

**Transcription of the Oral History Interview with  
Carol Bensinger Liebman  
January 6, 2006**

OGILVY: Carol, welcome.

LIEBMAN: Thank you.

OGILVY: What was your first exposure to clinical legal education?

LIEBMAN: I was a student. I went back to law school 10 years after college. When I graduated from college in '62, [ I knew of] only one person in my class at Wellesley [who] went to law school. I wasn't brave enough to be one of the few girls who went to law school then. So it took me 10 years – even though I had a husband who taught law, and had been around law school a lot. I didn't find the first year of law school a very supportive or exciting experience. It was the '70s, and the clinic was the place to go. I took a clinic, and that's when I found out I actually might be good at lawyering and wasn't a misfit. It was Boston University. We were affiliated with what was then called BLAP, the Boston

Legal Assistance Project, and the office was in the housing projects in Egleston Square. In fact, I took roaches home in my briefcase to Cambridge, and then to Newton, and then to New York before I got rid of those roaches. That gives you a sense of what the office was like. Lee Bromberg and Tom Mela were the clinical teachers, and it was just a great educational experience.

OGILVY: What year did you do that?

LIEBMAN: This was '73, '74. And then I worked there the summer after my second year.

OGILVY: What kind of set-up was it?

LIEBMAN: Well, in terms of cases, it was just your general legal services civil cases. We were the neighborhood [legal services] office. It's funny, I was thinking the cases don't stand out— I remember the people and the educational experience much more — the two cases that I remember are bankruptcy — when I vowed I would never do a bankruptcy case [again], because there was so much paper. Of course now, with computers, that would be different. And I remember reading — was it

*Before the Best Interests of the Child or Beyond the Best Interests of the Child* – but whichever one came first, and thinking, Wow, this is really important. And I went back to Lee and said, "Give me a [custody] case, because this is really important." So he, of course, made me represent a father, trying to upset the custodial relationship. I thought that was a great teaching moment about what it meant to be a lawyer – how you need to evaluate your values. But it was just a very supportive, collegial learning experience.

OGILVY: How many students were in the clinic?

LIEBMAN: Well, there were two teachers, so it must have been around – it was a small group. It must have eight or ten a teacher – 20 of us.

OGILVY: And what did you do during the gap between Wellesley and law school?

LIEBMAN: Oh, I did a lot of different things. I had two kids, that was most important. I worked for the Kerner Commission that investigated civil disorder, the riots. I worked for Action for Children's Television, and I worked for the Poverty

Program in Massachusetts. Actually the Poverty Program first – then we came to Washington and I worked for the Kerner Commission. Then we went back to Boston and I worked for Action for Children's Television – finally I got tired of being pushed around by lawyers. I would write the congressional testimony and some lawyer would come and deliver it, or I would write an FTC brief or FCC brief, and some lawyer would put cases in and sign it. I decided this was – and by then there were more women going to law school-so I decided it was time.

OGILVY: And so you went to – why did you pick BU?

LIEBMAN: This should be in the oral history. I applied to all the Boston schools, and that was the place I got in. Interestingly enough, I applied to Harvard – my husband was teaching at Harvard then – and at that point there was a preference for sons. And I wasn't quite there on the numbers, but had I been a son, I would have gotten in. And I'm told – Lance says-that the faculty head of the admissions committee came to talk to him to say that they had never been faced with this spouse or significant other problem before, and that they had really thought about it and they were going to do away with that [preference] policy, so I wasn't going to get in. I took one or two sons down with me. And then they reinstated the policy a few years later, but –it was actually just as well. It would have been, I think, a

very difficult situation. Law school was difficult enough. So I wound up at BU, which was great.

OGILVY: How many women in your class?

LIEBMAN: We had a third. BU had a long tradition [of admitting women]. I used to run into [Professor]Fran Miller, who teaches Health Law and Trusts and Estates, in the ladies' room. She had kids, I had kids, and we had both done a half day's work at 8:30a.m. when we showed up to put ourselves together again.

OGILVY: And after your graduation, what did you do?

LIEBMAN: I worked in a small private firm. A firm that had spun off from a second-tier Boston firm for 11 months and 16 days doing civil litigation. And my clinical teacher, Lee Bromberg, had then become general counsel at the Department of Corrections in Massachusetts – this was in the first Dukakis administration. And the chief lawyer, Ernie Haddad, the chief lawyer at Human Services, brought in just a remarkable bunch of general counsels in the Human Service Agencies.

OGILVY: Let me ask you when you throw out a name – the person transcribing –  
(inaudible) – go ahead and spell it out.

LIEBMAN: I can't spell. I went to public school in Kentucky. It's H-A-D-D-A-D, I think, Ernie. And Lee Bromberg. And so Lee had left teaching and had gone to be general counsel, so I went to work for him. And it was a remarkable three years – constitutional law and voyeurism every single day of my life. Then Dukakis lost and we got a very conservative governor, Ed King, and I felt that was not the place to be a Department of Corrections lawyer. So both BU and BC, Boston University and Boston College, were hiring clinical teachers, and I applied to both places and wound up getting the offer at Boston College. And I thought at the time, I'll do this for two or three years, and when the Democrats get reelected I'll go back to government. And here I am.

OGILVY: You say 11 months and 16 days. Is there a story there?

LIEBMAN: It wasn't the right match for me. I had little kids, I would eat yogurt at my desk. I

tried to get out of the office at 6:00 or 7:00. The guys that I worked for would go out and have a couple of martinis at lunch and be ready to start work again at 4:00. So it was not only the – it was [number] of hours but also when the work hours occurred. I was making enough money to pay somebody else to take care of my kids — and I didn't really care whether my oil company beat somebody else's oil company. I did not care enough [about the work at the firm] to miss being with my kids. If I'm really feeling like I'm helping people, making a difference, then maybe I can justify [time away].

OGILVY: And what did you find when you got to BC then?

LIEBMAN: That was great. BC's program, I was told, had been started by students. .It was the '60s, they wanted to help people, they got a 'storefront' somewhere in Boston and were representing poor people. And the law school found out about it, and thought, Well, you better put in some supervision. Don Stern, who later became the U.S. Attorney – first counsel to Governor Dukakis and then U.S. Attorney – was involved in getting a handle on this and providing supervision. By the time I arrived, there were three clinical faculty, and we had an office in Waltham, Massachusetts. And what was great about this is that the office was in city-owned property above a fire station. You walked up these dark stairs with a bare

lightbulb into what used to be a firehouse. It was a big open space. And the pole was still there. And my office had an electric blue kid's desk, a little bookshelf, and if I backed up I'd hit the bookshelf – and room for one chair. And I hated the desk, and I tried to get a different desk. And they tried to take it out, and they couldn't. It turned out what had happened is they had gotten all this donated furniture, and then some faculty and staff and the students had come out and actually built the offices around the furniture. So it gives you a sense it was pretty primitive.

There was actually a student board of directors, and at that time the students wrote every check. That shifted fairly quickly over the next couple of years.

OGILVY: Where's Waltham?

LIEBMAN: Waltham is a suburb of Boston, Massachusetts – a primarily white working-class suburb with, a small minority population. It also was the home of one of the state mental hospitals. So when deinstitutionalization took place a few years later, that became a heavy piece of our caseload. So Waltham was across the river from Newton, Watertown, western suburbs of Boston. And it was in the first few months [after I began work that] Greater Boston Legal Services – I think it was



then called Greater Boston Legal Services – went on strike. When I was hired by BC there were two slots. Laurie Glick and I were hired. And one was a BC-funded slot; one was a Legal Aid-funded slot. And we were each asked, which would you prefer? I knew there was a strong possibility that Legal Aid lawyers would be going on strike. And I said, "Gee, my brother is a union organizer. I don't think I want to be in this dilemma of deciding whether to go on strike or not as a professional. I prefer the BC slot." And Laurie was a BC graduate and said, "Gee, I can't quite see myself being a member of the faculty." So that worked out well, except he went out on the picket line and I would bring him coffee. And it was an interesting way to get started.

The first year at BC was actually frustrating, because I had had a fabulous educational experience [in the clinic at BU] and I wasn't happy with the way things were run at BC. I didn't think there was attention to the teaching, and it just wasn't what I had experienced as a student. And, happily, Mark Spiegel arrived on the scene. He tells me that I told him in his interview that if he didn't take the job I was going to leave. I didn't remember that, but it probably does capture my sense of it. So Mark was really my first major teacher.

OGILVY: When did he arrive?

LIEBMAN: He must have – let's see, I started in '79, so he must have arrived about I think maybe '81, right around then. And he was somebody who had been through the Chicago program. He was just wonderfully thoughtful about lawyering, about teaching. So he really was my first great mentor and teacher as a clinician.

OGILVY: What from your practice days were you bringing to your teaching early on?

LIEBMAN: I think as a government lawyer you can't just automatically take a side. You have to really evaluate did your people do what they were supposed to do in the public interest. So that gave me a kind of reflective point of view that I think was very helpful. It wasn't just you automatically do this, but you always were asking why – what's this really about? I think that was the most valuable thing that I brought. I think in some ways I was the best teacher my first year because I was learning the law alongside my students, and I could be fairly explicit about it. That was probably the most – probably the second year, when I knew a little bit of the law I was probably the most confident in terms of the lawyering. But it was when Mark got there that I really became much more self-conscious about the teaching and began to develop a theory of teaching.

OGILVY: What kind of cases were you doing?

LIEBMAN: Just general civil. Amazing – I mean, the first case that stands out – I think one of my first two or three cases was an incredible case in which a mother arrived at the office and claimed that her husband, who had in his possession his kids' passports – he was Latin American, she was a U.S. citizen – had come to town and was going to snatch the kids and take them away. And then on the way out the door – this was my first experience with on-the-way-out-the-door comment– said, "By the way, my elder son has been sexually abusing my younger son." I didn't have a student on this case. This meeting occurred before students got there. I spent a long night thinking, what do I do about this? –I did make a connection with a – we had a social worker. I should mention that. BC had a social worker as a member of the teaching team from the very beginning. And I had talked to the social worker – and we should talk about that a little bit later. So I talked to her, and we made some phone calls, and had gotten the mother on the phone to explain the situation to a case social worker. And I just spent a really sleepless night thinking, what do I do? Can I turn this family in? – and then [I] got a phone call from the social worker saying, "Are you going to do it?" And I said, "I can't [under the rules of professional responsibility]. [I understand if you think reporting is required], you have to [do it]." So she did. So it was really an

amazing case. I stayed with that family – working with them on and off for three or four years and later ran into the mother in the supermarket once, and she thanked me, and everybody was fine. But it was a great beginning lawyering experience in the legal service setting for me, because I had to wrestle with exactly the ethical and moral issues that I would later ask my students to wrestle with. And about the social worker – having a social worker as part of our team was another way that I learned a tremendous amount - about a whole other way of thinking about human behavior and helping people. And we very much wanted our students to develop a respect for other professionals and learn how to work with and talk to other professionals. So having Helene Martin and then Kathy Laufer, and now Lynn Barenberg as part of the teaching team was a unique piece of the BC clinical model, and a great learning experience for the teachers and the students.

OGILVY: In terms of cases for the students – (off mike) – ?

LIEBMAN: At the beginning it was probably six or eight, ten – the students worked on lots of cases. As we put more education in, they would typically have three to five cases open at a time. So it was a small case load.

OGILVY: A one-semester clinic?

LIEBMAN: I'm trying to think whether we – for a while we were two semesters. I think we were two semesters occasionally, but it was usually one semester. We always debated between giving students the Cadillac [experience of a year-long clinic] or letting everybody have a motor scooter to ride on. So I think in the beginning it may have been a year. And our thought was that at the end of the first semester we had really exposed them to the things you can expose them to that don't grow from repetition. They'd be better off if they had a whole year, they would consolidate and develop polish. But given that most semesters we had three or four times as many people wanting to take the clinic, we made the choice to go the other way to a semester model. It was hard. We were occasionally more involved in cases, because at some point you can't keep transitioning clients [to yet another new student]. We actually spent a lot of time talking about termination issues – us with the students, students with the clients. And that was interesting, because with a one semester legal aid clinic, you often are handing people off. I used to swear that there was a former client who had a service that the minute the students left sent phone calls out to all the clients, and said, "You can get to the lawyers for the next month" – because it did seem that clients had a way of knowing when we were available.

OGILVY: How far physically were you from the law school?

LIEBMAN: About four and a half miles, and that was a big distance at the beginning. I think we had a shared office at the law school, we had a mailbox. Dick Huber, who was the dean, was very, very supportive of the clinic, but we weren't very integrated into the school in the early days. By the time I left I had my own office. There was another office, a bigger office shared by the other clinicians, and we had become much more a part of the school. But that was a big mental distance and physical distance at the outset.

OGILVY: What was your title when you were hired?

LIEBMAN: I have no idea. It must have been "clinical professor" or –I think it was probably something like "clinical professor," and whether we were an adjunct, blah-blah-blah – I don't know what it was.

OGILVY: Did it change at all?

LIEBMAN: As things evolved there became a set of standards for "assistant professor," "associate," with long-term renewable contracts.

OGILVY: And how long did you stay in the Waltham office?

LIEBMAN: We went from the fire station to a much nicer office across the street which was stunning. You'd see the clients first come up the stairs, walk into the new office and look around, and you'd see them straighten up. They could just look around, and you could see that [the new space] said, "Well, you're worth something" [to the clients]. Then we moved to a third Waltham office, where they still are.

OGILVY: Did the practice change at all?

LIEBMAN: No, we stayed – and they've stayed general – we on and off talked about specializing. I like the kid cases, what was called CHINS, Children in Need of

Services, in Massachusetts. (And interestingly in New York it's "Persons in Need of Supervision" – not an insignificant difference.) So I would grab for the kid cases. But we stayed a general practice, thinking that learning the law was a part of what we were trying to teach. We would do a simulation – we did boot camp at the beginning, a really intense simulation the first 10 days of the semester. And we'd use a landlord-tenant case – I think usually a landlord-tenant – we might have done a Social Security case once – so they get familiar with that law. But we didn't try to teach them law. We were teaching them about lawyering and how to find the law – interesting whether that works as well in this era of specialization.

OGILVY: And how many hours a week – (off mike) –

LIEBMAN: It was a lot. I'm always surprised to hear clinical teachers having trouble having students take [clinic work] seriously. That just never was my experience. I think my only experience is we once graded somebody down for spending too many hours, because he was just overdoing it and he was driving everybody else crazy. Part of what we do is helping students learn what's enough and what's not enough. So they were there a lot I think - 20, 25 hours. There was what we always called the "semi-sacred" hour of supervision a week. But students were scheduled for



office hours two or three times a week, and were out there in Waltham much more and on the phone much more. It was a big – I'm trying to remember – it was seven credits, six credits – it was a high-credit clinic, so we weren't fighting against tons of other courses.

OGILVY: Did the size of the program grow in terms of clinical faculty?

LIEBMAN: A little bit. It's always been four faculty members. It went from three to four, and stayed four with Mark Spiegel and Bob Smith on tenure track. And they, for a long time, would rotate in two-year pieces – one of them teaching Civil Procedure and the other coming to the clinic. So you had one of them and then the other three supervising attorney clinical teachers and the social worker.

OGILVY: Was that a pretty stable cadre?

LIEBMAN: It was. I will never have a working experience like that. It was the five of us and then there were other people in and out – Ray Wallace, a former student of mine, was there for a few years. Alan Minuskin came later. But particularly with the

core of Alexis Anderson, Paul Tremblay, Mark or Bob and me and then the social worker, there was really a perfect trust. You could go [to one of the other teachers] and not have to be self-conscious about either a teaching issue or a practice issue. We tended to have lunch together in the conference room with the support staff and whatever students wanted to come in. We would meet once a week to look at the cases and decide which ones we had service obligations to and which ones would be good teaching cases. We had grants from Greater Boston Legal Services and some other grants to be the neighborhood provider. And it was just a remarkable group. I had dinner with Paul the other night, and we were talking about the evaluations that we did there at the end of semester. I don't know of anything like this being done anywhere else. It's the one thing I don't miss about being at BC. We did a mid-semester evaluation with a checklist, and met with students, and at the end of the semester we wrote evaluations that tended to go six to eight pages. We went through every piece of paper and every case file, everything the students had done, and evaluated them. I think I got one done in seven hours once. It took somewhere between eight and ten hours per student. Then we would circulate the evaluations, meet as a group and have to justify proposed grades. So, again, it was an incredibly rigorous grading experience, and again another way to learn [about teaching], because you could see what other people were evaluating and teaching issues that had come up. But writing the evaluations is the one thing I don't miss. I'm not sure I could still do it at this age. Writing those evaluations was really a killer.

OGILVY: Did it result in a meeting with students then?

LIEBMAN: So then you'd put the grade on the paper – then give the paper and the grade to the students and sit down with the students.

OGILVY: How was it received?

LIEBMAN: I think most of them appreciated it. A lot of them would show it to their parents, and parents would come up [to me] at graduation [to comment on the evaluation]. But I remember finding one of my student's write-ups– it wasn't that bad a grade either – finding it in the waste basket 20 minutes after our meeting, and I was crushed after I spent all that time.

OGILVY: Did you have students during the summer?

LIEBMAN: We'd try to get the good students in the clinic to stay, but they would go off to work elsewhere, and we wouldn't get enough, so we'd hire first-years. If it was first-years, then they were working for us as employees. It wasn't until very late in the life of my time at the clinic that we worked it out so that we could get more than a month of vacation. So now, and I think by about the time I had left – I left in '91 to go to Columbia – by then I think we worked out a rotation over at least every other summer. I don't remember the details exactly, a couple of us would be off for the whole summer. But it took a long time. So for a long time, my husband would say, "The three best things of teaching – June, July and August – and you manage not to get them."

OGILVY: What prompted the move to Columbia?

LIEBMAN: My husband, Lance Liebman, got a new job as dean at Columbia Law School. I was half-time at Columbia teaching a mediation simulation course and half-time teaching a section of the Mediation Clinic at Fordham the first year. I wasn't so sure it would work out to be on his faculty, so I hedged my bets and went down as a visitor the first couple of years.

OGILVY: Had you been doing mediation?

LIEBMAN: I had started being a mediator when I was at the Department of Corrections. At the Department of Corrections we defended the 1983 cases, because Frank Belloti – B-E-L-L-O-T-I – was a liberal attorney general, so he made us [DOC in house counsel] all special attorneys general so we could be the bad guys on these cases. And a lot of them were just bad management cases, you know, unresponsive managers. And I heard about a program on prison grievance procedures, and it seemed to me that might make a lot of sense, and it was [held] at Boston's Logan Airport, so the commissioner said, "Yeah, I'll give you a quarter and you can go." Michael Lewis, who was a Washington, D.C. mediator, was the person running the program. And he really taught us mediation. And I set up a prison grievance procedure, got the regulations promulgated, and, as far as I know, it never got implemented. But that's when I learned about mediation. And then right about that time the community mediation program in Massachusetts decided they were secure enough to let lawyers become community mediators, and I applied for that program and got trained as a mediator. So I had been doing some mediation as a volunteer in a community program when I went to BC. My dean said, "Oh, you should teach this sometime" – and kept after me. So I was teaching a simulation course. When I went to Columbia I thought this was a chance to – I was less and less enchanted with litigation. This was a chance to shift, so I set up the

Mediation Clinic.

OGILVY: Were you aware of other mediation clinics at other schools?

LIEBMAN: I know there were a few. I'm not sure I was aware of it. I know Lela Love had a clinic – I can't remember if Carrie Menkel-Meadow at Georgetown had – well, she was at UCLA then – was by then doing mediation or not. I know I didn't talk to those people – I just knew how to set up a clinic, so I went and hung out with various neighborhood mediation programs until one of them said I could bring my students.

OGILVY: How was it organized?

LIEBMAN: It was organized with intensive skills training the first couple weekends of the semester. And then we'd go up – at that point we'd go up to 144th Street in Manhattan, to what was then the Institute for Mediation and Conflict Resolution, which was a community mediation center. The Institution for Mediation Conflict Resolution had been set up by Ted Kheel – big time labor mediator/arbitrator –

back in the Lindsay era. And I don't know the story of what happened in between, but it then became a community mediation center and not this big organization he had set up. It must be my fate to go to old public buildings. This was in an old schoolhouse that was falling down. But we'd go up there two or three times a week and hope there'd be cases. I started with eight students. I now have 10 students in the clinic, because I wanted to add LLMs. It seemed to me mediation was something that was having an impact around the world, and people were interested in it. And unlike the reservations I had about having LLMs who'd practiced for three or four years, five years, in their home country, come into a clinic when you're teaching beginning skills – which didn't seem to make sense, it seemed to me mediation was new for everybody. So I went up to ten students. And the story of the clinic has been it's been the eight or ten students, intensive training at the beginning, go out and observe people for two or three weeks, and then go with either me or I now use teaching assistants or experienced mediators, because I just can't do four or five mediations a week. It's just – the older I get, the less patience I have. I think it's fun to go out and watch, but it's awfully hard for me not to intervene. And so I think it's good for them to have other supervision. I can't kid myself anymore. I tell them to call me "Carol," and they don't – and I actually accept the fact that it might be that the age difference does matter at this stage. So I think it gives students some freedom to try things that they don't feel comfortable doing with me as the supervisor. So the big design change for me is that I don't supervise every mediation anymore. But it's the

same model as in the litigation clinic, except you can't plan for mediation. When mediating in court or community centers we don't know much, if any, information about a case in advance. So you often were handed a card with some names and an amount of money, and that's all you know. But it's still the do and reflect [model of teaching], both debriefing with me and then writing journals, and then the weekly class has a mix of case rounds, skills, and policy or jurisprudential issues.

OGILVY: What's the range of matters?

LIEBMAN: Anything we can get our hands on, but at the moment we're doing small claims court in Harlem on Thursday nights. We get federal sector EEOC complaints – usually the ones that the judges think, Oh, my goodness – this is people who ought to talk to each other – occasionally some with some meat, but not as many as I'd like. We do what's called in New York "personal appearance part," which is a section of the civil court which hears cases where one or both sides is pro se and up to \$25,000 in value, and just anything else I can get my hands on – occasionally some cases from the university EEO office. So it's interesting. More people want to mediate than want to be mediated. And some community cases, although not as many of those – it's been harder to get those. They've been going



down, and we're not sure why. We go out to the community centers as well.

OGILVY: Have you had any noticeable impact with the addition of LLM students?

LIEBMAN: I've gotten a couple of invitations to go speak myself. Not as much [impact] as I would have expected, because I think it's new for them, so I now have [all students] do an end of the semester paper or project, and you get some comparative reflection there. Occasionally the cultural differences are highlighted, but we have such a diverse student body. I used to pay attention when I would pick my students for the clinic—they do written applications, and I pick some that I thought would add to everybody's education, some I thought I'd really like working with, and then lottery. And then I used to go back and look for some diversity. At Columbia we just don't have to do that anymore. We get fabulous diversity among the students, so there are different perspectives anyway. A lot of our JDs – a high percentage, relatively high percentage of our JDs have a first degree from a non-U.S. schools. One of my best diversity experiences was when I was doing an exercise, asking people to tell us their names, their middle names and the story of their names, because it reveals a lot about families and tradition. And there was a Chinese American student, and she didn't know what her middle name meant, but this red-headed Midwestern kid who spoke Chinese explained

what the name meant and the cultural historical meaning of that name. So we get a lot of the diversity issues and the different cultural perspectives anyway from the students.

OGILVY: You mentioned opportunities to speak, and I know that you've done some consulting and teaching. I want to come back to that. But before we go there I'd like to talk a little bit about – (inaudible) – clinical conferences. You remembered your first time? When was that.

LIEBMAN: The first one was in '82 in Minneapolis, and I actually pulled the folder – I think I mentioned – it was the sixth – pretty amazing. So I guess I was second generation, first and a half generation of clinical training? It was simply the best educational experience in my entire life. It was a model that the Georgetown people, I think, had had their hand in, where we really did group process work. There were about 60 of us. There were four small groups, about 12 people, and very little in the plenary session. We each brought a videotape. There'd be a [video] presentation, a critique of the presentation, and then a critique of the critique. And our group bought into it. Sue Bryant and Elliott Millstein were the facilitators, and they have been my mentors and teachers ever since. Dave Koplow, Karen Tokarz were in my group, Phil Hamilton. It was an amazing

group, and we really got into the group process piece of it. And, again, it was kind of the trust that Sue and Elliott built so we really could talk about reactions. It was very intense. I mean, it was a classic group process. Somebody, I can't remember who, but one member of the group brought in a visitor without asking us ahead of time, and we almost tore him limb from limb. The group had bonded, and "Don't you mess with our group."

They modeled as facilitators what great clinical teaching is, and I got to experience that first-hand, and then think about it and put it in an intellectual framework. It was just a remarkable experience. We were going through the different skills. How do you teach negotiation? How do you teach counseling? I didn't go to the first couple of clinical conferences I could have gone to, because I believed you had to take a videotape, and it took me two years, three years to get up my courage to tape myself. We were taping our students then – we always taped our students. So [at my first clinical conference] you would put yourself out there and then [the group would] really, really take it apart. I think there were very short presentations about teaching negotiation and counseling – and you'd take it apart and then talk about how well we had done at teaching. And it was an extraordinary, just extraordinary, experience.

OGILVY: And how did the group process – (inaudible) – ?

LIEBMAN: Well, it was the critique-the-critique piece that was the group process: How do we function as a group? What was helpful? Who was respectful to whom? I guess some of the groups wouldn't play. Some groups just did other things, but we were all fascinated by that part of the conference experience. It led me to do some reading on group process. I never quite got up the courage to go off to one of the Tavistock weekends, but I read a lot about it. And it was very useful again to think about when you're working with clinical students, it's a small group. It's a classic small group. And being aware of the group dynamics was pretty helpful. But Sue and Elliott were just fabulous, fabulous teachers. I mean, it was funny – here I was teaching, but I still remember at the break saying something to Sue that I'd been thinking but was timid about saying to the group, and Sue saying, "That's really good. Please bring it up when you get back." She was working every minute. And then a few years later at one of the weekend conferences I was asked to be a facilitator, and I facilitated with Sue, and it was like, God, I've been anointed – I've been raised to the Valhalla. We don't do that in the same way for our new clinicians. And maybe it's just being the old days always look better when you get to be old, but I think that's a loss. I don't know what you do about it. I guess the new clinical teachers conferences in a way are an attempt to replicate[the experience of the early clinical conferences], but it's hard – I certainly reached the stage where I don't want to talk about teaching interviewing

another time. I really think it's hard being a good member of a group and respecting people, when I want to say, "Hey, here's how you do it." I became less generous to wanting to be a teacher to new people. But I think it's a loss. I think that really rigorous thinking about pedagogy and supervision doesn't happen as much. I haven't been to the last few clinical conferences, because there isn't as much attention to mediation, ADR, and what I am teaching now in the Mediation Clinic and Negotiation. So I tend to go to the places where that gets discussed. But I think that's a loss and it's a big change.

OGILVY: It's also just getting so big – over 400 at the conference. What –

LIEBMAN: Sixty, sixty-five. And the commitment in those early years was you went and you stayed. And if you were in a group, you went to the group, and the group would let you know – you didn't go off. This went on for I think five or six, seven years – two or three people who had wandered off to see friends, and they really were scorned. But that group process, I don't think that gets replicated anymore in the small groups. Although, as I say, I haven't been to a clinical conference for two or three years.

There was another conference at Boulder, where I was a group leader, and had

also brought a videotape. This is another example of the intensity of the learning in those clinical conferences in the old days. I was just talking to Ellen Scully about this the other day – she was in my small group in Colorado. Dave Koplow was again in that small group. And I showed a videotape of a very attractive student, my supervision session with her – I actually had to stop taping when she started to cry. She was very pretty and very – she used her looks in her relations with people – not in any inappropriate way, but it was a piece of who she was. When she first called the opposing lawyer [on one of her cases] he had come on to her over the phone – "Oh, that answers one question – it's Pat – I didn't know if Pat was a guy." And then in court he would want to sit and talk to her, and he patted the chair, in a somewhat sexual way – not horrible, but she had been really upset about it and really furious about it. I was an early woman lawyer and got used to this sort of behavior, and if in court they called Mr. Liebman and I stood up and they got embarrassed, it meant I get put to the head of the motion list for the next month, I could handle that. So I hadn't treated the lawyer's behavior seriously enough. The student was talking about how it demeaned her sense of self as a lawyer, as a professional and wound up in tears. I showed the tape in my small group session and we had a very intense discussion. And it seemed to me that some of the guys weren't getting it. So I said, "Let me ask you" – I think I said something like, "Let me ask you guys have you ever had a female student come on to you, and what was it like." I went around and I was going to follow up with the same question to the about women teachers. .We were going around

the room, and there was a teacher, a male teacher from a Boston school, and we get to him, and he says, "You just put me in an impossible position. I never said this before, but I'm gay. So you just excluded me from the discussion." I mean, everybody froze. Then the next person spoke. We treated him like he wasn't there. And you can imagine, since we were all pretty sensitive, we realized this had been a disaster. We then spent a lot of the rest of the conference processing how we had failed to respond to him and why and how we could be – and it was – I mean, people were in tears. By the end people were sharing [deeply personal] things- about losing a son, about a serious illness and – it was an incredible, intense experience, because we as a group ignored somebody, realized it, responded to it. We created an atmosphere of trust that led people to take real risks and ask for help. And, again, it was an another educational experience about the power of the methodology that we use. I think it stayed with all of us. And that's a loss that we don't have that. On the other hand, times have changed, education has changed. The political needs have changed. So it's not an entirely bad thing that that's not there, but I do regret that [new clinical teachers] are unlikely to have that kind of experience.

OGILVY: You say the political needs have changed. What do you mean by that?

LIEBMAN: Well, it seems like it's been a long time since there's been a real liberal agenda in Washington. We got Clinton partly because he was able to abandon a lot of that agenda.

OGILVY: And how has that influenced the education agenda?

LIEBMAN: Well, again it's hard – I'm not as involved, but it would seem to me that that has to become much more of a focus, and that raises many more questions about how do you negotiate as a teacher, and can you – it was kind of a liberal assumption – I was starting to say set of liberal assumptions, but I think that's not entirely – it's not a useful characterization anymore. There was a belief in the law as a tool to bring– to level the playing field and bring everyone into the system and give everybody a chance to play that's under attack. And I think you can't – for somebody who grew up in the South and saw *Brown v. Board of Education*, grew up as a woman and seen the changes that the law has made – there are a set of assumptions that if you went out there and were a good-guy lawyer everybody would respect you and – you know, they might not agree with you, but they would respect what you were doing, and say, yes, that's a part of our set of social values. And I think that's under attack, and there isn't that shared assumption across the political spectrum. So I think that does change how we think about



what we're doing. In the Mediation Clinic I'm not involved in those discussions – we help individual people. I do think it's useful for students to be in the Mediation Clinic, to see the different ways that disempowered people get treated by the court and how difficult it is even to get your story across in small claims or personal appearance part, with even very good judges and how that lack of access to any expertise or expert guidance really hampers your ability to tell a story. But I think [the changed political climate] does change how you think [as a clinical teacher] about case selection decisions. We used to think, Well, which courts can be better for us, federal or state? But not whether we should – is this a situation where we shouldn't bring this case because [litigating and possibly losing is] going to go from bad to worse. I think that's changed a lot.

OGILVY: You've been involved with mediation for a fair number of years now. What changes have you seen? Improvements – (inaudible) – ?

LIEBMAN: Well, it's used now. The courts tend to accept it. I think lawyers are more open to it. The "it" remains a question: What is it? Is the kind of mediation that gets practiced a benefit? If you have evaluative mediations chosen by lawyers and their clients voluntarily, that's fine. If you choose a retired judge who isn't going to pay any attention to the relationship issues, it's too bad and I think it's a missed

opportunity, but that's a choice [about how to define mediation]. But with court-mandated mediation, I do worry about our inability as a field to make choices. A few states have said you can't evaluate – I'm not going to go into evaluation versus facilitating mediation – if somebody wants to know about it, then they can go read the books. I won't take our time now. But I think the field's wanting to be inclusive, because mediators like to be inclusive, may be making a mistake by not taking a stand by saying it's useful to evaluate cases, it's useful to predict outcomes, but that's not mediation. And as courts and agencies buy into the notion that mediation is a useful way to move cases, there's always that tension of, Is it changing the process? It's interesting teaching students who are very young and not very worldly, and they haven't even read novels.

A digression, but I had a student – we had a horrible domestic violence case once. The only time we had to lock the office door for a couple weeks. And a very young student, maybe 22 years old – this is at BC – was working on the case, and I couldn't figure out how she could be so sensitive to the psychological nuances. And I said to her, "Did you major in psychology? Have you been in therapy?" She said, "No, I read Dostoyevsky." And I always thought that was a good reminder[ of the value of literature to lawyering].

So with mediation it's awfully hard to – I wonder about putting these students with not a lot of worldly experience out there and asking them, with no chance to prepare, to be able to empathize and really recognize what's going on for the

clients. On the other hand, I hope it makes them better lawyers. Even if they're not great mediators, I'm there or a TA is there. Someone is there to help, and I hope it does make them think differently about what the needs are and the interests of the people they are working with and working against.

OGILVY: You mentioned TAs. Who are the TAs?

LIEBMAN: They're the best mediators from the semester before. I started doing this about five or six years ago, partly because I just couldn't – I was just getting worn down by running around doing both the logistics and the supervision. And it's worked out pretty well. They have to be good – they have to be people I would trust to mediate for a friend of mine, even if on the very elementary level. And they have to be people who I think can manage their way around the court and with court personnel when things go wrong. And there are always two or three every semester who really are very, very good, they go through the training again. I talk to them about training. Some years I'm better than others. Some years I've had them videotape themselves giving feedback to students during the training mediation simulation, so I could then critique their critique. But I don't do that all the time. I sit and talk to them afterwards. I have to say I cut corners more. I've gotten older and more tired of doing this. But I think it's been, as I said, a useful

thing for the clinic students because they can take risks with a peer that they can't take with me.

OGILVY: You still do mediation yourself?

LIEBMAN: I've very rarely done mediation on my own outside of the clinic. If anything comes up during the semester, I'll only take it if the parties allow students to second-chair – or at least observe. So I've done a few cases. I'm now doing a lot of work on conflict resolution in health care as a result of a grant that a colleague of mine, Bill Sage, who is an M.D. J.D. on our faculty – for a few more months but we're about to lose him, he had a big grant on the medical malpractice problem in Pennsylvania Bill said, "Do a little piece for me on how what you do with mediation might help after a medical error." And this has turned into a huge project that's consumed my life for the last three years. And we actually mediated two wrongful death cases as part of that project, which I shamelessly treat as a vigorous and robust data set when I go out and talk about this work. I haven't figured out how to have students involved in this, except very much as research assistants, partly because the stakes in the cases are so high for everybody doctors and families. I'm still trying to think about that. I might have one more reinvention of myself in me, and that will be the direction I go.

OGILVY: That's been one of the questions I've been asking toward the end of the interview. What do you see for yourself in the next 10, 15 years, whatever you feel you have left in the academy?

LIEBMAN: Well, I just turned 65, so I'm having trouble dealing with that. People keep saying, "Are you going to retire?" I actually cut back to three-quarters time, so I'm only do the clinic one semester a year, and that's because I want to do more in this health care area, and I realized I could spend a year or two getting a grant, but at 65 you don't throw away those years. I would rather do the conflict resolution health law work than spend time writing grants. But people say, "Are you going to retire?" and I say, "Why? I'd just be doing the same thing, so why not get paid for it?" I'm lucky enough I have a job. I would pay to get to do, now and in the past as well. I can't imagine a better more fulfilling way to spend a career. So I'll keep on doing mediations, health care work, as long as it stays viable, I'll keep on working with – see whether I can use these skills better with my grandchildren than I managed to do with my kids. But teaching is just a great – it's a great way to spend your life, partly I think because you always learn from the students. It certainly keeps you young. It's a little embarrassing when you ask a kid to help you with your cell phone, and they say, "Yeah, my grandmother has trouble with

that too." Hey, come on. But, I think I'll keep working in the conflict resolution field. I mean, I do threaten now and then to lead a strike of mediators in New York if they don't start paying them. In the Southern District a mediator shows up for free, and you've got five or six big firm lawyers there getting paid by the hour. But I think for me it will be more mediation, more teaching – and negotiation. I wound up teaching – setting up a negotiation workshop program at Columbia. We now have nine sessions of 20 students a year, and I control the curriculum, but very much give the adjunct faculty a free hand within their section. We developed set role plays, and the readings are set. But then people can do what they want [during the class]. Columbia for 13 years had a required one-week intensive simulation-based ethics course. Last summer, last August, was the first free summer I had after 13 years. We wound up [the ethics course call The Profession of Law] with a three-day divorce negotiation where we'd bring in 30 or 40 alums to teach sections of 10 or 15 students. But the first year we taught that I was just stunned at how little students knew about negotiating. They didn't know how to negotiate; they didn't know how to talk to clients. I thought teaching negotiation would be the most fun to do, so I set up a negotiation simulation course and then it's grown. So I keep working in that whole – I guess the whole area of conflict, conflict resolution, communication is where I'll spend the time I have left.

OGILVY: You've also been doing work internationally. Will that continue?

LIEBMAN: I hope so. I don't know if anybody's talked about this yet, but five years ago the Ford Foundation started putting money into setting up clinics in seven Chinese law schools – Jay Pottenger had been involved in that very much, and Jenny Lyman and Phil Schrag, Dave Koplrow, Barbara Schatz – I left somebody out. So I went over the first summer [with Margaret Shaw] and did some skills teaching. There was a mediation clinic – it's since folded, but there was a mediation clinic at Tsinghua, in Beijing – fascinating, just fascinating cross-cultural experience. We were using a translator – when you have to work through a translator, you really become a good teacher, because you have to be very clear, and you have to really know what you want to do and get it across. So we did mediation at Tsinghua, and then I thought I was going to be teaching negotiation in Wuhan – at South Central School of Politics and Law – and we had put together this whole negotiation curriculum. We got to Wuhan late at night. Early in the morning at 10:30 we met with our Chinese colleagues, and said, "So, we're going to teach you how we teach negotiation, right?" And they said, "No, we want you to teach lawyering skills." "When are we going to start?" "At 1:00." So I said, "Okay, we'll make that happen." So we had an hour and half to completely shift. But clinical education in China has grown. There was a conference this summer in China, and they now have clinics at 60 or so law schools. Ford, I think, is funding

13 or 14 of them – and, in addition, various schools have set up their own clinics. So it's neat to relive history, because Ford funded CLEPR at the beginning [of clinics in the US] and now they're doing this in China. So that's been rewarding. And I think that's the piece of the international work that may have the longest lasting impact. I taught conflict resolution in Israel and Brazil and Vietnam, and that's fun, but being part of building the institution of clinical education in China and the way that the gray beards were here – I'm getting to be a gray beard I guess in China – or there we're known as "the foreign experts." But that's been gratifying to relive those early days and the excitement and figuring out what works has been really – it's been really rewarding. So I hope that keeps up.

OGILVY: I've kind of come to the end of my questions. Is there any area that we haven't touched upon?

LIEBMAN: Well I guess the only other thing I was thinking about, looking at the list of questions, is the evolution of clinical writing. When I started teaching the Bellow and Moulton book was there. I can't remember if we used part of it when I was a student. I certainly used it as a teacher. I never succeeded in teaching from it, but it was a great book for me to learn from as a teacher. Certainly the Binder and Price and all its subsequent iterations were – I still use it. The vision of client-



centerness captures – I told David the other day – it captures what mediators are about too. It's not about me. It's about who are you, what do you need, how do we make this work for you. So that's been very influential. I keep saying that I'm going to go to one of these sessions on clinical scholarship and stand up and say clinicians should write when they have something to say, not when they have to say something. It does worry me some – maybe this is because we all want to recreate ourselves – but it worries me some that as we've gotten status and full status-that the people coming into the clinics are going to be very different, and certainly their energy and focus is going to be different. Columbia has long-term contracts. We vote on everything except appointments and promotions. I'm fine with that. Some of my colleagues aren't. But it does worry me that the shift to full status lets the academy define for us what status is rather than having us define it, and it may shift who gets to play and it may shift what the priorities are of the people who are coming into clinical teaching. But that's probably again just a troglodyte speaking, but that's my biggest concern for the field, that there's a cost that may not have been worth it to get full status, because the writing requirement takes energy away from teaching and lawyering.

On the other hand, as we've gotten bigger – as you've said, we're now so big – you can't rely on oral tradition the way we used to at those conferences. There has to be a way to have more people have access to what we think about. So I think there is value to clinical scholarship. But I worry that that does take away energy.

OGILVY: Have you found the *Clinical Law Review* to be a useful tool in your work?

LIEBMAN: Some, although partly because I've shifted so much to ADR, I tend to look at the ADR periodicals. But I think it's a valuable tool, because it does capture the things that I think are useful for us to be writing about.

OGILVY: Thank you.