

ABA Journal's Legal Rebels Trailblazers Podcast

Luz Herrera

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Announcer - Welcome to the ABA Journal Legal Rebels podcast, where we talk to men and women who are remaking the legal profession, changing the way the law is practiced, and setting standards that will guide us into the future.

Morris - Welcome to the ABA Journal's Legal Rebels Trailblazers Podcast, where we talk to legal innovators who have reinvented the profession and practice of law. I'm Angela Morris, a podcast host for the ABA Journal. Today, I'm talking to Luz Herrera, a law professor who has spearheaded "low bono" legal representation in the United States.

This is a way to combat the access to justice problem by figuring out how lawyers can charge fees that low- and middle-income people can actually afford. The ABA Journal named Luz a 2009 Legal Rebel for her pioneering ideas about low bono legal representation. Welcome to the show, Luz.

Herrera - Thank you, Angela.

Morris - I'm so glad to talk with you today. The first question is since the ABA Journal named you a Legal Rebel, you've actually moved. You've changed jobs. You used to work as a law professor at Thomas Jefferson School of Law in San Diego. Now you're here in my home state of Texas working at Texas A&M University School of Law in Fort Worth. So why did you make that move?

Herrera - Well there were several moves in between there. I think since I moved to A&M, I spent a year visiting at the University of California in Irvine working on a special project for the then California Attorney General Kamala Harris. That was a consumer law clinic that was run by Professor Katie Porter at the time. We now have an attorney general who's now a senator and a former professor who's now a Congresswoman.

But they were really working on the National Mortgage Settlement. And I went to Irvine to help run a semester of a clinical consumer clinic that helped the attorney general's office monitor the bank's compliance with the settlement. So I was there for a year. And once I was there, I had the opportunity to apply for a job at UCLA and became their assistant dean for clinical education, experiential learning, and public service.

So I was at UCLA Law School for two years overseeing the implementation of their clinical program and other experiential courses.

And while I was there, I had Texas A&M give me a call and said “Hey, we opened a school. And we'd love for you to come out here.” And I said “Nope, I'm not going move Texas.” And they called me again. They said “Would you reconsider? And let's fly you out to Fort Worth. We're doing some very exciting things.”

And so I said “Well, I'll agree to fly out and check it out.” And I went and they sold me. So I was able to get a job offer there and move to Texas. My husband and I have been there for a little bit over two years. And we love being part of developing a new law school.

Morris - Texas isn't so bad.

Herrera - No, it's been great. It's been great, and I can actually afford housing.

Morris - Right. Yeah, that's a great thing about it. So I would love to hear about your focus nowadays at A&M in law school.

Herrera - I'm the associate dean for experiential education there, which means I oversee their clinical education program, their externships, and their simulation courses. So it's really all the hands-on training that students get to become lawyers. So that's part of my job. I'm also a tenured faculty member at the law school.

Morris - Wonderful. I want to kind of go back to the roots. As I said, the ABA Journal named you a Legal Rebel for your ideas about “low bono” legal representation. And I know that you still have your toe in that world, so to speak. You've been doing it long before it was a buzzword. But today, it really has spread a lot farther. And I'm interested to hear what you have to say about what is exactly happening in the world of “low bono” practice today.

Herrera - Sure. Well I think there is a greater understanding, right? There's still a lot of people that don't like the name. And I'm sure there's better names for it. But I think it's become just much more common practice. And what I've really been excited about is how new graduates have taken to it and really understood the concept.

I think the biggest change or the biggest thing that has happened in the last 10 years is this shift of figuring out how to make low bono work through the nonprofit model. And so we've had a lot of organizations that have sprung up developing nonprofits to see how some of the low bono work could be subsidized through a nonprofit vehicle.

Every state has its different regulations about how these nonprofits can operate, so what works in Utah may not work in California. But I think that's been the biggest development over the course of the last five years that is really different.

Morris - That's awesome. I wanted to ask you about nonprofit law firms as well. For example, there at Texas A&M, you've been organizing the Incubator Consortium. It's a conference for both legal incubators and nonprofit law firms. What is the most cutting-edge work?

Herrera - Well the Incubator Consortium is actually a conference that rotates different locations. So the one this year is going to be in Salt Lake City. The one last year was in Georgia. The year before was at Texas A&M. So it's really a consortium of different individuals that are organizing a conference where directors of incubator programs and participants in those programs, but also leaders of nonprofit law firms can come together once a year to share information about best practices.

We often get sponsors who contribute to these programs and believe in the low bono model, to also participate in the conference. And so it's really an opportunity for folks who are usually off working in their own communities and trying to make a living and also do good and serve a gap. So the time for them to come together and really support each other and build on what they're doing.

Morris - Yeah. That sounds great. Well let's talk more about the nonprofit law firm space. What do you think are the benefits of going the nonprofit route rather than a for profit low bono practice?

Herrera - It depends on where you are in terms of if you're able to do them. But if you're working for a nonprofit, I think the biggest benefit that new graduates have seen is that they can qualify for loan forgiveness programs if they're working for nonprofits over an extended period of I think 10 years. So that's one of the biggest draws to a lot of individuals.

But there's obviously also the ability to subsidize the work so that you might be able to get some additional funding to support the work that is being done. And that becomes a way to subsidize the fees and the costs that incurred and the overhead expenses that incurred in providing legal services.

Morris - Are you referring to getting grants and fellowships from philanthropic foundations?

Herrera - Yeah. Absolutely. And also individual contributions, right? Donations. The biggest way that the nonprofit sector works is by every one of us opening up our own pocketbooks and donating \$5 or \$500. So that allows lawyers to also raise funds, not just to grants, but also through people who support their work that are part of the community that want to make sure that others in the community are able to benefit from legal services.

Morris - That's very cool. So are they finding that people have deep pockets for their cause?

Herrera - I don't think that deep pockets are -- most people unfortunately in the U.S. don't have deep pockets these days. But the contributions of 5 to \$25 to \$100 really make a difference. And so I do think there are people, particularly those who have struggled through a legal issue, who understand the need for subsidizing legal services and for providing different options and only market rate that will make a contribution.

Morris - That's really encouraging.

Herrera - Yeah. We don't have a lot of data on some of this work. And one of the things that we're beginning to do is have a conversation nationally about how do we help sponsor more research to see how these organizations are functioning, what we can do to better support these efforts. And so there's a lot of work that needs to be done to get more information about best practices in this area.

Morris - Yeah, yeah. Some law professor listening to this hopefully will take up the cause. OK. I want to talk with you more about this stuff. But before we move on, we're going to just take a quick break to hear a message from our sponsor.

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Morris - All right. Welcome back. I'm Angela Morris, and this is the ABA Journal's Legal Rebels Trailblazers Podcast. And I am talking with Luz Herrera, a law professor at Texas A&M Law School in Fort Worth. Hi there, Luz.

Herrera - Hi.

Morris - Let's talk about legal incubators. This is something you've been involved with for a long time. And a legal incubator, they train and mentor young attorneys to go solo and represent regular people. It is an answer to the access to justice problem.

And you know something? I've written about this in the past, and there really are a ton of incubators in law schools and bar associations. In your own opinion and what you've observed, how much good do you think that these things have done to solve the access to justice problem so far?

Herrera - I think they've done a lot of good. And I'm in the process of working with the American Bar Association to figure out how to begin to quantify the good that they've done. But I think it's really provided an opportunity for people who would not have otherwise gotten the service to be able to get either a 30 minute free consultation or document prep that was part of a maybe a clinic that incubators do in conjunction with legal aid. Or somebody was able to afford a divorce that they wouldn't otherwise be able to.

So I think they've done a lot of good. It is very hard to measure the impact in the community, because these are individual consumers that get the services. And because we have I think-- I don't know what the actual number is today, but at some point it was between 45 and 60 incubators or incubator-type programs that were listed on the ABA website. But if you have these programs around the U.S., you're going to have new activity that didn't otherwise exist.

So that's just on the consumer end that we need to figure out how to quantify this better. But I do think we have a lot of anecdotal information. And there are some of these programs that have kept data that we hopefully will be sharing and publishing soon.

But the other part is that we're also helping train lawyers, helping them educate, helping them get on track, and helping them develop a passion for this work. Because there are going to be people that will do the low bono work and work in incubators for a period of time like I did, right? And then go on to other things. I had my own practice for about six or seven years. And so then I went on to other things.

Low bono work is not going to be for everyone, forever. It will be for some forever, but not for everyone. But I think as we have different cohorts go through, that go through this process of setting up their own practices and providing these services, you definitely impact not just the community but the individual lawyers who are part of it.

Morris - Yeah, absolutely. That's awesome. Like you said, you started out running a low bono practice. You've gone on to other things, but you still very much are in the know about what's happening in this space. And it's really spreading. It's really growing. Can I ask you, what is something that just makes you excited about the future?

Herrera - Well I think what's really exciting is that we have a renewed or a new interest from the National Science Foundation about this area of work. And so the Academy of Social Sciences has recently issued a journal that's focused on access to justice and begins to have a conversation about access to justice on that scope. So having kind of top academics and researchers begin to pay attention to the gap of legal services and the need for different models is really, really exciting.

Morris - Wow. I had no idea about that. Thank you for sharing. I just have one more question for you. We've kind of hinted at this a little bit already. But whether it's a for profit low bono practice or it's a nonprofit law firm-- the truth is, it's great for lawyers to have a job, but they aren't going to make top dollar when they're focusing on serving low- and middle-income people. Can you tell me just why would you argue that they should do it anyways?

Herrera - Well I think if you wanted to make money, law school is not the path to go. You should go to business school or get some great engineering degree and go figure out a job in Silicon Valley, something to pay top notch. The percentage of lawyers making the top money is pretty small, particularly when you first come out of law school.

There's also a whole lot of students including myself, that go into law school thinking they're going into law school to help people. And there's plenty of studies that along the line they say,

well there's student debt. And there's real life. And so I have to pay my bills, so I'm going to go do something else.

But I think some of this work really allows law school graduates and attorneys to balance both, to be able to say I'm doing some good, but I'm figuring out how to make a living. I'm not going to be capped at a public interest salary if I'm able to develop a great business plan that allows me to make more than what maybe my local public service organization would pay. So I think there's opportunity to make a living.

When I had my own practice, I got myself a car. It wasn't a new car. It was two years old, but it was nice. I liked it, and I was proud of it. I was able to buy a home, and I was able to buy a commercial building. So it's not necessarily going to be able to generate tons of money. I think there's a lot of zeros missing in my pension as a result of doing this work for six to seven years.

But the satisfaction that I received, the relationships that I built, and I was able to figure out how to make a living and live a reasonable life. I didn't live in a penthouse. I didn't have new cars, but it really depends on what your priorities are and what you want to make of the profession.

Morris - Yeah, doing good and making an impact sometimes is worth more than money, huh?

Herrera - Yeah, for some people. And for those who don't, these are not the right projects for them, right?. But I think there's a great sector of lawyers and law students and prospective law students who go into law because they want to make a difference.

Morris - Yeah. Well, God bless them. Luz, I have really enjoyed talking with you today. Thank you so much for joining us.

Herrera - Thank you, Angela. It was a pleasure.

Morris - That is all the time we have today. I'm Angela Morris, and you've been listening to the ABA Journal's Legal Rebels Trailblazers Podcast. Bye, bye.

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