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Walter Heiser

University of San Diego School of Law

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CONVERSATIONS IN
ORAL HISTORIES OF THE FIRST HALF-
SCHOOL OF LAW



LEGAL EDUCATION:
CENTURY OF THE UNIVERSITY OF SAN DIEGO

Narrator: Professor Walter Heiser

Interviewer: Ruth Levor

Recorder: Ruth Levor

Date: March 23, 2006

Accession No.: OH-LRC-Heiser-1A

TAPE 1A: SIDE a

RL: This is an interview of Professor Walter Heiser for the project: Conversations 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 on March twenty-third, two thousand and six, in Professor Heiser's office in the School of Law. This is the first session of this set of interviews. Tapes and transcripts of this interview will be archived at the Copley Library of the University of San Diego.

Good afternoon, and thank you for agreeing to participate in our oral history project. I like to start out with a little bit about the professor's personal background, so can you tell me where you grew up.

WH: In the countryside in Michigan. The town that we were nearest of any size was a town called Midland, Michigan.

RL: What part of the state is that?

WH: Right in the middle of the state.

RL: In the palm of the hand.

WH: In the palm of the hand, right in the middle.

RL: And your parents, what were their occupations?

WH: My father was mostly a research chemist. He worked his entire career for Dow Chemical Company, which was headquartered in Midland, Michigan, and for most of that time, he was a research chemist. He produced a lot of patents for the company, things of that nature. My mother was a homemaker.

RL: You had siblings?

WH: Several siblings. I have an older brother who's three years older and actually was the first one of us to go to law school. Then I have younger brothers that are nine years younger than I. They're twins. Then my sister is eleven years younger than I.

RL: Now you have a family of your own. Just tell us a little bit about your wife and your family.

WH: My wife's name is Susan, and she works at San Diego State University, has a real job. She works long hours for the university. We have two children, two daughters. Kelly is the oldest. She's now thirty-ish, and Lindsey is the younger one. She's about twenty-five. And then I have two grandchildren, who are two-and-a-half and one year old.

RL: Are they here in town?

WH: They're here in San Diego. They've been back here for the last couple of years.

RL: You said your brother went to law school. Were there any other lawyers in your family?

WH: He was the first one on either side of the family and the first in all the extended family, but one of my younger brothers also went to law school, so there's three of us out of the five siblings, there's three of us that went to law school.

RL: What are the other two lawyers doing?

WH: My older brother works for a firm in Milwaukee, Wisconsin. He's really worked his entire career there. He does a lot of bankruptcy work and consumer finance. He does a fair amount of international transactions. That's the nature of his private practice for the firm.

My younger brother has a sole practice in Ketchikan, Alaska, and he literally does whatever walks in the door. He is the kind of person that, he didn't go to law school here, but wherever he went to law school, he benefited from his clinical program, and he's the kind of person that would, you know, that clinical program really targeted people like him that were going to become sole practitioners.

RL: What law school did he go to?

WH: It was called then The University of Puget Sound. I think it's now called Seattle.

RL: Seattle University, right, and your older brother, where did he go to law school?

WH: University of Michigan.

RL: What led you to decide to study law? Was it to follow in your brother's footsteps?

WH: Partially, he was influential in it, but it's because I realized that I had no other skills, coming out of, my undergraduate degree was in English literature, and I realized, although I had some possibilities for a master's in English literature, which might have led to teaching, I realized that that probably was not the best way for me to go, and I had no other skills, so it was either that or, I don't know, flip hamburgers.

RL: You went to law school where?

WH: I went to the University of Wisconsin law school.

RL: Good school, and to undergraduate?

WH: University of Michigan for undergrad.

RL: What do you remember, since we're going to be talking about our roles as educators, what do you remember about your own law school experience as a student? Did you have any favorite professors or mentors, or do you remember what kinds of impressions you had for starting law school?

WH: Well, I definitely had mentors and people I looked up to and definitely formed certain interests during law school that I maintained through til today. I don't remember my initial impression, beyond the fact that I worked extraordinarily hard, much more than I ever did in undergrad school and felt the same anxieties that any first-year and subsequent law student feels, but I did get involved, and I had no particular background in this before—I did get involved with a clinical program at the University of Wisconsin that was directed by a person who was committed to civil rights and poverty law. In fact, the clinical placements, such as they were then, were all in those areas, on the civil side at least, so the clinical experience, who I came in contact with, not only on the faculty but also in the real world during law school, those people made a tremendous impression on me.

In particular, two people—I worked one summer for a now-defunct organization called Freedom Through Equality. It was a government-funded program that funded legal services lawyers to handle what was called then law reform cases, class actions, impact litigation. I had a special grant, a Ford Foundation grant I think it was, to work there for the summer. That work was in Milwaukee at the University. It was in Madison, so we commuted. I was under the wing of a young attorney, a fellow named Steve Steinglass, who was very committed to his work, very

smart. During that summer, I think that was after my sophomore year, my second year in law school, during that summer, I began to appreciate the importance of good lawyering. I appreciated his dedication to his clients, and I developed a strong interest myself in that kind of work and in civil rights work, property law, et cetera.

He has since gone on, Steve, I keep in touch with, this is way back in nineteen seventy. He went on eventually to go into legal education himself. Until just last year, he was the dean at Cleveland State law school, that's what it's called, so he teaches on that faculty, so I still keep in touch with him.

The other person who was very influential was in my last year of law school, I did an internship or an externship with a federal district court judge in Madison, a fellow named James Doyle, who was a brilliant man and someone I admired greatly. That contact was very influential as well.

RL: You said Freedom Through Equality was a government-funded program. Do you remember which administration that was during?

WH: Let's see, 1970.

RL: I can't do it either.

WH: It could have been Johnson, no, it could have been Johnson.

RL: It must have been just after that, because . . .

WH: Was that Nixon next?

RL: I think so.

WH: Yes, it must have been Nixon.

RL: That's interesting.

WH: Yes, it got defunded, because it was too, you know, in the political circles it was too controversial, so the federal government cut off funds to it eventually, but it was very active and did lots of interesting litigation during the time that I was there.

RL: Do you remember any of the cases that you worked on?

WH: No, actually I don't. It's odd, not through that organization. Through that summer placement, I was introduced to a lot of people in the city of Milwaukee that did a lot of interesting civil rights and related kind of cases.

I was asked by a well-known criminal attorney in Milwaukee to help him on an appeal, because he didn't feel like he was very good at writing briefs, and I, through my summer work, had I guess demonstrated that I was pretty good at doing research and writing briefs, so I wrote a brief for the state supreme court in Wisconsin that was a challenge to the state's vagrancy law, where you could be convicted of the crime of being a vagrant. We challenged it on due process grounds, that the way that the statute was worded didn't give adequate notice as to what was a crime and what wasn't a crime. The state supreme court agreed, and they threw the statute out, so I do remember that.

RL: Was the vagrancy law used, did it seem to be used more to accomplish maybe some racially segregating types of goals? Why were they focusing on that?

WH: The concern was that it was being used to arrest anybody that was thought to be undesirable. Back at that time, there were protests going on, so if there were long-haired kids hanging around with no apparent means of support, they could be arrested for vagrancy. Certainly, it had a racial impact too, because a lot of ... you know, homelessness was not something that was as prevalent back then, but there were homeless people in Milwaukee, and they tended to be mostly African-Americans, so they'd get arrested too and, you know

sometimes thrown in jail for relatively minor . . . it was only a misdemeanor, but they could get thrown in jail.

RL: So you participated in this clinic program as a student, and that seems to me to be relatively early for a law school to have a clinic program. Do you have a sense of . . . I know that students don't have the same political sense that we do once we've become involved in the teaching, but of how that was viewed, how clinic courses were viewed or whether they were not seen as in with the academic purpose of the law school?

WH: Well, this program was initiated, I think, just as I got to law school, so it would have been 1969 or so. From what I've since read, I'm not so sure I was aware of it so much then, it was definitely one of the first clinical programs. There were only a handful other such programs in the country. Wisconsin then, and probably still now, always prided itself in being in the cutting edge of education, so there was faculty support for this back then.

But it was still some of the same issues that cropped up later on with regard to clinical education were evident then, which is that the clinic director, the fellow that I mentioned before, he was not on tenure track. When his contract of years ran out, they didn't renew it, so he was gone, I mean, he left the school. There was that notion that clinical professors, et cetera, were not the core of what the law school was all about. Having said that though, they really were one of the first schools to have and to give substantial credit for clinical placement.

RL: Do you have a sense of how popular it was among the students, how many signed up for clinic courses?

WH: It was pretty popular. There weren't any what we call in-house clinics. There weren't any clinics that clients would come in and be handled by students who were supervised by a faculty member. They were all externships or internships. They were all off-campus placements, but there were quite a few. I don't remember just how many any more, but certainly I would say no more than ten percent of the student body, during their time in law school, would be involved in a clinic program back then, maybe even less.

RL: Did all of the students really know about it, know that it existed?

WH: Yes, I think they did. I think the problem was, even though it was the late sixties, early seventies, law schools attracted a pretty conservative group of students at that time, so the more conservative students didn't really have an interest in the kinds of placements that were available. They didn't view it as something where they'd learn skills. They viewed it as something, well, I don't want to do it unless it's going to help me along to get a job in private practice, so on and so forth. So I think a lot of students just thought it wasn't going to be beneficial to them.

RL: Did it do mostly criminal work?

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WH: The clinical program?

RL: Yes, at Wisconsin.

WH: No, it had probably half and half, probably half the externships were criminal and half were civil. The civil ones would be with organizations like Legal Services or Freedom Through Equality or the attorney general's office. Now it's in the state capitol of Wisconsin. The criminal side was with the public defender or the prosecutor's office and the criminal department of the attorney general's office. So they were roughly equal numbers.

RL: So you did this in law school, and when you graduated, where did that lead you to?

WH: It led me to legal services work, poverty law, and that was a direct offshoot of my clinical experience. I knew I wanted to do that by my senior year. Going into my senior year, I knew that was what I wanted to do at the end of my law school, and so in addition to the clinic, I took a lot of courses that I thought would be helpful. They didn't have poverty law courses back then and

things like that, but I took federal courts and, you know, courses like that, that I thought would be useful for litigating different issues.

I applied for, and was accepted into, a program that again no longer exists, as far as I know, called the Reginald Heber Smith Community Lawyer Program, I think it was called.¹ It was another government funded program that was headquartered in Washington, D.C. It had a connection with Howard University in Washington, D.C. Its goal was to take law graduates and place them in legal services organizations around the country. I think it was particularly geared towards minority students so they would have an opportunity to compete equally with nonminority students for these kinds of jobs. It paid you an amount out of their funds that was equal to whatever the starting salary was at the place where you would work.

The whole idea was that you would be somewhat independent of the commands of the local onsite directors for this legal services program, in the sense that the reason for this was to encourage people to do two things. One was law reform litigation, class actions, things of that nature, things that would change the law, and secondly was to have significant contact with community organizations. At that time, the major community organizations that were being referred to were things like the National Welfare Rights Organization, you know, various housing rights organizations. There were a lot of community groups that were pretty well organized that needed legal help one way or the other, and these Reginald Heber Smith fellows,

¹ “The RHS program was established in order to attract talented young lawyers to the field of poverty law. Initially sponsored by the Legal Services Program within the Office of Economic Opportunity and administered by the University of Pennsylvania, it recruited recent law school graduates, trained them in various aspects of poverty law, and placed them in regional legal services projects throughout the country. The program was named for Reginald Heber Smith, author of *Justice and the Poor* (1919).

“Inspired by the civil and economic rights movements and committed to their cause, the Reggies made an immediate impact upon the regional and local projects where they were placed. After two years, in 1969, the Program was moved from the University of Pennsylvania to Howard University where greater emphasis was placed on attracting minority Fellows. When OEO was dismantled in the mid-1970’s, the Reggie Program moved to the Legal Services Corporation. From 1967 to 1985, when the program ended, there were approximately 2,000 Reggies. Many went on to have careers in legal services, become educators, judges, and prominent lawyers.” Katharina Hering, *50 Years Ago, the First Class of Reggies Completed Their Training at the University of Pennsylvania* (Aug. 18, 2017), <https://blogs.commonsgorgetown.edu/righton/2017/08/18/50-years-ago-the-first-class-of-reggies-completed-their-training-at-the-university-of-pennsylvania/>.

referred to as “Reggies,” these Reggies were supposed to march in, you know, right out of law school, march in, handle law reform cases and advise these groups.

That intrigued me, and I applied for it. We went through training at Howard University during the summer after law school. I was assigned to St. Louis, Missouri, the Legal Aid Society of St. Louis, Missouri, a place I knew nothing about beforehand. You didn’t have a lot of options as to where your choices were of being assigned, and it turned out to be fantastic. I was actually able to do exactly what you were supposed to do as a Reggie. It was fun.

RL: Did the program and these organizations arise out of the civil rights and/or antiwar movements?

WH: Not the antiwar movements. They were not really linked in with that in the least bit. They definitely were offshoots of the civil rights movement. Back during the times of some of the major riots in the sixties in the African-American communities, the Congress appointed some commissions that engaged in a number of studies. One of the commissions, I think it was called the Commission on Violence, was trying to figure out why it was there were riots in some of these African-American areas of various cities.

They came up with a number of different findings. One of the key findings was that these people had no access to the legal system or the political system. They were so disenfranchised, and therefore, the only way that they could express themselves, you know, it turned out unfortunately to be a negative way, was through either demonstrations or riots, et cetera, et cetera.

In fact, this was why Legal Services was funded by federal funds, you know, from the national level. This was thought to be a way to get people to be franchised, to be part of the system, so to speak, by being able to get into court, by having free attorneys. Whether it was a class action to reform the law or a simple landlord-tenant dispute, prior to Legal Services, those people didn’t have any access to the court system. So this came out of one of the commissions that made this recommendation, and the federal government, to its credit, picked up on it, funded Legal Services, funded things like the Reginald Heber Smith Program, and that was the reason why.

RL: When you talk about class actions and law reform, what kinds of reforms are you talking about? Is it mainly under the rubric of this idea of the access of the disenfranchised or are there specific types of reforms?

WH: Well, that was a very popular concept, term to be used, law reform, litigation back in the sixties, seventies and even into the eighties, and it essentially covered a lot of territory, but it would mean essentially litigation that would reform or change either the law or institutions. I wasn't involved in this kind of work, but some of the people in my program were involved in things like challenging prisons and the conditions of prisons and trying to change the Commission of Prisons. A good friend of mine was involved in that kind of a lawsuit to change the conditions at the Missouri State Hospital for the Criminally Insane. These were cases assigned not just to right some individual wrong but to change institutions.

The other side of law reform litigation, the kind I was involved in, was to just change the law, that is to say, to not just change behavior one defendant at a time but to change the law, whether it be state or federal law, so that vast categories of people would be benefitted by the change. I was at the Legal Aid program in St. Louis for five years and handled a number of class actions.

A lot of them had to do with getting the state or federal government to change the law, either because, you know, when we sued the state government, we sued them because they were not complying with certain federal requirements, whether it be public housing, welfare benefits. I did a lot of welfare benefit litigation where the state was not complying with federal law, even though they were supposed to, with regard to eligibility for welfare or termination of welfare or so on and so forth. Then, at the federal level, we would challenge certain practices of the federal government as it would affect our clientele, which were poor people, as being in violation of the constitution, so that was the kind of thing that we dealt with.

RL: Being brought in as an outsider into a local program, was part of the idea to have people there who were somewhat immune to the local politics to address these situations from the outside?

WH: I'm not sure about that. To be honest with you, I'm not sure the Reginald Heber Smith people really thought through this program very well. I mean, it worked fine for me, but they were really asking outsiders to come in right out of law school, come in and try to make significant change in a relatively short period of time, so I don't think that that was perhaps even thought of as a benefit or a negative when they set up this program.

RL: Who was this person that the program was named after, do you know?

WH: You know, I used to know more specifically. The only thing I recall was that he was one of the early legal aid kind of people. I think he did pro bono work way back in the nineteen-teens or -twenties or something when that stuff wasn't even heard of, but beyond that, I've forgotten, and I could be wrong about that.²

RL: You were really going into the practice of law. When did the idea of the teaching of law, and how, did that come about?

WH: Well, after five years of the kind of work I'd been doing at St. Louis Legal Aid, a number of things happened. One is it got to be a bit more routine than I liked, not as challenging. I mean, I liked the fact that I was having some success and doing some good things, but the actual work became kind of routinized after a while. Secondly, as we got further into the seventies, the federal government, under the Nixon administration, began to cut back the funding and put restrictions on Legal Services, and you couldn't bring class actions unless you got consent from the central federal Office of Legal Services, and then they didn't like giving that. You couldn't

² "Born in Fall River on December 21, 1889, and went to Harvard, obtaining his A.B. degree in 1910 and his LL.B. in 1914. On his admission to the Massachusetts Bar in 1914, he became chief counsel of the Boston Legal Aid Society, commencing a connection with legal aid . . . which continued, although he left the staff of the Boston Legal Aid Society in 1918, until his death. His book, *Justice and the Poor*, published in 1919, established him as the principal keeper of the Bar's conscience in legal aid. The National Legal Aid and Defender Association in 1957 established the Reginald Heber Smith Medal, awarded annually for outstanding service to legal aid. *Reginald Heber Smith, 1889-1966*, 52 A.B.A. J. 1138 (1966).

handle certain kinds of cases, so on and so forth, so it just became too bureaucratic to do that kind of work and consequently even more routine, because you were left with a category of cases that you could handle that weren't that exciting.

I started looking for other things to do, and I looked into private practice. I wasn't that interested in that, and I thought about teaching and made some inquiry. I was still in St. Louis, so I made some inquiry at St. Louis U. and Wash. U., just with people I knew on the faculty about what it meant to be in teaching, and they gave me various advice.

Then I happened to see an ad, I'm not sure how I even saw it, for a program at Harvard Law School. It was a teaching fellow program, where you could go for two years. You taught half time at Harvard Law School, and you were an L.L.M. student half time at Harvard Law School. They paid you a salary for your teaching part, and because back then under the tax laws, half of it was not taxed, and they waived all your tuition for taking the L.L.M. I interviewed for that and got accepted and went off to Harvard for two years to do that.

RL: Were you still single then?

WH: Yes, I was [laughter]. That came out of the blue! No, I was, and I will say no more.

Narrator: Professor Walter Heiser

Interviewer: Ruth Levor

Recorder: Ruth Levor

Date: March 23, 2006

Accession No.: OH-LRC-Heiser-1A

TAPE 1A: SIDE b

RL: What was the Harvard experience like? What did you teach, and what did you study while you were there?

WH: It was great. It was a program that was set up to take practitioners and turn them into law professors. I don't think there's any other program then or now, that program no longer exists, but any other program then or now that had that goal. What it did, there were five of us in each, so I started there in 1976, so in my group, there were five of us. Since it was a two-year program, there was another group of five, so there were ten total at any one time.

What Harvard set up was a situation where you would teach, either by yourself or with an experienced faculty member, you would teach one course a semester. You would, of course, take classes towards your L.L.M. and write a thesis, but also they had a seminar just for us that dealt with teaching and how to teach law school. That seminar brought in not only law faculty but faculty and consultants and scholars, et cetera, from all different disciplines. It was phenomenal, a phenomenal experience!

RL: I had never heard of a program where law professors were actually schooled in any pedagogic theory or technique.

WH: It's the only one that I know of. We visited other people's, established professors, we'd visit their class, and you'd see how they teach, but this was the only one where there was a goal to produce a law teacher, to learn about education theory, learning theory, to practice, I mean, one of the things we often did in these seminars was that we'd make a presentation to our colleagues, our other teaching fellows, and then they would critique us about our presentation. We did that for two years. We met roughly once a week for two years in that kind of a seminar.

In addition, attending classes was interesting because you could pick classes, either based on your interest in the subject matter, or you could pick them based on your interest in the professor. Your interest in the professor might be that they're a really brilliant scholar, but also might be that they're renowned to be a good teacher, so you could watch them in action, so on and so forth.

The first year I was there, my first semester, I taught a course that was similar to a legal writing course for the fall semester. Then, the spring semester I taught a very interesting course on federal jurisdiction, a first year class, but it was very interesting the way that it was taught. They used simulation and brief writing as opposed to the usual Socratic method that we have of class. The students were graded on their papers, their briefs, for content.

Then the next year, there was a very well established clinical program at Harvard, set up under a guy named Gary Bellow, who is the guru of clinical legal education. You had the option, and I took that option, of the second year working with him in his clinical program, so I did that for the whole second year. That had many different aspects to it. One aspect was that he had a seminar that he taught just to us about how to structure clinical programs, how to teach clinical courses, how to coordinate them between the various things students might be doing in a clinical program. We did some of that teaching as well.

We also supervised students in the field, so I actually spent a semester going to South Boston every afternoon, because there was a legal services office there that we would take out Harvard students down to, and I would supervise the students, who would handle their own case load through that. It was tremendous, tremendous program.

Gary Bellow was a person who was, I think "driven" is the right word, was driven by the idea that you could set up schooling, law school, so that you could make lawyers more, not only better practitioners but more ethical as practitioners. That was what drove him. He just was a

tireless worker. His program was set up to accomplish those goals, and he had very clear theories on how those things should be done. Basically, what he was doing, not in an overbearing way, he was trying to teach all of us teaching fellows his theories about clinical education and hoping that we would put them into effect.

RL: Now, this was five or six years or a little more since you yourself had been a clinical student.

WH: Right.

RL: Was there a vast difference between what had happened during your education and what was now going on?

WH: Oh, yes. Again, Gary Bellow was in the forefront of this. I don't think other schools were doing this. He had an idea for clinical education that emphasized handling The students would represent actual clients under the supervision of someone who was trained to give feedback to the student. That was a model that was not in effect at Wisconsin when I was a student, because you were just placed in an office. You just did things. You might get a little feedback but not very much.

Under Gary Bellow's idea is that the clinical professor or supervisor would devote all their time to giving feedback to their students on everything they did, whether it's interviewing, whether it's counseling a client, whether it's negotiations with an opposing attorney, whether it's handling something in court. He had broken down all those different lawyering skills into what he thought were the good exercise of those skills or the good performance of those skills versus the bad performance. What he had done, he had broken that down. He had a classroom component for the clinical students where he laid out his models of good lawyering. Then the students were supposed to take those models and apply them to their representation of actual clients. The clinical professors and those who were not uniformly, not totally, but at least with a couple of us those were teaching fellows, were to give feedback to the students based on this model constantly, every day.

RL: I would think that taking them to Southie at that time in history would have been a baptism of fire. Is that correct?

WH: Yes, we had an African-American student who was hesitant to go down there. The office in Southie, I had never been to Southie before I went down for this clinical supervision, but the office there was about seven or eight blocks from the nearest underground stop, T stop, so you had to walk seven or eight blocks to get to the office. An African-American woman in particular was hesitant to go down there and do that, so we tried to tell her, "Well, I think it'll be okay. We should just see how it goes."

It didn't go well. The first time we went down there, there were rude remarks made and everything else.

RL: She was not unescorted though?

WH: She was not unescorted. I specifically went down with her the first day, figuring there wouldn't be anything that would happen. I was kind of naïve. I was wrong. She just decided she wouldn't, she didn't feel comfortable, she didn't didn't want to be covered into dropping out of that clinic, but she said, "You know, I just don't feel comfortable, and I'm not going to learn as much."

So she got assigned to some other clinic office or legal services office.

RL: This whole idea of giving feedback based on the Bellows model, was there a conflict between that and your own experience? Did you sometimes have to resolve that conflict in giving feedback?

WH: In the sense that his versions of good lawyering were different than mine?

RL: Perhaps.

WH: Rarely. That was never a significant conflict.

RL: Did you bring that forward with you when you came to USD?

WH: Yes, there is a point to all this. When I got hired at USD, I came out as the clinic director straight after my two years at Harvard. I discussed this before I came out with the then acting dean of the law school, Grant Morris, that my goal would be to try to create the kind of clinical program and clinical experience that my mentor, Gary Bellow, had schooled me in. I explained to him what that was going to mean and that it was going to be a bit more expensive model, certainly more expensive than a farm-out model, where you just have internships and externships, and that there was going to have to be a class component to it besides representing clients that would get credit.

The law school, I think the whole faculty probably voted on this at point, agreed with it all. So I came out as a disciple of this fellow, Gary Bellow, trying to replicate what he had done at Harvard.

RL: When he was doing that at Harvard, you referred to the professors in the program. Were they actually professors? Were they tenure-track professors?

WH: He was tenured, Gary Bellow. He was the clinic, he wasn't even the clinic director; he was just sort of the clinical professor. There was a woman who directed, did the administrative directing of it, who was not then tenured. She subsequently became tenured. Everybody else who was involved in teaching in the clinic were either teaching fellows or practitioners, adjuncts, or what they call at Harvard lecturers, people that were hired full time but not on a tenure track.

RL: One of the things that we're looking at now that we're in the thirty-fifth anniversary year of our clinic is this whole status idea clinic education, and of course, Harvard is looked at as this model of the Socratic method and of, you know, the apex of academia, so did you have a sense of any controversy over introducing clinical education into Harvard's curriculum?

WH: Oh, I didn't have that sense. I'm sure there was that suspicion about clinical education, but Gary was a very, very bright person, and he could converse with the more traditional teachers and scholars at their level, very smart fellow, and he was very persuasive, so he could persuade them or anybody else that his method of education was actually better than the Socratic method in terms of what law graduates are going to do, which is to practice law. I'm sure he had some resistance early on, but it couldn't have lasted too long, because he was only there a couple years, two or three years before I came to Harvard, and he already had a tremendous of resources at his disposal. Harvard Law School gave him a lot of resources to conduct the program the way he wanted to conduct it.

RL: Do you know how that program progressed over the years, where it is now? Do you have any sense of whether it's still strong?

WH: I don't really. I kept in touch with it, in fact went back there and did things occasionally for about the first ten years after I left there, but then I sort of lost interest, haven't paid attention. Gary Bellow died, I don't know, maybe ten years ago, so I went back for that, back for his memorial service and tried to get some sense of what had happened to clinical education since I had been there, and I really couldn't get a good sense whether it was still as well funded and vigorous as it was when I was there.

RL: You ended up with an L.L.M. in what?

WH: You didn't have to declare a subject. You had to take a certain selection of classes. There were classes you could select from, and then you had to write a thesis.

RL: Just lead us through the progression of events going from there, coming out here to USD. What was that like?

WH: Well, it was interesting, as you can imagine. The difference in climate was dramatic, particularly how I happened to learn about USD and visit out here. As the end of my two years at

Harvard was drawing near. I went through the double-A LS's hiring convention, as any prospective law professor would want to do. I had quite a few interviews. I got called out for quite a few onsite interviews. I had a few offers, a couple of which that were attractive, but I had a desire to get to southern California to see what that's like. I never really lived there before, or at least somewhat of a desire to do that, so somehow I saw an ad for USD was hiring a clinic director. This ad came out long after the double-A LS hiring conference had taken place, so it was an opening that came up after that conference.

Somehow, I don't remember exactly the sequence, but I saw this ad. I didn't know anything about USD, but I called up, inquired about what the job would entail and this, that and the other, and they said, "Well, we've got a fellow out there who's actually visiting Boston right now. He's a clinical professor, and he's visiting his family in Boston, but we can arrange for you to meet up with him and talk to him."

This fellow named Tom Bettles, who is now in private practice here in town but was the clinic professor here for a couple of years. They gave me his hotel number, and then they had contacted him, so I contacted Tom at his hotel, and we set up a meeting at the hotel. I'm thinking, "This is all rather strange."

So anyway, I met him at the hotel, and we chatted for a half an hour or so or an hour, and I asked him questions about the job. I brought my résumé along, and he asked me questions about my interest and background and everything else. Then he went back, a day or two later he went back to San Diego, and the next thing I heard from San Diego was they asked me out to interview for the clinic director job.

That would have been in March of 1978. I mean, it's classic how this all occurred. It was a gigantic snowstorm in Boston. It was freezing cold. I went to Logan Airport. The plane could barely get off the ground there was so much snow. I fly into San Diego, which I'd never been to before, at least not as an adult, and it's a Santa Ana. It's like, you know, eighty-five, ninety degrees in March. I got off the plane, and I knew something was different in San Diego!

RL: You did notice.

WH: Yeah, I noticed something different. Then I interviewed. They put me through the usual interview process here, and I've got to say, what struck me about USD, even back in 1978, you know, it wasn't the weather or the location of San Diego quite so much that made this place attractive, is that there were some really interesting people on the faculty, and they had a really interesting, although somewhat infant, clinical program, and they were willing to devote some resources to it to make it even better. Then I got an offer for the position, and the combination of those things led me to come out here.

RL: Were the other offers that you got also for clinic positions?

WH: No, oddly enough, they were all traditional classroom teaching, and that made them less attractive to me, although they paid more. But it made it less attractive, because I really wanted to try to put into effect what I had been learning from Harvard from Gary Bellow, so that made this place very attractive to me.

RL: Do you remember who some of the people were that you thought were interesting out here?

WH: Well, on the regular faculty, I remember spending time with Ken Davis. I had actually a delightful discussion with him. Grant Morris.

RL: What did Ken Davis think about the clinic program? Did he talk about that at all?

WH: No, he was not interested in clinical education at all.

RL: I wouldn't think so.

WH: He was interested in other things that I had learned about at Harvard, because I had studied with some people in nonclinical courses. I'd studied with some people that were pretty renowned in areas that Ken was interested in, so that's what we talked about.

RL: In the administrative law field?

WH: Well, no, it was actually in what's called public law litigation and the role of the court in handling very complex kind of cases.

RL: And little did we know back then what a complex case was, even though we thought we did.

WH: Yeah, now we do. So they made an impression. I'm sure there were others too. I can't remember who it would be, but I can't remember right now who they were, but the clinical people were just an interesting bunch.

RL: Whom did you meet at that point?

WH: Well, Charley Lynch had been the person who had created the clinic here. He had been the clinical director. He was stepping down from that position, although he stayed on the clinical faculty.

One of the most active people and interesting people was a guy named Rod Jones, who was in charge of the criminal side of the clinic. He had a great sense of humor and was quite bright, very enthusiastic. The other people were all very interesting to. I'm trying to remember who they all were.

There was a fellow named Mike Devins, who did criminal clinical stuff. Tom Bettles, the guy that I had met in Boston was here, although that was his last semester here.

RL: Were they a fairly young bunch at that point?

WH: Except for Charley, they were all young. I was in my low thirties, early thirties, and they were all either my age or even younger. Charley was quite a bit older, and Rod Jones was probably a little bit older than me but not a whole lot. So they were all young and enthusiastic.

RL: Was it all men at that point?

WH: It was, yes. It was all men.

RL: Did you meet any female faculty that you recall when you came out?

WH: Nope, no. I mean, there were some women on the faculty, but there weren't very many, and I didn't meet them.

RL: You talked about support for this idea of a clinic program. Grant was then probably in his first acting . . .

WH: I think so.

RL: . . . deanship at the time. Where was the support for the program coming from in terms of funding, actual funding?

WH: Most of the fund funding came from the general law school revenue. Grant was the acting dean, and I think he was committed to funding, or even increasing the funding, of the clinics, but it was really his predecessor, Don Weckstein. Don was on sabbatical, so Don was the dean, and Grant was the acting dean. Don was very much committed to clinical education, and I think it was mostly his, he was a very strong dean, and I think mostly through his doing that the program had been funded to the level it was even before I got here.

There was some money that came from outside sources, which was an interesting process.

RL: Were those private donors, or you mean other departments on campus?

WH: No, no, the system that had been set up before I got here was that on the civil side at least we had contracts with a number of different places around the county to have our students and a professor or professors provide legal services to the contracting sources. One of the contracting sources was San Diego State University, so our clients would be San Diego State students. We had two other contracts with social work agencies around the county whose clients were basically poor people. They got some funding, I guess, through United Way or something to fund a legal clinic for those people.

So we would go out there once a week, a professor and a group of students who would interview whoever they had set up for us to see. We would interview them. We would provide legal counseling to them on the spot, and if their problem needed more work, we had the authority to take those people on as ongoing clients.

RL: I think that reminds me of the question I had lost on side A of this tape, and that was in reading about the history of the program, I learned what I didn't know before was that it followed the passage of a law in California that allowed law students to represent clients, and I guess I was wondering, because at the time you were talking about Wisconsin, whether that was a movement across the country. As a student, did you represent clients, or were you empowered to?

WH: No, when I was a law student back in the late sixties, early seventies, you could work for an attorney, but you couldn't deal directly with the client, I mean, you couldn't do the interviews and everything else with the client. You had no authority to practice law in that sense. The only authority you had would be to do research and writing for an attorney.

When I got to San Diego in 1978, there was already then adopted, I'm not sure if it was a statute or it might have just been a rule of court, authority for students under the supervision of an attorney or a law professor, students to represent clients directly, in other words, in other words to really basically do all the things an attorney would do on behalf of a client. So in the civil side, we took our students out to interview potential clients, and we accepted some of those cases as ongoing clients, the students acted as the attorney. They did all the work, subject to the supervision of the professor or the supervisor to make sure that everything was going properly

and to help out if need be. Many of them were basic cases. The students could handle the whole thing themselves.

RL: Did you have that same feedback model? Was the feedback model as intense as what you had studied at Harvard?

WH: Yeah, we tried to do that, so what I set about when I got here was to, again, to replicate that Harvard model, which, you know, throughout legal education, everybody's trying to replicate some model that Harvard set up. This happened to be the clinical model, so I set it up first to train all the clinicians, all the clinical faculty, how to give feedback, and that we worked on, you know, on a weekly basis for quite a long time. There are ways to do it that are effective as opposed to not effective.

RL: This was separate training. I assume you were into the semester when you came?

WH: I came in the summer, so right before classes started in the fall. Once I got my feet on the ground and started understanding what the program, how it operated and everything else, I realized that there wasn't much, I didn't think, there wasn't much feedback being given to the students. The whole idea of taking cases was not just to take a case but to learn from it.

I tried to set up a model where we took fewer cases and spent more time working on the cases and then gave feedback on each thing the student did. The theory was that if you could teach a student to handle a case from start to end, to handle a case properly, and properly meant that you had to give feedback so they'd know what to do right or wrong or if they did it right or wrong, that if they only handled a couple of cases like that during a semester or a year, that that was much more educational than just simply handling a whole bunch of cases without knowing whether what you're doing is good or bad lawyering.

So that was the theory that was set up. To accomplish that, we had to change the model in terms of what cases we took on to represent in terms of actual client, you know, real client cases. Some are good for that model, and some aren't. We had to make sure everybody who was doing the supervision was on board with this idea of feedback.

Narrator: Professor Walter Heiser

Interviewer: Ruth Levor

Recorder: Ruth Levor

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TAPE 1B: SIDE a

WH: Feedback, I think I was saying that I had to make sure that the clinic faculty was on board about this model and also that they understood how to get feedback in an educational way, constructive way.

RL: Did you meet with any resistance in introducing that model?

WH: Yeah, yeah, there was one person on the clinic faculty that just thought that this was all baloney, that what students really want to do is handle a bunch of stuff and be left alone, so long as they didn't commit malpractice. I said, "Well, that's a model. It's just not the model I think is educational, because you want to make them learn something from this beyond just the experience of handling, you know, four or five different cases.

RL: In training the faculty, were you able spend as much time doing that training as you wanted? Were you able to do any simulations of feedback?

WH: Oh, yes. We did that right away. We met regularly. We met once a week as a clinic faculty. It was a very cohesive group in that sense. It was a lot of fun. We met once a week to discuss, and I think we had set up initially that one week we would meet to discuss whatever

seemed to be something for discussion that week, and then the other week we'd do a series of simulations where we would practice our ability to give feedback. I won't go into detail, there's a whole model about how to give feedback in this legal clinical context so as to make sure the students don't get too defensive and so on and so forth.

We worked on that model the whole first year, and then eventually we decided that we had run the course of doing that with regard to our giving feedback to students in a clinical setting, so we decided since we had a classroom component, we decided to continue on and have each one of us make a presentation as if we were teaching a class, and then we'd all give feedback to the teacher. All that went on for the first year.

RL: What was the classroom component of the program like?

WH: When I first got here, there wasn't really any classroom component. The clinical program was set up with at least a dual tier, a double tier. The first tier was for students who had no clinical experience, whether they be second-year students or third, so they would be in the most basic kind of clinical setting. Then we had a second level, more advanced level, for those that have had a semester of clinical experience. They could continue on with the idea that they'll handle more difficult cases and so on and so forth.

As to the more difficult cases, the only thing that resembled the classroom setting is that the supervising faculty member would get together with the students, and they'd discuss the cases.

RL: In a group?

WH: Yeah, they'd go around, and they'd give updates on what the cases were and this, that and the other.

With the first level ones, there was hardly even that. There was a meeting once in a while but not very often, because they were handling such basic things, there wasn't much of a perceived need to sit around and even talk about how they were doing the cases. There was some individual supervision so there wasn't any need to do group discussion about it.

Based on the model that I'd been indoctrinated with at Harvard, I realized that, again, for the total learning experience those students are going to get as a result of the clinical program, that you needed to not simply have students working on actual cases, but you needed to have them step back a bit and be able to see in a more general sense what were the attributes of good lawyering, so I asked the faculty to approve this, to make it a component of the basic clinical course that there be a classroom component, where all the students would get together, sometimes all of them or sometimes the ones from doing civil work separately from the ones doing criminal work, and we would teach them, as clinical teachers, models of good lawyering. There would be give and take—there's some disagreement about what good lawyering is sometimes, so there'd be give and take, but introduce them to the bigger picture, so that the experience wouldn't just be a series of individual cases with feedback relevant to those individual cases. They could see a bigger picture of how to interview a client, how to negotiate properly, how to counsel, how to do motion practice, how to do basic trial practice.

Now there³ were already existing simulation courses that did that for any student, our trial practice course, things of that nature, but this was designed specifically for the students that were doing the clinic.

RL: I was going to ask whether there were any class prerequisites to becoming a clinic student.

WH: None for the first level. For the second level, you had to take trial practice and, I think, evidence, but not for the first level.

RL: What was the class called?

WH: The name we gave to . . . I think . . . I don't remember what it was. I'm not sure we called it anything more than the clinical class that went along with the clinical experience.

RL: Were there separate credits given for the class and the experience?

WH: Not as such. What we recommended as the clinic faculty, and what the oral faculty approved was that there would be, I think it was four units, four credits for the first level, and of that four credits, there had to be at least one credit hour devoted to a classroom component. Now that was a doubling of the credits, because when I came here, the first level students on got two credits, which means they weren't really able to devote much time to their clinical stuff. This upped it to four credits for the basic class. That was the model that was put into effect, I think, by the second semester I was here.

RL: What types of cases were they handling at that time?

WH: Potentially there could be almost any kind of case that could be handled. We were seeing, through our various intake places, whether it be San Diego State or some of the community-based places we were seeing clients, there was a wide variety of cases. Certain cases we decided as a group that, as a clinic faculty, that were just simply not suited to this model. Anything that a student couldn't represent the client directly on we eliminated, so that would mean on the criminal side, that would mean any criminal case where, like most felonies, there was no authority for students to handle those. They had to play a totally secondary role. Federal court, anything in federal court, no authority for students to handle it. So we just eliminated all those things.

Then, from a pedagogical standpoint, we looked for cases that would give a student in one semester exposure to all the law skills that we were trying to teach, everything from interviewing through trial. It's hard to find those cases. The ones that fit the bill were landlord-tenant eviction cases, because they happen quickly, there's always some interesting factual issues, there's always some interesting legal issues, potentially interesting legal issues. They involve a lot of emotion, so the student has to begin to learn how to begin to deal with upset clients, a lot of emotion not directed at the student but at the landlord. I would say that became what we looked for if we could at all find it.

Certain dissolution of marriage cases had, the more complicated ones we couldn't really handle for a lot of reasons, because they were just too complicated. The ones that were called default divorces or basically divorces by consent, we let the student handle one of those just for

the experience, because it's such a basic thing, but they weren't really good learning devices. There was some interviewing that took place, but otherwise it was mostly a matter of just filling in forms and doing a kind of *pro forma* hearing in court.

So really it was things like landlord tenant cases, any case that, any administrative hearing situation where you could take the case from start to the finish of the hearing within the semester, that's what we looked for.

RL: Maybe when we continue next time, we can delve into a little bit how the faculty and student interaction worked in handling these cases.

WH: Mm-hm.