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Walter Heiser

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 Walter Heiser

Interviewer: Ruth Levor

Recorder: Ruth Levor

Date: April 6, 2006

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

TAPE 2A: 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 in Professor Heiser's office in the School of Law on April sixth, two thousand and six. This is the second session of this set of interviews. Tapes and transcripts of this interview will be archived at the University of San Diego's Copley Library.

When we last met, we were talking about the early days of your presence here at the clinic and the kinds of things that you were trying to do for the program to model it on the Harvard program where you had studied, and I wondering to start out whether you, in supervising the students whether you also worked with members of the local bar.

WH: Yes, although there were five of us on the clinical faculty that were all members of the California bar and therefore could supervise students on civil or criminal cases, there were some areas of expertise that we just didn't possess on the clinic faculty, so we sometimes contracted with, sometimes just got volunteer members of the bar, local members of the bar to supervise students in certain areas. The one that comes most immediately to mind is immigration law.

RL: Do you remember some of the members of the local bar who helped out?

WH: Well, in immigration at one period of time it was Rosemary Esparza, and at another period of time it was Jan Behar. I don't remember which one came first and which one came second any more.

RL: Are they both alums?

WH: They're both alums, yeah. Rosemary I haven't been in touch with recently, but Jan I know is practicing immigration law here in town still.

I'm trying to think of some of the other areas, and I'm unfortunately drawing a blank. I guess in part because we had two other specialized clinics, which required particular expertise on the part of the supervising attorney. One was a mental health law clinic, and the second was an environmental law clinic. Although we staffed those clinics in terms of the supervising attorneys, apart from the local bar, we did that in a way based on some special grants we got from the Department of Education, we did that in a way that they actually became full time members of the clinic faculty. Although they were on soft money, they didn't practice any more.

The environmental law clinic, that was Janet, her name back then was Janet Motley. She has since married, or remarried, and her last name is Janet Weinstein, and she is currently on the law faculty at Cal Western. She was the environmental law clinic supervisor for one or two years, and then we hired Richard "Corky" Wharton, and Corky of course is still on the faculty, has been here for all those many years.

In the mental health law clinic, we hired another local practitioner, but again he was full time for us, was Allen Snyder, and Allen Snyder is now not only still on the clinic faculty, he is a tenured member of the clinic faculty.

RL: You're making a distinction there that maybe it's a good time for you to clarify, the various statuses of clinic faculty.

WH: Yes, I can do that, I think. I'll just give you a little bit of history. When I first came here, there were certain members of the clinic faculty who were on what you would call a regular tenure track like any other member of the faculty, like any faculty member who would teach a nonclinical course. There were three of us in that category, Charley Lynch, Rod Jones and myself. Then there were a number of people that were clinic faculty, that were full time, but they were not on tenure track. They were hired for a term of years. When I first came here, the term of years was three years, and then they had to leave, and then slowly it was upped by the school to five years. It took a while for that to happen.

Sadly, we lost a lot of good people as a result of that. One of the unfortunate consequences of those kinds of limitations on how long somebody can be here is that in particular we lost a fellow that I worked very closely with, a guy by the name of Rex Perschbacher, who at the end of his term or near the end of his term took a job with the University of California at Davis on the tenure track, became tenured and currently is the dean of U.C. Davis and has been the dean for the last few years. So we lost a lot of talent. He was not the only person. We lost a lot of talent because of that.

Anyway, that was how things were when I first came here, and then over the years, things evolved. The rest of the law faculty finally became convinced that having these term limits was not a good idea and that they needed to put all the clinical faculty on some kind of a tenure track to the extent that there were resources at the school to do so. We then went through a process whereby, I can't remember exactly how many now, three or four of the positions that had been filled by people with a term limit were converted to a clinical tenure track.

The clinical tenure track meant that if they were in that kind of position, the expectation is they would devote all, or nearly all, their time to clinical teaching, but they would not seek to teach other kinds of courses, nonclinical courses. In return for that limitation on their teaching, they were not expected to produce the kind of traditional scholarship, law review articles, so on and so forth, that was being required of the nonclinical tenure track faculty. They had a scholarship requirement, but it could be satisfied by research and writing in practical areas and so on and so forth.

We went through that process. It was a painful process. Some of the people that had been on the year-to-year contract or the term limit contracts were not selected by the faculty to go into

these newly created clinical tenure track positions. Some people that applied for them really also applied to be on a nonclinical track position and were disappointed when they didn't get the nonclinical track, so they got into the clinical tenure track position and so on and so forth. It was a somewhat painful process. Some of the people that had been here before that process began didn't stay on.

Today, in 2006, we have what, at least four people that are not only on the clinical tenure track but have consequently become tenured as clinicians.

RL: Those would be?

WH: That would be Terry Player, Laura Berend, Steve Hartwell and Allen Snyder.

RL: Do you have a sense, and I know this began before you arrived here, of why those distinctions were made to start with? Did it have to do with the whole difficulty that the clinical education movement had in gaining acceptance by academia?

WH: Yes, in short, yes. There were certainly, and to some extent, there still may be now, many people that just didn't think that clinical education in law should be in law school. They thought it was not something that law schools should be doing. There may have been many reasons for that, but one of the primary reasons was that those sort of traditional law professors just didn't think that there was any academic intellectual merit to having clinical professors on your faculty, particularly as tenured members of the faculty.

Now that I think has changed gradually over the years, although I suspect there are still some people that feel that way. Various schools across the country went through, in roughly the same period of time that we did, went through a process where they had to reevaluate how they were treating their clinicians. In part, they were getting pressure, and I think we were too at USD, getting pressure by the double-A LS, the accrediting agency and the A.B.A., the two accrediting agencies for law schools, they were getting pressure that they had to do something to make the status more permanent as opposed to year-to-year.

Different schools took different approaches. Some schools decided just to treat clinicians like non-clinicians. They'd all be on one tenure track. There would be no distinction in terms of what they were expected to do or to teach or to produce in scholarship or what rights they had or what benefits they had, so on and so forth. Our faculty didn't take that approach. This was a faculty decision. They decided that, for a number of different reasons, that, and I'm not trying to defend these reasons, I'm just saying a number of different reasons, that there should be these two tracks, clinical and nonclinical. Not only were there limitations on teaching with regard to what a clinical tenured person could teach, but there were, and still are, limitations on what they can vote on with regard to things like appointments of new faculty and selection of a new dean, so on and so forth.

RL: In general, they can't vote on selection and retention of nonclinical faculty, if I remember.

WH: It's actually a little more complicated than that. It's a very screwy system. Clinical professors can vote on all appointments to the faculty, that is, all new hires to the faculty, whether it's hire for the clinic or hire not for the clinic. They can do that, but they can't vote on any tenure decisions having to do with nonclinical faculty. I forget the rationale for that distinction, but it was one that carried the day with the faculty, and that's what they decided.

RL: There's a similar discrepancy in what they can and can't vote on with regard to a new dean, is that correct?

WH: Yes, so with a new dean, they can vote on . . . on the appointment of a dean as a new member of the faculty. They can't vote on any tenure decisions because deans usually come with tenure. I don't recall what their rights are with regard to voting on the acceptability of a dean or not. I just don't remember that. Every time we go through a dean search, it's another complicated system of figuring out who can vote on what.

RL: Have to go back and look it up again.

WH: Yeah.

RL: In terms of the faculty, I'm going back to the time when you first came, were any of the clinic faculty also in private practice at the time other than the people that you talked about that we brought in for the various subject areas?

WH: You mean any of the clinic faculty in private practice in addition to teaching?

RL: Yeah.

WH: Not really. The teaching jobs were pretty much full time, so maybe people would handle an occasional case here or there in private practice and consulting, but it wasn't something that went on very much.

RL: Clinic faculty in general, how much contact did they have with the actual clients of the clinic?

WH: That's an interesting question. That would kind of vary, I think, with the professor and with the student and the client, et cetera. The general philosophy we tried to adhere to was that the student was primarily responsible for representing the client and would initially interview the client; would initially counsel the client; if we took the client on as an ongoing client, would be the one who had contact with the client about certain either litigation or other kinds of decisions that had to be made with regard to their case, but it was always with the understanding that the professor would be involved enough so that the professor could make sure that the student was doing the right thing, which often then the professor had to spend a lot of time talking with the student about what's the right approach and why and this, that and the other.

Now sometimes, some faculty members decided that they would sometimes just deal directly with the clients and not just with the students, particularly in difficult cases, and that kind of depended on the faculty member and the student.

RL: There wasn't an overall guideline as to that?

WH: No, the concern always was that the client get good legal service, so the students being new at what they were doing, could make mistakes that could be avoided if the clinic faculty member were involved. What we tried to emphasize was that the clinic student shouldn't be making decisions on any kind of key issues without thoroughly vetting it with the clinic faculty. That may not have required the clinic professor to actually deal directly with the client in some cases.

RL: There was never any taping of the interviews for later review?

WH: There was some of that, yes.

RL: No rooms with one-way mirrors or anything like that, where you could watch?

WH: You know, we had a room with a one-way mirror, which no longer exists, that was set up for that kind of purpose, but we never used it that I recall, not for dealing with real clients. We used it for simulations sometimes.

We would videotape certain interactions with clients, particularly initial interviews with clients, that the student would do with a client, and use that for instructional purposes. We could then sit down with the student afterwards and go through the tape and discuss what could have been done differently in terms of the interviewing techniques, so on and so forth. Of course, that was all done, and only done, with the permission of the client. They were told that this was a law student clinic and that these students were learning and this was part of the learning process, and that we would destroy the tapes afterwards, but if they didn't want to be recorded, we'd get their consent before we would do that.

RL: How do clients generally react to this kind of unusual setup? Do you see them behave any differently than you think they might if the person were a licensed attorney rather than a student?

WH: I wouldn't say that I observed much difference between a client dealing with a student versus the clients dealing with, let's say, an attorney who had been out, oh, I don't know, four or five years in practice. Clients pretty much view them the same. Partially, it may be because these were mostly clients, they were low-income clients, so they were clients that were simply not used to seeing attorneys, so they didn't really have any real expectation, particular expectation of what it would be like to see an attorney versus seeing a law student.

And the law students, you know, they dress professionally, they acted professionally. I think from the clients' perspective they realized that law students were students and that they were young and somewhat inexperienced, but most of the students conducted themselves in a quite professional manner. I think the clients responded to that positively. Occasionally there would be a client that would really not want to deal with a student, wanted to deal with a "real lawyer," but that was very much the exception not the rule.

RL: How would that be handled?

WH: Most of our cases we had no obligation, the way we took in new clients, or interviewed new clients, we had no obligation to take those clients on beyond the initial interview and counseling stage. That was solely left in our discretion, which in a general sense, it is in any attorney-client situation, so if we knew right off the bat that the client was not comfortable dealing with a student and really wanted to see an attorney, we would just simply have to say to the client, "Well, we just can't provide that kind of service. We're really an educational clinic. You may have to go Legal Aid or some other kind of place where you can talk directly with an attorney."

Nobody seemed upset by that.

RL: Were there ever situations where interpreters were needed for language purposes?

WH: Oh, yes, yes.

RL: How did the clinic retain those interpreters?

WH: Yes, quite often we had a need for Spanish to English translation, Vietnamese to English, Laotian to English, I'm sure there were more too. We could pretty much tell ahead of time, based on where we were going to do the interviews, the initial interviews, and who had signed up to be interviewed as potential clients, we could pretty much anticipate certain problems. My recollection was that at the various places where we did the intake interviews, the initial interviews, there was not somebody employed by us but there was somebody employed by the host organization that would do an initial screening and would ask questions or determine whether or not there was a need for a translator. We rarely had a problem with that.

RL: You as the director, you came in as the director, were also doing the hands-on work, . . .

WH: Yes.

RL: . . . teaching and supervising. What kinds of cases were you supervising?

WH: A whole variety of things. Some of the cases I had inherited, because there were already open cases in the clinic, and then I tried to select new ones that I thought were good teaching cases, but it really ran the gamut, particularly some of the older ones, a lot of landlord-tenant cases, a lot of eviction cases, quite a few Social Security Administration cases, where someone needed to have a hearing in order to either get Social Security benefits or contest the cutoff of Social Security benefits, consumer cases, a lot of people getting sued for not paying consumer contracts.

Then, some of the cases I inherited were in federal court, dealing with you name it. We had Freedom of Information Act cases, copyright violation cases, it really ran the gamut.

RL: Was there as much push toward negotiated settlement in those days as there seems to be now?

WH: Yes, I think so. I think it's fair to say that that was always something that we would consider and present to the client as a possible way of resolving the dispute. Yes, I think so.

RL: So it happened in a large number of cases that they didn't really go all the way to court?

WH: Yes, I'd say the vast majority did not go into court.

RL: Were the students ever disappointed? Did they expect to get the court experience? Is that part of what they thought they were paying for?

WH: Well, I should clarify what I just said. That's on the civil side, this is true of all civil cases, most of them settled or were disposed of before there was any serious court action. On the criminal side, although there were plea bargains obviously, we tended to get a fair number of cases that went to trial on the criminal side, so the students that really wanted some trial experience were encouraged, whether they wanted to do criminal law or not, were encouraged to go into the criminal defense clinics.

The ones on the civil side, we made it pretty clear to them at the outset that our goal was to get them into court if there was a case that legitimately required that, but we really couldn't promise that. We tried to do them at least once a semester, but anything more than that we really couldn't promise.

RL: If a case did go to court, would a faculty member accompany them?

WH: They had to, yes. The state bar rules require that in court, in fact, in a number of different settings, the state bar rules require that a law student could not go in by themselves. They had to be supervised by a member of the bar, so yes, we would often go to court with them.

RL: How about when the parties were going to come to a negotiated agreement? Did a faculty member have to be there for the signing of the agreement? I'm sure you had to vet the agreement.

WH: Yeah, we would vet it. I'm not sure we were there for the technical signing, but we made sure during the process of negotiation, if we weren't there in person, that the student was sensitive to the fact that not every settlement's a good settlement, and they may not have enough experience to know what a good settlement is or not, so that they should discuss it with, not only with the client, because the client obviously had to approve it, but also with us, with the faculty, as to whether we thought it was a good settlement or not.

RL: I know a lot of times the settlement involves financial negotiation, and I remember that in practice it was a good idea to have them reviewed by CPAs or some other kind of accountant. How about in this setting?

WH: We never really confronted that, never had to turn to that as far as I can remember, because our cases were all cases involving a small amount of money. Anything involving a large amount of money we just didn't handle, because we figured that that client could find an attorney in private practice who'd be willing to handle it if enough money was at stake.

Secondly, our malpractice insurance carrier would not underwrite us, would not insure us, if we took on fee paying cases, and anything that might recover a lot of money is "a few paying case," because you could get contingent fees, so we really didn't have very many cases that were that complicated in terms of the calculation in damages.

RL: Did you ever bring in experts?

WH: Yeah, oh yes.

RL: Were they mostly volunteers?

WH: I don't recall we ever paid for an expert, at least on the civil side. On the criminal side, they may have had to pay, but then that was, because clients on the criminal side were all

indigent defendants, the payments would be reimbursed by the state or paid by the state, but I don't recall on the civil side we ever had to pay for an expert.



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TAPE 2A: SIDE b

RL: How were the clinic students graded?

WH: We had a number of different courses. We had one course that was the basic entry-level clinic course, which was the one that had the biggest enrollment. Most students took that but didn't go on for anything more advanced. In that course, it was graded pass-fail. The clinic faculty developed a set of criteria by which we would measure the students' performance during the course of a semester. We would share that with the students so they knew what we were expecting from them. Those criteria had less to do with the actual performance of the lawyering skills than with the sort of professional responsibility or responsibility in a more general sense that was exhibited by the student in dealing with the client. It wasn't really ever a problem to grade a pass-fail.

Eventually we moved to a four tier pass-fail to try to be able to reward students who really did excel in what they were doing in the clinic and to also, you know, not reward students who were clearly below average, and that didn't prove very difficult to use either. Good students, based on the criteria we had set, good students we could really pretty much identify. Certainly, you'd spend enough time with them as a clinic faculty member so you could do that. The bad

students mostly were, occasionally you got a student who'd get a low pass or even a fail, were ones that just totally dropped the ball. It was that they didn't perform something very well, although certainly you would try to critique them on that so they could do better the next time, but if they just dropped the ball. They didn't show up for something, and there were students who didn't show up for court hearings, for example, and didn't really have any good excuse, so that kind of lack of responsibility could generate a low grade.

RL: It's almost more a grade on work ethic and professionalism.

WH: Yeah.

RL: This was that broad basic prerequisite course.

WH: Right.

RL: Is that a class the student had client contacts?

WH: Yes.

RL: Did they do the client intake?

WH: They all did client intake, the initial client interview. They all did that, and they all counseled with clients. In other words, a client would come in with a problem; the student would do the interview, would take notes, would go talk to a clinic professor before the client left and would at least give the client some legal advice based on that initial interview, although sometimes the legal advice wasn't any more than to say, "Well, you need to see a lawyer in private practice because you've got a case that's worth a lot of money."

But sometimes it was a little more involved in terms of giving them legal advice about how to deal with a certain legal problem, so on and so forth. So every student would, pretty much every week, would be interviewing a client, talking to a professor about the interview and

then based upon what the professor and the student decide, the student would go back and advise, counsel and advise, the client about whatever the legal issue was. So every student did that every week.

Beyond that, the goal was for each student to take on at least one or two or a handful of cases every semester that they could then work on past the initial interview and counseling stage.

RL: This was even in the basic course?

WH: Even in the basic course, yes. On the civil side, we tried to get every student to handle, for example, a simple landlord-tenant eviction case, a very easy case to handle because the issues are pretty discrete, the time frame is collapsed, and you go to court very quickly. Back then, you went to a more formal court, the municipal court, so it was a perfect kind of case for a student. Our goal was to get a student involved in at least one of those kinds of cases each semester.

RL: What about the facilities? Where did all of this take place? You talked about the outside agencies . . .

WH: Right.

RL: . . . that you went to, but how about on campus?

WH: All the initial clients that we encountered took place off campus at some agency location. We had several when I first came here. But if we kept a client on beyond the initial client counseling stage or even to counsel them if the problem was too difficult to counsel them on the spot, if more research was needed before we could even give them a basic answer to their issue, all that was done back here at the law school.

Back then, when I first came here in 1978, that was all done on the third floor in the main law school building. There were a series of clinic professor offices there. We all had our office in the same location. We had a couple of secretaries and receptionists there, and we had one or two

rooms that the students could all share for various purposes, and that's where all the follow-up work was done.

If we took a case, we decided to take on a client all the way through to the resolution of a case, that's where all that work was done back in a relatively small area. It got pretty crowded at times.

RL: Is that the suite of offices on the north end, the front end of the building on the third floor?

WH: Yes, so the northeast end of the building, yes.

RL: Was that basically the same size as it is today?

WH: It was exactly the same as it is today in 2006. It was exactly the same back in 1978. I don't think that area has been changed at all.

RL: Except for computers.

WH: Computers and new carpet, but in terms of the rooms and configuration of the rooms, it's all the same. Now we used to have, actually I'm remembering now, things weren't quite as bad space-wise as I just let on, or just indicated. There was also a rather large room right across from that suite of offices that was known as the faculty library, and we soon quickly redubbed it the clinic/faculty library, because it had a lot of basic legal research books available, California reporters, California statutes, so on and so forth, and quite a number of tables there and seats and everything else, and our students could do work in there, either research work or they could actually do work on their cases on those tables there.

In the heyday of the clinic, when we had fifty, sixty students a semester signed up for the in-house clinics, that's where a lot of them would have to do their work.

RL: Were you shown these facilities during your interview?

WH: I was. I did, yes. I saw them.

RL: So you knew what you were getting into.

WH: I knew what I was getting into.

RL: You say at that time there were fifty or sixty students? In the entire program?

WH: Well, I don't remember exactly what it was when I first came here, but during I'd say the first five years that I was here, in-house clinics, that means the clinics where students took on actual clients that were supervised by clinic professors, we would typically have probably fifty, sixty total. That's between criminal and civil. Sometimes a little less, sometimes a little more.

RL: And they all had to take that basic class?

WH: Correct.

RL: Which was called . . . legal clinic or something?

WH: I don't remember what it was called when I first got here. We changed it to Legal Practice, that's it, Legal Practice, that was it.

RL: In a single Legal Practice class, about how many students would there be?

WH: Again, each semester there'd be, I'd say between forty and fifty.

RL: That was one class taught by one clinic professor or was it split up?

WH: It was split up. The way we handled it was that all the students would sign up for that course. Depending on their interest, criminal versus civil, so on and so forth, we would divide them up among the clinic faculty, but they would all be together, or at least all the criminal people would be together once a week and all the civil people would be together once a week for a classroom component to the course, where we tried to do some simulations and some presentations about lawyering skills, so on and so forth.

It turns out that in terms of the supervision of students who were actually representing clients, that was divided up among the clinic faculty.

RL: When you went to the various agencies for the initial intake, did you go as groups or did each student have to go at a separate time?

WH: We went as a group. We didn't necessarily always do this, but we pretty generally did this. We would divide up the students and assign each student to one professor, so I might have five, six, seven students who were assigned to me, and then we would go out as a group or we'd meet as a group over at one of these agencies' locations and do our initial client interviews. I would have maybe five or six students who were interviewing clients in different rooms at those facilities, and then they would all come back and talk to me, each one would come back and talk to me individually, about their client's case and what to do and so on and so forth.

It was fun. It was a lot of work for the faculty, but it was a lot of fun too. You really got to know the students well, and it was a really good esprit de corps, and it was fun.

RL: Were most of those students fresh out of college?

WH: Most of them were second-year law students. The vast majority of the basic clinical program were second-year, either first semester or second semester.

RL: But of traditional age, or did you have many who had former careers?

WH: Oh, I see what you mean. The majority were the age you would expect if you went right into law school out of college, but there were always some older students that had done something else. It could have been anything, different profession and then went back to law school. That was always nice too, to have that mixture.

RL: As far as the scheduling of the classes, they were offered to both day and evening students, I assume. Did they take place both in the day and the evening?

WH: Well, the clinics had to meet in the evenings. That is to say, the interview sessions, the intake sessions, tended to always be in the evening. The classes themselves were usually in the late afternoon. We did that so people in the evening division could, if they had any flexibility at all, they could take the course and go to an evening clinic to interview clients and then go to the late afternoon class. We'd also have our classroom session starting at four or five o'clock, long after everybody else had left the school.

RL: How well prepared did you find the students? I'm sure they came to you at all different stages of both their education and their maturation, but in general, can you make any generalizations about whether they were really ready to do this?

WH: It's difficult to make generalizations. They did come from all walks of life, all stages of maturation, all different knowledge about the practical aspects of law or just dealing with people. I think they were all eager to learn. Not all of them understood their limitations very well and knew that they had to learn, but they were all eager to learn something, so it's hard really to generalize.

Part of what the clinical faculty had to do, each one of the clinical professors had to assess each student and make sure that the student was not put into a situation where there was going to be a problem, either that the student would "fail," that is to say would just not successfully be able to complete the task at hand, or where the client would be not served properly, so you had to make that assessment, but it definitely did cover the spectrum. I always viewed our teaching mission, or my teaching mission, and I still view it this way today even

though I don't do clinical teaching any more, as being to teach and educate and improve students at whatever their level they come in at—that's not a very good sentence—whatever level they are at when we first see them, to improve them so when they leave us, or they leave one of my classes, they're better at whatever it is they're supposed to learn.

I don't expect them all to be at the same level. That's why in regular classes, we have As, Bs, Cs and Ds, but I do expect that there's going to be improvement. We very much took that attitude in the clinic. We realized that certain people just were never going to be really terrific at certain practical aspects, but we wanted to make them, we always used the terminology "reasonably competent lawyers" and therefore make them better than they were when they came in.

RL: "Reasonable" has so many wonderful uses in the law.

WH: Exactly, "reasonably competent attorneys."

RL: That sounds like a very good mantra. What do you think was the greatest surprise to students when they start working with clients?

WH: Gee, it's hard to say, because it's hard to put yourself in the student's head to know what they thought was the greatest surprise. My observation about students over the years in dealing with clients, I think the greatest surprise probably was that there's an emotional aspect to dealing with the client, that clients come with emotions, and they come with biases and prejudices as well as emotions, and you need to be sensitive to that, because if you just treat them like they're a legal problem, you know, like a problem you would get written out for you on paper, you're probably not going to connect very well with the client, and that means you probably aren't going to do as well for the client as you could.

That I think came as a, I'm not sure so much as a surprise but as a real difficult learning experience for many attorneys. I think what did come as a surprise to some was that, because clients are people, people come with all kinds of bias, prejudices, emotions, people make all kinds of different choices, that what the student thought was a rational choice, whether it had to

do with accepting a settlement or not accepting a settlement or whatever it had to do with, was not often what the client viewed as a choice that they wanted to make. It was a surprise to some that many people just don't make what you would consider to be a logical, rational, economic, money-driven wealth maximization choice.

RL: You have so much to teach in the classroom component procedurally and the like. Was there a softer side to that? Were there lessons on counseling, on psychology, on those kinds of things?

WH: Yes, indeed. In fact, I became sensitive to this when I was at Harvard because this was not exactly my idea, although how I implemented it here was something that not even was done at Harvard. We actually had a psychologist who team taught with a member of the clinic faculty a simulation course on interview and counseling. We also hired him to talk to our clinic students that were handling actual client cases. He would, not every week but two or three times during the semester, he would present some materials and stuff during our classroom component.

It was interesting. It was an interesting aspect of it. Initially, a lot of the students were very resistant to all that as too touchy-feely, and some of it was too touchy-feely, quite frankly, but the goal was to sensitize students to the fact that clients don't have necessarily the same mindset that attorneys do. It's not so much that clients aren't rational, because I would say that they are rational, it's just they're rational in a different universe in many respects than attorneys are. Attorneys are rational in the universe of legal principles and economics and so on and so forth, and not all clients are, particularly if they come from different cultures.

RL: What about teaching materials? Were there already prepared materials that you were able to purchase and use? Did you have to do a lot of your own creation of materials?

WH: We had to do a lot of our own. At that point, this is again, I'm talking about the early period of my experience here, which was '78, I think I was clinic director for five years, so until '83, during that period of time, there was almost nothing available that was useful in terms of teaching materials for the classroom component of the clinic. There were some things that had

been developed for trial practice, but in terms of that you do before you get to trial, interviewing, counseling, negotiation, so on and so forth, there was very little out there.

RL: So Burrow hadn't really written materials?

WH: No, we didn't have much—oh, I'm sorry?

RL: Burrows, Barrow?

WH: Oh, no, Gary Bellow.

RL: Bellow, I'm sorry.

WH: Bellow, he did write materials, and they were published, and they were materials that I used when I was at Harvard, I should say that he used when he was at Harvard, but they were in looseleaf. They were just, you know, typed materials. He subsequently had them published as a book around the early 1980s. I did use some of his materials when I first got here, but there were some problems with his materials. They weren't good teaching materials. Even after he published the book, we only used the book once or twice before we realized they really weren't good teaching materials for what we wanted to do. They were probably better for a course that had more classroom time than we had.

We put together our own materials. It was always a scramble in the beginning to do that from whole cloth. We ad libbed a lot.

RL: Were you able to use the materials over again? Did they require a lot of updating or changing?

WH: If they worked, we would use them again, and we might update them or whatever else. Most of them were simulation materials. We tried not to do much lecture. We did use a lot of videotape in the classroom component. Because we were talking about lawyering skills, to the

extent that the skill is a performance skill, like interviewing or counseling or negotiation, whatever else, the best way we found, the best way in a classroom setting, was probably simulation, but if you couldn't use simulation, the next best thing was to have videotapes about people doing these skills and go through a critique of what they're seeing or have the students critique what they're seeing.

A class that functioned properly would look like this, that is to say the classroom component of the clinic. The students would read materials before the class about what good lawyering was for this particular skill, let's say it's how to interview a client. So we would assume they read the materials, not always correct, but we'd assume that they read it, and then we would show them a video of an interview and ask the class to give critique. Was it a good interview or not? Why not? What should have been done differently? Then we'd ask them to just do it differently, to explain how they should have asked the question differently, and so on and so forth.

Those classes, when they worked, were highly successful. I really think we taught those skills very well.

RL: Did you make the videos or were you able to find videos that had been done for this purpose?

WH: There were some videos. I did pilfer the Harvard clinic library, video library, and I brought probably, because I knew that I wanted to use videos in my class. We had used them to some extent in Harvard. I pilfered theirs and brought several tapes that had short vignettes on them that they had produced.

But even those we decided didn't really demonstrate the kinds of problems that might come in whatever the skill happened to be, let's say negotiations, didn't really demonstrate it as well as we would like, so we did quite a few. It was fun. We were all very savvy in filmmaking, videotape-making, we used back then. It was fun.

RL: Who participated with you in this?

WH: The clinic faculty mostly, and then, to add realism, we would get people that were just outside the law school, totally outside the law school, so they would look like actual clients more than clinic faculty.

RL: You had scripts?

WH: We had scripts, because we would build in, primarily what you want with videotapes is to have a bad example that has many things going wrong that could be corrected, and have the students identify those things and discuss how they should be done differently. Then, only after you've thoroughly discussed all that, do you show them a good example of what an interview should look like. Our optimal approach was to have the same people involved in these two different interviews let's say a client counseling session, one that goes horribly wrong, because the attorney controls the agenda and makes the decision for the client, and the client's obviously not very happy with the decision as part of the film, and then one that's done, you know, the way we'd think was the proper way to do it.

RL: Did you film it yourself, or did you have some campus media people?

WH: It was all very rudimentary, but we worked very closely with the campus media people. They would help film it.

RL: Were there any comic touches in these videos?

WH: We'd try to add in something without being too over the top. We'd try to do that.

RL: Do you know if they still exist?

WH: I don't know, and even if they do exist, they're probably not in a usable format.

RL: That's what I'm wondering about.

WH: Yeah, we used to keep them all upstairs. Then we decided to put them all over at the AV department across the way. Then when I stopped doing clinical teaching, I didn't really keep track of what happened anymore, but I know the technology has changed. We were initially using reel-to-reel videotape before we even went to the cassettes, and of course there were different formats of cassettes and so on and so forth.

RL: But there are ways to reduplicate them, and they may be a wonderful historical artifact.

WH: They may be there. I have saved, where are they? I created some of these things before I even left Harvard. They had a very good AV department there.

RL: I see videos on the bottom shelf.

WH: I bet those are some of them. I bet there are some of me doing an awful job of something or other, a deposition or whatever else that dates back to 1977. I hope not. We'll want to destroy them.