD grad. I left Defenders the same time Jose Tuffouo did and both rented space with Grimes and Warrick.

RL: How did you get your clients?

LB: I did appointed work. I was a terrible business person. I was completely unprepared for the bookkeeping part of the job. Somehow I forgot the part about asking for money.

RL: Laughs. Well if you are appointed then you would be paid by the court.

LB: Paid by the County.

RL: But you still needed to submit a bill.

LB: Yeah, I did that. Back then there were just half a dozen women and I don't think any of us really had much of a retained client base, because defendants didn't go to women at the time. That's changed.

RL: Yes.

LB: But that was not true then, especially Spanish speaking men.

RL: Um hum.

LB: Which was a chunk of the appointed work I did. They didn't want a woman if they had a choice.

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RL: And so did you find it difficult assisting in private practice from a financial point of view?

LB: No, there was plenty of appointed work. I was one of seven Spanish speaking lawyers on the homicide panel so I could handle anything up to a death case which I never did but I did take homicide on down on an appointed bases. It was just, I did not like the business part of private practice so I went back to Defenders.

RL: How much longer did you stay there?

LB: I think I was there a year before I started teaching at USD part time at night. I was an adjunct for a year. So it would have been two years, because the year after that I was offered the position here and I took it.

RL: I see. How did that come about? How did you start teaching?

LB: Terry Player asked if I would teach a small section of trial techniques. The class that is on my transcripts was still called that back then. Now it is Lawyering Skills two. And I did that and I liked it. And I was running our Chula Vista office as it was and that was a training office and I liked training new lawyers. So it wasn't that much of a jump to training law students. And then, Terry asked if I would consider interviewing for a permanent position and I asked Alex Landon who was my boss at the time if I could take a leave of absence because I wasn't too sure I wanted to leave the practice permanently. And he gave me a three year leave of absence. It was a one year leave that turned into a three year leave.

RL: And after that time and you...

LB: After that time Defenders was in competition with the idea of a public defenders' office. The county was trying to decide. I didn't want to work for a public defender. I would have gone back to work for Alex in a heartbeat.

RL: How would that be different, working for a public defender?

LB: It would have been a government office, civil service office, controlled by the county and Defenders was a private non-profit corporation like Federal Defenders still is. That was operated by public funds but non-the-less it was a private non-profit and Alex was a fabulous boss. So I would have been more than willing to go back and work for him. If that's the way it turned out but which it didn't.

RL: How did it turn out? I mean in terms of what happened to Defenders Inc.?

LB: Defenders Inc. closed its doors when the Public Defender was formed. The county board of supervisors made it clear they wanted to put together a Public Defender's office to represent indigent crooks as cheaply as possible. So the funding was already less than what it needed to be for that office. So Defenders closed its doors and a lot of the lawyers went the Public Defenders with their cases and some of the assets, whatever the physical assets were sold. And USD was given a \$200,000 grant from those assets and Cal Western was given a \$600,000 grant from those assets. So it was disbanded.

RL: I see. You said to represent indigent crooks.

LB: Absolutely.

RL: Does that mean then that when crooks in my mind doesn't include assault, battery, murder, that kind of thing?

LB: Board of supervisors resented the ideal that a defendant was entitled to council paid for by the county to begin with. I distinctly remember at one point they were discussing whether or not the sixth amendment right to council applied to the county of San Diego. They did not want to provide any kind of legal representation at the public expense. There was a time when Roger Hedgecock was still a politician and I think on the board of supervisors. That he suggested not having either office, but instead having the Civil Bar volunteer lawyers to represent criminal defendants. So there wouldn't be any expense.

RL: But they would also not have experienced criminal lawyers.

LB: Not an issue. Not a problem. He was appointed actually by Judge Roger himself, was given the case. When he made that public announcement it lasted for less than a day.

RL: So a case was assigned to him to be the Public Defender?

LB: A case was assigned to him. It was a petty theft with a prior. I was in the arraignment court that day. Barbara Gamer was the judge. That was a great day. And she said well if Roger

Hedgecock thinks all lawyers ought to pitch in to represent a criminal defendant, he should be the first. So she appointed him to represent this woman who was in custody on a petty with a prior. So Friday afternoon she had her clerk call Hedgecock's office to inform him of the appointment and apparently he went ballistic and by Monday morning he was off the case.

RL: And did he let go of that ideal at that point?

LB: Yes.

RL: So the Public Defenders' office as it is now constituted does provide all kinds of legal counsel?

LB: Right. They do now and here we are sixteen years later probably, seventeen years later, I think they finally have pay parity with the prosecution. But it took a number of years before there was parity in the positions.

RL: You talked about the disbursement of funds from the liquidation of Defenders, Inc. and there as a big disparity, Cal Western got a much larger grant. Is there a story behind that? That you could tell?

LB: I was, for a long time, I was on the board of Federal Defenders, Community Defenders, and Appellate Defenders groups. All three of them were private, non-profit and they all had the same board of directors. And we asked both law schools, I don't know why we didn't ask Thomas Jefferson, we asked both law schools to come up with a proposal to deal with the assets. And Cal Western came up with a very detailed proposal that Jeanine Cooper, who was on the faculty of Cal Western until she died, very persuasively presented to the board. They wanted to do a Criminal Defense Advocacy College that would have been equivalent to the one that's in Atlanta, that's nationally renowned and they were very specific. They had the college structure drawn up and Janine did a good job in presenting it. Christine Strong was our dean at the time and she came to the board meeting with very vague ideas about what we would do with the money.

RL: Hmm, hmm.

LB: And it was pretty clear she really didn't have anything specific in mind. So that's why.

RL: Well, I think of the fact that her predecessor, her immediate predecessor, Sheldon, was really interested in a Criminal Law Center and his wife directed one and I know that there was a lot of rancor that surrounded that and I wonder if that would have influenced her thinking. Aside from the fact that Criminal Law was not her personal field.

LB: It could be. I know the legal community loved Sheldon, he's still sorely missed.

RL: Right.

LB: So if anything, that helped USD get some of the money.

RL: Uh huh.

LB: Just because he had been here.

RL: And do you know where that money went?

LB: To me.

RL: Oh, good. I was hoping that was the answer.

Laughter from Ruth and Laura.

LB: It was very specifically drawn up and I still have the grant agreement. That money is to be used for indigent criminal defense and we use it for an annual defense seminar, a graduation award, and sometimes funding students that can work on pro bono projects that some lawyers in the community are doing. So, I've been a very jealous guardian of that money. I've been approached by faculty a couple of times to try and get a chunk of it and it has been unsuccessful. There's just not indigent defense money out there.

RL: Right. Right.

LB: So that's what I use it for.

RL: And how does that, how does that interact I guess with Criminal Clinic work here? Is that the vehicle for it?

LB: No. It's completely separate. The annual Seminar is completely separate. We used to do two a year but that was too much so now we do an annual seminar and it's attended by either criminal defense lawyers or mental health practitioners or students. They are all invited.

RL: Yes.

LB: That was a good example.

RL: That was an excellent seminar. So you moved in to law teaching and what was that like? Most of us start teaching under those circumstances have not taken education courses in college.

LB: Nope.

RL: Have no pedagogic training other than what we have observed from the other side of a chalk board, shall I say. When you first began to teach, let me back up before I talk about preparation for teaching and ask how Terry Player knew you.

LB: Oh, she was the local welfare fraud guru when she was in private practice. She had a corner on the market on welfare fraud. None of the rest of us could understand any of the

paperwork. So she gave lectures periodically to Defender's lawyers because we had to do those cases. And could unravel the paperwork.

RL: So when she was in practice did she defend a lot of people accused of welfare fraud?

LB: She did. She worked for Legal Aid and I think welfare fraud was her specialty.

RL: Uh huh.

LB: I still don't know how she figured it out.

RL: Uh huh. So she was the welfare fraud guru and you met her by attending her classes?

LB: Yep. I did.

RL: So back to the classroom. There you are teaching what is now called Lawyering Skills two. To what was then called...

LB: Actually that was as an adjunct and the small sections were very well prepared by the person who did the large section. I don't remember who did the large section that year, when I was still in practice. I think it was Terry.

RL: So, in other words, there was a prepared syllabus and curriculum for you to follow...

LB: It was Terry. Of course. Correct. So I just followed the piece that was the assigned simulation for the week. Cross exam, direct exam whatever opening statement which I was kind of doing for the office anyway in Chula Vista because those were new lawyers for the most part.

RL: Okay. So what were some of the techniques that you used lecture role-playing. How did you do that?

LB: The large section met with instructions to the students as a group and then they broke into 12 small sections and I had one of the 12, so the students already had an assignment, the simulation exercises were already prepared by Terry, so I just needed to get the students on their feet. And critique what they were doing and give them suggestions on how to do it better. So it was already 95% setup.

RL: So what appealed to you?

LB: Same reason I asked Alex to do a training office. I liked working with the newer lawyers. I liked people learning new things. That was fun. A good time.

RL: Now when you joined that instructional staff full-time and we'll get to that. How did your duties change? Were you just doing the same thing on a larger scale?

LB: No. For the first few years I taught Advanced Trial Advocacy with Alan Schneider and Criminal Practice, a criminal Clinic class with Rick Barron. Criminal practice was something I'd already been doing in South Bay. We had a live client clinic and it has clinic at the time so it's really just teaching students who knew a little bit less than the baby lawyers anyway. Advanced Trial Aid I would have had a much harder time teaching that class if it hadn't been for Alan. As a teacher he is truly gifted. He is a wonderful, wonderful, teacher so I learned a lot from being with him in the same classroom.

RL: Describe that a little bit. What about his teaching is so exceptional?

LB: He has a way of approaching the subject matter. That, I guess it's the traditional Socratic approach but he doesn't tell his students how to get to their conclusion he just sort of nudges them in that direction until it finally clicks. He has a very elegant way of using language that makes it very easy to pay attention to him.

RL: So these original courses that you taught have nothing to do with clinic programs at USD?

LB: Oh yeah, Advanced Trial Aid was one of the clinic offerings and Criminal Clinic was the in-house clinic.

RL: Okay, so you came into this Clinic group and what was that composed of at the time? Was Terry in charge of that?

LB: Terry was the clinic director. I think she had just taken over from Walt Heisner. I think he stepped down the year before I came on at full time. So Terry was in charge of Steve Hartwell, Alan Schneider, Rick Barron and Corky Wharton and me. There were six of us.

RL: What was it like to work for Terry? And you can tell us the truth, nobody will ever listen to this.

LB: It was great. It was great. Terry had way too much work to do. She was teaching full-time, in addition to having all the Admin. responsibilities for the budget, as director, in the early years at least. So she didn't have a lot of time but it was a very cohesive group. It was a collaborative atmosphere. People talked about their classes with each other. We put together our own curriculum for several, for many years, until Christine put a stop to it.

RL: How so? How did she put a stop to it?

LB: The six of us could figure out how to offer a coherent Clinical curriculum and we did that every year. Especially since we alternated classes. We would alternate through Advanced Trial Aid. The Lawyering Skills, a trial techniques class, and that sort of thing and we'd contribute to the materials, we'd jointly contribute. So we had a group of people who pretty... we didn't share everything I've never taught Civil Clinic by myself or Environmental Clinic, for that matter, but we had a working knowledge of each other's course load. So we come up with a coherent curriculum. Christine decided that we all needed to talk to the Associate Dean when it came time to put together a course schedule individually. She didn't want us meeting and actually at one

point she told us we were prohibited from meeting as a Clinic. She sent poor Jenny Shu upstairs to break up a Clinic meeting. Terry's office was right over Christine's and I don't know if she can hear through the walls or whatever but somebody told us told her that we were meeting.

RL: You were meeting in defiance of her order?

LB: Yes, we were. We needed to figure out what to talk to Jenny about. To put together a curriculum. We couldn't just wander down there one at a time.

RL: Now what do you think suspect, believe, know was behind the Dean's approach?

LB: She was a control freak. She needed to control the curriculum, and she also took the budget away from Terry. So we didn't have...Terry had no idea what the budget was going to be either. That's my sense. She just couldn't stand to have faculty determining what they were going to teach as a group.

RL: Well, you say faculty. Were you faculty at that time?

LB: Part of the time. Initially no. I think, I don't know which came first. At some point during her tenure she stopped us from meeting together. And during that time permanent status became an issue, because it had to, because of some accreditation problems, I think.

RL: All of you, the six of you, what was your status?

LB: We were all on contracts. I had two three-year contracts and then the original one-year contract. So our maximum was 7 years and I know 7 years is a magic...I've forgotten the details by now it's a magic number. The faculty had to fish or cut bait with us at 7 years.

RL: I see. And so...

LB: Actually two of us... excuse me, were on soft money. Allen and Corky were on soft money.

RL: So what happened as far as the faculty status was concerned? How did that progress?

LB: Oh there was a period of time there was a fairly vehement debate over tenure-track status versus long-term contract verses whether we could just keep extending contracts. All different kinds of statuses were pursued by the faculty to try and figure out what to do. And not all of it was pleasant, by any stretch. So ultimately Steve and Terry were put on a regular tenure-track position. And I think, shortly before the vote on them for permanent status came about, Alan and I needed to... they needed to do something with Alan and me and put us on a Clinical tenure track status and in the process demoted Terry and Steve.

RL: To that Clinical tenure-track?

LB: To that Clinical tenure-track status. It was extremely unpleasant at the time and it has done lasting damage.

RL: In sense of?

LB: It was demeaning. It was nasty. Very little sensitivity was displayed.

RL: What kinds of things do people say?

LB: One of the faculty members, who is still with us, a fairly young guy sat next to Terry and me at a faculty meeting and said we needed to do a clinical tenure-track because clinicians don't have the mental capacity to understand more traditional writing. Terry and I just sort of looked around him and stared at each other and wondered if he really knew that we were on either side of him.

RL: And that he had said that out loud.

LB: Oh yeah, he said it to the group in large.

RL: And was there a lot of support for that?

LB: Yes, I think that was one of the reasons people decided to vote for a clinical tenure-track. Although it certainly wasn't the overwhelming reason.

RL: What was?

LB: My two cents supported by not a whole lot of empirical evidence but I think, I'm persuaded that we were given clinical tenure-track status because that meant we did not vote on appointments. In order to ensure that the four of us, or the six of us as we started out originally, would never vote on appointments because the people who care the most about appointments figured we would vote against them, against their candidates every time. So in the process we shrank from 6 to 4 and wound up with clinical tenure.

RL: You shrank because who left?

LB: Jean Montoya was hired during that time period as a clinician. Shortly after Jean arrived Christine either proposed to the faculty or got somebody to propose to the faculty that Jean's status be converted to regular tenure and it was. She told the rest of us in the clinic not to even bother. Jean was converted to regular tenure and we lost a clinical position in the process so that went from 6 to 5. And then in that permanent vote process Corky was reduced in status to an administrator, 3/4 time administrator. Which he still is, despite working longer hours than any of the rest of us.

RL: So that was even a further slap in the face.

LB: It was. It was very badly done. It was a bad thing to do but it could have been done with a whole lot more sensitivity.

RL: So the four of you remain in this clinical tenure position. Were you granted tenure at that time?

LB: Yes, Alan and I were granted tenure the same day and I think that was the same day Corky was converted to an administrative position. Terry and Steve were given clinical tenure a couple years earlier, when their status changed.

RL: Now, what will happen if and when a position comes available, in your opinion?

LB: I'm not sure. It's going to happen. We are aging rapidly as you can see.

RL: Probably a day at a time like the rest of us.

LB: I don't know. I have my suspicions. There has been a periodic effort to enhance clinical offerings and clinical positions and it's never gotten anywhere. We have a lot of Adjuncts teaching in our clinic, but we do not have a critical mass of full-time clinicians. It's interesting because when I was first hired USD's Clinic was pretty much in the forefront of clinical education nationally. And we have continuously fallen behind as other schools have developed their Clinical programs. We are permanent. I will say that clinical tenure at least gives us permanence and job security but in terms of a clinic I think we've just held the status quo over the last 20 years. Which is really a shame. So I don't know. My sense is, I know, I think there are folks on the full-time faculty who would like nothing better than for all of us to either die or retire and make sure there are no more full-time people on the clinical faculty.

RL: Compare that to what you might know about the clinical programs at California Western School of Law.

LB: Oh well, it's a much more congenial faculty I will say that. They have also an aging population of clinicians. However, they're much more integrated with the faculty, and I say that because the faculty volunteers to do site inspections for clinical placements. Cal-Western has clinical placements from Alaska on down. And they do site inspections and travel to those locations. The regular faculty is not only aware of that, but volunteers to help out with the work of site inspections.

RL: Do you know who how the number of clinical faculty compares?

LB: I haven't asked for a total. I know they have one person who is new but temporary. He is on a three-year contract and that didn't require a loss. I know that one of their clinicians died a couple years ago and I don't know if he's been replaced. So number wise I think they have a couple more than we do, they may have 6.

RL: When you started teaching in the clinic, did all of the students who took Clinic classroom courses also do clinical work. Participate in providing legal experience, legal services?

LB: No. That I know and that's still true. You could take Interviewing, Counseling in Negotiations and Advanced Trial Add. None of which are connected to a clinic. You can still do that. Lawyering Skills Two isn't connected either. So there is a choice of live client versus simulation.

RL: Are those all graded courses?

LB: No. Last time I looked ATA was graded. Lawyering Skills Two is definitely pass-fail. Interviewing and Counseling in Negotiations I think are pass-fail. The clinics are pass-fail. Although I think some second semester clinics may still be graded. We used to when we had an in-house Criminal Clinic grade the second semester but not the first.

RL: When you had an in-house Criminal Clinic is that what you mean? How does that compare to the situation today?

LB: We do a class. Criminal Clinic class hasn't changed. But the placements are all placements with a trial agency in town, as opposed to students handling their own cases under either my supervision or Jean Montoya's supervision. So we don't take, USD is not counsel of record any longer in the criminal area.

RL: And there's no client work on campus as there is with I guess special education, right?

LB: Correct. Except there has been a new Clinic called the class is Perspectives in Criminal Justice. And I've been teaching that for the last four or five years and that's not being offered this year and that's a new Clinic. But we're not counsel of record even though the students work on their own cases it through the Public Defender's office so it's kind of a hybrid.

RL: I see and so you need to coordinate then with the Public Defender's office or over the trial agency?

LB: Public Defender.

RL: It's all the Public Defender.

LB: Defender Clinic does expungement cases through the Public Defender so it's a post-conviction remedy caseload. In addition to post-arrest interviewing situation.

RL: And that was the group that we visited the downtown jail with.

LB: Yes.

## CONVERSATIONS IN LEGAL EDUCATION:

ORAL HISTORIES OF THE FIRST HALF-CENTURY OF THE UNIVERSITY OF SAN DIEGO SCHOOL OF LAW

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Narrator: Professor Laura Berend

Interviewer: Ruth Levor

Recorder: Ruth Levor

Date: August 29, 2006

Accession No.: OH-LRC-Berend-2B

TAPE 2B: SIDE A

RL: This is an interview of Professor Laura Berend for the project Conversation in Legal Education. Oral histories of the first half century of the University of San Diego, School of Law. The interview is being conducted by Ruth Levor at the University of San Diego, Legal Research Center on August 29, 2006. This is the third session of this set of interviews. Tapes and transcripts of this interview will be archived at the University of San Diego's Copley Library.

RL: So just to clarify what we were talking about originally, when you first came there was an in-house Criminal Clinic.

LB: Correct. An adult court and we did misdemeanors in adult court. I think there were a couple of felonies in there. Yes.

RL: So, how does that compare for you, in terms of the students experience and what they're getting out of it?

LB: There's, it was the same class. It was the criminal practice Criminal Clinic class that we currently offer. The in-house option was one of the placements available. So, there's absolutely no question that the students who handled their own cases were far and away better at handling cases, by the end of the semester, than students who were in placements, because they were responsible for all the case work and all the client contact and all the courtroom work under our supervision. Rick and I, Rick Barron and I co-taught that class until he left USD.

RL: Where did he go?

LB: Public Defender at Santa Barbara. The writing was on the wall that he was not going to be given a tenure-track position so he left.

RL: I see. So how did this change come about? That there is no longer in-house work.

LB: After Rick left, we had a series of adjuncts teaching with me, until Jean came along. And they taught for two years apiece. So, we had, first was Glenn Warren and he taught with me for two years and co-supervised the Criminal Clinic. After that was Tom Penfield and after that was

for Floralin Inisman. Floralin is now at Cal Western. I think it was fortunate for her, but I think, that originally, she pursued that option, instead of engaging in the tenure track battle here. She's very happy there. So, I co-taught with those three people for six years and during that time we were invited by Norbert Aaronfreund, who is the presiding judge out in juvenile at the time to come out to juvenile court and handle delinquency cases. So, we went out there and we had, we had our choice of any of the appointed juvenile work, and pretty much a hundred percent of it is appointed, that we wanted. So, we would look at the complaints and the students would decide who they wanted to represent, whatever charges looked interesting, and that's what we did, short of murder. We sort of kept a lid on the charges. And we were there for 10 years as an in-house clinic and after Floralin left, Jean was hired. And Jean and I spent a lot of time out in juvenile court, with the students. And ultimately Christine put a stop to it.

RL: When she made Jean a member of the regular faculty, did Jean continue to teach the same kinds of things?

LB: She teaches, she still teaches half time in the clinic. So, she and I alternated Criminal Clinic, which is what Christine had us do. She said we couldn't afford to pay two people to co-teach a clinic. And there's no way to do a live client clinic with one person if it's criminal, because there's too much Court time. So, Jean and I wound up alternating Criminal Clinic, which we still do.

RL: Now you talk about using a lot of adjuncts now, who are members of the local bar.

LB: Right.

RL: How about back at the beginning? Were there outside attorneys assisting with the supervision?

LB: Nobody helped with the Criminal Clinic. There was no help with the Civil. Corky still did Environmental. I think immigration clinic has been around for a long time, but not that far back. So, I think we've just continued to add clinics with adjuncts. And most of those did not exist when I came. I'm not sure if any of them existed outside of what the six of us taught.

RL: So, how much contact, if any, did does the supervising faculty have with the clients?

LB: Currently I have zero in the Criminal Clinic because we don't have any clients. The students are all in placement.

RL: Right, but back then.

LB: We had to supervise the students' interaction with the clients.

RL: So, you want to be present.

LB: I was present and we certainly had to be present in court. We rarely interfered. The students were usually so scared they were better prepared than most lawyers. And we certainly

prepared them ahead of time for the client interaction. So, in the Criminal Clinic contacts at least we were there but not vocal.

RL: They got the case material before they met with the client?

LB: Yes, we would pick up the complaints out in juvenile court. And get the discovery, which would be the police report, and then they'd meet with a client within a day. Specially if the juvenile was in custody. That was a rule, 24-hour rule.

RL: That's part of the speedy trial process?

LB: No, that's our rule. That's part of being competent, in my opinion. Meet with the client as soon as possible. That came from Defenders. We were all given a 24-hour rule when I started to practice. You just get there.

RL: It is a good rule.

LB: I think it is. I wish it were followed today.

RL: Now the students that go down to the jail for the expungement cases, they're not getting that information, they're sitting in a cubicle protected by a glass wall and taking materials out of an inbox, right?

LB: That's a different Clinic. The students aren't going to be counsel of record. They're just there as an arm of the Public Defender's office to talk to new arrestees about what to expect in the criminal process. To give them a little bit of an update, and to help out with bail, if that's possible, so they can call Community Resources for the inmates from the jail to help with bail. Expungements are all out of custody and that's at the other end of the system. It's all post-conviction and people have written to the Public Defender's office asking for expungement relief. So, it's two ends. The arrestees are in custody and students aren't getting any information except what they are arrested for. They haven't even been charged yet.

RL: So, they are basically doing an orientation for the new arrestee.

LB: Orientation and possibly springing him from custody if that's at all possible.

RL: What would be the basis for that? Just the bail that you were talking about?

LB: Right.

RL: And the expungement is, it has to do with the record.

LB: Yes.

RL: Is there much written work involved for the students?

LB: In the bail project class?

RL: In any of the criminal Clinic practice. Or is what they're doing, is any of what they're doing, involve any kind of drafting? Legal drafting.

LB: Yes, the Perspectives in Criminal Justice class. Their project involves the students preparing expungement motions. That takes up a huge amount of my time because I'm the editor before the case file goes back to the PD's office. It's astonishing how much time it takes students to do a simple motion if they've never done motion work for. So, I still don't quite understand it. And the worst thing for them to do is drafting a cover letter. That seems to be harder than anything else.

RL: From the point of their actual writing skills, or?

LB: They don't know what to say in a letter to introduce themselves. They do not know how to put together a cover letter to a client.

RL: And I'm sure you given them prior coaching on that.

LB: They work at it. Well I get the edits. So, it takes multiple drafts usually. Very rarely do they get it right in one or two drafts, which is really the point of the class. Better now than later.

RL: Absolutely. What's your general impression of mechanical writing skills, at this point?

LB: I'm usually disappointed. I don't think students get as much writing experience as they should.

RL: Have you found that to become exasperated over the years?

LB: Yes. My sense, without any foundation for believing this at all, is that text messaging seems to be responsible for a lot of the mistakes and there's way too much reliance on spell check.

RL: They don't put the smiley faces in their letters, do they?

LB: So far no.

RL: I want to hear when you get the first one, please give me a call.

LB: That's something to look forward to.

RL: What about grading in these clinics and classes? How is that done from the point of view of what are you looking for?

LB: When you pass fail for both of mine.

RL: So, is it a simple completion of the work? Satisfactory completion of the work?

LB: Yes, satisfactory completion of the work. I do give some high passes for excellent work. And I don't give you a many of them and it's usually pretty easy to sort out. Exemplary students stand out pretty quickly.

RL: And how often does it happen that someone just doesn't satisfactorily complete the work?

LB: It is rare and I give them plenty of notice, if they want to withdraw from the class. I gave my first low pass in a longtime last spring despite multiple warnings. And I don't know why I gave him a low pass actually. I did a memo in support of the grade thinking it would be challenged and it still might be. After I got through with the memo I realized, you know I should have failed him. But I didn't. That's rare.

RL: Has that happened? That someone has failed?

LB: No.

RL: Because of the notice they can withdraw and that has happened?

LB: People have withdrawn. It's been a number of years since students have withdrawn from the class. I'd say at least 10 years. But they usually know they're getting into a small class where they can't hide. That's why semester was extraordinary, there was no place for him to go.

RL: Now where were these programs physically located when you first arrived? There's a group of six people.

LB: 308.

RL: 308.

LB: All the clinics and us were in 308. It was Bedlam.

RL: And that's on the same level as the courtroom but in the front of the building.

LB: Correct.

RL: Okay. And what is in that room now?

LB: It is the faculty offices.

RL: But not necessarily Clinic.

LB: No. Clinics are down the hill. In whatever that Annex Building is next to Mission Federal.

RL: Okay. But you're you don't go down there?

LB: Nope. Criminal Clinic doesn't have any connection there because we don't have any live clients.

RL: Right. So, the clinics that are down there are Special Education and ...

LB: I think there are 12 of them, including Crim Clinic so that doesn't count. And Corky's Environmental Law Clinic. I don't think that's down there either. I think we have a total of 12 clinics now.

RL: I see.

LB: And they're all stuffed into that building.

RL: So, when you were in 308, and were those facilities adequate that time?

LB: No.

RL: In what way?

LB: There wasn't enough room for students to spread out. There wasn't enough room to interview. Fortunately, or unfortunately, actually fortunately, for the students a lot of our juvenile kids were in custody. So, they didn't need a lot of space. But for those who are out of custody, we were competing for room. I think the Civil Clinic did interviewing somewhere else. I think they went up the street on Linda Vista to something. I don't know what that building was. So, there was some relief there. But it was crowded all the time.

RL: And at what point was that disbanded physically?

LB: I'm not sure. It's been a number of years since the clinic offices opened down the hill. I think Christina was still here.

RL: But

LB: Five or six years.

RL: You're still in the Law School building, although downstairs now.

LB: I moved for the clinic. The live clients move down the hill. I couldn't take the Bedlam anymore.

RL: And Steve is still in the Law School?

LB: Everybody else is still there. Steve and Terry and Alan are still in 308 but the clinic staff is now down the hill along with Margaret Dalton.

RL: Who is the administrator there. So, it's managed differently. There's no Faculty Director.

LB: Correct. We have an administrator. Margaret's terrific but her authority is pretty limited.

RL: How many students did you have in your classes, on average? What's the size of a normal class?

LB: Perspectives has ranged from half a dozen to last semester is having 13, which I will never do again. So, 10 would be the maximum if I'm teaching it again. Criminal Clinic has a 24 person maximum. And sometimes we're there. Sometimes we're anywhere from a dozen on up. I have 13 at the moment but it hasn't settled out yet. I think there's still a few in the woodwork.

RL: Yeah, we're early in the semester now. Over the years, maybe this has changed over the years, but have most of your students been people more or less fresh out of college? Or have they been people who are a little bit older and have some other work experience?

LB: I'd say it's fair to say that most are right out of college although there are a significant chunk with a few years under their belts. Five or six maybe doing something else that may have been related to their college major, clear up to some second career people. I've had a number of second career folks in their 40's. I'm not good with age anymore I want to say 40s and 50s but I could be dead wrong, a second career for sure. A lot of Jag people coming through for military work.

RL: And can you make a sweeping generalization about differences in those two groups of students? That is students fresh out of college compared to those with some life experience.

LB: I don't think life experience matters. I think what matters the most, and that's my impression only, that the younger groups of students come to law school never having had time to think. They have come from a background that is so complicated and so overbooked that reflection seems to be a foreign idea. And I don't think that's related to experience I think it's just related to their generation and that is really a shame.

RL: What kinds of changes has that brought about in how they perform?

LB: They don't think carefully through a project. The idea is to get it done so they can go on to the next thing. That's partly why I think they rely on spell check because they can't think carefully about their writing. And that's why some of the writing reads like text messaging. They've just got to dash through it. I teach a class in evidence practice called Evidence Advocacy and they do weekly memos for me. What a difference in the last few years. They're dashing off the memos rather than making may be a shorter document, but a more cogent document if they had given the issue some thought rather than throwing down whatever comes to mind. And that's too bad.

RL: That's an interesting reflection.