

Interview with Albery Erlebacher on behalf of the DePaul Emeritus Society

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AE: what was your impression of law students at DePaul during your first years here?

MCB: Well '64 was a sort of a turning point if you remember. Um, Father O'Malley had left the presidency of the University and we have a new President. At the time, the executive vice president was Father Richardson and Father Richardson had been expected in '63 to become the president.

AE: I've heard that story...

MCB: But there was a problem in that his brother was the superior general and there was some talk that you can't really have the brother of the superior general, who was by the way very young at the time, so there was some opposition to him. So they brought in somebody who was a biology professor at the time...

AE: Father Cortelyou

MCB: Father Cortelyou. And Father John Cortelyou was a wonderful human being but he felt a little bit uncomfortable, at least at the beginning being the president and he was not comfortable making public speeches and for all practical purposes Father Richardson was running the University, at least so it appeared to me/be*. Now the one thing I have to tell you Al, that absolutely fascinated me, and struck me was in my first week of teaching, the man who had recruited me by the name of Al Vail, God rest his soul, said to me well lets go down to lunch and he took me to the faculty dining room that you remember...

AE: On the fourth floor...

MCB: On the fourth floor, next to the students' cafeteria. And we sat at a round table. and lo an behold he comes the president, Father Cortelyou and the Executive Vice President and the Chancellor and they're all sitting at the table and I'm looking at them, you know, this is my first week of teaching.

AE: Had you met them before?

MCB: I had met them cursory, but I'm sitting at the dining room table with the President, the Vice President and the Chancellor.

AE: I had the same experience at year later....

MCB: Yeah. And I looking around and I said wow, this is an extraordinary place and as weeks went by and I had the habit of going there, and we met several times there, this was to me just a unique experience, being able to sit with colleagues, many of them senior colleagues, from other branches of the University and I mean, I remember one day sitting there and listening to Dominic Crossan, who was such a distinguished theologian, speak about the latest book he wrote. We had so many other distinguished colleagues who did extraordinary things. And here we would sit around this round table and hear about what they were doing and be part of it. It gave me an enormous feeling of being part of the institution and frankly Al this is why for forty-five years, even though I had many offers, I never left DePaul.

AE: I know. And I had some of those same experiences as well.

MCB: I'm sure you did.

AE: What about the students in the beginning years?

MCB: The beginning years was, I have to say, I was extremely impressed with the students in the first few years of my teaching. And I have been totally disappointed with the students in my

last few years of teaching. Now I supposed psychologists can say this is really a process of ageing that you always sort of look at the past as having sort of something better or having more to offer than the present. But let me try to describe that. At the time, the law school had about six hundred students, now it has about one thousand. In the six hundred students, we had almost fifty-fifty day and evening students. Among the evening students were people who were mostly older than I was and they mostly all had their jobs and their careers. They didn't really have much time to study, to read, but there was a certain amount of seriousness and dedication that was just extraordinary to watch. And what I think was more touching in a sense for me was they didn't have the expectation that something was due to them. They knew they had to do the work. Even if it was minimal or maximum they just didn't have the expectation that because they had been admitted to law school or they came from an undergraduate college that had a big name or they had a good LSAT score that yes that meant that they were entitled to graduate.

AE: Did you always, I know your major area is international law and things associated with that, and we'll get to that, but in the beginning, did you teach those course right from the beginning?

MCB: No, no actually, you know DePaul Law School was a very bread and butter school. People criticized it for it, but I have to say, it had its merits in that it gave a structure. Um, I look at today's curriculum and the openness that's available and the total contrast with a highly structured and a totally unstructured as between the two, frankly I would take the structured. The totally unstructured I think not only creates confusion but losses a lot of the synergies that one can obtain by having a thought out, planned, synergetic curriculum. Um, in the first few days, first few years, that is fifteen years, I taught criminal law, freshman criminal law. So as they came through the door, I had the benefit of greeting them, so it was like day one of their legal experience. And I taught three sections, so that was either two day and one evening, or two evening and one day.

AE: Basically you taught American criminal law...

MCB: I taught American criminal law. And three sections means 12 hours of teaching...

AE: Sounds familiar...

MCB: It was pretty tough. Not like now, where people barely teach six hours and most of them manager to teach only three hours a week. And in addition to the 12 hours, in those days we had to give a midterm exam, grade the midterm exam, we had to take class attendance, people would sit in the same spot. We had to know people. There was an expectation that we would be at our offices from 9-5, except on days when we had evening classes. Um, we were expected to have an open door policy to see the students. Today, most of my colleagues, at least in the last ten to fifteen years, barely come two days week where their classes are scheduled. Our classes were scheduled between three and four times a week so there was a certainty that we would be there. Today that is not the case, everything has to facilitate the faculty member doing what they want to do.

AE: Young people who are studying law today, and comment on this, tend to specialize earlier in their studies than they did when you came.

MCB: Absolutely.

AE: You produced general lawyers

MCB: WE did. To give you an idea, for the first, from '64 to '69 to be precise, the students had two and a half years, out of three years, of required courses. Only in the last semester did they have an option, they had basically eight courses from which to choose four, so it wasn't really much of an option. In '69, by the way I was extraordinarily fortunate in that I was, I think, the only professor in the history of the law school who was promoted to full professor at the end of my fifth year of teaching. And by then, I had published a major textbook on criminal law, changing the whole methodology of teaching criminal law from the case method, the English case method, to a more European doctrinal methodological approach.

AE: Looking for theories?

MCB: Looking for theory or a doctrine to start with but then following a method as opposed to simply going from case to case without understanding whether its the historical, sociological, political or other factors that lead to the evolution of a legal concept. And so in '69 I was asked for the first time to chair a faculty committee to revamp the curriculum. And we did and we did two years of required and one year of elective, but in the electives we narrowed the electives to what I call track electives. So you could choose a track that specialized you in public law, private law or lets say taxation. And just a little vignette of history, in order to do so, we had to get rid of some courses. And in my absolutely naiveté, although after six years I should have known things differently, I looked at the curriculum and objectively found that the one course we could do away with in the second year was called philosophy of law. Now the only problem, that course was taught by one John T. Richardson. [laughter} So the committee said, you want to go tell him that, you go ahead. So sure enough Al, I went down, you remember the offices were on the sixth floor.

AE: Sixth floor, they moved around.

MCB: Yeah but the sixth floor was the executive offices so I went down to the sixth floor and I told Father Richardson, we have decided to cut off your course and we are moving it to an elective as opposed to a required course. So, you know, he was very, what should I say, very met in his answer like, alright, thank you, goodbye. And I was out the door.

AE: I know at the university and not only the law school, I know that you have been active in the larger university community as well, could you tell us a little about some of the kinds of activities and things that you accepted either willingly or not so willingly within the larger scope of the University?

MCB: well, as you know, the University in those days, I would say from the '60s well into the '70s, and some maybe to the mid-80s was a much smaller, and much more integrated institution. And there was really a tremendous emphasis on I want to call it the family spirit of the university, for lack of a better term. Um you know, knowing your colleagues from other departments and eating lunch with them once a week or visiting them, you know travelling the

“L” with them, there was a lot of this type of interaction. And I think, going back to the weekly luncheons and I’m sure you’ve seen that. I mean many times some of us would take the President or the Chancellor or the Vice President to task, why did you make this decision, you know, we would express our disapproval or approval. So you know, there was a sense of openness, transparency and I want to say even accountability.

AE: Long before the word openness came in the lexicon...

MCB: Long before it came, and you know it translated into small things. You know, we would walk the corridor and if we found a piece of paper, we would pick it up. I mean I have seen countless times, Father O’Malley or Richardson come in, walking the corridors at night turning and the lights off, it was that kind of an atmosphere. I think that among the things that I was involved in from the beginning was the curriculum change. You’ll recall that at a certain point in the college of liberal arts there was a desire to do what I would call, a sort of a Hutchison University of Chicago curriculum change...

AE: Do you think that desire came initially from the top down, from men like Richardson or Cortelyou, or did it come from the bottom up or both?

MCB: well, first of all Richardson was extremely supportive of it, but Martin Lowry was the one, he was the dean of the school of liberal arts and sciences, he was the one who was driving it but we would have meetings of that committee every Thursday evening from 6-9. And different faculty members of the college of liberal arts and science would come and present their views. And I have to tell you, the faculty was very enthusiastic. Just as a vignette, I remember spending three hours on one of these evenings, between two faculty members debating the difference between psychological social psychology and sociological social psychology. Where does it fit, does it fit in psychology or sociology, if you took a course in this would it satisfy that. It was that type of animated debate and you know the faculty was very much involved and very much desirous of bringing things. Liberal arts and science had a life of its own, it was not like commerce. Commerce was very much like law school, it was a professional school, mostly with part time people, many of the faculty members both in commerce and law practice outside, they

came to teach part time, there weren't at least in commerce too many PhDs, so you know, it had a different feeling. It was a more transient atmosphere.

AE: That was one of the difficulties before you or I came, that was one of the difficulties in the accreditation, eth overuse of part-time people who were not on tenure track in the faculty...

MCB: Exactly. So you know, that was one of the very significant experiences I had. I, several others, one of which was when Richardson asked me to draft general rules for the University on promotions and tenure, which as you'll recall at one time the University established a committee on tenure and promotion. The members were elected by the academic council. I had the privilege of serving for five years on that committee and three of them as chair. Fortunately, Dick Howk was the first chair I served under and had the opportunity to learn the ropes of it. Suzanna Apt was one of my colleagues on it and it was a very very thoughtful process but also a very difficult one. Two interesting cases. Dean of liberal arts comes in and wants the promotion of a mathematician who was Hungarian and he brings in a piece of paper, that's about this size with a theorem on it. None of us could understand what the numbers were and he said this will be published the American Journal of Mathematical Studies and we need to promote this name, who had been stagnating for ten years as an assistant professor, not to associate but to full professor. So we said why, and he said, he has solved in ten years work a theorem posed by a mathematician at the University of Chicago that nobody else could solve. Well, we relied on the editors of the American Journal of Mathematical Studies. But then came the dean of eth school of music and he said well we need to promote this guy. He was an Englishman, the first one was a Hungarian origin, became a very well known mathematician. The other one had a double name and was an Englishman, a very sort of iconoclastic character. And apparently he had invested a certain way of recording percussion music, and that didn't convince us too much and so dean Miller got very upset and went to the Executive Vice President to get us overruled and the Executive Vice President had to come and talk his way with us and anyways so, it was these types of things. And finally, I think my third most interesting involvement was to draft the University's rules for appeals for people who are terminated and what type of due process they would have.

AE: I would like to move this discussion on to an area for which I know your great fame is built and that is the study of international law and all of the activities. I took the liberty of looking you up on the internet before I got here and it is full of your writings and your talks and your books on topics such as the history of the international criminal court, the Palestinian Israeli War and its solution, the legal aspects of the Iraqi war, the legal and moral aspects of the war in the former Yugoslavia, terrorism and international law, I could go on. How did you first get involved in this large topic of international law, how did you first get interested and involved in this?

MCB: I think my first interest was awakened as a law student, first in France and then in Switzerland. In Switzerland my mentor then, who was dean of the law school, had been a great supporter of the Nuremberg Tribunals and of creating an international criminal court. And was the president of an organization called the international association of international penal law, which is the oldest scholarly organization in the world. At time had it, I succeeded him and became the [resident of that organization many years later. So in the '50s I was interested.

AE: so before you came to DePaul...

MCB: Oh yeah. I was a graduate law student ten years at Nuremberg, yet it was still something that was very much alive and I was in Europe and you know the affects of the war, the Holocaust, this was something that people felt very deeply at that time.

AE: How did you begin to involve these personal, professional interests into the law curriculum here at DePaul.

(29min)

MCB: Well this was my biggest difficulty, frankly, when I came international law was not taught and let along my specialty of international criminal law and human rights. So I basically had to pay my dues with the dean of the law school by teaching fifteen years of three sections a semester of criminal law and doing all sorts of other things in order to get to the point where in my tenth year I was allowed to teach a course in international law and in my fifteenth year I was

allowed to teach a course in international criminal law. So it took a lot of, what should I say, dues paying before I was able to do so.

AE: But, you've developed that program into quite a noteworthy one here at DePaul and what have some of the students you have had in these courses, classes what have they gone on to do in the area, or have they gone on to work in the area of international law, terrorism, the other areas of that that you're interested in?

MCB: Um, you know I put them into three categories. One category which is probably the largest category is the category of the unknown. That is unknown in the sense of I don't know what impact the subject or I had on them and how they translated that impact into anything meaningful. But I'm not discounting that because many of them have gone on to important positions. One of them became chief of staff of a president and a cabinet member. Another one became chairman of the board of a major Fortune 500 company, actually two of them but one of them of a major oil company. To what extent some of that may have influenced them or affected their thinking at a time when they were dealing with something completely different but of great significance is something I don't know. But I would hope that this is part of the unknowns of education in general. You know, we plant the seeds and you look at the people and you say well hopefully when they have reached these positions of power or authority, they will be able to do something with it. The second category are those who may have dedicated their lives for a short period of time, which I've seen quite frequently, people who would say well I'm going to do two, three years of sort of internship or fellowship or work in this or volunteer for this and then go back and make money or enjoy life. That's a much lesser number but the fact that they have had the commitment to do so means that these values which are in them are not likely to be jettisoned in the course of their professional careers. And the third category which is was you asked of and who do you directly see going into certain positions. Well one of my former students became the deputy legal advisor of the United Nations and spent a good number of years there. Another one spent his entire career at the Department of State office of legal affairs. Two of them have spent a lifetime career in the Department of Justice doing international work in the Department of Justice. At present I have three former students working in the International

Tribunal for the Former Yugoslavia. One in the Tribunal for Rwanda. Two in the International Criminal Court. Three are in the state department as career diplomats. Now those are the ones...

AE: That's the third category...

MCB: Those are the ones in the third category and also those are the ones who are also still in contact with me. So this is not based on a survey. I mean these are the ones who have remained close and kept in contact.

AE: To what degree has DePaul supported your interest in this field of international law and studies of terrorism and I know your many travels for the United Nations and in various parts of the world?

MCB: Well I, there was a period when the Security Council appointed me as the chairman of a commission to investigate war crimes in the former Yugoslavia. Now that was in 1992 and it was the first time since Nuremberg that the Security Council had nominated a body to investigate war crimes. This was very much in debate because of political considerations. England led by Lord Owen and other European countries wanted to solve the Yugoslavia problem by the usual old realpolitik approach, which is how do you slice the pie and make everybody happy and go home. And the other side was really led by Madeleine Albright, who convinced President Clinton that there is a principle of justice that we cannot abandon. And so I was entrusted with chairing this commission. It was daunting work and this was during the time when the war was going on. So I was really caught between those in the Security Council who wanted to have a peace settlement and those who wanted the justice outcome. So it was a tension between the pursuit of peace as a political settlement and the pursuit of justice.

AE: May I ask you, do you think it has to be one or the other? Are they reconcilable?

MCB: No, it doesn't. They are very reconcilable. And that's what I kept telling people. Frequently and more often than none, it's a question of timing. There is a time when you have political negotiations, political settlements where you, you know, let the dust settle when you

stop the conflict, when you stop the war. You know you put justice on the shelf for a while until the right time comes about. I don't think you need to compromise justice. And I also think that you know when I'm speaking to somebody who has more experience than I have in historical matters, but every conflict is sui generis. Every conflict has its own dynamics and characteristics. There is no justice model that can be said to be one shoe, or one size fits all. You have to identify what the goals are here. If you want reconciliation its one thing. If you just want to put out a wall between the two opposition factions and let them do whatever they want on their side, its another. You know, just to illustrate the dilemma, for years the pursuit of so-called peace in the Middle East has been let's have an agreement. And I have always held the position that this is not about signing a piece of paper. It has to be about reconciliation between the two people. The territories are too close. The strategic depth is too narrow. There just are too much dependence on one another. So if you think of peace in terms of reconciliation then you don't think in terms of erecting walls. You think of how do I establish a common road system, a common electric grid, sharing the water resources. How do I integrate the needs of the communities, how do I make one side understand the narrative of the other.

AE: Its clear to me, I think you are talking about the Arab Palestinian Israeli situation. Do you think that's, I don't know, maybe off the topic for this but do you think that's possibly one step in some solution or towards some solution, it's a greater people to people or person to person?

MCB: Absolutely.

AE: Parallel with whatever may go on between...

MCB: governments...

AE: entities?

MCB: Absolutely. I think that, you know, where you see that people try to reach out to people and sometimes very small symbolic things have huge consequences. You know if you see a doctor from one community going to the other, the same as say a Serb and a Croat or a Bosnian.

You see somebody who's in need of care and somebody from the other community going and showing that care. These little stories, these anecdotes have a way of spreading out through the communities that are just extraordinary in their impact. Anyways so when I had this enormous task, the UN didn't give me any resources. So I went to Father Richardson and I said you know, I need to get this work done, its an enormous task, there is a war going on, I need to go and investigate there. I mean just to give you an idea of the proportions, we had at the time, close to 200,000 people killed, we uncovered, that is our commission, 151 mass graves, we did the biggest rape investigation in history. I personally interviewed 223 women who were raped, we collected evidence on over 550 raped women, information about over 4,200 raped women, we documented a whole policy of ethnic cleansing, so it was an enormous amount of work. So I needed a place to have the database and Father Richardson gave me the space in the O'Malley building, he gave me an entire floor and I called the FBI came and devised the security system. And I recruited over the two years that we were there 141 law students and young law graduates to work with the database.

AE: Were these mostly DePaul law students?

MCB: Mostly DePaul law students. I would say 80% of them were DePaul law students and DePaul Law graduates.

AE: And they did this work pro bono?

MCB: Pro bono. I had a few staff supervisors or lawyers, that were also DePaul law graduates, that we paid because we didn't have enough money. But we had an operation that ran 24/7...

AE: is that project completed now?

MCB: Oh yeah. It lasted from '92 to '94. I developed a database to enter all of the evidence that we had from the field.

AE: Have you been involved in any of the trials at an international court that have come out of the experience in areas of the former Yugoslavia?

MCB: well it was the work that I did in that that produced the biggest report by the Security Council, which was 3,500 pages long as a summary, it was backed by 79,000 pages of documents...

AE: And that's what the lawyers who are prosecuting those cases are using?

MCB: Correct. Exactly. So I turned this over to the Security Council, on that basis the Security Council was politically forced to set up a tribunal because they couldn't turn their back on it.

AE: In other words, your work led to the creation of the court...

MCB: Absolutely. That's pretty well established you know...

AE: As we finish this up, lets get back for a few minutes to, we've talked about some of these gentlemen before but let me just throw names at you and ah and impressions if you will...

MCB: Sure.

AE: Father John Cortelyou, Father John Robert Cortelyou

MCB: Well Father John Cortelyou was a very affable, easy going, good person. That this is the word I would choose. He always made one feel comfortable and at ease. Never sort of superior or arrogant, you know he was, I'm not a Catholic so I can't use that analogy too much but its like what you expect your parish priest to be like.

AE: Neither am I. [laughter] Typical DePaul... Father John Richardson?

MCB: John Richardson is a man I had great admiration for. We had a period of time in which our relationship was very uneasy, first because of my experiment with the curriculum, but I was also pushing very hard for faculty rights. At the time, deans would hire or fire faculty, promote them or not promote them.

AE: Are you talking law school?

MCB: No, I'm talking in general at the university level. Because I was (44;21)