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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

Narrator: Professor Laura Berend

Interviewer: Ruth Levor

Recorder: Ruth Levor

Date: September 6, 2006

Accession No.: OH-LRC-Berend-3A

TAPE 3A: 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 September 6, 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: I spoke and I know this because I have notes, not because I have independent memory, we were talking about at Clinic students and whether they were fresh out of college or whether they were people who had come to school later in life. So I wanted to follow up on that with talking about how well you felt, in your observations, they were prepared for the rigors of Law School.

LB: I think that's changed over the years. In two respects the students have changed a little bit and I've gotten older with a lot more teaching experience under my belt. Initially I thought they were very young because I was used to training lawyers. I can tell you now the last few years, maybe last 5 to 10 years, I think the students are quite a bit smarter than they used to be intellectually; however, they are no more mature emotionally. So, there's sort of a chasm between the intellectual pieces and the emotional pieces which makes it difficult sometimes for them to exercise good judgment. They can be so smart and yet have lousy judgment. Not only about their way to handle their school work, but the way to keep themselves healthy and focused on school themselves. Just to take care of themselves can be a problem. Being smart isn't enough.

RL: What about in than how they deal with clients in either simulations or in real situations?

LB: Depends on what kind of clients. Now as you know we don't have live client criminal clinic anymore. So, I don't have that many chances to observe students with clients. And my bail project class I almost never sat through interviews with expungement clients even. I would debrief the students afterwards. And I think, maybe because of that gap between emotional and intellectual maturity, they still have a lot of trouble developing a relationship. Just basic rapport with a person as a professional. They don't know where to start. They don't know how to identify themselves. Empathy is still there. They are able to empathize and get along with another human being but they're having trouble putting on a professional face.

RL: And what kind of things do you do to try and coach them in that regard?

LB: Debrief. Talk to them about the interviews afterwards and get them ready for the next one. And help them do cover letters, which is extremely difficult when they're sending motions out to be signed. I don't know why that's extremely difficult but it is. They just can't seem to introduce themselves in a professional way. Years ago, when we had the in-house juvenile clinic students did a fabulous job, very quickly with their delinquent clients. The clients in delinquency court and the big deal was age. The clients were younger than they were and that made such a huge difference when we moved from adult Court to juvenile court. It was overnight. And that was a wonderful, wonderful thing that allowed the students to automatically come in with some sense of authority because they were older. Not tougher, just older.

RL: Interesting. Your classes are being Clinic classes are different than being run of the mill law school substantive classes, as they are sometimes called, so I wonder if you ever use the Socratic method at all in teaching?

LB: Oh, constantly. Particularly with a live client situation. I can't get that open. I have a screwed-up hand. We used to do Clinic meetings independent of class and we talked about our case work. And that was almost exclusively Socratic method unless something was verging on incompetence or malpractice, which hardly ever happened. And in class, my first day of criminal Clinic class, we looked at police report and it's all Socratic.

RL: Do you have any favorite stories about students' experiences with clients? You know you talked about debriefing.

LB: I still think of one back in the days when we did adult court. I was pretty new to teaching. And one student who was very earnest from Bakersfield, he was very serious very, very dedicated. He thought of the law as an honorable profession that he needed to look up to. Sort of like Knights of the Round Table almost. Very serious about doing a good job for his clients he was prosecution oriented but did the in-house Clinic anyway, to his credit. And I still remember going to South Bay when we were meeting with adult clients and he was assigned an adult black man who was charged with a weapons offense. I think it was carrying a concealed weapon or something as a pistol. And that was the first time that the student had ever had a conversation with a black man. I don't know what the Bakersfield demographics are but my sense was he never come into contact with an African American person before. And our rule was, he not only made eye contact, but you shook hands when you said hello and introduced yourself. And he had a very, I could see the hesitation and he wasn't sure how to handle this and he was clearly frightened, but he did it. And that was just incredible teaching moment because the other students were there watching him. That produced excellent class discussion afterwards and he never forgot it. I'm still in touch with him and it's been probably 20 years. He's now on the bench in Bakersfield. So that was a good example.

RL: That's a great story.

LB: That was a good thing.

RL: What about gender-based issues in terms of, let's say women going in to represent very tough clients or anything else that you can think of. I know you certainly had your share of experiences what about your students.

LB: In a Life Plan situation, I was with them or the other person teaching criminal Clinic was with them for any kind of a live client situation unless they were out of custody and came to the clinic office and then we were available. We'd sit through the first interview and they were on their own for the subsequent ones, with us within earshot, at least one of us. So, I don't remember juveniles having a problem with women students. Adults sometimes did but then they had to deal with me and it didn't get any better so that was a non-issue.

RL: Well that's good to hear.

LB: Yeah those got resolved pretty quickly.

RL: Were there any real, you know, terrible missteps on the part of the practicing attorney to be, where you had to interject?

LB: I can think of one and I have not followed up with that student and I don't know whatever became of him. It was still with the live client situation and I don't remember the client but I remember the student. I felt he had a lackadaisical attitude about being helpful and doing the required legal work it was though it was as though he were going through the motions. And I asked him about it and he said he's just something on the order of he's just one of one of many. Clearly unconcerned with the human being as opposed to just getting the legal work done. I think he told me he wanted to do civil work and as far as I'm concerned good riddance. He needed, I told him he needed to do a paper practice. Not deal with people. And I don't know whatever became of him. I don't remember, I do remember having to interrupt one student, who is currently on our faculty as a philosophy professor. He decided to get a law degree and he did a jury trial. And we had to back off a little bit, regroup, little overly enthusiastic.

RL: This is actually in courtroom?

LB: Oh yeah.

RL: In what way was he over-enthusiastic?

LB: I think he was starting to yell at the security guard. It was a Target petty theft situation and I'm cross examining him. He was starting to yell at the security guard. He is supposed to just ask the questions. Laughter.

RL: So, he got a little overly involved. This is kind of a contrast to the previous student.

LB: Exactly.

RL: We talked about to me, that he really cared.

LB: He certainly did. He was in a state of disbelief this could be happening. That was a good thing.

RL: But he didn't go into Criminal?

LB: No, he's still in the philosophy department and he's a terrific person and I think a terrific lawyer. The excess passion is a good thing. That you can fix.

RL: What do you think are the greatest surprises to students, going back to the live client situation, when they first start working with a client?

LB: Some I think there are two pieces to that. Some take an in-house clinic because they want to be prosecutors later on and want to see the other side. And it's always gratifying to me how easy it is for them to relate to a defendant's humanity and it's a surprise to the students that these are likeable human beings. They're not just a criminal charge. So, I think the prosecution types get a perspective that's valuable to them later. For the worst of them, assuming they are prosecutors gone bad, they've at least seen that they're praying on human beings at some point in their lives. And I don't know, I can't think of anybody who's in that category. For the defense minded students, it's gratifying to me to see a natural affinity for the underdog turning into a coherent focused legal approach. It gives their affinities some structure. And that always happens.

RL: Now there are, if I'm not mistaken, in addition to yourself other Clinic faculty who are USD law alumni. Is that correct?

LB: Corky was. Allen no. Terry no. Jean no. Hartwell no.

RL: Right. Okay so now was Corky a student of yours?

LB: No. I think he graduated ahead of me. I think he graduated in 1972.

RL: What about anyone else that works at USD? Is there anyone that's now working at the law school that was a student of yours?

LB: Janet Madden. And Judy Brenner was, until she left for UCSD.

RL: I thought that might be so. And they both took what, do you remember?

LB: Janet took Advanced Trial Add, I think my first year or second year at best. It was just unnatural in terms of coming across as that genuine warm human being. Which is why she is in the job she's in. And Judy took a Basic Trial Skills Practice, which was a big class, and I didn't get to know her very well, although she raised her hand all the time.

RL: I'll bet she did. Judy Bruner who was Judy Carbone at the time.

LB: Yes, very vocal. I can't think of anybody else.

RL: Remind your former students that you've talked about a few of them and what their career paths are. Some of them are on the bench. Are there any others that you can think of that you, that were students of yours and you kind of followed their careers and know what they're doing now?

LB: Oh many. I keep in touch with many of them.

RL: Can you tell us about some of them?

LB: I just got a letter from a woman, Shelly Blair, who went back home to Chicago, a couple years ago, after she graduated and had to do civil work because the Chicago PD. didn't have any openings. And she just got a job at the PD's office and sent me business card. And is positively thrilled.

RL: That's great.

LB: And another one's the prosecutor in Riverside. He was just hired permanently after the Bar. There are few of those. San Diego DA's office, there a few of those. One of them spoke in my class last week on charging. She's in the DA's office.

RL: Who is that?

LB: Lisa Rodriguez. Her husband Paul Rodriguez was in the PD's office. I keep track of a lot of them. Especially the local ones.

RL: Tell us some more. Some names that you can think of.

LB: Mell Effley is in the PD's office. He was the student training supervisor for many years, which was great, because I could just refer students to him for placements for Crim clinic and he knew the way the class was set up so he knew where to what kind of lawyers to put students with. Angie Bartosik is his replacement and she's a former student, as well. Chris Lindberg is in the DA's office and he is coming to talk. Actually, you may have met him. He's going to talk about grand juries when the grand jury class meets. He has supervised that class last year and did a much better job than I did because I don't know anything about grand juries. Other than what I've read. Those are a couple. I keep a Rolodex of them. I got a call from a former student's sister today who I haven't returned yet. She's in Orange County there are few in Orange County and they will be, they're always available to talk to students who are interested in work. That's the main reason I keep the business cards.

RL: What, I would imagine that a lot of them asked you for a, to be a reference for them is that true?

LB: Often.

RL: Is that true?

LB: Yes.

RL: And I just wanted to put that on the record because I think that is the kind of service that many faculty do, for the law school, that may not be specifically recognized. That there are people who are employed because of your credibility in the community and then your ability to really give some substantive information about the applicant.

LB: I think there have to be many of us who do that. I have a whole directory in my computer of letters of recommendations for students. There a lot of them.

RL: But I do think there is a difference and I'm not making drawing any kind of a pejorative comparison between the ability of the Clinic professors to do that and those who teach other courses because the clinic professors actually do see these students operating as attorneys.

LB: True.

RL: Where as, the others can certainly talk about their academic qualifications, and their brilliance or if they were a research assistant but there's just that I think that little extra edge that you have in being able to talk about them as almost as a previous employer to them in a way.

LB: Oh, no question. That's absolutely true.

RL: Are there any specific teaching materials available for clinical education?

LB: There are now. It's gotten easier over the years.

RL: So that implies to me that there weren't when you started.

LB: No, there was nothing for Criminal Clinic or Criminal Practice class. And Jean Montoya on our faculty suggested she and I write, turn our teaching materials into a book. Which we did a few years ago. Thank God. So, we did that and made a teacher's manual out of it as well. So now all we have to do is order it like everybody else. Saves a lot of time.

RL: That's wonderful. What did you draw upon, other than your teaching materials, mean go back a step, how have these teaching materials come into existence?

LB: It started before me. I'm not sure who put them together. I talked to Rick Barron, who I started teaching with. He'd been in the Criminal Clinic before me and he wasn't sure where the original police report that we still use came from. His guess was it was a real case when we were doing adult clients and he just picked that one. And since then we've developed it but nobody knows where that started. And then we pull different materials from different phases of practice to compile the set of materials to go from arrest through sentencing. It was very time-consuming at the time.

RL: I can imagine. You started, you start with a police report, which makes sense.

LB: Right and arrest.

RL: And what other kinds of documentation do you use in these materials?

LB: We've got a bail reports to back up a bail review. Which the students will do next week. We do interviewing and counseling scenarios. That they're going to do tomorrow. They have a prelim, a piece of a prelim, they have to do. It's a felony case so they do that. They put on a piece of a grand jury, that I'm getting help with these days. Thank God. They do, they don't do a trial. They learn about discovery. They learn about pretrial motions and they have to prepare them. And they have to, they have materials that we give them for discovery purposes. They do a plea-bargaining session. Which is much more difficult than they have reason to believe since they all seem to watch Law and Order. And then they do a sentencing, which is extremely difficult from a legal perspective.

RL: When they do the plea bargain, they do it among themselves?

LB: They do.

RL: They do the role playing?

LB: They do.

RL: There's no outside professional that comes in to give them a taste of what it would really be like if they were talking to a DA?

LB: I show them a video of myself and someone who used to be in the DA's office, with one of my old cases. That is a reenactment of the plea-bargaining session that happened in that case. With Florin Inamine as judge, he used to teach here. So that video is still good even though it's several hairstyles old, I've noticed. And he's now in the US Attorney's office.

RL: Who is in the Attorney's office?

LB: It's the one who was in the DA's office. It's ummm, oh my God, Bruce Smith. I don't know if he's is an alumnus or not.

RL: And then you say the sentencing is also among the hardest things for them to do?

LB: It's the hardest things to fit into the applicable legal categories that judges need to consider to impose a correct sentence. They know what they want to do for the defendant, or to the defendant, but it difficult for them to put their thoughts into the appropriate legal categories where they will fit and be recognized as applicable.

RL: And what do they use for to learn about these categories?

LB: We give them the sentencing rolls. They are part of the materials. We give them a library that's the appendix to the book that has our California rules in them. They don't like doing that and it's hard. It's very difficult to do.

RL: And do you think it's the structure of it? The lack of flexibility to make up your own ideas about what should happen to the client?

LB: Absolutely, but that's the way the system is. To be legally relevant it's got to fit into a rule and that's hard to learn.

RL: So that leads to my next question. I think it's one of the first answers to the question and that is, what are some of the classic difficulties that are involved in clinical education? And you told me a little bit about getting the students to work with the sentencing rules. But what other things that really give them fits or give you fits.

LB: Well it's time intensive. To start with, it's not in contrast to the traditional course. It's not just a lecture to 80 people and then they leave. So that's very individual. What gives me fits, over all, is their, although they're extremely bright, most of them have trouble being articulate writers. I think writing skills are a problem and my classes are not the place to learn that in-depth. My courses are structured presupposing that they've already learned that and that's not true often. I just read their first papers today for the current bunch and I have to say I was hugely relieved that all the apostrophes would seem to be in the right place for the first time in years. They're pretty well, all but one, was well written and that's a surprise.

RL: Good. And for them, what would you think they find may be frustrating about the experience?

LB: I think juggling. They have to keep a calendar. They have to figure out how to get to their placement. They have to figure out how to get to class. They have to figure out how to meet with me. This week was the first appointments with me and I have to say every single one of them is signed up this week and that hasn't happened in years. I have usually had to chase them down. So, this bunch may have figured out scheduling issues faster than the others. And they're still kids so they need to figure out their pizza time and bar-hopping time and whatever else goes on.

RL: What about you personally over these years? Has your 3-year experiences, has your approach changed?

LB: I can no longer relate to students as peers. I can tell you that. I could when I first came here I was still young enough. So, I'm at least one, sometimes two, generations removed. So, I'm automatically in a different position than they are whether I like it or not. Most of the time I don't like it. So, there's an authority there. There's also some student difficulty in realizing that I do understand their current situation. Even though there's a gap I've been out of practice a long time except for my last sabbatical and I'm glad I went back into practice for that because that helps. Helps me relate to the current criminal landscape in court. So, the generational gap has positive and negative aspects of it.

RL: What did you decide? What did you do during your last sabbatical?

LB: I worked for the Alternate Public Defender. I carried a full caseload for 6 months. I worked under the supervision of a woman I trained 20 years earlier.

RL: Who was that?

LB: Jackie Crowle. C r o w l e. And I have to say I learned what it happened to me after many years of teaching. I used to be able to carry a caseload and get through the cases and that's what she continues to be very good at. And I found myself asking questions about the global implications of whatever the charges were, especially the drug charges. I wanted to talk about social policy issues and rehabilitation issues that are no longer relevant because of the way the code is setup. And restructuring the system and in some respects that isn't legally permissible because of the statutory schemes and that sort of thing and I just drove her nuts. And it drove the judges nuts because they needed to finish their calendars. They needed to get on with their cases. There isn't any time for that. I didn't realize that back then.

RL: Well do you think that's somewhat of a more academic approach?

LB: I do, but it is the practitioners who are more intimately familiar with the day-to-day workings of the system and I didn't realize, at least to my way of thinking, how much some things are out of whack, especially in drug cases. And the results weren't going to get anybody anywhere. It's strictly punitive. And it was just going to be a revolving door. There was just no point in treating a case this way because the defendant was going to come back and come back repeatedly.

RL: How long ago was this event?

LB: It was 2000, so it was 6 years ago.

RL: Now have the rules changed to any extent? I mean there, I thought that there was more a mandated treatment.

LB: There is. There is for some drug cases and as I understand it Prop 36 came into effect after I was on sabbatical and as I understand it it's been hugely successful in terms of saving money. To the court system in terms of getting people off drugs initially that's not its focus. So, I don't think the arrest rates have gone down. The recidivism rate may have come down some, which is a start, but looking at the war on drugs globally it hasn't happened.

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RL: Thank you for this. So, giving the changes in your own approach, what have you observed as the greatest changes in the clinic programs over the years? Sounds like one is the current lack of a live clinic?

LB: In the criminal area that's true. They're still, I think every other Clinic is a live client one except the criminal clinic.

RL: And did we talk about how that happened? Why that happened?

LB: Yes. That was Christine's idea. Christine Strahan split up the team-teaching requirement for crim clinic. So, without team teaching we can't manage a live client criminal Clinic. It takes two people.

RL: What about some of the other changes?

LB: In our Clinical program we have continuously added more adjuncts, who teach clinics. I think the grand total I was told, a while ago, was 12. 12 Clinics, including the ones taught by full-time faculty so we're offering a huge number of choices but we have lost. We've gone from six full-time clinical faculty to 4 since I've been here. With no sign of expanding our full-time faculty and we lost our Clinic director as well. We don't have a full-time faculty member who is the clinic director. We have an administrator who does not have a whole lot of clout.

RL: Right and is that even a full-time position?

LB: Terry Player was the clinic director for many years and she taught a class as well as Administrative Clinic. But she also had control of the budget. So, she managed the money in addition to overseeing all the clinics we had at the time. And yeah, that was much more than a full-time job.

RL: Well, what I was asking was, that is Margaret Dalton's position officially a full-time position?

LB: I don't know. I know she does the special ed Clinic too.

RL: Yes.

LB: So, her Clinic director position can't be full-time. If it doesn't include that.

RL: I see. Did you find the students, do you find the students to be very serious about their Clinic responsibilities?

LB: Most of the time yes.

RL: Are they competitive with one another in that setting?

LB: I do my best not to tolerate that. I'm a firm believer in collaboration and cooperation because that's what happens in criminal practice. It's not a competition sport. You are dealing with people and people's liberty, so I do my best not to tolerate competition.

RL: How do you address it? And what forms would you see them competing or trying to be competitive?

LB: I think I make it clear at the outset that that's not what we're doing here. So, I rarely have to redirect anybody. I can't remember having to do that. At least not in recent years.

RL: Now though the classes that you teach, I may have asked you this already and pardon me if I did, are they assigned grades or pass-fail?

LB: Criminal Clinic is the four tiered pass-fail with the high pass and low pass options as well. The Perspectives class, the bail project, is also that is the same. Evidence Advocacy is the same. That is a simulation class. My Ethics class that I haven't taught in several years was graded, because it also was a paper requirement. So, the Clinical ones, the traditional clinical classes are pass-fail.

RL: When they are pass fail, is there any kind of a requirement that would be analogous to the grading curve that sounds so many have to fall in to a certain category?

LB: No. I give the students a list of what they need to do to pass which is basically do all the work and then I tell him what is necessary for an honors grade. I don't need to talk about a fail

although the last semester for the first time in years I gave somebody a low pass. That really destroys a grade point average but he got plenty of warning.

RL: So, it does figure in to their GPA.

LB: The low pass does and the fail does.

RL: We talked about, of course, when you were first a student and one of the very few women. When you started teaching had the proportion increased drastically from the time that you were student?

LB: 20 years ago, there still weren't a lot of women. I don't know if there were enough yet for critical mass but there were certainly more than there had been 10 years earlier, 10 15 years earlier. Nothing like today.

RL: And so clearly now we've gotten to a point where often the women make up more than 50% of the class. Did those changes cause any changes in clinic advising or dealing with clients?

LB: I don't think so. I think by then we were doing a juvenile clinic so anybody older than 15 was in position of authority.

RL: When you first came back to USD to teach, do you remember what political climate that was at that time in the world at large?

LB: In the 80s. I wonder if Reagan was governor back then. I think so. I think so.

RL: Did things that were going on in the nation and in the world have any effect on life in the classroom here?

LB: It had an effect on the life in the clinical program that's for sure. That during that 80s is when we started losing the social programs which is why I'm thinking Reagan must have been Governor because he's the one who started dismantling our social services infrastructure for people. So, we began having less and less options for clients with mental problems or drug abuse problems. We started losing our social service agencies.

RL: What kind of agencies were you working with?

LB: Rehab agencies. Outpatient Mental Health Services that were available, is all drug and mental health services that we utilized quite a bit. There were Shoplifters Anonymous services. I don't know if they're still around. Some of them were volunteer groups but all of them needed some funding somewhere and that started drying up.

RL: And the agencies just closed down?

LB: Yes. Most of them. There a few that still exists but it's an ongoing problem. The jails took over. The jails became our Mental Hospitals.

RL: We've talked a bit about, we talked more than a bit really, about the relationship of the clinic faculty to the non-Clinic faculty. And the whole I would say fight over faculty status. What, when Faculty status was granted. Were the requirements for sabbatical different in any way for the clinic faculty then for others?

LB: No. Nobody made an issue of sabbatical. Sabbatical rights. The main issue was whether or not we'd be able to vote on faculty appointments. That was the big battle. And the answer was no, ultimately. The secondary battle was whether we would have clinical tenure or whether we'd be on long-term contracts that some schools still use. Cornell being one of them. For their clinical faculty. And for some reason we wound up with clinical tenure.

RL: Which sounds like a better deal than long-term contracts.

LB: It is. I still have some of those old reports.

RL: So, from other from other institutions and what they were doing is that what you mean?

LB: No, from our committee reports we just had one committee after the other debating the issue for several years.

RL: I see. And there were actually Clinic instructors at that time on that on those committees.

LB: No.

RL: No there weren't.

LB: I don't think so.

RL: So, the reports are basically minutes of meetings that none of you attended.

LB: They were reports done in preparation for faculty meetings or committee meetings. There were, there was a committee on long-term contracts appointed by the dean at the time. And we have a committee reports that were presented to the Faculty. We could go to faculty meeting so I have copies of those. The long-drawn-out debate.

RL: Since the Faculty status has been granted has anybody new been hired?

LB: No.

RL: So, really there has not ever been any hiring process assigned to Clinic faculty.

LB: No. We lost two positions in the process. We did not gain any.

RL: And the people who were granted faculty status were then granted tenure also, or did they have to go through additional process to achieve tenure?

LB: Alan and I, Alan Snyder and I were put on the clinical tenure-track when that track was invented. And we were on that track. For a couple years, I don't remember how long, and then we were the faculty voted on whether or not to give us tenure. And we went through the interviewing process just like everybody else who comes to campus for a job. Terry and Steve, I think I mentioned before, Terry Player and Steve Hartwell were on regular tenure-track status before Alan and I were up for consideration and they were demoted in the turmoil at the status meetings about Alan and me. To clinical tenure track, but they also had to interview for their jobs. And were ultimately granted clinical tenure. Corky was a faculty member on a contract and in the process was demoted to an administrator. So, he's no longer considered a faculty member.

RL: So, when you talk about interviewing were there other candidates that they interview for your position?

LB: Yes. Interestingly enough by that time clinicians across the country were savvy enough to inquire of clinicians where the job opening existed to see if they'd be interviewing for somebody else's job, to see if the position were currently filled, and the current candidate wanted to stay. So, we got many phone calls, over that period, asking if anybody was trying to save their job and many people declined to be interviewed as a result. There's sort of a clinical loyalty out there. So, we did have a couple people come to interview. As I recall but many more people called and said try and keep your jobs, we won't interfere.

RL: So, actually coming up for tenure was tantamount to the position being open.

LB: Applying for the position...

RL: Because it would have been an up or out.

LB: Right. So, we were interviewed like everybody else. And we did a presentation like everybody else. It was very painful.

RL: And did you also have to create some kind of a dossier?

LB: We had been reviewed. We had personnel committees that were appointed regularly as part of the contract process so we had been reviewed many times before the positions were converted to tenure-track. But yeah there was an additional review process and ultimately there was a review of scholarship.

RL: Did that bring up any conflict over the name of the scholarship? That the clinic scholarship was not traditionally scholarly?

LB: That debate happened when the decision was made to have a clinical tenure-track as opposed to regular tenure-track. And, yes, there were many discussions about what constitutes Clinical scholarship and whether that was different from the traditional scholarship. So, yes, and

those were some vary humiliating debates, since we sat through them. We being a clinician sat through them. Sort of the family dog approach again.

RL: And what was painful about doing the presentation and going through the process?

LB: Well I had a good time with my presentation. It was painful being told that we had to do one in front of people we thought were our colleagues, as opposed to group of strangers. And I decided I was wasn't going to do a theoretical presentation. I was going to conduct a class since that's what I was being hired to do. So, I did and I assigned homework ahead of time. I figured I was going to do an authentic clinical class. So, I had a good time.

RL: Could you call on people.

LB: Oh yes. I did call on people and it was astonishing how many people came up to me before class convened to tell me that they were unprepared and couldn't do the class. I think that neutralized, a hard time on the part of some of those, that would otherwise have happened.

RL: In the course of your teaching here you have taught under Deans starting with Don Wextine. Is that correct?

LB: Sheldon. Sheldon Kranx, I started under.

RL: Okay. So, that would be a Sheldon Kranx, Christine Strahan, Dan Rodriguez and now Kevin Cole, with Grant Morris in between.

LB: A couple times. Three times.

RL: Three times exactly. Did you experience, other than what we've already discussed with Dean Strong, differing approach to clinical education on the parts of the dean?

LB: Oh, definitely. Sheldon was absolutely a supporter of clinical education and he was very involved in the legal community in San Diego USD. He brought USD an enormous amount of respect that we have since managed to fritter away in large part. But people respected him. Respected the institution. Respected the clinical program, despite how small we were at the time. We were still really on the cutting edge in the country. And he supported us in every way other than economic. Our salaries were terrible. Probably because we were on short-term contracts. He just didn't pay us very much.

RL: Did your salaries go up when you received a tenure-track status?

LB: I think mine did. Alan, I think Alan's went down if I remember correctly. Alan and Corky were on soft money many for many years, not University money. And I'm not sure how that worked. They can tell you better than I but my salary did go up.

RL: So, you were saying Sheldon was supportive.

LB: Absolutely. He was a great role model for clinical education and very charming. We used to say the clinicians the four of us, or six of us, to be hauled into his office to talk about something we thought and then we'd walk out with a new project and we never did know how that happened. Very persuasive man. Christine ultimately was anti Clinic. She did not want it. She thought it was a waste of resources and did not want anyone to, she wanted control of whatever happened in the legal clinic and by definition you really can't do that if you're dealing with five clients. That bothered her and it bothered her that the Criminal Clinic was invited to come out to juvenile court. Because of a separate connection that I had with Nap Jones, who's also an alum, and was the presiding judge out there. She was very concerned about whether we were going to tarnish the reputation of the school somehow. And I don't think she respected criminal defense work anyway, and the clinics in general. So, she had control issues. Dan, he didn't hurt the clinics, but he didn't use any of his capital to make things better either. I think he raised my salary considerably and I imagine he did that, I don't know if he did that to the rest, but I imagine he did. We were way out of sync with the rest of the faculty. He was sort of neutral. He did nothing to repair the damaged Christine did to our reputations in the legal community. She really ended what Sheldon had done. So, that's work left for Kevin Cole to try and repair. And that's a shame.

RL: I thought now that we'd move on from faculty and from deans and talk about support staff. As you smile, okay, what can you tell us about different secretaries? And other support staff that worked for the clinic program?

LB: Well we've had quite a colorful collection. When I started Lucille Stevens was there. Lucille is still, she's retired, but she still active in the community. She was a force to be reckoned with. I love her dearly. She ruled the clinic with an iron hand, in terms of what her responsibilities were. So, from an administrative point of view, you did what Lucille told you to do. I still remember she got into a fight with the fire marshal over a doorstep and Lucille won. We had a wood door stop. Apparently, the fire marshal came to inspect the building and was going to take it away. And I don't know how the Dean's office got involved, because I was in court at the time but when I got back, I was told there had been an uproar. And we still had our door stop. And the Dean's office was calming down the fire inspector.

RL: Wonderful.

LB: So, Lucille was there for a very long time.

RL: How did she relate to the students?

LB: She could be a bit caustic. She expected a lot. She expected people to behave like adults and do what they're supposed to do. And because they were students, they didn't always do that. But by and large, I think students respected her. And I think it was a pretty good relationship. We had, as I mentioned before the tape started, we had one secretary who joined the Commune after selling all of her personal belongings. That was an interesting person she had a very otherworldly alternative Universe approach to her work which could make things pretty difficult. She was there for a little while. We had one woman who had all of us working on her legal problems and we didn't know it. I was working on her criminal problems. I think Hartwell had

her landlord-tenant issues. Alan had some juvenile issues, I think. And Terry had something else. We were all representing her somewhere.

RL: And you didn't talk to one another?

LB: We didn't talk to one another. We took privilege very seriously until it all started to unravel. And it helped that she brought fresh-baked cinnamon rolls almost every morning.

RL: Sounds like a quid pro quo to me.

LB: Yeah, that was a disaster. Her work was disastrous.

RL: But she got good legal services.

LB: She got good legal services for nothing and brought us desert in the morning. We had another woman who had a drug problem but she was the fastest typist I've ever seen. We would hand her a document to type and it was almost done by the time you turned around and left her office.

RL: How accurate was it?

LB: Absolutely accurate. She had an incredibly short fuse we later learned, due to her drug problem. And she was an amazing softball player. Corky can tell you more of that story. She had one hell of a fastball probably drug-fueled.

RL: Well she wouldn't be the only one nowadays.

LB: No. she would be in good company now. And we had somebody else who kept trying to tell Terry what to do and would send out emails once we had computers to students. Telling them her version of the legal advice and to ignore what Terry told them. And she complained about all of us. She complained about me in particular because I would leave voicemails for her late at night because I work late at night. And she said I expected her to be on call 24/7 just because of the voicemail. She wound up suing the University, and the clinic and all the clinicians but apparently it just evaporated somewhere. We finally terminated her. Thank God so we've had quite a colorful history.

RL: Any who were not that colorful?

LB: Well, Lucille was grounded at least and didn't have any legal problems that any of us knew about. She played the violin in the University Symphony. So, she was pretty normal but nobody else was. Oh, yes there was. We had Nina Crow who was our paralegal for many years. She was fabulous, she organized the cases for every clinic perfectly. And kept everybody on top of what we were supposed to be doing.

RL: Was she a graduate of USD's paralegal program? Do you know?

LB: I don't know. She was wonderful. She fell in love and got married and moved to Laguna Beach the nerve. I still miss her she was sort of the beacon of light in the middle of the chaos.

RL: What emphasis, if any, do the clinic faculty place on research and publishing?

LB: Everybody's different. I think. I think of all of us Steve Hartwell probably approaches the closest to the traditional faculties. He's written quite a bit. All of us have written some except for a Corky. I think Corky did write a practice book early on. I don't know. Depends on who in the traditional faculty you're talking about. Some of them don't write either. Write less I should say.

RL: What type of Library did the clinic have when you first came?

LB: I think it was all sitting in 308. And it wasn't much. I think we had the codes and everything else we had to come over here for. I don't remember any. Well we certainly didn't have computers when I started. So, we just have the code books. We had the blue annotated codes and that's it.

RL: Did you use that faculty library that was across the hall?

LB: Yeah, that's right. We did. We had some of them. That's where some of the cases were. So, yeah, we did have access to that. But it was all hardcover books for everybody.

RL: How has the collection changed over the years?

LB: Now we have computers. Students do Lexis and Westlaw. I still don't know how to use either one very well.

RL: So, what do you use?

LB: I still use books.

RL: And has the collection grown?

LB: The clinic library has moved down the hill as far as I know with the Legal Clinic offices. And I don't go there because I don't have a live Clinic. I have the six packs, the penal code and various other code sections in the paper back that I use. If I need to, I'll figure it out in Lexis. And I don't very often.

RL: Now, we've talked about the subject areas that you've taught and do you remember any time when there was some major appeal in the law or in the statutory system or some major case that came down that really overturned everything? Made the way that you practiced different?

LB: Three Strikes. Three strikes law was passed about the time we shut down the juvenile clinic. So, as a clinic we didn't have any contact with that. But that certainly changed the criminal landscape. That would that was a 94? 92-94, something like that.

RL: It was closer to 94 I would think then 92.

LB: Could be.

RL: So, you've talked about before and after computers do you remember the actual introduction of computers into your work life and into the clinic?

LB: Yep, Terry bought K Pros for everybody. The old K Pro machines over the objection of the Provost office. Who thought, the Provost office thought the computers were a passing fad. But since Terry had control of the budget, we had enough money and she worked out some deal with K Pro. We all got one.

RL: Was this before the rest of the faculty got them?

LB: Oh, absolutely. We were way before anybody else. Nobody else got K Pros I don't think.

RL: Do you, so that Provost at that time was Sister Sally.

LB: Sister Sally. Thought it was unnecessary. An extravagance.

CONVERSATIONS IN LEGAL EDUCATION:

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

Narrator: Professor Laura Berend

Interviewer: Ruth Levor

Recorder: Ruth Levor

Date: September 6, 2006

Accession No.: OH-LRC-Berend-3B

TAPE 3B: 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, School of Law Legal Research Center on September 6, 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: When the K Pros were purchased for the clinic program, did you use yours right away?

LB: I did with some help figuring it out. This was very new to all of us so nobody knew what they were doing.

RL: What did you use them for? What did you start out using them for?

LB: All we could do was word processing. I don't think there were any research programs available. It was just a word processor. So, we used it for Motions, class notes. That's it. That's all you could do with it. Writing. I think I probably wrote some course materials on there.

RL: Did the K Pros have a hard drive or did you have to put two discs into it?

LB: They had the old five and a quarter inch floppies. I don't remember a hard drive. I think they must have, but I don't know. Terry would know that one.

RL: And so how did that progress then? How long did you have those K Pros?

LB: It had to be a couple years. Terry was very much into computers so when something was available to replace them then she did. I don't remember what they got replaced with. I don't think legal research on the computer was available for quite a while. I don't know when that became available. I remember using whatever the machine was that I was issued just really for class notes. We gave one to the students to use for their legal work so there was one of available for, at least one available for students to use. But it was new to everybody.

RL: Did they work well?

LB: The K Pros looking back were glacially slow. It took forever. They had orange letters and the screens were very hard in the eyes but we didn't we it then. It was not a good color. But eventually, yeah, I don't remember a lot of breakdowns. And Terry built a computer. She learned about the parts and what went into them because we didn't have any support. We didn't have any computer people in the faculty. And I don't know if the University had anybody so we are pretty much on our own.

RL: What are some of the, I know that you're active in the community, what are some of the organizations that you've been active in?

LB: Well the legal ones there's a criminal defense Bar Association that still exists. I was on the board of that for years. Criminal Defense Lawyers Club have I been on in that for years. And I was President for a year and on the board for a long time. I'm the immediate past president of the San Diego Psych Law Society. And I was I am still on the board of that have been a board member for a long time. Those are the legal ones. There was women's criminal defense bar which was it self-defense organization for the few of us who are out there.

RL: You don't mean self-defense in the traditional physical sense.

LB: Just to keep us alive in the profession. Give us somebody to talk to who was in the same boat and that sort of phased out when there were more women in the profession. That it was very helpful while it existed. So, those are the local ones. That's all there are. Oh, and the County Bar. I am about to get off the legal Ethics Committee I think and take a break for a while and I haven't been active for a couple years. I don't think I will be until I teach my class again.

RL: Now I know you've collaborated with Jean Montoya. You talked about that. What about with colleagues at other law schools that you collaborated or had professional friendships with them?

LB: Larry Bentor teaches at Cal Western and he teaches the equivalent of my Perspectives class. We try to alternate. He uses it. He teaches that piece as part of his Criminal Procedure class as an advanced seminar. But the idea is the same. I forgot to mention I was on the board of Federal and Appellate Defenders for, took over from Walt, that lasted 17 years and now it's Jean has replaced me. Thank God. It's a long time. So, Larry Bentor is an ongoing colleague that's course-related. Linda Martin is a clinician at Cal Western. Who's a friend. We don't collaborate on anything. Mark Weinstein is also a Cal Western person who should logically be a colleague probably because he does a Criminal Clinic there, but we don't talk very often. There is a couple of people at Thomas Jefferson, but I hardly ever see them, and the names don't come to mind.

RL: How much of your USD colleagues would you say you worked most closely with or just kind of hung out most closely with?

LB: Besides the clinical folks. Probably Lynn Dallas and Shawn Martin.

RL: But let's step back a little and get philosophical.

LB: And Ginny Shu actually.

RL: And Ginny Shu. Okay, that was philosophical. What advice would you give to someone starting out as a clinic educator today?

LB: I would say pick a school that supports the clinic wholeheartedly, on the order of Cal Western. I think that's really helpful to some personal satisfaction.

RL: Now when you single out CA Western to talk about support, are you talking more about financial support?

LB: No. I'm talking about the other faculty being supportive of the clinic in the sense of respecting what the clinic does and being helpful. I don't know if I mentioned it before but the Cal Western faculty helps with site visits. They do Clinic placements all over the country. Some in Alaska. Some in Arizona, I think. As well as California. Maybe Oregon. And they take the ABA rule seriously and do site visits to make sure students are getting a quality experience. And the rest of the faculty volunteers to help with those. I can't imagine that happening here. Even if we had those placements which we don't. I think that would be. I think that would be my first piece of advice is look for a supportive environment.

RL: Anything else?

LB: Make sure you have enough practice under your belt so it gives meaning to your teaching.

RL: What has been particularly satisfying to you about your career here?

LB: Seeing the student progress into what I consider good advocates in criminal justice and to me that means lawyers who are honorable and have unquestioned integrity. And I think that's true the majority of them and I'm in touch with enough of them so that makes me feel really good. Product I think is what somebody might call it.

RL: And what do you think has been the biggest changes that you've seen here. I know you seen a lot but it's just the most striking type of change that you've seen at USD?

LB: At USD in the law school or USD generally?

RL: In general.

LB: Well USD has expanded into a mature University and I don't think that was true when I started. I think there are lots more schools and lots more programs than existed. I think there's at least university-wide a recognition that there's a community out there that the school needs to be a part of. The law school itself, I think first thing that comes to mind, is it has become much more right-wing, much more conservative than it used to be. Much more active in seeking out

right-wing supporters. Which is troubling in the sense that it's almost an exclusive approach that is a further snub to the legal community that I'm in touch with. On the one hand we try and reach out to alums in order to get money from them. And on the other we come across is not very inclusive.

RL: Looking back and looking forward, what kind of changes do you anticipate in legal education and clinical education further on into the 21st century?

LB: I think Clinical Education, in spite of our faculties attitude has expanded so it's certainly part of the mainstream nationally. And has become very creative in different parts of the country. There are many different types of clinics doing a lot of good work in the community. And pro bono has certainly pro bono work is certain become part of the main stream too. Which is a good thing. So, I think clinical education is here to stay. From our experience I think a lot of our new hires have joint degrees and I don't know if that's true nationally. It's interesting the backgrounds of these folks, these new faculty, are very interesting. And much broader I think than just the law faculty and I kind of hope that's true in the future. I hope that gives the legal education some diversity that we don't currently have. And I think we're getting more minority students represented in our student body. I hope that's a national trend as well. I think maybe opportunity is opening up for minority students. But at the same time some of the doors may be slamming shut because of the cost and I don't know how that's going to play out. I think the loan students are currently carrying are staggering. That's got to have an influence on not only coming here to begin with but choosing a career once they get here and that's troubling.

RL: So, I've asked you all kinds of questions and all kinds of topics but it's possible that maybe you have some strong impressions or memories that I just didn't know to ask about. Can you think of anything that you were waiting to talk about that hasn't come into our conversations and that you'd like to add before we wind them up.

LB: I can't really think of any areas that we didn't talk about casually before we set a date to begin with. Having said what I just did, about people thinking about going into teaching, in a way I had occasion to think about this yesterday, in a way I kind of regret thinking of San Diego as my home because I haven't been willing to leave. So, I think professional satisfaction gave way to a personal choice in terms of choosing where to live. Had there been a law school in town with a more welcoming faculty besides Cal Western I think I would have gone there. And been much happier professionally and that's too bad but it's my choice to live here. So, I think students are faced with those choices to. It happens all the time. They all want to stay here but they have to choose where the jobs are and then think about coming back. So, that's a reality for anybody focused on San Diego, I think.

RL: Quite true. Well I want to thank you not only for your time in these interviews but for the support that you've given me outside of our talks here. For recommending other interviewees to me. For getting information about our first female law professor so that I was able to interview her. And for telling me some of the tales out of school that you that you've told that sent me off in some other good direction. That I think you've been very helpful to our Oral History Program and I want to thank you for that.

LB: Thank you.