

THE EARLY YEARS OF CLINICAL LEGAL EDUCATION AT UCLA:

Across Substantive Domains

DAVID BINDER AND PAUL BERGMAN*

DEDICATION

We dedicate this brief memoir about the first decade of UCLA law school's clinical program to our late and beloved colleague and friend, Paul Boland. Paul was one of the "Three B's" during the decade before he began a distinguished career on the bench, and his fingerprints are all over the design of the UCLA model of clinical education. Paul was a genuinely kind and caring soul; if you were his friend for a minute you were his friend for life. We are grateful for our time together.

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Under the leadership of Deans Richard Maxwell and Murray Schwartz, UCLA law school applied for and received a grant from CLEPR (the Council on Legal Education for Professional Responsibility) and in 1969 became one of the first law schools in the country to establish a Clinical Legal Education program. The program was started partly in response to law student demands for greater relevance in a legal education. Students wanted to go

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beyond three years of analysis of abstract legal principles and reasoning; they also wanted to learn how to be lawyers while promoting social justice. Law schools responded by emulating medical schools and adding “learn by doing” programs that breathed new life into the traditional law school assortment of “podium courses,” seminars, and moot court exercises. Students would learn how to practice law by working with faculty on actual cases.

UCLA hired David Binder to establish its clinical education program. David was then a public interest lawyer at the Western Center on Law and Poverty, but he had been a lawyer in private practice before that. Under David’s guidance, the law school hired three additional clinicians as adjunct professors: Paul Bergman, Paul Boland, and Bob Chartoff. The long-term job prospects for these four initial clinical faculty members were uncertain. The CLEPR grant provided two years of seed money; after that it was up to the law school either to support the program on its own or terminate the experiment. Bravely and perhaps naively, David, the Pauls and Bob began teaching clinical courses in the fall of 1970. Bob departed the law school after a couple of years. Law school funding for the clinical program did not. UCLA continued to support clinical education and the “Three B’s” developed the program as a team until 1980, when Paul Boland went on the bench. His parting gift to the law school was an ethic of caring for students and clients; his parting gift to Paul Bergman was a classic original Eames chair that Boland was too tall to sit in comfortably.

In the beginning, UCLA’s clinical courses were focused on litigated disputes. Binder, Boland, and Chartoff taught Civil Trial Advocacy courses. They supervised students in the representation of low-income clients who were plaintiffs or defendants in a variety of civil disputes. Bergman taught Criminal Trial Advocacy; he supervised students in the representation of criminal defendants at trial. (Bergman somehow persuaded David Binder and the UCLA hiring committee that he was competent to do so, based on the one state court indigent criminal appeal he had handled while clerking for a Ninth Circuit Court of Appeals judge.) For the record, we fulfilled the rules that required us to secure the written consent of all clients to have law students work on their cases.

Soon after the clinical program was established, the Three B’s made a fundamental decision that established a UCLA Model of clinical legal education that set UCLA apart from the clinical programs that many of

its peer schools established. We decided that our primary educational mission was to help students who would enter diverse practice areas after graduation to learn how to use lawyering skills competently. The result was a “skills-centered” clinical program that focused not on discrete types of legal problems of low income clients but instead on complex lawyering skills such as interviewing, counseling, negotiation, and trial practice. These skills were important across virtually all fields of law practice, whether clients were business leaders or low income tenants and whether legal claims were based on contracts law, tort law or the U.S. Constitution. Moreover, as a general rule these skills were not systematically taught to law school graduates by practicing lawyers — if they were taught at all. The creation of courses devoted to different lawyering skills meant that the UCLA clinical program would not become a general purpose legal services office that aimed to maximize the number of low income clients that it served.

The UCLA Model of clinical legal education had three primary characteristics:

- Courses were based on discrete lawyering skills rather than on discrete types of legal problems of low income clients. UCLA clinical courses carried titles such as Interviewing and Counseling or Negotiation, rather than Landlord–Tenant Clinic or Domestic Violence Clinic.
- In simulated exercises that took place during classes and in out-of-class individual exercises (our teaching load was heavy!), students practiced and received feedback on the skill or skills to which a course was devoted. The substantive law backgrounds of the simulated exercises varied; one might involve a contracts dispute and another one a wrongful termination dispute.
- The actual cases that students worked on were selected because they allowed students to practice and receive feedback on the discrete skill or skills to which individual courses were devoted. For example, students enrolled in an Interviewing and Counseling clinical course worked with clients who sought advice concerning a wide range of legal problems. If further legal work was needed the clients were referred to other offices. Students enrolled in a Depositions clinical course represented clients in the deposition phase of complex litigated disputes that arose in a variety of substantive law areas, both taking and defending depositions.

The skills-centered design of UCLA clinical courses helps to explain UCLA's prominence in the national development of a literature of clinical legal education. The Three B's (joined at and for different periods of time by Al Moore, Gary Blasi, Susan Gillig, Carrie Menkel-Meadow, Lucie White, Bill Graham, Robert Mann and Vikki Bonebakker) began analyzing lawyering skills and creating course materials and simulated exercises aimed at developing students' competence in the skills that lawyers needed to represent clients competently across substantive domains. These course materials became textbooks and law review articles in which UCLA clinicians analyzed lawyering skills with the same care that more traditional law school professors analyzed Torts, Contracts, and other substantive law subjects. For example:

- Along with psychologist Susan Price, David Binder wrote *Legal Interviewing and Counseling*, in which he developed the then-radical idea that legal problems belonged to clients and not lawyers and that lawyers should educate clients about alternative approaches and their likely consequences and encourage the clients to make important decisions.
- Paul Bergman wrote *Trial Advocacy in a Nutshell*, which approached courtroom advocacy as learnable skills rather than intuitive artistry. For instance, Paul's Trial Ad book incorporated the "Safety Model of Cross Examination" that Paul had developed and described in an earlier *UCLA Law Review* article. (In 2016, Paul published the 6th edition of the Trial Ad Nutshell.)
- Paul Bergman, David Binder, and Susan Price published *Lawyers As Counselors — A Client-Centered Approach*. Ever since the publication of the book and its successor editions, the notion of client-centered representation has dominated the teaching of lawyering skills within law schools and in the legal profession generally.
- David and Paul co-authored *Fact Investigation*. From the time of Langdell in the 1870s at Harvard onwards, legal education had emphasized analysis of appellate court arguments. *Fact Investigation* analyzed the processes of factual inference, and set out reasoning and investigative methods for developing strong factual arguments.

- Al Moore wrote about cognitive schema and inferential reasoning in decision-making.
- Carrie Menkel-Meadow analyzed legal negotiation and the structure of problem-solving.
- UCLA clinical faculty wrote scripts for and produced lawyering skills videotapes that were used in law school classes across the country. The videotapes consisted of short vignettes of lawyer–client interactions that law school instructors and students could critique in class. (A new generation of recorded exercises is planned as we write this memoir.)

The books, articles and materials written by UCLA clinicians were used in clinical education courses across the country. This lawyering literature demonstrated not only that lawyering skills were complex, but also that they were worthy of and amenable to description, analysis and teaching. This work helped to support the idea that clinical legal education was a legitimate part of a first-rate academic legal education.

UCLA clinicians also spurred the international development of clinical legal education by partnering with colleagues Avrom Sherr and Roger Burridge at the UK's Warwick University for a series of legendary Clinical Education Conferences. The conferences attracted clinicians from all across the country and Europe, as well as law school instructors from countries such as Japan that were in the process of trying to establish clinical programs. The conferences were paper-based, and many important lawyering skills articles that further stimulated the analytical underpinnings of clinical legal education and the understanding of lawyering skills were first presented as papers at the UCLA/Warwick conferences. The early conferences took place at UCLA's idyllic Lake Arrowhead Conference Center. The lakeside locale was so identified with the clinical conferences that when it became Warwick's turn in 1993 to host a conference, England's Lake District was the only logical site at which it could take place.

A desire to teach lawyering skills across substantive domains was reflected in UCLA's unique Witness Volunteer Program. In simulated lawyering skills exercises, students initially served as clients and witnesses for each other. But we soon realized that law students talked and acted too much like law students to serve as adequate proxies for the people whom our students would be working for and with after graduation. With that

in mind we brought on board Witness Volunteer Coordinators (the first coordinators were Bunny Friedman and Marian Gilbert) whose task it was to recruit volunteers from the community to serve as clients and witnesses in simulated exercises. The community volunteers usually performed in roles that the clinical instructors had created. But instructors often invited volunteers to “be yourself” and discuss personal experiences. Since our goal was to train students to use lawyering skills effectively across all substantive domains, the nature of the specific legal problem that a volunteer talked about was largely irrelevant. If a volunteer wanted to talk about a restaurant-related dispute in which the volunteer had once been embroiled rather than the circumstances in a “canned” landlord–tenant dispute, that was fine with us.

UCLA demonstrated support for clinical education in a variety of ways. One small example is that the Three B’s obtained tenure as professors of law with full faculty rights and privileges, not as clinical professors of law with limited faculty rights as at many other law schools. UCLA also softened the margins among faculty members by encouraging clinicians to teach non-clinical courses, and vice versa. On a regular basis, David taught Civil Procedure and Paul taught Evidence. While these courses were not clinical, we incorporated simulated exercises into classes and blended discussions of skills into our coverage of substantive law.

As clinical education at UCLA and elsewhere expanded beyond its initial focus on court cases based on the legal problems of individual low income clients, UCLA clinicians maintained a skills-centered ethos. Paul for example taught a Street Law course, in which law students taught law-related materials to high school age students. Paul considered his primary “clients” to be the law students enrolled in the course, and he approached the course primarily as an opportunity to develop students’ lawyering skills no matter what topics they chose to cover in their teaching. For example, how did students attempt to establish rapport with the students in their classes? What did their classroom experiences teach them about how to develop rapport with clients? What did they learn about communicating the meaning of abstract legal principles such as due process of law to non-lawyers? How might educating high school students compare to educating clients, judges and jurors? By using simulated exercises and students’ teaching experiences as a vehicle for helping them to develop lawyering skills, Paul sought to help

students transfer their learning from law school into their professional lives, regardless of the fields of law they worked in.

Decades on, the excitement of the early years of clinical education remains one of the memories for which we are most grateful. All of us, instructors and students alike, were aware that we were involved in an experimental and untested type of legal education. We were privileged to experience the moments when students began to understand the meaning of professional responsibility and to realize that they could translate their legal knowledge into actions that could improve the lives of clients. The excitement extended to the videotapes we made to record students as they practiced lawyering skills in classroom and out-of-class simulated exercises. Even though the recording machines used reel-to-reel tapes and the pictures were black-and-white, in the 1970s the ability to see oneself immediately on a TV screen was itself a thrill (if occasionally painful). Our careers unexpectedly and serendipitously turned in the direction of law school teaching at a unique time in the history of legal education, and for that we are forever thankful.

Just as we teach client-centered lawyering, we are also student-centered law school instructors. With this in mind, we asked a few of our earliest clinical students to send us brief recollections of their time as UCLA clinical students. We conclude this memoir with their responses.

PAUL MARCUS (Paul has had a distinguished career as a law school academic, among other things serving as the dean of William and Mary Law School and president of the Association of American Law Schools):

I remember vividly the time I spent with Dave Binder, Paul Bergman, and Paul Boland in the clinical program at UCLA. I learned a great deal about the practice of law, the respect to be given to all clients and lawyers, and the standards of professional responsibility that we must adhere to. We worked on cases for poor people, individuals who could not get lawyers, individuals we cared about a lot.

In the coming year, I will become the president of the Association of American Law Schools. The theme I will emphasize is Access to Justice: What law schools can do to involve students and professors in providing legal services to those in need. I learned a lot about this during my time at UCLA. I never forgot it.

DOROTHY WOLPERT (Dorothy was an “OWL” (Older and Wiser Law student) when she entered law school. She has enjoyed a lengthy career as a civil litigator and a transactional lawyer):

I couldn't possibly recount what the clinical program meant to me and did for me in a few sentences! It was the highlight of my legal education.

After two years of appellate erudition, I was finally exposed to professors who were talking about people and their actual problems and how to prepare ourselves to help them solve those problems. Rigor and compassion were the hallmarks of the courses; and the principles on which they were based were loyalty and the best interests of the client and our public responsibility as officers of the court.

In forty years of practice I've yet to interview a client for the first time without thinking of my closing statement. David taught me that. When I started my first job, I knew where the courthouse was — unlike many of my young colleagues. I knew from firsthand experience the awful power of a judge. I appeared in a case for a young Mexican who was on probation and was seeking permission to visit his family in Mexico, which had just suffered a catastrophic earthquake. He didn't know if his family had survived.

I pled with the judge as best I could. My client, more eloquent than I, said he had to go home to grieve for them if they were dead. The monstrous judge responded in a chilling voice: “You can grieve here,” and denied the request. That experience has made it easier and mandatory for me always to tell my clients that you never can know what will happen to you in a court of law and that risk factor must always be part of one's decision-making in pursuing and conducting lawsuits.

Your amazing work in trying to impose some order on “the anarchy of human experience without suppressing the vitality of diversity and disarray” has inspired me and countless students and made them better lawyers. I could go on, but won't.

RICHARD FYBEL (Rich has been on the bench in Orange County, California, for many years, first as a Superior Court trial judge and later as an associate justice of the California Court of Appeal):

In 1970 and 1971, as a third-year law student, I was fortunate to participate in the first year of UCLA law school's clinical program. The program was led by star Professors Binder, Boland, and Bergman. I represented a mother in court in dependency proceedings in a successful effort to regain custody of her child. I also represented a woman who was sued on a questionable debt; we prevailed at trial when the lawyer for the plaintiff company was unprepared and a continuance was denied. My practical experiences in the program and the important lessons learned from our wonderful professors have stayed with me during my professional career as a lawyer and judge. I remain grateful to have been included in the inaugural year of the clinical program.

BOB MCKAY (Bob is in private practice as a commercial and real estate lawyer and litigator in Pasadena, California):

I believe the clinical program that Dave Binder created was UCLA's first. I thought the class would be a respite from the typical law school routine. It was. I was excited about being in Dave's first class, and in the forefront of clinical programs with the opportunity to help real clients in real need of representation — to find out how it really works. I really looked forward to the class. Dave gave his students a head start on the real practice of law. Through the program a classmate and I had the opportunity to work on an actual case and argue in court. We won — victory attributable to the clinical program, and, of course, Dave. The experience was invaluable.

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