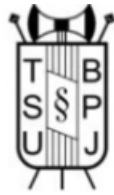


GOLD E. LOCKS NOT GUILTY!

interview with Louis Barracato



Professor Barracato came to Poland in April to teach Civil and Criminal Procedure during the American Law School Program 2007/2008. Luckily, he agreed to take part in an interview just before flying off back to the States early the next morning.

Professor Barracato worked as a managing counsel for Neighborhood Legal Service, a part of a nationwide Legal Service Program, in 1966-1970. He was also a legal counsel for the Department of Health, Education and Welfare in 1965. Apart from teaching at the Catholic University of America for thirty nine years, he visited universities in Arizona and Pennsylvania. He is also a proud member of the American Civil Liberties Union, for which he conducted trials, acting as a defending counsel for the minorities.

To tell the truth, I was a little afraid that Professor will call my questions leading or object to them for one reason or another. However, nothing like that happened. We talked about his life and work, education in the USA, differences between American and continental legal systems and about law and ethics. Although a little intimidating for students trying to skip classes or not prepared for them, Professor is an extremely nice and warm person, with a brilliant sense of humor, charisma and an optimistic view of the future. I must say, I really enjoyed the talk.

Joanna Śliwa: *Professor Barracato...*

Louis Barracato: You know, I don't trust reporters.

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JŚ: *Well, since I am doing an interview for the first time in my life, I suppose you can hardly call me one. Welcome and thank you for agreeing to answer some questions for ALP. This is not your first time in Poland, is it?*

LB: No, it is not.

JŚ: *That was a leading question, wasn't it?*

LB: Well... a little but not totally. It would be leading to say this is my fourth or fifth visit to Poland.

JŚ: *And is it?*

LB: Yes.

JŚ: *Do you like to come here to teach?*

LB: Very much so.

JŚ: *Have you noticed any changes in Cracow or in Poland over the years?*

LB: The city is filled with many more tourists than initially. There is a lot of fixing up of buildings, which are getting new facades and seem much more fresh and modern, yet maintaining their old look. There are many more restaurants and just the number of people itself! I stay at Floriańska and that street never gets quiet! There are always people there, no matter what time of day...

JŚ: *You have been teaching at Catholic University of America and here. Do you notice any significant differences between Polish and American students? What we have already heard is that we don't use laptops so much and the American Professors really do appreciate this, as laptops annoy them very much. You can never be sure what the student is actually doing behind the screen.*

LB: Exactly. We are, in fact, engaged now in a faculty debate about whether or not allow students to continue to use laptops in class. When I was a student – and that was many years ago – and also not till long ago, before laptops became really popular, students daydreamed in class for a variety of reasons and it was up to the faculty member to get their attention. The fact that they have a new and more modern device with which to daydream doesn't change anything - you still have to make them focus. I have never had a problem with people not paying attention in class, so it doesn't bother me as much as some of my colleagues. However, the biggest difference between me sitting at my desk and daydreaming and me using a laptop, is that everybody around can see what I am doing and, thus, it is a distraction for other students. And to that extent, I really think

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we should do something about it. If we could figure a way in which laptops could be used without causing distraction to others, then I wouldn't be so concerned.

JŚ: *I suppose that in a mock trial class there aren't so many opportunities to use a laptop.*

LB: Right. The students are performing. But I also teach a course in evidence law and this class has about eighty, eighty five people in it. There, the use of laptops is much more problematic.

JŚ: *Do you use the Socratic method in the evidence law class?*

LB: I don't believe anyone practices a truly Socratic dialogue. I do work on problems, though. The students get the problems beforehand and they have to work out the answers before they come to class.

JŚ: *I think this is the best way for the students to learn. That's how they get to memorize a great amount of the material. The Socratic method is not quite as practiced here, but it seems that the Polish students can manage it pretty well.*

LB: That's also what I think. In fact, some students from here came to take my evidence law class in the USA and they did quite well.

JŚ: *Lets continue the topic of comparative perspective of teaching. Apart from working at CUA you have also visited universities in other states. Does teaching of law differ much around the US?*

LB: Not at all. Most universities today are what we call 'national law schools'. They admit students from every state and expect a student to be able to practice law in every state. They don't teach just local law, and the methods of education are pretty much the same.

JŚ: *Even despite the fact that law in every state is different?*

LB: Exactly.

JŚ: *Does the fact that CUA has "Catholic" in its name influence the teaching in any way?*

LB: I wouldn't say so. Especially, as I am an agnostic and there are a few Jewish professors as well. It makes you conscious, however, of where you originate from and who you represent. Thus, if any of my colleagues was strongly Catholic and wanted to express that view I would support him. In fact, the biggest bone of contention between the faculty members in the matter of deity, is whether God is a Republican or a Democrat! The CUA has changed from being conservative at the beginning, through liberal, to moderate

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– just as the American society has done, so now once again, my views are in the minority. However, I have always felt very comfortable there and, since my former students have been elected deans, I've been able to skip the faculty meetings for three years in a row!

JŚ: *At CUA you coach teams for trial advocacy competitions to much success. Particularly, in 2001 you beat eight groups before going into the national finals. I noticed that among those groups was the team of the sponsors ...*

LB: Yes!

JŚ: *How did you manage to do it?*

LB: Well, I had four outstanding students on the team and they were probably the best I have ever had. They were dedicated, they did a lot of work and, when they put on their performance, it was absolutely incredible. We have a video tape and a DVD of it and when I look back on it, I come to a conclusion that they were actually better than I remembered.

JŚ: *What was the winning case about?*

LB: It was a case of a shooting. Some people, including a mother of two children were out drinking and scheming to come in the early morning hours and take the children away from their father who had to take care of them alone because the mother was an alcoholic. He was there to protect his children and when the people came up the stairs, they got into a fight, a gun went off and one of them got shot.

First, we had to be the State and prosecute him for shooting someone and then defend him by way of self-defense. I think we were equally good on both sides.

JŚ: *The institution of mock trials is not very widespread in Poland...*

LB: It's new in America! It wasn't until the late 1970s when trial competitions started. We got in on the ground floor and we have been continuing ever since but there are still some schools that don't practice it.

JŚ: *Could you explain briefly what the idea of a mock trial is about?*

LB: You get a case file and, if it is a criminal case, and you have to prepare to prosecute and defend,. Each school does both sides and puts up two students who are prosecutors and two who are defendants. When we prosecute, the two who are defendants are our witnesses and then we switch sides. You than get to do it three times in the preliminary rounds. From the preliminary rounds you advance to the semi finals and the finals. In

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Puerto Rico, we were first, we also advanced several times to the semi finals, we lost one time in the finals. But for the most part, I think we are respected by schools thanks to our solid preparation.

JŚ: *What does it take to prepare such a team?*

LB: Every weekend! Saturday and Sunday, they practice with me at the law school! They know they're going to give up their weekends during the whole third year, thus, only the people who really want to be there, do it.

JŚ: *What, in your opinion, makes a good trial lawyer?*

LB: Chutzpa! It's a Jewish term for imagination and nerve.

JŚ: *Talking about lawyers in general, do you think it's more important to be able to do research and have a solid background of knowledge, or perhaps to have reflexes and wits?*

LB: You have hit the nail on the head because, if you are going to be a research lawyer, you don't need wits and reflexes but, if you want to be a good trial lawyer, you need both.

JŚ: *Would you say that trial lawyers are a different breed of lawyers?*

LB: Absolutely.

JŚ: *You mean, a better one?*

LB: A different one. I have some friends who never, ever wanted to be in a courtroom but they are great lawyers all the same. However, to really have fun with the law, you need to be a trial lawyer.

Do you know what Maalox is? Or Pepto-Bismol? It's medicine for an upset stomach. Trial lawyers are always drinking it because they always suffer from stomach problems, while other lawyers don't. It's just a different kind of pressure, due to what's at stake. In criminal cases, it's the man's freedom and that's something you cannot take lightly. In civil trials, it's only money and that's not nearly as important but, still, being a criminal or civil trial lawyer is more exciting for me than being a research lawyer.

JŚ: *I suppose it depends on the person. You have to like the feeling of excitement, nervousness and pressure.*

LB: That's right. You can be nervous, you just cannot show it!

JŚ: *You also worked for the Capitol Hill Moot Court Institute. Can you tell us something more about this initiative?*

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LB: It was a program which our clinic put on for elementary school children. A trial of Gold E. Locks took place.

JŚ: *What part did you play in the trial?*

LB: I was representing Gold E. Locks against the three bears.

JŚ: *Was she found guilty?*

LB: No, of course not!

JŚ: *But she did break into the house, didn't she?*

LB: Yes, but we thought she was more of an invitee.

JŚ: *How did the children get along with the trial procedure?*

LB: They were very much into it. They understood all that went on. Actually, I was standing next to the jury and, this being elementary school children, I brought some candy with me...

JŚ: *But that's illegal!*

LB: ...and I gave them the candy! Unfortunately, the judge saw me do it.

JŚ: *Moving away from teaching into the realm of trials in general, how do you evaluate the jury institution?*

LB: I am a firm believer in the jury system. I really think it works, although I can't exactly explain how. I suppose that the collective wisdom and judgment of twelve people is much better than any single one. It is when they get together, they become brighter and more just. They reflect on their role as a jury and they understand how significant it is to get to play it. We have a lot of people in the States who try to avoid the jury duty and would rather spend their time doing something else, but my impression is that the people who did it, whether they wanted it or not, came away with a positive experience. Thus, I am convinced that there's something better out there and I would take the jury system over any other legal system.

JŚ: *Unless the situation resembles that in 12 Angry Men, where one person's judgment proves to be better than the judgment of the group. At the end of the day, he manages to convince them, but one may say it was a pretty close call.*

LB: Of course, I like the situation with the jury better when I am a defense lawyer – then I have to convince only one person. The fact that, in the film, Henry Fonda talks into it the rest of the jury is all the more glorious but, nevertheless, we don't take a person's freedom unless we achieve unanimity and that's a very important factor.

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JŚ: *How do people get selected for the jury?*

LB: The system has changed much over the years. It used to work in a way that – and that’s why people didn’t like it – when your name was called and you got selected, you had to come in for a full month, every day, Monday till Friday. Obviously, after some time, you got bored with just sitting there, you would prefer to be somewhere else, e.g. making money, as you only received a limited amount of remuneration as a jury. Today, we have something that is called “one trial, one day”. In other words, you get called when your name comes up and you appear for one day. The names of the possible jury members are retrieved from the voters’ registration, although now the scope is going to be broadened to all those in possession of a driving license as there are more people with a driving license than there are registered to vote. If, during that day, you don’t get to sit on the jury, then your name goes to the bottom of the list again. But if you do sit on the jury, you stay there for as long as it takes for that trial to end. Most trials last a day or two. Every now and then there comes a trial which lasts, say, nine months and obviously the jury doesn’t like it, but that’s really rare.

JŚ: *What exactly is the compensation for the time spent?*

LB: Minimal. I think it’s about forty eight dollars a day and that’s obviously very little.

JŚ: *So it’s more like working pro bono for the State?*

LB: Right. As a citizen, you have an obligation and you should fulfill it. That’s the way I look at it.

JŚ: *What about the jury assessment of expert witness testimony?*

LB: The whole idea of expert witnesses is mind-boggling to me. We take twelve people and we tell them that they will have to listen to something that’s surely beyond their understanding. They don’t know anything about the subject, whether it is medical malpractice or electrical engineering and, therefore, each party brings its expert who is to be qualified. After this is done, the experts are supposed to tell the jury what should’ve been done but what hasn’t been done. Now, the jury, previously without any knowledge on the particular topic, is to tell which of the experts is telling the truth.

JŚ: *Sounds quite ridiculous.*

LB: Doesn’t it? Well, I tell students in my evidence law class the very first day that they should not expect logic to work there because the rules of evidence are more based on historical accident than they are on logic. The expectation that the jury will know what to do in the event of an expert witness testimony is clearly unreasonable. So, I guess, it

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all boils down to the question of believability. Who makes the more creditable witness? Who can talk to the jury in a way that they can understand it?

JŚ: *But this way, instead of focusing on the facts and results of the research, more weight is given to the impression the witness or rather the lawyer examining the witness makes on the jury.*

LB: That's what the jury trial is all about, anyway. The trial is not a search for truth. Some lawyers would not agree with me on this point and I always end up in the minority, it seems, when discussing this subject. The trial is a search for the appearance of truth. Who appears to be telling a better story? What is more likely to have happened?

JŚ: *I suppose it may all depend on what kind of truth we are talking about. Something may be true at that precise moment...*

LB: Exactly. The appearance of truth. When they say he ran through the red light, it doesn't mean he really did it, it means only that they thought he did because they believed in that piece of evidence. The merit goes literally to the appearance of the witnesses and lawyers. Are you somebody that the jury can relate to, somebody they like? If not, you've made a bad choice in your career. If you are the kind of person that turns people off, makes them upset by the way you look, you shouldn't be a trial lawyer. The same thing with the witnesses, especially the experts. I hate to admit it, but I think that a good portion of results in our system is based not on what you say, but how you say it.

JŚ: *In our system, it's the judge who gets to assess the facts and the creditability of the witnesses. He is supposed to do it in accordance with his experience and the rules of logical thinking, whatever that means. Don't you think that because judges are used to the procedure, they are also more apt for this task?*

LB: What did I tell you in class about judges who sit day after day in court? They become emotional cripples! Do you know what that means? They become blasé about what they do, they are not motivated by emotions and, I think, life is an emotion! The jury ought to feel! Your goal as a trial lawyer is not only to make the jury close their eyes and picture what went on. They have to feel it. If you can't make them feel it... you're not doing a good job.

JŚ: *Isn't it all about seducing the jury?*

LB: Yes. Something wrong with that?

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JŚ: *Nothing, I was just wondering... Your trial is very different from ours. It's much more exciting and, so to speak, adversary.*

LB: We have an adversarial system...

JŚ: *So do we, but somehow it seems not to be the same.*

LB: Well, to tell the truth, yours is not very adversarial. The judge basically reads what the witness has to say and the job of the lawyers is done mostly at home. In the courtroom there's nothing but sitting. I'd go crazy.

JŚ: *It can get pretty boring, I admit. You have already partially answered my next question but just to be sure – you think that cross-examination of experts is a good idea, despite the fact that it seems to focus not so much on solid research but on the life and personality of the expert witness?*

LB: Professor Wigmore from Harvard wrote that the greatest legal engine invented for the discovery of truth is a cross-examination of a witness.

JŚ: *Expert witness?*

LB: Any witness. Cross-examination is also what sets the Anglo-American legal system apart from everything else and the beauty of being a trial lawyer is to be able to cross-examine somebody, although, this is probably also the single most difficult thing to do.

JŚ: *And that's what makes the American movies about lawyers different from all the other movies in the world...*

LB: Exactly.

JŚ: *Now, another question...*

LB: Do you disagree with me on that? Because that's the question I used to ask at my old exams here: "If you had the power to choose where the Polish judicial system would go and to implement any changes, what would they be?" More often than not, the answer was cross-examination. It appeared to be even more popular than the jury system. I personally agree with Professor Wigmore. If you want to get the truth out of somebody, you need to cross-examine him. My children used to hate dinner time because, without realizing it, I used to ask them such questions as on cross. Finally one of them told me: "Do you have to cross-examine us all the time?!"¹

¹ For comparison, see: discussion on the jury institution with Mark Atkinson (*Judges are just like all other people.*" *An interview with Mark Atkinson*, p. 34).

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JŚ: *There must be something in it. From what I've observed, it's possible to sense a trial lawyer when you see one. I don't know exactly how I should put it... Let's just say that these people are more persistent in getting their point across.*

LB: Back in the States, students do evaluation of faculty members and the two words most often used to describe a trial lawyer are: intimidating – that doesn't bother me so much, as it makes the students prepare for class because they don't want to be caught – and arrogant. Now, the latter is something I'm a little worried about, as I never do it purposely. I'm very informal in class, I call students by their first names; if they want to pass, they usually do, I don't pressure them. I'd rather substitute "arrogant" with "confident", but if that's how they see it, they must probably be right.

JŚ: *Another big difference between the Polish and American trial is that, in Poland, the prevailing party gets everything, together with the trial costs and the costs of experts, whereas in America...*

LB: ...it depends. If it is a contract, you can put it into the body of an agreement that the costs of any dispute are going to be paid by the losing party. If it is a tort, you usually don't get the costs. What happens, however, is that the lawyer takes the case on a contingent basis and he pays the costs upfront and then they get deducted from whatever is won.

JŚ: *And in criminal trials?*

LB: There the system is different. You pay if you can afford it, if you can't, the court will appoint someone for you but you don't get to select. Thus, the rich can pay for whatever they want, the poor don't have a choice anyway, but the middle class – they're on their own. They really have it at the roughest, as they are not poor enough to get somebody appointed, but at the same time they are not rich enough to get the best. So, sometimes it's better to be poor... No, I take that back. It's never better to be poor. *(Laughter)*

JŚ: *Wouldn't you say that paying one's own costs of the trial precludes the way to justice?*

LB: It seems that you have to run the risk. That's why Las Vegas is so popular in the States. Love of the gamble! The lawyer can't really guarantee you anything, as there's no way of knowing what the outcome of a trial is going to be. So, you have to tell the client all about the likely costs and ask him if he's willing to gamble, as he might never get the money back. It is a factor that might keep somebody out of court who otherwise deserves to have his claim heard. However, we are such a litigious society that numerous suits are brought all the same. I cannot even imagine that there would be more than what we have now. Obviously the system

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hasn't stopped people from filing claims and we tend to get even the dumbest lawsuits. I, personally, think the lawyers should be sanctioned for bringing some of them.

JŚ: *Speaking of representing the poor at trial, in the late 1960s you have worked for Neighborhood Legal Service, an organization which provided legal help at trial for those who couldn't afford it. This was a part of the nationwide Legal Service Program conducted by the Legal Service Corporation, am I correct?*

LB: Yes, that was the beginning. We were initially a part of what was then called an Office of Economic Opportunities. The first head of the OEO Legal Services, a man named Clint Berverger, later became dean at CUA. He was the reason I started to teach there. The whole program had just gone off, the first office was at New Haven, Connecticut, the second – at Washington D.C. This was really a brand new phenomenon, people didn't understand how it exactly worked, but I always knew I wanted to represent the poor, so I was immediately into the idea. You see, in 1964 we passed the Civil Rights Act. I then went to Mississippi to register the black voters and that peaked my interest in helping the poor. When I came back, I went straight to Legal Service.

JŚ: *Wasn't that a dangerous thing to do, registering the black voters in the South back then?*

LB: Yes! But I didn't know it at the time. Only when I got back, I found out about the shooting that occurred with the people from Detroit. We were in some situations when we were called names and threatened but I, myself, never felt really frightened.

JŚ: *I think it's great that you did it.*

LB: Well, you have to remember that I was a great fan of John F. Kennedy and Robert Kennedy. They were really the first ones to start talking about these things and Johnson carried it through to a wide public. I grew up in a very white Connecticut town, where I had very little contact with black people and poverty. When I went to Washington to law school and saw the poverty, right in the nation's capital, I got motivated, much to the disappointment of one of my professors who was trying to place law students from CUA at major law firms. We were a very small and up-and-coming school at that time – only about thirty five people in my class in early 1965. Person number one was going to work with a very big firm in New York and I, being number two, was supposed to work with a big Washington firm. But I kept saying I want to do Legal Service and he was like: "What?!". He got really upset with me but I was determined. And the guy who was number three – I took him with me!

JŚ: *How does voting in the USA look like now?*

LB: Only about the third of our population takes the time to vote now and that is really embarrassing. We have reduced the voting age to eighteen but the young people haven't stepped up ... I know a sure-fire way to guarantee their involvement in the affairs of their country! You know what that is? The military draft. Service in the Army or Navy. I assure you that the people would immediately start to protest and say: "I'm not going to fight in this bad war. I'm not going to fight like we did in Vietnam." At the time of Vietnam, there was such a draft and the anti-war movement came from people who didn't want to fight. Subsequently, they generated interest among other people as well. I guarantee you that this is a way of getting the society upset about the fact that we're at war now.

Now, I know Poland is one of our allies and that you've got people there too, but we shouldn't be there. We should never have gone there. We could've been in Afghanistan because there we were really looking for bin Laden but he was never in Iraq! George Bush was just trying to finish off the war his father started and it's terrible! It's the first time I've been embarrassed to be an American. They've lied to us... Do you know the difference between evolutionism and creationism? I've always thought that Darwin was right about the survival of the best and strongest of a kind, but looking back from Washington to George Bush you get a feeling something's gone wrong!

JŚ: *That shows we should probably look for some reason underneath... How do you assess the work of Legal Service nowadays? I read that it satisfies only about twenty percent of people's needs.*

LB: If that! It all started a little before Ronald Reagan became President. In 1968, there was an amendment put on the OEO Legal Services which said we can no longer do criminal cases. When Reagan became the governor of California, he reduced what they were allowed to do in his state. Later on, as President, he put more restrictions on OEO and cut back the funding. We have been struggling with this approach ever since, except perhaps, for the eight years of Clinton. The truth is that Legal Service now is only a fraction of what it should be.

JŚ: *Where does the funding come from now?*

LB: From the government. But it's not nearly enough.

JŚ: *Moving into the field of law and ethics and the controversial issue of lawyers lying for their clients... I have to admit that all the regulations I've managed to look through: European (also Polish) and American ones, are pretty consistent in that they don't allow a lawyer to make false statements in court and introduce false*

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evidence. However, what they all underline is that a lawyer can't do it knowingly. At the same time, for instance the Polish rules of professional conduct state that he doesn't have an obligation to check the facts that the clients supply.

LB: That's why a lawyer never asks.

JŚ: *But that's ridiculous.*

LB: Isn't it? These regulations have been introduced so as not to have a fraud perpetrated in court. The court should be free from fraud. Who's going to disagree with that? It's not that simple, though. Let's imagine that I'm a client. I walk into your office and say: "I killed my wife but want to claim self-defense." You now know the truth so you can't help me put up a self-defense claim. You would have a duty to disclose. Naturally enough, I say: "You're fired.", I go to another lawyer and, being now educated by what has just happened, I say: "I killed my wife in self-defense." He can now get me on the stand and get me deliver my perjured testimony and you have no obligation to go to court and say that I'm lying. So, perpetration is allowed all the same. If this is the case, why should I give up my representation of this person after working so hard to have gained his trust, if some other lawyer is simply going to do the same thing? My friend, who represented me at trial and who wrote a book on this topic, said that a lawyer has not only a right but a duty to lie on behalf of his client.

JŚ: *Are you of the opinion that this is true in every situation?*

LB: No. Only in criminal cases because, again, of what's at stake. If it all boils down to money, then I don't consider it an important enough reason to make me lie. But it's different when somebody's freedom is going to be taken away. I have to bear in mind that, because of the precedence system, I don't represent only this particular client but all those defendants that come after him and who are going to be charged with the same crime. I want to make sure that our system is going to allow me to represent those people fully.

JŚ: *The case you discussed in class about how you pleaded guilty in order to enable your client to escape the threat of capital punishment, although you knew he was innocent...*

LB: That was a lie.

JŚ: *Yes, but considering the circumstances, one may call it an acceptable lie. I think most people would say you did right. Let's think of another situation that might happen: you know that a person has committed the crime and that, if he is not stopped, he may well do it again.*

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LB: If I know that somebody is about to commit a crime and place somebody else's life in jeopardy, I'll disclose. If it comes to my client's freedom versus somebody's life, I would always opt for life. When somebody's already dead because of what my client did and he is not a treat to anybody else – then it's a different scenario.

JŚ: *So, in your opinion, it should be left to the evaluation of a particular lawyer in a particular case?*

LB: That's right.

JŚ: *And what with hiding tools of crime for your client? There was a case, I think, in Virginia in 1967, where a lawyer hid the money and a gun coming from a robbery?*

LB: Yes, I remember this one! Well, suppose I get a subpoena that tells me I have to hand those things over. I represent a lot of defendants, so I keep a whole drawer full of guns and I bring to the court the whole box and say to the judge: "You try to figure which one it is!" At least I'm following the subpoena.

JŚ: *Do you also have a separate drawer for money?*

LB: (*Laughter*) No, unfortunately not. Money, I can't have. But do you know what really happened in that case you mentioned? The lawyer actually asked the Bar Association for an advisory opinion before he hid anything. They gave him the opinion and he simply followed it. Later on, they just changed their minds and said it wasn't really the best solution. So, I think it was most unfair for the lawyer. In yet another case, a lawyer was also subject to a disciplinary punishment for trying to protect his client and, at the same, give some comfort to the families of the victims killed by the client by disclosing the place where the bodies were buried...²

JŚ: *You are not a member of the Bar right now, are you?*

LB: No, I'm not. I got disbarred, although I've paid their dues which they used for wrong purposes. So, when I got reinstated, I realized I didn't want to be a member of this group any more and I've never rejoined.

JŚ: *What were the grounds for disbarring?*

LB: The technical grounds I was accused of were that I was arguing my cases in press and holding the judiciary up to public ridicule. I was saying what an idiot the judge was. The fact that mattered, though, was that I was doing a lot of other things which were also

²For comparison, see: discussion on lawyers' lies in court with Leah Wortham ("A nation held together by laws." *An interview with Leah Wortham*, p. 48-49).

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violations, but they chose not to look at it. The judge was really not a good one. He later got ranked by the Washington legal magazines as one of the two worst judges...

JŚ: *So you were right.*

LB: I was! I got quoted a lot in the papers as this was a very controversial case. Probably the Bar didn't want to see me going so public, especially as I was representing poor people. You have to remember that this was the time when Legal Service started and the Bar thought that representing somebody for free equated to taking the money out of their pockets. The fact was that these people couldn't afford legal advice, but the Bar didn't seem to understand it.

At one time, there were around five of us in the Service, all of whom were going through disciplinary proceedings. We were rather controversial. As this was the late '60s, early '70s, the flower children, some of my colleagues would not wear socks, grew their hair long, and so on. But when I went to court, I always looked like every other lawyer. My feeling was that the particular person I'm working for can't afford to go to any other lawyer. He is stuck with me, so when I'm representing him in court I should look right. We even had a little disagreement about it with my colleagues. Judges told me afterwards that some of my colleagues were brilliant lawyers, but it was difficult to get past their appearance and hear what they were saying. They looked awful!

JŚ: *What was the controversial case about?*

LB: We were going to start representing in divorce cases for people who couldn't otherwise afford to get a divorce. We wanted the court to pay for people to be able to use the court in such situations. We ended up with a Catholic judge who didn't believe in a divorce, anyway, not alone a free divorce! Those were the kind of statements I would make that got me into trouble. The solution of this judge was to appoint me, individually, to every single case that came along. We took it to the court of appeals and we won, of course, because if my colleague was bringing a case pro bono and I was on the other side then no judge ever would've let us do it, due to the conflict of interests! It would be as if two people from the same firm were representing the opposing sides! It was really dumb on the part of the judge to do that.

Unfortunately, at this point of the conversation, my tape recorder stopped operating. The discussion, however, went on.

Once we finished discussing the moral aspect of lawyers lying on behalf of their clients, we moved on to yet another issue which causes much dispute, namely, the

coaching of witnesses. Professor expressed his strong opinion that lawyers should always try to stop witnesses, as well as their clients, from committing perjury. If the jury catches a witness on a lie, no matter how small or insignificant it is, the creditability of a witness is lost. Thus, it is always better to say the truth and then figure out a way of how to make this truth beneficial for the client. Conversely, other kinds of familiarization with witnesses are allowed. A lawyer may go through the questions with the witness, tell him what is likely to happen in court, cross-examine him for a try, indicate in what way the testimony should be given, even explain how the witness should be dressed. As long as the witness is not lying, it is admissible.

I also learned that Professor is a member of the American Civil Liberties Union, an organization founded in the late 1920s to protect the beliefs and rights of the minorities. What many people find surprising, is that ACLU conducted trials also for the most unpopular groups like Ku Klux Klan or the Nation of Islam. Professor Barracato himself took part in trials, protecting the rights of the Nazis and the Black Panthers to freely express their views, much as he dislikes them. After all, the whole point of the institution is to protect all beliefs, in accordance with the motto: "I hate what you think, but I would get myself killed in its defense." This led us to discussing the question why Americans are so impressively aware of their rights. Taking for instance the various lawsuits filed by the religious minorities, one may wonder why the USA differ so much in this aspect from Poland. Professor thinks the reasons lie mostly not within the number of the minorities which, by the way, is truly impressive in America, but within the origins of the country and the fact that the first settlers came here in search of the freedom of mind.

On the topic of separating Church from the State, Professor was of the opinion that the Supreme Court has gone too far in trying to secure religious tolerance. The effect, at times, seems to be quite the opposite to what was initially purported. One of the main elements of most of the religions is the need to practice openly, build a community and voice one's beliefs. The complete ban on the State's involvement in religious affairs makes it impossible for the believers to include religion in the most important moments of their lives. On the other hand, things like the mass at the opening session of the Parliament or the motto on dollar bills: "In God we trust." are simply accepted under the label of ceremonial deism and never questioned. Although Professor Barracato does not agree with Justice Scalia on many points, he thinks that in the case of graduation prayer authorized by the school, Scalia was right to dissent: the requirement to stand up and maintain silence out of courtesy and respect for other people's

Louis Barracato - Gold E. Locks not guilty!

feelings does not immediately indicate participation in the prayer and cannot be considered too big a sacrifice for a conscious citizen.³

As for the future, Professor is planning to become a bag-bagger, i.e., a person who never retires and continues to teach until they carry him out of the classroom in a bag. Apart from working on the new case files for his trial advocacy classes, he also considers writing a book. In the meantime, however, he is going on a well-earned vacation to the Arizona desert to play golf!

I wish him many precise swings!

³ For a more thorough description of the graduation prayer case see: *Free exercise, expensive gas. An interview with Jay Wexler*, p. 95.