

University of San Diego

Digital USD

Conversations in Legal Education

Legal Research Center Archives

4-13-2006

Conversations in Legal Education: Walter Heiser, April 13, 2006

Walter Heiser

University of San Diego School of Law

Follow this and additional works at: https://digital.sandiego.edu/law_oral_histories



Part of the [Law Commons](#)

Digital USD Citation

Heiser, Walter, "Conversations in Legal Education: Walter Heiser, April 13, 2006" (2006). *Conversations in Legal Education*. 29.

https://digital.sandiego.edu/law_oral_histories/29

This Oral History is brought to you for free and open access by the Legal Research Center Archives at Digital USD. It has been accepted for inclusion in Conversations in Legal Education by an authorized administrator of Digital USD. For more information, please contact digital@sandiego.edu.



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 13, 2006

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

TAPE 3A: 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 thirteenth, two thousand and six. This is the third session of this set of interviews. Tapes and transcripts of this interview will be archived at the University of San Diego's Copley Library.

Good afternoon, thanks for agreeing to continue once again. We were talking about former students of the clinic, and whether you know anything about their career paths.

WH: Yes, I don't remember specifically many of their names, but I do know for a fact that many of the students that were in the criminal clinics did go on right out of law school went on to work either at the D.A.'s office, City Attorney's office, a lot of them did that, or to various defender organizations. Depending on what year they graduated, there were different types of defender organizations, but basically criminal defense for indigent defendants. A fair number of people that were in the criminal, I think it was a very high percentage of people that were in the criminal clinics went on to work in those areas.

The civil side, they all went into practice someplace, and I've only really kept in touch with a handful, although occasionally I'll see them out there in the community and catch up, but a lot of them remarked that various of the clinic courses were very helpful in their practice, and they utilized them quite a bit.

RL: We have looked at a lot of the positive sides, but I don't really know what some of the classic difficulties would be in clinic education. There are probably certain challenges that clinic faculty share, and I wonder what some of those are.

WH: Well, there are challenges of different types. Let me just launch into a discussion of the various types of challenges. One type would be just the accomplishment of the educational mission that you hope to accomplish during the course of a clinic. When you deal with live clients, actual cases, live client clinics as they're referred to, it's very unpredictable. You just don't know what kind of case you're going to get. It's just hard to control in any kind of educational way exactly where the cases are going to take the students that take you. That's always a problem. That's always a problem. Cases that you think will be really good for students turn out to be not good for a variety of reasons. It's just not something you can fully control.

That creates also a problem for a clinic faculty, which is that when the students leave for the summer, unless there's some kind of a summer clinic, these clients have to be taken care of during the course of the summer, and it quite often used to mean over the course of a summer that the clinic faculty had to keep working on the cases to make sure that they were handled properly. That meant the clinic faculty would do it themselves without the help of students many times, and it meant in the early years at least that, because there weren't any summer stipends for that, that you were basically working for free, so that was a problem.

Other problems are more from the viewpoint of the institution, the law school. Clinical education can be very expensive to the law school, because most of the models, even the simulation models to be effective require a low student-teacher ratio. That means you're paying clinical faculty to teach maybe only a total in all their teaching assignments a total of twenty or thirty students, whereas another faculty member may be teaching one class of eighty students and another class of fifty students. In terms of resource allocation, it creates some difficulties. It

really requires the institution to be willing to put up the resources for clinical education, knowing that it's going to be a low student-teacher ratio.

That is not as big a problem as it might first appear for the law school, because the law schools also are sensitive to the fact that the A.B.A. and other accrediting agencies want the law school on average to have a fairly low student-teacher ratio. The clinical courses are one way of balancing off the big first-year required courses and so on and so forth with regard to student-teacher ratio. It is a resource allocation problem.

USD could certainly use more clinical faculty than they currently have. The demand is certainly there for more courses to be staffed by full-time faculty, but the law school, in terms of resource allocation, is just not willing to hire more faculty for that purpose.

RL: You worked in the clinic program for five years, is that right?

WH: Mm-hmm.

RL: Maybe you can tell me a little bit about your switch over to the other side and whether these issues had a role in that.

WH: They didn't have a role in it. I mean, what happened was I had been administering the clinics for five years and really enjoying it, and I think, I think, I'd achieved a certain amount of success in establishing a good educational model here and implementing it, but I was asked to be associate dean, and for some unknown reason, I thought that was a pretty good thing to do. By the time that I realized that it wasn't such a good thing to do, it was too late!

I became associate dean, and the time required for me to do that, because I started in 1983, back then, we only had one associate dean to do the work that's now done by, oh, I don't know, two and a half people perhaps, administrative people, so it was a lot of work. I realized I couldn't do that and do clinical teaching, which was unpredictable, that is to say, where court dates, et cetera, were not under my control. I couldn't do that. I did teach, but I taught classroom teaching, civil procedure. That's when I started teaching civil procedure.

That allocation of responsibilities for me continued during the whole time I was associate dean. My recollection is I didn't do any clinical teaching during the four or five years I was associate dean.

RL: Did you follow Doris Alspaugh as associate dean or did she follow you?

WH: No, I followed Ginny Shue. Ginny Shue had been associate dean before I was associate dean, and then she stepped, and she subsequently became associate dean again several years later. I don't know how many years she been associate dean, but she was my predecessor.

RL: And your successor?

WH: No, I think Jack Minan was my successor. I think Jack did it, and then I think Ginny took over for Jack.

RL: Some places that's a rotating position.

WH: Right.

RL: Was that considered a rotating position in those days?

WH: Yes, yes. I gave a commitment, I think, of two years, when the dean asked me and I accepted, and then for a variety of reasons, I extended it on for another year and, I think, another year after that. I think after three years, I really wanted to go back into teaching, clinical teaching or other kinds of teaching, but there were a lot of issues at the law school during that time, and so it was thought, and I actually agreed too that there was a need for some continuity, at least at the associate dean level during that period of time.

RL: Was Don Weckstein the dean?

WH: No, it was Sheldon Krantz.

RL: What were some of the issues that you had to deal with during that period of time that I hear you talk about?

WH: I tried to block that out of my mind!

There were certain set things you were supposed to do back then, the associate dean. One was counsel students on academic questions or issues or problems. I don't mean academic problems in the sense that they were behind in grades, but if they had an academic issue that needed to be resolved by an administrator, dealing with the various academic rules, so on and so forth, then they would come to me. That was one part of it was dealing with the students.

The other part was dealing with the faculty, and that could take many forms. Certainly, every year, I was the one that decided who taught what classes and when, so I did all the class scheduling. I did all the exam scheduling. On top of that, whatever other issues there were or questions there were with regard to the faculty, I would deal with those. Sometimes the faculty had issues that they wanted to raise with the administration about their teaching load or about whether they were able to do something pursuant to the academic rules, so on and so forth, so I would try to answer those questions. I can't remember exactly what those things were, but they were just constant, never-ending.

On top of that, I had responsibility for hiring adjuncts, so I did that hiring and put into effect a couple of things with regard to adjuncts that I thought kind of interesting, and I thought they were good things to do. One was an evaluation system, where we could really evaluate the adjuncts and how they were doing in the classroom. The adjuncts were happy to cooperate. Secondly were training sessions for the adjuncts in how to teach and how to write exams and so on and so forth. That hadn't been done before, and that proved to be very successful. The adjuncts liked that a lot, so I spent some time on that. So just a whole hodgepodge of things to deal with.

RL: Sheldon Krantz was no longer dean when I came here in 1992, so what can you tell me to kind of give me a picture of him and what it was like to work with him?

WH: Oh, he was pretty easy to work with. He was a good delegator. Unlike some deans, he was happy to delegate a lot of stuff, and foolishly, I was happy to accept it. That's why I was so busy. I did a fair number of things that I think subsequent deans have kept to themselves, but he was very supportive about that. To me, he was very easy to work with.

RL: Did he focus more on his Center for Criminal Justice, is that what it was called?

WH: I'm not sure how much he focused on that in particular, but he definitely focused on connections outside the law school, particularly in San Diego, even more so than nationally. He tried to form some good relationships with people in the San Diego community and set up all kinds of centers, et cetera, many of which were partly staffed by practitioners and partly by people on the faculty. He was very good at that. He did a good job at that. I think during his tenure as dean, we had some of our best interaction with members of the local bar and bench.

RL: When you stepped down as director of the clinic to take on this position, who stepped into your shoes?

WH: Terry Player, Professor Player.

RL: How long had she been with the clinic before that?

WH: She came a year after I started, so she would have been there four years at that point.

RL: When you discontinued your deanship, did you do any more clinical teaching?

WH: I did a little, but without going into the details, I was discouraged from doing very much of it by the then current dean, Kristine Strachan. She had some very strong notions about how the clinical program ought to be organized and this, that and the other. She did not want a clinic

director, so that wasn't a position that I was going to go back into. She wanted to decentralize things in the clinic.

I did teach some courses in the clinic, but she then said that the model that I was teaching under, which had a low student-teacher ratio—I guess this was meant to be flattering to me; I didn't take it that way—wasn't a good use of my resources, for me, that I needed to be teaching in bigger classrooms, bigger classes, that if I wanted to keep teaching in clinical courses, I'd have to step back and let adjuncts do most of the actual teaching, and I would sort of oversee what they do, sort of like what we do with the Lawyering Skills II course now.

That was just of no particular interest to me. I'd done enough administrative work already. I'd at that point logged ten years of administrative work, first as clinic director and then as associate dean, and I didn't really want to. I wanted to get back into teaching and not into administering what other teachers were doing, so I didn't accept that option. I didn't take that option that she gave to me, and therefore, what that left were larger traditional classes. During her tenure as dean, that's all I taught.

RL: By that meaning civil procedure?

WH: Civil procedure, federal courts; then I developed California civil procedure as a classroom course, international civil procedure--all procedure, nothing of substance.

RL: Well, in the legal term of art.

WH: Yes.

RL: You've given us an idea of how Dean Strachan approached the concept and the actuality of clinic education. Over the years, as you've seen different administrations come and go, how have you seen that affect the clinic program?

WH: For a lot of reasons, the clinic is very much affected by whoever the dean is, I think more so than a lot of other programs in the law school, and the reason for it, one reason I already

mentioned, is it's resource-intensive, and if you have a dean that doesn't think that's a good expenditure of resources, they won't expend the resources for the clinic. They'll spend it someplace else.

Secondly, for a long time, the clinical faculty did not have any security. They weren't tenured. Therefore, whatever the dean told them to do, they felt like they had to do it, or else they might get fired. They didn't really have any academic freedom in that sense to say, "No, I don't want to teach, I prefer to do something else besides your suggestion we do or how you suggest we do it or whatever else."

It just didn't exist at that point. The clinic was always greatly influenced by whoever the dean was. I mean, Don Weckstein, when he was dean, and then Sheldon Krantz, were strong supporters of the clinic and devoted the resources and so on and so forth that were necessary. Kristine Strachan was a supporter, although she had her own peculiar notions of what the clinic ought to, how it ought to be structured. Again, because people weren't tenured, they really couldn't say, "No, I think your structure is wrong."

That was a problem even though she did provide a lot of resources in terms of finances and raising clinic salaries and so on and so forth. It still was an issue of having the security to say no.

Then, the mood, I think it's fair to say nationally, has shifted in legal academia much more towards research than teaching. Dan Rodriguez, the most current dean, although he wasn't anti-clinic, he just emphasized and devoted his resources, allocated his resources to scholarship and research and people that could do that kind of activity and wasn't interested in expanding the clinic and spending more resources on the clinic.

RL: What about during all the interim periods in which Grant Morris was dean? Did he mainly preserve the status quo?

WH: He mainly preserved the status quo. I would say on balance he was pro clinic, but he was limited by whatever the status quo was.

RL: You mentioned the lack of tenure, and I'm not sure that we established whether you were hired on a tenure track when you first came.

WH: Yeah, I was. I was hired on a tenure track and received tenure within the normal course, whatever it was, four or five years, four years after I arrived here. I was not tenured for most of the time I was clinic director, but I was tenured by the time I finished up being clinic director and became associate dean.

RL: You must have also then been working on publishing to meet your tenure requirements.

WH: To some degree, but the whole emphasis on scholarship at our school is a fairly recent phenomenon. When I first came here in 1978, there were many people that were tenured that wrote nothing at all, published nothing at all. I had published a couple things, and that was certainly considered at that time to be adequate for tenure, as long as your teaching and other service was good.

It's very different now, but that's how it was back then. I never had the conflict that a lot of young professors have now about having to spend more and more time on research at the expense of teaching and so on and so forth.

RL: Yet, you have done a fair amount of scholarly publishing since that time without necessarily being under pressure to do so.

WH: Right, since I stopped being, for me the key was stopped doing all the administrative work. Once I stopped being associate dean, I was able to focus much more of my time on scholarship and have been steadily able to do that since, but during the time I was clinic director and associate dean, I got very little scholarship produced, very little traditional scholarship. I did a lot of clinical materials that were published in a sense, but not traditional law review articles and things of that nature.

RL: When you made that switch and starting teaching civil procedure and the other related courses, what was that like in terms of the teaching experience? It's very different.

WH: It was very different. I immediately enjoyed it. It was not like I didn't enjoy it, but it was very different. I mean, you're up in front of a large group. You're exchanging information, questions and answers, and leading a discussion, but it's not kind of the hands on stuff, performance things, that you're used to in clinical education, so it did take me a while to get used to it and I think to develop some good techniques in that style of teaching. I always have tried to utilize, and still to this day do, some of the clinical notions of teaching in civil procedure, particularly with simulations.

RL: Do you?

WH: Yeah, to this day I still do certain complaint drafting simulations. Sometimes I do negotiation simulations, so on and so forth.

RL: These are within the first year?

WH: Yeah, within the first year, and they're all tied in to the material. Early on, when I was teaching civil procedure, I taught what was referred to as the small sections. It took one section of the first year, divided it back then into two or three small groups, and they were linked in with the legal writing instructors, Lawyering Skills instructors.

The one year that I did that, I happened to get linked in with a young woman who was just starting out teaching. She had been in practice. We decided to combine both courses together and to coordinate all the assignments with my course, with civil procedure topics. We did a lot of skill things to sort of trigger off some of these writing assignments, interviewing of clients, so on and so forth. They argued motions, all related to some written assignment they were doing for Lawyering Skills and also for some material we were covering in civil procedure. That was great fun, absolutely great fun.

RL: I bet it was for the students too.

WH: Well, I don't know. We were never asked to do it again, because . . .

RL: But I think that was a school-wide decision, to drop that coordination.

WH: Well, and also the school-wide decision was that all the students in all the sections of Lawyering Skills should be doing roughly the same thing, and we were doing something very different from the other sections, so I think the students might have liked it a lot. It might have been more work than other students were doing in the other sections, but it was clearly different, and whenever you do something different, you know, it causes issues.

The point is I tried to use my clinical training in the classroom.

RL: I think there's a real hunger among law students for experiential learning, and that's an ongoing debate, I'm sure.

What about the Socratic method? Did you get into that?

WH: Yes. I mean, you know, nobody uses the true Socratic method as Socrates did it. That's a skill that few of us possess, and it's also a very time-consuming way to teach a subject. But the sort of modified Socratic method of questions and answers and following up on answers with other questions, yeah, I used that.

RL: So you do find there to be a certain value in eliciting that kind of thinking from the students and getting them in the habit of thinking like a lawyer, as we say?

WH: Yes, I do.

RL: I think one of the issues of Socratic teaching is the answer. You know, do you give the answer? Do you not give the answer? Where do you stand on that in your method?

WH: Oh, I'm not sure where I fall on the scale, the give-your-answer don't-give-your-answer scale, but I am very conscious of, I'm always thinking about whether or not the discussion is fruitful to not only the student that I'm talking to but to the rest of the class. To me, it's not particularly fruitful, just in what I teach, put it that way, it's not particularly fruitful to spend a whole lot of time trying to get a variety of students to figure out the correct answer, particularly when really what I want to get at is something after the first couple of answers, so I usually will give enough hints so they can get the answers eventually pretty easily, eventually get them pretty easily even though initially they might not have been able to get them, and then move on to something else.

Civil procedure is kind of a rule-based course. There are some broad concepts obviously but there's also a lot of distinct rules, so it's not the kind of course where I feel the best use of class time is just talking about broad concepts without any resolution of what those broad concepts might, how they might play out in real life, because it is a course that deals with real life litigation.



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 13, 2006

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

TAPE 3A: SIDE b

RL: I've heard it said on occasion that when we teach civil procedure in the first year, that the students don't get it. They don't understand the relationship between, you know, a 12(b)6 motion and what goes on in the real world. What do you think? Should we be teaching it in the first year, or should we go back and be requiring it in the last year?

WH: I think clearly it's a good course for the first year. There is that obstacle, because you're dealing with a real live system, civil procedure system, that many if not all the students have little or no contact with in their lives, so they're asked to study about something which they don't really know about first-hand.

The way the course is structured, and it's partially the material you pick, and it's partially how you choose to teach it, that's not a significant problem, particularly if you do the right kind of background preliminary work in the course, which I try to always do. When I'm teaching the incoming first-year students, I spend the first week, or two weeks I should say, on just various background things. I try to use some very basic kind of experiential learning so that they can experience what various things mean, if only in the context of a simulation before we get into some of the cases and theoretical problems about those things.

In reality, what happens, most civil procedure courses focus on topics initially that don't require a significant amount of knowledge about the real world of civil litigation in courts. One of the typical things you start with is the concept of personal jurisdiction.

[Interview interrupted by a phone call; resumed on April 18, 2006]