

**Transcription of the Oral History Interview  
with Paul Bergman**

Bergman: Well my first introduction was very backhanded. I was actually working at a large law firm in L.A. And like most of the people who were hired the year I was, we were kind of dissatisfied and trying to do . . . figure out what else we could do besides work at a big firm. And actually, one of the other people who had interviewed before me had gone over to UCLA had heard about this position that something new was beginning called clinical education. And gee, it sounded interesting. Maybe I should interview there. So without ever kind of intending to go into law school teaching, and at that time I was told that the law school had money for two years. I figured, well I'll do this for two years, and then I'll do something else. I was . . . no children, relatively free. So that was my first introduction. I knew nothing about it. I had not had a clinical program, obviously, cause they didn't exist when I was at Boalt Hall. So I just thought it sounded interesting. And that's as much as I knew about it.

Hall: Actually, I don't think I've asked this question of anybody. But did anybody know much about clinical education at that point as far as you could figure out?

Bergman: No. I don't think we had any conception of what it was then, or might be, or what direction it would go in. My recollection is, to the extent I knew about it, it was

somehow that the idea it would be beneficial for law students to be involved in actual casework while they were law students. And that seemed like a good idea to me. I think the law schools . . . My sense later was that the law schools looked at it as a way to respond to student demands and kind of keep the lid from blowing off a little bit. But that's as far as it went at the time, just that it would be good for students to get some hands on experience like medical students had before they left medical school.

Hall: Paul, give me a little bit of your background before you actually came to UCLA. When were you at law school, and how long were you working for the law firm between then and when you actually started teaching?

Bergman: Yeah. It was relatively brief. My graduation from Boalt, was 1968. Then I clerked for a judge for a year. Then I went to work for the firm that I had more or less promised to go to upon graduation from Boalt, which would have been the fall of '69. Dissatisfaction set in probably set in by . . . well probably in December. It was . . . You know, when I sort of asked people in the law firm like, where they were going in December, they said, "What do you mean where are we going? This is what we do all year around." I said, "Well this doesn't sound that promising." But I was more . . . that's only semi-serious. I was looking around, I guess, by early 1970. And so by the time I went to UCLA, I had about a year of litigation experience. And so I certainly did not have the kind of background that we would look at now for someone to hire. I had done well in law school. I enjoyed law school. But I certainly, as I say, never

thought about teaching as a career.

Hall: Had you been . . . Obviously Berkeley was one of the more turbulent campuses. Had you been much of a political activist yourself? Or was that something you stayed a little removed from?

Bergman: I was . . . You know, it was hard not to be a political activist, if only for the reason that you could see yourself sort of being sent to Vietnam. And Berkeley was a hotbed. But my recollection of the campus . . . the law school . . . is that kind of while the rest of the campus may have been shutting down for days at a time, that the law school went on pretty much as is. So, you know, you'd be maybe an activist in-between classes. But then, you know, when corporations time was at 11:00, you were in the seat at corporations at 11:00. Or at least most of the people were.

Hall: So, when you got to the law firm, was your dissatisfaction more just of the day-to-day routine of it, or was there any sense that you were hoping to do more with the law than you actually were going to get a chance to do.

Bergman: I think I can say I was dissatisfied on almost every level that you could be dissatisfied about. I felt uncomfortable wearing a coat and tie, for example. I thought that was . . . I didn't feel like me. I thought I was dressing up to do something that seemed very strange and artificial to me. And now, of course, business casual is the order of the

day. But in those days, I actually was called into a partner's office cause I wasn't wearing a coat in the hallway. I'd left my office without wearing a coat. I was dissatisfied . . . It seemed very . . . I didn't like the way lawyers treated secretaries. I didn't like . . . I didn't like the way *I* was treated very much. When we got a Christmas bonus the year that I was there that I had started in the fall, my first Christmas was that December, and I had only been there two or three months. But when I originally took the clerkship, the firm had said, well, this is something of a hardship for them because I had agreed to work after graduation. And even though I was clerking at the firm . . . Even though I was clerking, the firm still regarded me as a member of the firm and didn't like it, for example, that I was thinking of taking off for a month for a vacation between the clerkship and starting in the law firm. Yet, when it came time to Christmas bonus, I was given the bonus that the people who had just started in that fall had gotten. And I went in and I complained about it to one of the partners. Obviously I was not going to be around there for very long. He said, "Well, you just started in September, so you've only been here for three months." And I said, "Yeah, but when I wanted to take a vacation, you said that I shouldn't do that because I had been a member of the firm even though I'm clerking." So I found these kind of strange things. I also must say I didn't find any empathy for the clients that I was working for. They were in some way glamorous. It was a major entertainment law firm. I was seeing the litigation end of it. But mostly they were wealthy people fighting other wealthy people, and it was pretty apparent to me that the work I was doing was not terribly important. I just wanted to do something that felt more

empathetic to the way I wanted to spend my life. And I didn't know what that was going to be at the time, but I just knew that that firm wasn't it. I didn't know if the problem was *that* firm I was with, or what. I just was very naive. I just know I wanted to get out of there.

I'll go on. But if your eyes glaze over, forgive me. I'll just think I'm teaching a class, you know? So that's okay.

Hall: Let me ask you, when you went down . . . It's obvious, why you had a motivation to leave where you were. But when you went down to UCLA, how did you begin filling in this great blank of what was clinical education, and how were you going to teach it?

Bergman: Well, the first sort of tremor I had was when at the time, we were going to teach two courses. One we called sort of poverty law advocacy. You know, two litigation courses. One civil based and one criminal based. And somehow, I was going to teach the criminal course. Well, I hadn't done any criminal work whatsoever. It was a bit nerve-racking. Well how am I going to teach criminal law? So I spent a good deal of the summer before I started teaching actually just going down and watching criminal trials, and talking to attorneys, and talking to judges, and trying to figure out what, if anything, I could find out. Find out some section numbers that students wouldn't know about so that I could sound smarter than they were. And know how to get to the courthouse so I wouldn't be embarrassed trying to have a trial, but I don't know how to

get there. So you know, basically my preparation was just learning sort of as much as I could about some of the substantive criminal law that the students were likely to be dealing with, and watching some of the criminal procedures and talking to people. And at that point just figuring that my . . . All I wanted was to try to get them ready to kind of interview a client and handle a case without really knowing at that point what that really entailed. Because as a first year associate, you're spending most of your time doing legal research. So I hadn't had much contact with clients, supervising students, the actual conducting of oneself in court. All of this was very unfamiliar to me.

Hall: I have to believe, from what you're describing, that this is not a case where you could complete your education in two months. That a lot of issues in that first year must have started coming up as kids handled cases that started almost like revealing gaps to you that you hadn't been aware of. Is that a correct reading of what that first year would have been like?

Bergman: Yeah, yeah. Well, it was more than the first year. It was the first *few* years. And probably to some extent, is ongoing now. Part of teaching is continually finding out where your own gaps are, and where you could fill in better. But certainly, we were making it up as we go along. This is being recorded on videotape. But when we started, just the idea of being on videotape was new, so that the students had this sense of just a sort of awe at interest just because we were videotaping what they did in the

classroom, and then playing it back ad nauseam and kind of commenting on it. But very specific. I mean, we didn't have any models to work from. It was just, "Well, in this context, maybe you should have said 'A' rather than 'B'," without any sense of, "Well, would you generally say 'A'? What was behind my thought that A would be better than 'B'?" So it was all very seat of the pants, and very, very context specific. And it wasn't . . . By the . . . I would say probably by the second and third year certainly, what I was realizing is the need to do develop some model, some sense of trying to give students some sense, first of all, of what they ought to be doing. And then measuring what they were doing against what . . . at least my thoughts about what they ought to be doing.

Hall: Paul, let me ask you about that first year first, and then we'll move into years two and three as you started to develop some of that. Are there any vivid moments you remember of things that came thrown at you, and you just didn't quite know what to do when you first were confronted with it?

Bergman: There probably were, but I probably didn't let the students know that. I think there were times probably . . . What I vaguely remember is times working with students who had a sense that didn't really know what to do, and feeling that I had no real way to help them. That they were just kind of lost in either a practice exercise that we were doing in the classroom, or that they were going to court. And even though I was right there, just feeling a panic that they . . . that I didn't know what they were going to say.

And not knowing, am I supposed to step in really? What's the model we're working from here? If the idea here is that students are supposed to get practice at this, to the extent that I was more knowledgeable than them, which probably was marginally true at best, nevertheless . . . You know, sometimes I would have a sense that I was . . . I didn't like what was being done perhaps, but I didn't know whether it was appropriate for me to step in and do something about it. So I think that was the most uncomfortable kind of thought I had. It was actually working with the . . . When the students were working with clients, either in interview setting or in a courtroom hearing of some type, feeling that this was not going well but being very uncertain as to what my role should be. Should I kind of write it down and talk about it later? Or should I just step in? And that's probably a continuing issue. But for me, never having thought about it before, it was awful.

Hall: Did you have anybody that you would have considered a mentor in that earlier period where you could bounce some of those kinds of questions off of them?

Bergman: Not really, cause we were all doing this for the first time. I think I was very lucky to work with David Binder, who I think is an excellent lawyer and had much more experience than me. I'd say that to the extent I had a mentor, it was working with David and just . . . not that he had any of the answers, but at least he had more experience than me. So I felt I was very lucky to have him to talk to about some of the issues that we were just talking about.

Hall: You say you were working in criminal defense. What kinds of cases typically were your students handling, and what was their workload like?

Bergman: We at that time had a full year. It was a full year of sort of trial advocacy. Or we'd call it criminal law advocacy course. And we spent roughly the first third in training, which was just to go through the phases of a criminal trial as I recall. And we said well, the first thing that's going to happen is you're going to meet the client. So let's have a week of interviewing experience. And we dealt with very small classes, maybe six. We would have the Student A would interview Student B. We would videotape that. We would play it back, comment on it. The class would . . . the students would comment on it. Then Student B would interview Student C. You know, and we'd go around til everyone had had a chance at trying the exercise and being critiqued. The classes would go on for hours. My sense it we'd start around four in the afternoon, and often wouldn't be done til about nine. Incredible, but at those days, since everyone was looking at videotape of each other and no one had ever done that before, students didn't mind. They all had a sense that this was experimental and new and exciting. So the first third of the course was basically going through the phases. Well what happens at an arraignment, what happens at a preliminary hearing? Then we would . . . I would split the class in half. Half of the class would prosecute cases for roughly the next third of the semester. They would be doing generally preliminary hearings, some misdemeanor trials under the supervision of a prosecutor. Meanwhile, the other half of the class was working with me, and I would be assigned . . . We'd get some referrals

from judges, generally misdemeanor kinds of cases, and either take them to trial or hearings.

We had some fun cases. I still remember one of a client who had sort of kicked a police officer in a place where she shouldn't have done it and was charged with assault on a police officer. We had someone who had imported some strange chickens or some animal to have in their house and was selling it. You shouldn't have been doing that. We had some interesting kinds of cases. And I would supervise the students working with these individual clients. And then roughly two-thirds through the semester, I would stop. And the ones who had been prosecuting would come in and now take over the defense. And the ones who had been working on the defense would go downtown and be supervised by the D.A. So that was kind of the model for the first two or three years I would think. Maybe longer.

Hall: Paul, it sounds like very early on, you hit on a lot of techniques that actually became pretty prevalent. You know, the videotaping, if not outright simulation. Sort of role playing and that kind of thing. Was that just happenstance, or was there something you were able to draw on that sort of said these are good techniques to try to use in this kind of context?

Bergman: I don't . . . If I did, I don't remember. I mean, I'm certainly not in no way claiming credit for doing it. And anything I would have done would have been ...

Hall: (Interrupting) I'm not even suggesting . . . It seems like a lot of people are sort of hitting on . . . simultaneous . . . I'm just trying to get a sense of was it something that people just sort of logically said this is a good way to use videotape? Or was there . . . Had somebody planted a seed that everybody could draw on, I guess is what I'm asking.

Bergman: I don't think there was any model. I don't think . . . I don't recall looking around. My sense is that all of these were . . . we were kind of probably kind of farmers planting crops. And we were each sort of doing our own planting unaware that someone in the field a few fields down was doing the same thing. But there were . . . at time, we were so busy trying to do what we were doing that there weren't networks. There wasn't e-mail. There wasn't . . . We didn't even know who each other was. So, it was a matter of . . . There was the technology. The school had bought it, and we thought that . . . I guess in some ways, this had probably been a model within law offices. It wasn't a model that I had been exposed to. As I said, what I had was mostly legal research. And if there was law office training, it had to do with some partner giving a lecture on new developments in construction law or something like that. It wasn't skills based. It was knowledge based training. So what we were trying to do was do skills based training. And it just seemed like the way to do it was to have students do it, and then try to comment on what they were doing. And we would do this ad nauseam. We would do it, as I say, for hours at a time. But because it was so new, nobody seemed to mind.

Hall: I want to come back to the cases. You mentioned the police officer getting kicked and that kind of thing. When you factor in the resolution, are there any cases that stick out as great victories, or ones that kind of make you cringe when you think back, in terms of like an outcome that went bad that might not . . . that might have been tied in with the representation?

Bergman: Well I guess I remember the police officer case, cause we actually won that one. And I remember we filed a motion. We handled the preliminary hearing, and then filed a motion. There was some legal insufficiency or factual insufficiency under the law. So we actually had a hearing on the motion and got it dismissed. So that was a great victory for us. I mean, any victory as a criminal defense lawyer. So that was exciting to actually go in and win a case. We did some work. You know, in those days, it was interesting because I was almost the same age as the students. So there were still the sort of anti-war protests going on. There were still mass arrests. So sometimes we would represent UCLA, undergraduates mostly, who had been arrested in some kind of anti-war demonstration. I remember some of those kinds of cases getting . . . when you would get a sympathetic judge who would be willing to dismiss the case. I remember some of those kinds of cases. I don't know that we had any disasters in the sense that most of our cases were relatively small. And even if we lost . . . We started doing . . . After a few years, we started doing child dependency cases. And some of those cases ended up like . . . The unfortunate thing about those is that victories could turn into disasters. Because if you were generally representing the parent, and if you

succeeded in preventing the county from removing the child from the home, sometimes we would find out that the parent had later abused the child again. So we didn't feel too good about those kinds of things. Those were more like the kinds of cases that, in retrospect, we would think were disasters.

Hall: How much were you . . . In the early years, how much did you and your students see this program as sort of like an instrument of social justice versus just an instrument of teaching?

Bergman: Well, I'm sure the students saw it as an instrument of social justice. I must say that I, unlike a lot of people who started in clinical education, I did not come out of a legal services background. And I think early on, we talked about to what extent our role . . . the law school in doing this was going to attempt to satisfy . . . provide legal services on any kind of large scale. And I think I always regarded that as kind of a basic decision. And we made a decision. I say we, me, David, and myself mostly . . . and there was a third fellow, Paul Boland . . . that we were going to be sort of focused on educational goals rather than client service goals so that we would take . . . We were not going to open a law office that would be kind of accessible by any great number of clients. The clients that we took would be based on referrals, that we would accept referrals to the extent we thought they had educational value for the students. That we would take a few cases and have students work on just a few cases and get adept rather than just kind of take cases in mass and kind of try to service a large community. So I

felt good about what we were doing. And I think the students saw it as extending representation to people who certainly weren't entitled . . . would not have gotten that much attention paid to their cases. At UCLA, at least, we made a basic decision that educational needs came before client service needs.

Hall: Is that a decision that, in your mind, has proved out to be a good one?

Bergman: Well it's certainly one that I'm comfortable with. I think it allowed us to not be so tied down to cases, that we were able to focus students on issues that we wanted to focus. You know, if you take a lot of cases and just take them from beginning to end, you've got to do a lot of things which don't have any particular educational value, but they're part of the representing a client. I think by limiting the kinds of cases, by limiting the numbers of cases, by taking cases only at a certain stage in the case, we sacrifice perhaps the notion that the students would see a lot of cases to beginning, probably not 'til end, cause a lot of time students wouldn't see that anyway. But I think we really able to focus on parts of the process that at least we thought had the most educational value.

Hall: Tell me a little about . . . You said that by the second or third year, you began to get a sense that something on maybe perhaps the more structured, defined was needed in terms of the educational component. How did you and David, or just you individually go about bringing about greater definition to the clinical process?

Bergman: Well I think that what I started doing . . . both of us really . . . was for example, if we're trying to teach the students to interview a client with a . . . let's say in my criminal law class. Well how do you . . . What information . . . Basically, what do you need to get from a client? Well one way to go about that, or one aspect of that is the substantive information. By the time you're done talking to this person, in an hour or whatever it takes, what should you know that you didn't know before you started talking to him? The other way to think about it, or the other aspect of that, was what are you trying to do with interviewing? What are the goals here apart from that this is a client with a criminal problem. Or this is a poor client, what are you trying to do? What are the goals of an interview? How should you be conducting it? What are the general skills that would apply to whatever kind of client you're interviewing? And I found myself just kind of naturally gravitating towards that. I wasn't as much . . . I thought what I could most profitably spend my time doing was thinking about, well how do you interview, because I wasn't all that sophisticated about criminal or civil. It didn't really matter. It's not like I was tied into a model of what the clients were going to be, because I hadn't represented any client on any kind of individual basis. So I kind of naturally went to a more abstract plane, I guess. And I'd say so that when I started, like by the third year let's say, I probably had some materials that I would give the students to read that I had produced myself. It probably had nothing to do with the kinds of cases we were working with. But they were just what I thought about interviewing, or the counseling, or the trial conduct in general. And I think I just kind of went that way because we weren't tied into that much working with clients with

specific problems as a goal of the school. The goal was to train them to be lawyers, rather than to train them to handle certain kinds of cases. At least, that's the way we thought of what our mission was.

Hall: Let me ask you. Compared to the old . . . the traditional teaching method, even given limitations of your sense of direction in the early years, did this still seem like more of an effective way of teaching the kids than what you had seen when you were going through law school?

Bergman: Oh yeah. I mean, I love the interaction with the . . . the individual interaction with the students was wonderful. By the end of the year, you really got to know each other. I'd never experienced anything like that. I had just been in kind of large lecture classes. I kind of enjoyed law school. I sort of expect that those of us who ended up in law teaching probably on some level enjoyed our time in law school, and enjoyed being students. We might have found frustrations, but I certainly had a good time. I went to class, I enjoyed the class discussion. But I certainly never had any sort of mentoring kind of relationship with a faculty member. I respected a number of them, but more for their knowledge. Not with this was a person who I said, 'Gee, that's the way I'd like to be as a lawyer.' What they were doing seemed to have nothing to do with being a lawyer. I mean, after three years of law school, I still didn't know what it meant to be a lawyer. If you had asked me, 'Well what do lawyers do,' I would say, 'I don't know. I know they don't sit in classes and listen to lectures.' But you know, there was

nobody in my family or life who had been a lawyer, so I still didn't know. It was all pretty much of a mystery to me. So, I think what I wanted to do was to . . . and where the excitement was . . . was to try to be a model and present myself as . . . according to my ideas at least, this is how you should be as a lawyer. These are the kinds of empathies you should have with your clients. These are the ways you should think about it. These are the kinds of obligations as a professional that you owe your clients. And I wanted them to . . . And I felt strongly like, you know, you ought to be like me, as I'm trying to be and as I think about it. And that forces you to get to know them very personally and to try to sort of figure out what their strengths and weaknesses were, and what you could say that would be a . . . I was . . . you know, you can't be just like you, but what you can do is have the same . . . use the skills in a way that your personality and everything enables you to use them. And I just found that a very rich conversations to have with students.

Hall: Paul, if I could ask you to try to articulate it, what qualities did you see yourself as being in a position to try to instill in these law students that made up the idea of lawyer?

Bergman: I think responsibility for an individual and their life. And that's nothing that I got in law school. It was all . . . As I say, it was all kind of abstract knowledge. It was no sense of somehow using this. It was the law, the practice of law, not the knowledge of law. And there was . . . And it seemed to me that the idea of the practice of law is

really trying to empathize with clients, trying to figure out what they need. What is their problem? How can you help them with that? And that's an awesome kind of responsibility. That's what I think I found missing at the law firm. I didn't . . . Their problem seemed to be that they had lots of money, but wanted more of it. And apart from whether there was any legitimate basis for that, they could hire lawyers to play these games to try to get more of the world than they had before. And I wanted students to feel individual responsibility for specific clients, and really understand what it meant to be a professional. I'd sat on some general level, that's what I saw myself as doing. How do you use this knowledge to really help people who have problems?

Hall: Tell me how your teaching approaches evolved. I certainly want to ask you about reel justice, these sort of movie clips. But before we can get to that one, what other kind of things did you guys devise or use that seemed particularly effective to you?

Bergman: I think further . . . I'm sure it's the way my mind works. But trying to organize skills in a way that the legal system kind of organizes substantive laws. You know, breaking down legal rules into elements, and that there's some . . . first comes the procedural . . . you know, that there's sort of an order. Our legal system is realizing that this is what we are committed to as a certain process, and that when you say there's a legal process, that implies some kind of orderliness to all this. And that skills are also processes, and that before we started, it was sort of globally. Well, what's an interview about? And

then kind of taking it down. Well, sort of there's an order to the interview. Not just in terms of the chronology or the kinds of things you're talking about. But before you can do that, you have to do something else. So trying to organize and teach in sort of a building block in sort of a building block fashion, I guess. And trying to start small and build up to a whole interview. At the start, the interview and interview practice might be . . . You know they say, Student B has kind of a script or a problem. And Student A is going to interview them. And then you talk about everything that went on during the interview. In my sense, going to smaller pieces and breaking it down and letting the students practice very individual things and trying to go from at least what I saw from sort of lower order to higher level use of skills. So that was primarily the way my thinking evolved I would say, is taking very much a building block approach to skills.

Hall: What was the genesis of reel justice?

Bergman: Reel justice. I taught evidence for like two or three years in the sort of mid '80s. And foolishly put together my own materials to do that. I like teaching from my own stuff. And then there was like a hiatus of six or seven years that I didn't teach evidence. And then kind of in the early '90s was asked to teach evidence again. So it was like starting over in a sense. And the genesis really was re-thinking well, how can I present information to the students? Or how can I just diversify what goes in class? I think I've always been a believer that, no matter what you do in the classroom, you ought

not to do the same thing all the time. To the extent I didn't like law school, it was the reason why I didn't like the practice of law was that every day was just like the next day. One day it was Jones v. Edwards. The next day it was Smith v. Johnson. But you know, we're going to talk about the case. You know, but there was not enough . . . I would say variety. So I've just been a believer in variety, that no matter what you do, no matter what your subject matter is, you ought to try to do different things. So I was just trying to think, well what can be . . . What would be different? And I've always loved movies. I guess growing up in L.A. And I just thought about there's all these courtroom movies. And why don't I just show a clip from a movie and let them talk about that instead of a case? So I started doing that, and was kind of looking around for other clips. I mean, I kind of knew the classics like "To Kill a Mockingbird" or "Anatomy of a Murder" that everyone else did. But I thought, well there must be more courtroom movies out there. I'll go find a book and read about them and get more clips. And it turns out, at least so far as I could tell, there was no book. So I thought, well, I'm an academic. I'll write one. So that was . . . that was the genesis that I started using clips in evidence and found it was something that students responded to.

Hall: What made that an effective tool, and what were some of your favorite movies to grow on once you went past the first couple of classics?

Bergman: Why is it an effective tool? For one thing, I would say different. I think there's . . . what is it . . . the Hawthorne effect or something? That anything which is different

will be perceived as more interesting. So, I suppose if I showed movie clips every class, they wouldn't be interesting. But it's because you . . . They're compact. They're often dramatic. They're real enough to allow you to say, well, how would you have handled that if that was a real situation? But kind of off-beat enough to be more interesting than just showing a clip from an actual trial, though that can work, too. The second part of your question . . .

Hall: Any movies that you found particularly effective? Or even on the flip side any movies that seem particularly Hollywoodish as opposed to real life?

Bergman: Yeah. To me, the most effective ones that I find are ones that students can argue about legitimately as to what the ruling ought to be. In an evidence course, for example. Or in a trial techniques course, where you can have a legitimate kind of discussion. You know, I never believe as a teacher in showing something bad and asking students to . . . how many things wrong can you find with that. The same thing with student exercises. I always try to . . . One of the other things I try to do is to meet with the students ahead of time. And I do this even in evidence when I do some of these role plays in evidence. I try to get the students to understand what they ought to be doing so that they have the best shot they can at doing it well. Cause I think people learn better from doing something well and having that reinforced, rather than doing something completely wrong and then get a list of things that they do wrong. I don't think that's a particularly helpful teaching model. So, for example, in practice sessions when

students do something . . . the parts that aren't very good . . . I may, after we critique, I'd say, 'Okay, now let's do it again.' I want them to feel that they know what it sounds like and feels like to do it well, at least what I think of as well. So I try to look for clips that are not just totally dumb, and then say well, how many things wrong can we find, where that is something that an attorney might do, and where there would be legitimate debate as to is that a good way to do it? Is that a legitimate way to do it? How should a judge respond to this? And you know, now once you start looking for them and find some old movies that I didn't know about from the '40's and '50's, especially wonderful examples . . . Often, sometimes I do the research based on reality. One of my favorites is a lawyer, a cross-examiner who's getting increasingly frustrated by his inability to prove that the prosecution witness is a liar. And he gets more and more agitated and angry and upset, and finally pulls a gun out of his jacket pocket. And of course the witness and everybody else in the courtroom dives for cover. Well, that's a point that the attorney was trying to make. How would somebody react when a gun is suddenly . . . when they're suddenly confronted by a gun. The whole thing was an experiment. The idea was to show the jury that everyone would dive for cover. And in the context of the movie, that undermines the witness' testimony. Well it turns out that that was actually done. That wasn't just sort of a fictional creation, but it was done by a lawyer named Earl Rogers in L.A. in an L.A. courtroom about 1910. And it seems silly today. But here's this old movie from the '40's which is a wonderful recording of what a creative lawyer was allowed to do about 100 years ago.

Hall: Do not attempt this in a courtroom today.

Bergman: Do not. Right. Don't try this at home.

Hall: While all this was going on at UCLA, . . . Or actually, I want to ask you one question that relates more to a national issue that a lot of people have talked about. What were the working conditions and status for you and the other clinicians at UCLA?

Bergman: I think UCLA early on, at the end of the second year, was going to keep us . . . They said, well do you want to teach next year? And there was kind of never more of a commitment for the first few years than the next year. And they said, 'Well, this seems to have been successful. Students have signed up for it. Do you want to teach next year?' I said, 'Okay.' I hadn't thought of anything better to do. And kind of along with that came a . . . At some point, like after I think about years, the law school had to kind of decide what to do with . . . well with me specifically, I guess. Because they were bumping up against university rules. You have to have tenure, or you have to be God. So they committed to tenure, and the issue was how is tenure going to be any different for you as a clinician? And I started to do some writing. You know, nothing major. A little piece on the journal of legal education, and some writing I had done for the students, for the classes. And so they cobbled together sort of a set of criteria that would constitute tenure for clinicians. But there was never a sense . . . There was never a separate kind of tenure. It was a one tenure model school. So I

never had a sense that there were committees, law school committees that I wasn't eligible to be on. Or that somehow my status was any different from, anybody else's status. Once they decided that these are going to be . . . that the work was worthy of continuing and putting together some criteria . . . which is, I recall, had to do with . . . Not that the quality of whatever I wrote would be judged by the same standards, but perhaps there would not be as much quantity of writing demanded. It still had to be writing, and I think that the quantitative . . . the substitute for kind of the same quantity of work would be somehow developing a national reputation as a clinician. And so, getting letters from other clinicians in other parts of the country that, yes, they had heard of Paul Bergman and thought he was doing fine work or something like that, that would take care of the quantity. But the quality of whatever I was putting out still had to be judged by the same standards applicable to anybody else. Once that basic decision was made, I think issues of separate status just never surfaced at the law school.

Hall: I've got to switch tapes here.

Bergman: Yeah, I see this light blinking.

**(There was a slight pause in the interview, and then it began again as follows:)**

Hall: A lot was obviously going on during this period away from UCLA in terms of these

issues of status and going from the Bar Association \_\_\_\_\_. CLEPR funding ran out, and new ways of coming up with money had to be come up with. Do you have any sense of what you think were some of the major turning points along the way in terms of clinical legal education becoming entrenched in moving forward?

Bergman: You know, I'll be honest with you. I'm not by nature kind of an organization man. So while there was a very sort of politically active clinical movement, I always saw myself as somewhat on the sidelines. Both because I think the models of clinical education were very different at other law schools. Other law schools tended to have . . . They had status issues, and had . . . The courses looked very different. I mean, they would have like a welfare rights clinic or something like that. Well, we didn't have a bunch of separate clinics. And I recall a meeting that David and I had down in the basement of the faculty center, just over coffee, and trying to figure out what we were going to do very early on, and decided this civil law advocacy and criminal law advocacy . . . That this, it didn't make any sense that in both courses, to a large extent, we were teaching similar kinds of skills. And then deciding that our courses ought to be skills focused rather than problem focused so that we started developing courses around skills. So that we'd have a course in . . . our clinical course in interviewing and counseling in which the work of the students would . . . their client contact would consist of interviewing and counseling. That could be in any kind of case. But I always felt that somehow, I didn't have that much connection. I wasn't on the same page. I didn't come from a strong politically . . . A sense that what the law school

ought to be doing was serving poverty level clients, clients with certain kinds of problems. And to the extent that law schools were not recognizing that as valuable, that was a political judgment by the law schools. And there was a sense of anger and injustice. I never felt it at UCLA. Maybe because what I was doing, I don't know whether this is right or not. But to regular faculty, the traditional faculty looked very similar. They looked . . . They were breaking down substantive law issues into . . . and writing about them in a way that I was breaking down skills and writing about those. Okay, maybe the subject is different, but it looks a lot like what we're doing, whereas, in other law schools that wasn't the case. So I was very much, I must say, off to the side of the debate. I mean, I felt strongly that the clinical work was important. And it ought to be recognized, and the clinicians ought to have tenure. But I wanted that to be based on kind of model that I felt would be strong and durable and worthy of tenure according to the law school community. So, I was generally . . . obviously supportive, but I wasn't really involved in the kind of judgments and decisions and political arguments over the status kinds of issues.

Hall: Let me ask about just the debate over the general direction of clinical education itself. Were you ever at any conferences where there was a big social justice versus skills kind of debate going on?

Bergman: I don't know that it was . . . I don't recall a debate, because I think that most clinicians were committed to social justice. I mean, they saw . . . no one would way I'm

committed to social injustice or something like that. But, client service was seen as . . . . A lot of clinicians would describe what they were doing as training lawyers to work for under-served communities. And I just saw myself as training lawyers. So that when I went to the conferences, it wasn't so much that there was a debate about it. I think it was taken as a given. And I always just felt that well, I just had kind of a different view, and that's fine. And they can do what they do, and I'll do what I do. But I don't remember a conference where there was . . . the subject matter of the conference was organized around this kind of a debate.

Hall: I guess the question I'm getting at is, did you ever feel at any of those conferences that people would sort of question your approach and it somehow being a wrong approach to clinical education?

Bergman: Yeah, occasionally. But yeah, I would have like debates with someone like Gary Palm, let's say for example, who is very committed to client service. And what we're training is lawyers to go out and serve under-represented communities. You'd say well, you guys are on the lunatic fringe out there. And this is what you ought to be about. And that's fine. We would have kind of interesting debates. But I don't think it ever went any further than that. And I think that we saw ourselves as somehow as luxury. I saw a lot of clinicians as being . . . I wouldn't go to a lot of clinical conferences, cause the issues they were worried about was . . . Well as I say, I'm not particularly a conference goer. Some people just love to attend conferences. I'm

not that way. And a lot of the issues they were talking about would be things like, well how do you get any time off from the summer when your . . . because you have all these client service things. And that would be a big topic. Well, I wouldn't really have anything to say about that, because that wasn't a problem that I had. And I felt in some way that I had this luxury to be able to have the summers to write, to have less client-service responsibilities. And so I think that to the extent that I saw that I could be a contributor to the movement and development of clinical education, it wasn't attending conferences. It was writing about having the time to, and therefore the obligation really, to write about some of the skills issues that I saw as significant. And even that people could use in other clinical courses if they didn't have the time to develop it on their own, because nevertheless, these are things that students ought to know about. So, if I could . . . If my work could in any way be of help, that's the way it would be of value.

Hall: Paul, just the last couple of questions. Are there any people you would point to as being especially influential in the development of clinical legal education?

Bergman: Well, I've identified David Binder as somebody. And I guess I would say I think a lot of people would mention Gary Bellow and Bea Moulton as a textbook which was mostly kind of cobbling together different things. But certainly, that was an early effort to . . . that there was a body of knowledge that you could organize around lawyering skills that wasn't contextual, that wasn't based on certain kinds of problems.

And so, to me, that sort of meshed with the way David and I thought about it. So I would certainly point to those people as sort of heroes of clinical education.

Hall: Okay, what do you think of . . . looking at the whole span of when you began to now . . . what do you think have been the biggest successes of clinical legal education, and where do you see it going in the future?

Bergman: Well certainly, I guess one of the biggest successes is just that 30 years or so later, we're still here. I mean personally, but certainly clinical education as a model or as a responsibility, let's say, of law schools is certainly entrenched. It's hard to imagine now that a school would say, 'Well, this clinical education stuff is not very important and not worth having. I think another success has been, apart from . . . I think has become somewhat institutionalized in the non-clinical courses, and that's a trend I'd hope to see continue. That we wouldn't be talking about necessarily . . . There's traditional education and there's clinical education. Part of what clinical means is to work on actual cases with students. And maybe there's . . . There will probably always be a lot of faculty in law schools who would not be doing that. But clinical education is also . . . what that means is that you're talking about skills rather than knowledge, and that you're also talking about a teaching methodology. And that those two aspects of clinical education have been to some extent, and I hope will continue to be absorbed into the regular sort of non-clinical curriculum, if you will, so that more faculty will take a more problem-based approach and use some of the clinical

methodology in their courses. I guess that's what I'd like to . . . certainly one of the directions I'd like to see clinical education go is to sort of break down the barriers. And hopefully it's going in that direction already.

Hall: Sandy, that sort of wraps up my questions. Do you have any that you'd like to follow up on?

Ogilvy: I'd like you to talk a little bit about the other books.

Hall: Oh, yeah, right.

Ogilvy: Especially interviewing . . . *Lawyers as Counselors* . . . and also on the . . . how you used . . . I assumed you used some of those things and then decided that they . . .

Bergman: Well let's see.

Ogilvy: You can start chronologically.

Bergman: Yeah. Well let's see. I guess I was asked about some of the other books that I've worked on. My first book was *Trial Advocacy in a Nutshell*. And there was this nutshell series. Nobody had written trial advocacy, and that's what I was teaching. So that was kind of an extension of what I was trying to do in my class, which was . . .

that was kind of a natural outgrowth of thinking about skills that were, in this case, skills of courtroom advocacy that were not tied to the context of working with a client, working with a particular kind of problem. And a lot of the literature that I read, and that had available to students seemed to consist mostly of war stories, or these general kinds of principles equivalent to buy high and sell low. Well that's great, but how do you do it? So you read things like 'be persuasive,' and 'be organized,' and 'focus the attention on the client during direct examination' . . . 'focus the attention on yourself during cross-examination.' Well there's nothing wrong with any of these principles, I guess, but how do you do these things? Everyone would like to be interesting and dynamic and persuasive, but not all of us are blessed with the innate ability to do that just by reading about that as a goal. So, an early effort was to try to figure out . . . sort of pierce those veils as it were . . . to try to figure out what lawyers were doing. What do you do to focus attention on the client? Then David and I wrote . . . I think the next book that came along was the fact analysis book, *Fact Investigation*, which again, there we knew we were writing books . . . I mean, usually when legal academics write books, they have in mind that there are courses that these books could be used in. And we knew that UCLA had . . . we had a course in fact analysis that was a clinical course. But we knew other law schools did not. But we thought this was a book that was important to write. Because we wanted students to have some tools for thinking about doing factual analysis, which was kind of the equivalent of the legal analysis they were getting in their other courses. How do you think about facts? What's the inferential process? How do you make facts . . . How do you persuade somebody? How do you

work with facts to be able to do that? And I think that's been a successful book. Obviously it's not the kind of book that gets adopted for use in a law school course, but we think that the sort of the inferential process that we described there is one that, without using the book, you could certainly . . . It gives you something to talk about with students. It helps them organize a body of information and figure out, well here's where I am . . .

**(Side A of the tape ended here. Side B began as follows:)**

Bergman: . . . about the chronology at this point anymore. But then the interviewing and counseling book, David and Susan Price had written a book in the late '70s kind of while I was working in the late '70s while I was working on trial advocacy, which was kind of the equivalent of trying to figure out, well what are the individual skills of interviewing? What are you doing when you're trying to interview? And working from a model that we saw that many lawyers had of the client turns the problem over to the lawyer, and the lawyer kind of makes the decisions. And here's what we're going to do, and in trying to come up with an alternative model to that. So that was the genesis of something that was called, "client-centeredness," which we thought that basically that the lawyer was an agent and a helper. And again, from the perspective that skills are processes, what lawyers ought to be about is using their skills to help the client figure out their own problems, a kind of client empowerment that clients have to live with their decisions, and they therefore have to make them. The lawyer's job was

to help them make with the client, after being adequately counseled, the decision that the client thought was best based on their own values. And I think that was, at the time it came out, was a very significant conceptual model that didn't really exist. It had n't been thought of in any organized way. And here was this book with some tools to be able to do that. I think our feeling was . . . I was not an author in the book, but was involved in it . . . The feeling was that that book had to be . . . because the image of the lawyer as decision-maker was so strong that the book, the late '70s book intentionally, I think, kind of took the client almost . . . took the lawyer almost out of the picture entirely. That the lawyer's values were not terribly important. That you were . . . As long as you had gone through this process, the client's decision was very much of a individual client with an individual lawyer, and that the client would decide. And this was a very rational client who was in charge of their own life, and could make these kinds of decisions. When I got involved in the second edition, one of the things that I wanted to do was to cut back on that. And that was really a political point just to get attention. And it certainly got attention. It also got some criticism. People say, 'Well, wait a minute. That's really maybe too much of a caricature of what it ought to be.' And so we tried to balance it in the second book where we really did give the lawyer more of a voice in the affairs. It's still client-centered, but a more balanced view of what that means. Currently, as this tape is being made, we're in the course of producing a new edition of the book which will be, among other things, more focused on lawyers as not working with individuals, but what changes when lawyers work for community groups and that kind of thing. I've also done a number of other

kinds of books for non-lawyers, which I found very interesting. I've written a book now, and its third edition (now 6<sup>th</sup> edition) is about to come out on the civil justice process, and trying to explain to lay people what they need to do to represent themselves in court. I've done another one on the criminal justice process, and another one on depositions, all trying to break down . . . What I found most interesting about that is that we as lawyers speak in shorthand to each other. But when you actually have to explain to non-lawyers what these sort of rules mean, and procedures . . . how they play out and give examples. You really have to think of it in a much deeper and more basic way. So that's how even the way I think about these issues when I talk to law students and lawyers.

Hall: Paul, one last question on the client-centered approach. Was there anything intrinsic to the clinical education process that naturally led to that? Or . . .

Bergman: I think . . . I don't know if it was inherent in clinical education. I guess when you're . . . If you have a model or a conception of kind of the lawyering ideal, I suppose it's like you can have a conception of tyranny as that's the best form of government, and my job is to teach future tyrants how they should rape, pillage, and despoil the countryside. So I don't know if there was anything inherent in the clinical educational model that led to that. I suppose that probably most of us who became clinicians and wanted to work with clients . . . because we saw that as itself a value, that basically, the work of

lawyers is important. And it's not the knowledge of lawyers. It's how they work with clients to help them solve problems. And because it came out of those who went into clinical education, I think, probably all of us have in common that we think that work is important, that the clients are important and their situations are important. Their problems are important. And what we want to do is help them with that. Whether we see that as our main mission of the school or whatever, I'm sure we all have that conception. So I think it grew out of our sort of personal agendas that probably drove us into clinical education in the first place. But I guess there's nothing inherent in being a clinician. You could be a perfectly adequate clinician, I guess, in terms of your teaching ability and teaching style, and teach a whole different conceptual model of what it means to be an effective lawyer.

Hall: Last question I want to ask is one that people have had a lot of different thoughts on. It has to do with the notion of whether students trained in this . . . whose training includes a clinical component . . . emerge as better lawyers than those who don't. I guess what I'm wondering is do you think there's any way of actually measuring or determining that, and should more be done to figure out whether that's the case?

Bergman: It's hard to measure because obviously there's so . . . I don't know that there's an agreement on uniformity on, well what makes someone an effective, capable lawyer? You know, you can't like say, 'Okay, let's see how many partners are out there who have had clinical education as opposed to those who haven't,' or 'those who are still

lawyers as opposed to those who aren't.' But I think that . . . so I'd like to . . . I think that's an interesting question. I think we have, at UCLA at least, sent out questionnaires, our own sort of personal questionnaires as to whether or not the students four or five years out, let's say . . . did they find that their clinical education has been helpful? I guess because we're sending it to them, they say it has. But we try to break it down obviously to whether . . . I think in terms of basing it on conceptual models, we had a sense that if you had some kind of model you're working against, well what does an effective interview look like? What should be going on? What should you be doing with counseling? What does counseling consist of? Even though the kinds of cases they might work on would be very different when they get out of law school, nonetheless they have at least some grounding in a model that we thought, or think at least, is generally applicable that they could build upon and use. And we certainly have our own sort of anecdotal and semi-seriously done surveys that the students do continue to use the models. And I think we probably can and should do more in that. Obviously, we're all hoping to train better lawyers. For some people better might mean people who would have sort of a continuing commitment to underserved communities. While I certainly don't object to that, I suppose for me, the better, more effective lawyers would be one who can simply better . . . have better skills and able to use these skills in the service of their clients, whoever those clients are. But I don't know that we've got any general modeling that we could . . . or surveys that we could say, or definitive proof, because I don't know that there's universal agreement as to what that would look like.

Ogilvy: When did you start using the techniques, or some of the techniques, that you described in “The Games Lawyers Play”?

Bergman: The Games Lawyers Play was, I think I started using those in the . . . well, certainly started using those by the mid-70s. I talked a little bit earlier about trying to break down skills into sort of the building block approach. One of the things that seemed to me that students didn't fully appreciate was the extent to which the skills that they had built up, or their life experiences were going to impact them as lawyers. That to some extent, the way that they reacted to other people in non-legal situations was going to influence what they did as lawyers. To some extent that was good, and that they ought to recognize that, and not think that . . . I always felt that somehow law school sent a message that looked at your lives to this extent thus far as being useless. And now we're going to inculcate you in a new way of thinking that we're going to call 'thinking like a lawyer,' that this is all a self-contained system, that it's all analytical, and that forget about all that stuff that you have been doing until you got here. And that's probably a caricature of the message, but it seemed to be that the students kind of weren't sure about to what extent their past experiences had value to them as lawyers. And so what I try to do is to devise a series of little exercises where they were taken out of any legal context whatsoever, have them engage in an exercise, and then say okay, what might this look like in a legal context? So for example, I would have the students . . . They still do. I just have them play charades. And what the group is trying to guess is maybe not a movie title or something, but is a legal rule or

some legal phrase. But then, to break it down and say, what was going on during this game? How was the person communicating when the person pulls on their ear? Why is that communicative? And as a lawyer, you're not going to pull on your ear, but if you don't know what pulling on your ear means, you may think, 'Gee, this person has a problem with their ear.' But if you know the game, it means what I'm going to do . . . the clue I'm going to give you is something that sounds like the term. And so analogy. And we use analogies like this in every day life, and you've done this all your life. That analogy is somehow a form of legal reasoning, that you haven't experienced. So what I try to do is to take . . . What is the skills that's going on here? Is there kind of a fun and sort of narrow, non-legal context that I can put that in so that students don't have to think that somehow they have to behave as a lawyer here? But when you take them out of that context, they just behave as they would, and then you can analyze. You get sort of the pure behavior, as it were. And then you can ask them to make the connections.

**(Someone enters the room.)**

Hall: This is a first. How you doing? Have a seat for just one moment Frank.

Frank: Alright.

Bergman: I take back everything bad I said about . . . I didn't mean a thing.

Hall: Any, I guess this is the first time I've actually \_\_\_\_\_ liked this. But any last thoughts you would like to offer about clinical \_\_\_\_\_, \_\_\_\_\_ done or about your journey in it?

Bergman: I hope these aren't my last thoughts. I'll see what happens as I walk across the street. I don't know that I can add, except I think I've been accidentally blessed with a wonderful career. When I talk about what I've done and what I've had the opportunity to do. I say I can't take any credit for this. It's not like I made this decision to do this. As I told you, it was accidental. Someone else looking around for something to do who referred me. I fell into this. One, two years became three. Three became four. And I think probably looking back on it, it's the opportunity to work with the students on such a personal level that's just been wonderful. And probably what I bring with me when I think about my life.

**End of Interview.**

Transcribed by: Sabrina Hilliard