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## Conversations in Legal Education: Stephen Hartwell, September 20, 2006

Stephen Hartwell

*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 Stephen Hartwell

Interviewer: Ruth Levor

Recorder: Ruth Levor

Date: September 15, 2006

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

TAPE 3A: SIDE A

RL: This is an interview of Professor Stephen Hartwell 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 15, 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: Do you still keep in touch with any of your former students?

SH: Yes.

RL: What do you know about their career paths? What they're doing, how they're doing now?

SH: I'm not sure how to answer your question to me. It would depend upon the individual.

RL: Well tell me about some of them.

SH: I keep contact with a student who graduated last summer class. And who was alcoholic and simultaneously on cocaine. She has no memory of law school until the last semester. She was in one of my classes and I asked her if she was okay. And she said she couldn't talk about it and I asked her if she could write about it. So, she wrote me and told me about her drugs. And that she was trying to quit. And that it was a struggle. So, we used to meet. About once a week for the rest of the semester, about 10 weeks. She graduated last. She was the bottom of the class. Without giving details about her, she has gone on to be a successful attorney. And the last time I saw her was about seven or eight years ago. She came down and stayed with us for a week, in our house. She's doing very well. She's married. I was the best man at her wedding. I gave her away, the father of the bride. I was the father of the bride or whatever you called it. And since then we communicate once or twice a year by e-mail. Stuff like how you doing? I'm okay. That's probably the person that I kept the longest contact with. And the most profound connection.

RL: How's her addiction?

SH: Oh, she's clean as a whistle, I think. I mean she does difficult work and does it well. I went with her to Alcoholics Anonymous a couple of times and I went. They, do you know what birthday is? I mean when you when they celebrate your sobriety.

RL: Yes, I do.

SH: Cakes. So, we went and had cakes a couple of times. I get e-mails from a variety of students, may be every year so. Usually just saying I enjoyed your class. Hope you're doing okay. I'm practicing, usually they're out of town, and practicing in Phoenix or I'm in Chicago now or something. Very brief messages. That's the most common connection.

RL: Are most of them trial attorneys?

SH: Oh no.

RL: What's the gamete? Is it the whole gamete?

SH: The whole gamete. They are doing any kind of work. Nothing that is distinctive.

RL: Now in talking about the students, one of your activities, for want of a better word, is that you serve, I don't know whether officially or not, to the Law School's gay, lesbian ...

SH: Pride Law?

RL: Pride Law.

SH: Oh, what a story that is.

RL: Tell that story.

SH: That could take six tapes.

RL: Let's go.

SH: It was the beginning of the semester around 1990. I'd have to go look. I could find out. That I was reading a school newspaper the Oceanside, I think it was called and I saw an item about all these different clubs getting started. Like the Filipino club, the Balsa and all these. And they had all these meeting places. Come to room 308 at noon. We'll have pizza and we'll meet. At the bottom of line of this article was a line with the phone number and a first name. Meeting off campus if you're gay or lesbian. With a phone number. So, I, without even thinking about it, I picked up the phone and I called the number and I left a message and I said I am a faculty person at USD. If you want a faculty advisor give me a call. And so, I met two students off campus. At a restaurant, which I thought was appropriate and ironic. We couldn't even meet on campus. And the first thing she told me is she said are you, you're straight, aren't you? And I said yes. And she says they're going to think you're gay. And I did just what you did. Like so, I could care less about what people think of my sexuality. And so Strong, Dean Strong had just taken over as

Dean. So, I could figure it out by that. And they thought that she could be sympathetic and so we met. And um, I think we had a meeting with her, Dean Strong and she said that's fine. It turned out, I found out later, that we had had an AALS evaluation at USD. Which I had not known about. At least this part I had not known about. They had criticized the Law School for failing to meet the needs of gay and lesbian and trans-sexual students. In fact, it was seen as hostile. And that report had gone, as we used to say, across the street, to the Provost office. Provost Sally. And that they were concerned about it. That part I didn't know. So, when we set up a meeting with Sister Sally, it was so funny. We go into her office, the three of us, and her desk is completely clean. There's nothing there and she's sitting there with her hands holding Jesus. Well what did you want to talk about? As if nobody knew. So, we chuckled. What do you think we're here for? And so that first year was sort of, come to terms with Anachronistic feelings which seem bizarre now. The main concern of the University was that a gay organization would want to use the church for a dignity Mass. Which was the last thing anybody was interested in. They were concerned that if they had a gay organization that they would want to use the Church. The diocese for religious purposes. Which I suppose, if you're Roman Catholic, would be a very difficult problem. But from our point of view, nobody's interested in that. The second was that they were going to proselytize. The irony is of course, is that the Catholic Church proselytizes. There may be some gay person somewhere that proselytizes but, give me a break. It's all kinds of questions about how people become gay but people who are gay say I was born this way. Nobody asked me about becoming gay and why would I choose to be gay if I had a choice in the matter. I'm happy I'm gay but why would I have chosen this. So there are lots of misconceptions, which proselytizing and using the diocese, were preeminent problems. And then there was a problem about using University money. Like if we had a room or a typewriter or computer. Could the University's money be used for that? And our position was we should be treated like everybody else. It's not a difficult position take and if other people had offices or shared an office, we should be able to share an office too. If they had budget items so they could have pizza and we should have the same thing. And that caused the problem because that I have to get my memos out so I can get the language. They had two different words that they used. One was called recognition. And the other was called something like sponsor, I think it was a different word. And sponsored meant that they approved of the work that you were doing and that's why they were giving you money. Recognition means that they would recognize you as an entity but was neither supported nor did not support they were neutral. And, so, they fussed around with changing the language of how they should treat all organizations. Because we asked them, I remember one of the questions I asked them I take it that you would you support a Mormon group? You sponsor all the beliefs of the Mormon church? And Jewish organizations, what do you do with those organizations? Do you approve of their religious beliefs? And there was a suit, you know an obvious recognition that the Catholic Church was an entity. All kinds of organizations they can have. A women's law Caucus that was called women in law at that time. They were basically quote-unquote feminists and they were most of them were pro-choice. That was at one-point part of their constitution, part of their statement. How could you support that? So, the usual thing where you show that there's already inconsistencies going on and that you're just one more inconsistency and you have not paid attention to these inconsistencies and now you are paying attention to ours. So, they changed the recognition and a within about a year it was then called Galsa, gay and lesbian law Students Association. Then we had a cute little girl who is bisexual and she insisted that bisexual should be included. And then we got a transvestite

and transsexual he insisted or he or she insisted that they be included so they changed it to Pride Law. In order to be inclusive.

RL: Be inclusive.

SH: Be inclusive. Any way that was how it started. I'll go back and dig up some memos and I can give you some dates and some names. I'd rather do that and make sure I get names and dates right. But that was fascinating and it was very satisfying. And I was the faculty advisor up until when I retired. Quote unquote about 3 years ago. So, somebody else, Atkins is doing it now. The changes that have occurred in 16 years that was so closeted and we had gay faculty that never came out. We met off campus the first year.

RL: And it may be an obvious question, but would you talk about why? Where the idea came from?

SH: A lot of students were afraid. Afraid to come out. Afraid that it would show up. That the professor wouldn't like them and maybe get a negative evaluation. I mean the usual things people are afraid of in life. It was part of the culture of that era. We forget how much things have changed but this school is really backwards. And Judy Lou, who you may know, an undergraduate professor, unbeknownst to me, and she unbeknownst me to her, started the undergraduate at the same time. So, the undergraduate group got started simultaneously.

RL: I see.

SH: So, it's part of the change in the era.

RL: And you talk about changes. I think you're referring to changes in attitude. That attitudes are more open now.

SH: Oh yeah. You can be a gay faculty person here and nobody cares. If you want to be out you can, at least that's my impression, and if you don't then you're not. It's your choice now where then I'm sure people didn't feel it as a choice. I never, I made a point not to talk to gay faculty because I didn't want to make, I mean I didn't avoid them, but I didn't want to get them in a position where they would feel awkward. It was that strong. At least that's how I felt it.

RL: Why did you volunteer in the first place?

SH: Well two reasons actually. The propelling reason when I read that I thought this is so ridiculous. And unfair that they have to meet off campus. I mean this is just stupid. I was offended by it, I think. And the second reason is I've always liked gay people. I wrote my first article on gay set back in law school and gave a presentation in class which got a lot of feeling for it. I interviewed a lot of gay people in La. Not too many about half dozen people, for the paper that I wrote it about. Defensive, gay men were charged with sex crimes. Sodomy and exposure and stuff like that. So, I was comfortable with it and I didn't I was not homophobic so to speak. I always liked gay men. And you asked me a question about do I see other people out of class. A couple of the guys that I hang out with are both gay. And we go out and have beer

and have coffee, four or five times a year, every couple of months. So, it's a group that I felt really comfortable with it.

RL: Can you talk about some of the activities that the club sponsored were?

SH: Oh, it hasn't changed much over the years. Speakers. There was an effort that one guy decided to do. I was part of Tom Holman, The Law Society, for couple years, and one of them was for example making a mentoring group so the gay students could mentor with gay attorneys. To find out who the good judges were and what judges you had to avoid and what kind of cases to take on. That mentoring aspect. At one point making sure, course with Frank here it was easy but making sure they were gay books in the Law Library that covered gay topics. Just gets together. We used to have in our house on beginning of fall semester and have people over. Fellowship meet with other people better. That you can get to know and rely on. Go to for help. We had a person come over from the counseling center every other year talk about gay students are more likely to have counseling problems. At least they were at that point because of the pressure on them. And there is a lesbian counselor, I think she still there, counselor and she has started a group over the years. Her game is being serious. Make sure they know about that she would come over and talk about what they would do. Not different I don't think than other clubs. Social, somewhat political, job-related. Support.

RL: Did Pride Law ever get involved in some of the political issues that arose on campus that...

SH: About the military?

RL: About the military, about faculty.

SH: I think individuals did but as an organization I don't think they did. Okay now I think they are probably more active now than since but I don't know. I'm not involved anymore.

RL: I see.

SH: As part of my retirement.

RL: Yes, I support that. Back to the clinic are there and were there, when you began, specific materials available that you could rely on for Clinic education?

SH: One of the joys of being a clinician is there was practically nothing. There is something about the famous binder in price interviewing and counseling book. And I had the big book which I'll have to go back and get the title. I can't think of his name. He died about 5 or 6 years ago. Anyway, there's a big thick book but that wasn't very useful either. For myself and I think this is true of all of us who taught courses as opposed to supervision. All of our materials, with very few exceptions, we made ourselves which has been one of the joys of being a clinician. Is just starting out. I never had a clinic class in law school. I had no idea what a clinic class was supposed to be. We talked about that little bit last week and I think that's true of everybody else in the clinic. So, it's practically in the early years, we did a lot of sharing of materials.

Simulations and articles of the time. I still don't use a text book because there aren't any in my opinion, there's no useful textbooks. I constantly my materials are all articles either that I've written or that I get from some other place.

RL: And these are in the interviewing and counseling class?

SH: That and Negotiations, Trial Practice Lawyering Skills Two. All of those classes I think everybody uses their own materials. I don't think anybody uses a book.

RL: Has there been any sharing or sort of archiving of the individual materials that the faculty have constructed?

SH: Clinical faculty?

RL: Um hum.

SH: Only informally, if you go into 308 that's up on the wall.

RL: I see.

SH: But not in any systematic way.

RL: I see. And so, I would guess that a good percentage of your pedagogy is experiential.

SH: Yes. To my mind if it was not experiential it is not clinic. Period.

RL: Can you give some examples of your approach here? In your units?

SH: Well I will give you an example. This is what I call experiential. A couple of years ago, students came into the class that I was teaching. And they were talking about a case they had just been discussing about flag salute. And it was a common law case. So, the next class I walked in with a flag. Marched in to class with a flag at the beginning class and I said we will all salute flag. So, we all said I pledge allegiance to the flag. And I gave them handouts and the first handout said, when it gets to under God it says and Muhammad is his prophet. And the second one said: Hear our Lord who has led us out of Egypt, excetera. It was Jewish obviously. And the third said it was agnostic and the fourth was a blank. So, I had them do the flag salute four times, and asked them what was it like doing the flag salute differently? And they had all kinds of thoughts which they had never thought about when they were reading the Supreme Court case. Namely, particularly, to do the one on Islam. It was offensive to many of them. And some of them are able to see how, if you were a non-believer, to say under God is just as offensive as for them as Christians to say Mohammed is his Prophet. That's experiential teaching. You begin with the foundation of experience I just did something. I just saluted the flag. Even secondly what your feelings are about it. Some of them, when I asked about it, could express literally where it felt. Like a tenseness in their stomach? Or tenseness across their shoulders? And from those physical feelings comes values. I'm unhappy. I'm uncomfortable. I'm anxious. I don't like this. And from those basic beginnings come your ethics, your morality

which is where you should begin. So that's experiential to me. Experiential to most clinicians is interviewing a client, which I agree. That is experiential too, obviously. But you can create all kinds of experiences that have intense feelings connected to the experience without using clients. And that's really where my interest is. I leave it to others to do the client work. I mean I'm interested in that. I did it for a long time. But I find other ways of doing simulation much more interesting. Because in this class, for example, I had 30 people all focused on the same feeling, because they had all experienced it. They were all in the soup together. Where with the client, you're my client and I'm the attorney. And it's one-on-one. And the Clinic professor comes in later and says what did you think? How did it go? And, typically, what the student says is about the case and you don't get to what's going on between you and the client, because it may seem inappropriate. Because I'm trying to get them a new place to live. I'm not trying to figure out what's going on in their head and their heart. I'm more interested in the basic questions about what was the connection like. What was it like talking to this person? Who is so different from you and has values that are different than you? How do you make accommodations on certain things? And I find that for myself I can do that better through simulation. So experiential is experience if you can get to physical feelings, reacting feelings to it, and then from there what values do they attend to. Then where you go from there?

RL: So then how do you test?

SH: Well I teach classes where I don't have to grade, except pass fail. I have done classes like Professional Responsibility where I had to grade. And I have to tell the class that there's a bifurcation in class. There are two different processes going on. What I'm interested in, and what I have to grade you on. So, this is the stuff I'm interested in and this is the stuff that I have to grade you on. And occasionally they will overlap but more often they are different. So, I try to be, like a good consumer protection act. Tell them what's going on so they don't have anything hidden. So, if I teach a class that has to be graded, I would with some exceptions, I would grade them similar to another law professor, academic law professor. In terms of how do I test them with experiential, I get a huge amount of feed-back. In terms of testing for purposes of knowing whether what I'm trying to get over gets over that I can find out because I have journals. I have soon as write journals. I do quick rights in class. So, I get to feed-back all the time on what's being understood. I do a lot of discussions in class. So, if your question is focused on how do I find out what's going on for purposes of mine on whether they're getting it that I know.

RL: So, is there a baseline for a student having to receive a pass?

SH: Woody Allen said 95% is showing up. If you show up and participate then I know you learned something. You cannot not learn something if you're participating.

RL: And do you have levels of pass? High Pass?

SH: 20 roughly 25% high pass. And whatever the guidelines are from the academic team. I used to keep it very, very, sophisticated numbering system and where I keep track of points at the end of the day and all that and I found out that my subjective impression and my point system were identical. It is not rocket science. People who speak up in class, they bring in stuff

and they have interesting things to contribute and they help other people. I'm looking for a Collaborative Learning environment where people help other people learn it is obvious.

RL: Well then on the other side what are some of the classic difficulties involved in clinic education and clinical practice?

SH: The difficulty is if you make it one, if and only if. That you're an island in an indifferent sea. Not a hostile sea but an indifferent sea. The law school as a whole maintains a clinic, I believe for, and I don't mean this negatively, for basically political reasons. You need to have a clinic program in order to attract students. But the faculty in the administration, by and large, it doesn't not support clinic but it's indifferent to clinic. So, if that's an issue for you it's a problem. The flip side is, the good side is for me, is that I've never been interfered with. I've never been told not to teach in a certain way ever. Dean Rodriguez, for all of his interpersonal difficulties that I've heard about it and don't know about, for me was very supportive. He supported my writing and he was very supportive of the way I teach. And honored me with the University Professorship. Which I was absolutely flabbergasted. I mean I, but I didn't even saw it. When I saw the university professorship, I just skipped it over. I didn't even know about it I've been on the list. And a month had gone by and he wanted somebody call me when I had done something right. I didn't know I had been selected. But anyway, in response to your question, I think that's the difficulty is the lack of recognition and appreciation or understanding.

RL: Do you think, know of other programs and other law schools that perhaps hold a higher stature?

SH: Yeah. University of New Mexico and you can talk to Terry about that if you haven't already. NYU, New York University as distinct from NYU. No not New York University, New York Law School. There's New York Law School, then there is NYU. They are both strong clinic programs. Those are the ones that come to mind.

RL: And what are the indication of their strength?

SH: Oh, I left out American University. Well American and New Mexico have clinicians as Deans. And they have Clinic programs which are inclusive. They're part of the but not kind of an add-on like we are, they are part of the law school education. So, if you start with the Dean as a clinician and make it as part of the system of the school, you have an entirely different attitude towards the clinic programs. But I don't know that I would be any happier there than I am here. I'm left alone and I do what I do and I have complete freedom to teach. I've got no complaints.

RL: And included in that lack of censorship it sounds like it's lack of any University censorship about some of the topics that may be antithetical to Catholic be large sea teachings.

SH: Right. That is correct.

RL: As you gain experience in teaching has your approach changed in any way over the years?

SH: Well some things remain fundamental the experiential part remains fundamental. I think it's a reflection of the politics of the last six years. I'm more aware of the cataclysmic direction the country is heading. That we are falling apart. And I do two things more for my students than I used to. One is to tell them and try to bring this out without being lecturing about it, that it's not enough to be an attorney in San Diego. You have to be part of a saint in this world.