

**Transcription of Oral History Interview with
David Binder
January 3, 2001**

Hall: How did you get into clinical education?

Binder: Well I went to UCLA to start a program, and I had no idea what clinical education was or should be.

Hall: Well how . . . I know you had wor . . . Was this after you had worked for the Center on Law and Poverty?

Binder: I worked for the Western Center on Law and Poverty. And I had been at part-time at UCLA teaching a small clinical class when the offer came along. And one of my early remembrances after being hired, the dean saying to me, 'Well, what's clinical education about, and why have we hired you?' So that was my introduction to clinical education. I didn't know anything about it.

Hall: Do you remember what your answer was when you were asked that?

Binder: No. I remember what my reaction was, which was, 'You hired me. So why are you asking me what it should be.'

Hall: Well David, I have this sense from a lot of the interviews that we've done that just because the way this came together, you had a lot of programs that were sort of being thrown together with almost no real sense of even, as you say, what it was about. What were just some of your recollections like when you first came to UCLA, and you were in charge of getting a program going? What was that process like?

Binder: Well, the way it was set up, we had a CLEPR grant for, I believe it was \$100,000, which of course at that time was a lot of money. And I was to be that director. I was the only 'real' faculty member. And I could hire three young people to work with me. And that's how we got started. I brought one of those people with me from the Western Center on Law and Poverty. And Paul Bergman was one of those people. He came in off the street and wanted a job. And the other fellow whose name was Bob _____, he also came from the Western Center on Law and

Poverty.

Basically, what we did is we started a program in which we represented various kinds of clients, indigent clients. And I think we called our program something like Trial Advocacy and Poverty Law. That's how we got started. And essentially we all did the same thing, which was just, in retrospect, primarily the processing of cases on behalf of indigents.

Hall: Actually, if I can back step a moment, you *were* involved with the Center on Law and Poverty before this opportunity came. So you had obviously been attracted to poverty law in some way beforehand. What was sort of your personal history in the prior years that led to that point?

Binder: Well, I was in private practice for nine years. And then I got tired of that. One of my descriptions was I was just sort of a glorified clerk. I collected money from corporation B on behalf of corporation A. A transfer clerk is what I called myself. And I got tired of that. And I'd done a lot of civil rights litigation, pro bono. So I thought I would try the Western Center on Law and Poverty and give up private practice and see what it was like to do essentially civil rights kind of litigation on a full-time basis. And that's how I got started.

Hall: I may _____ part of your answer to have that truck sort of roll around the corner. We've found one problem with urban interviews is that you can't always control the background noises. But how long were you with the Center, and . . .

Binder: Just about a year until this offer came along.

Hall: And were there any sort of memorable experiences during that time there?

Binder: Yeah, there were a lot of memorable cases there, probably . . . Well, there were 18 lawyers. I was the Director of Litigation, and there were a lot of interesting large law suits. I guess perhaps the most memorable was an action on behalf of all black people in the city of Los An . . . *county* of Los Angeles against the Los Angeles Police Department, a problem which obviously exists today if anybody reads the newspapers. So that was probably the most memorable case among all the cases that were going on at that time, for a whole variety of reasons. If you want me to go into those reasons, I'll be glad to go into 'em.

Hall: Actually, just real briefly if you could. And then I'll move along to the clinical.

Binder: Well, part of it was because the judge . . . notorious might be the right word . . . was supposed to be a very hostile fellow. Turned out not to be particularly hostile in this particular case. And in part because we were funded . . . The holder of the funds for the Western Center on Law and Poverty was USC. And when we eventually got an order certifying the class, and for publication of the notice to the class, the university wouldn't release funds for us to publish the notice. And so there was a big . . . Let's say there was a confrontation between myself and a Vice Chancellor, if that's the right title of somebody at USC. So that's one thing that makes it quite memorable.

Another thing that makes it quite memorable, unfortunately, is that when we finally got the class certified, it turned out that my predecessors had not developed much evidence. And so I and two other fellows would go on weekends to various parts of the ghetto in Los Angeles and stop fellows on the street and ask 'em if they'd ever been hassled by the police. That was quite a memorable experience, given my immense size and so on. That's another thing that was quite memorable. One of those people subsequently became my student and became the president of the Local NAACP.

Hall: David, let me ask you. You'd have been at the Center or a year. You were given what seemed to be sort of a nebulous offer to start a clinical type of program at UCLA. What made you decide to move in that direction rather than just continue right where you were?

Binder: Well, I guess a) partly it was I enjoyed the little bit of teaching I had done two afternoons a week, and b) I was very frustrated by the Center. I guess I can best express those frustrations. We couldn't seem to have any agreement about how we ought to be using our resources. Things were pretty much done on a catch-as-catch-can basis. And that, among other things, left me with a great sense of frustration. Frankly, I felt I was doing more as a pro bono lawyer in private practice than in fact I was accomplishing at the Center. So I think I would have left, frankly, if the job offer hadn't come along. But I'm not sure.

Hall: When you went to UCLA, you were obviously starting something just from the ground up. What . . . Are you able to recall sort of what some of the early . . . What questions you had to sort of sort through, just even in terms of the direction of the program?

Binder: Well at first, it was just a matter of getting something up and running. And eventually, I don't know how long, we started trying to figure out, 'Well, what are we doing that's not simply an early release to the practice of law? What *should* we be teaching students about?' And we didn't want to be just an early release practice. That was one thing that was sort of going on. That was a major thing that was going on in my mind. So I was trying to think about, 'Well, what areas,' trying to think about, 'Well, if I'm trying to teach somebody to be a lawyer, what are the things that I ought to be trying to teach,' rather than simply working on the cases. I'm sure that was the foremost thought in my mind.

Hall: Well, I know it's a pretty common model in the early going just to turn kids loose on cases. If you think back on just like the first year or two, what would the experience of one of your students have been in this program?

Binder: Oh, it would have been . . . There was a year long course. It would have been a semester of doing sort of traditional work on cases, motions and that sort of thing, a classroom component devoted primarily, though not exclusively, to trial advocacy. And in the second semester, actually going down to court and trying

cases in the dependency court. Now when that actually kicked in, whether that was two or three years down the line, I don't know. In the first year, I think there were very few trials. I don't think we even had it developed to that extent. I think we were just working through the cases.

Hall: Obviously, this was a ti . . . What year was this actually that you were starting up?

Binder: 1970.

Hall: Okay. It was coming right at the end of, obviously, a very turbulent decade. What was the climate of the students you actually attracted to this program? Were they politically active, or did they have a real strong sense of social justice?

Binder: Oh, they had a *very* strong sense of social justice, but it wasn't coming to the end at *all*. I mean, we still had Vietnam, we had Cambodia. It didn't come to the end of that . . . That's really when the Civil Rights Movement was in its heyday in Los Angeles. So it was a while before any of that fervor calmed down. There

was a combination of anti-war demonstration and civil rights commitment that fueled the desires of the students. That's really what was going on. But I'm not a very good historian, but when was Richard Nixon elected president? 1974? Is that right?

Hall: Actually, the second election would have been '72.

Binder: Seventy-two.

Hall: Yeah.

Binder: Okay. So he's still in office in about '74. So there was a good period of time in which the students were quite concerned about matters of social justice.

Hall: When you got the first year of that program going, was it hard to attract students? Or was there just a certain group of students who every much wanted to be a part of this?

Binder: Not hard to attract students at all. We *never* had a problem. We've *never* had a problem attracting students. Never. From the day one.

Hall: Okay. What other memories do you have just about that first year just from the day out? Is there anything that sticks out?

Binder: Well, I don't have memories so much of the first year as distinguished from the first period. But I have memories of fumbling around, not really knowing what we were doing once it became clear to me that we had to be doing something more than having students process cases if we were gonna have a place in the university. That was my thought. That's what sticks out in my mind. And I can remember all kinds of individual cases and stories and so on, and students. But . . .

Hall: I'm gonna ask you to do that just for a minute. But I do wanna draw out the point you're making about the evolution _____. But just of the first couple of years, is there just any case or cases that were most memorable?

Binder: Oh, there aren't particular cases that are . . . Well, sure, there are cases that are memorable. One was representing a family, a Cuban family whose goods were being transported from some place to Los Angeles, and the company wouldn't let go of their furnishings. So they didn't have any place to sleep in their house. I remember that case very well, and everything turned out wonderfully and we had a great . . . And they invited us over for dinner once they got all their household goods back. And one of those students is Paul Marcus whose been a dean, I guess, at Arizona, and I guess is now at William and Mary. I'm not sure exactly where he is, but that was one of the students from that class. Another student has just been appointed a judge. And from that era, another student of mine has become one of my closest friends. He always went to court in this rust red corduroy suit. That's the thing I remember about him. But I have lots of memories about different students from the era, some of whom I still see.

Hall: Now, a lot of the kids . . . I was a little bit younger, but I had my own recollection . . . were obviously quite rebellious against authority on a lot of fronts. How did that affect, in any way, the relations they had with you as part of the faculty? Or maybe, another way of putting it is, how did your relationship to the students differ from what it might have been in the traditional law school

class?

Binder: The whole set up was so different. I mean I wasn't . . . When I teach a traditional class, I'm standing in front of the students and peppering them with questions. Clinical education is so much more performance based that I just don't see a parallel at all. What I don't . . . And obviously age had something to do with the amount of distance that you have from the students, or the students feel they have from you. I mean, it's hard for me to be *as* close to the students today as I was then. After all, I wasn't that old then. I had a lot more hair. But there's still not, in the clinical classes, there's still not a tremendous amount of distance between myself and the students. Some, of course, to be sure. It's much more a collective effort kind of process. And students who are in clinical classes are there because they *wanna* be. Students who are in traditional classes are there often because they *have* to be. I teach in the first year, so they have to be there. Some may be interested, and some may not be.

Hall: David, I'm gonna come back in a second to this notion of that you began to see that something was a little bit missing in the approach. But, did you find those first few years exciting, or was it more just frustrating or confusing or what?

Binder: Oh no. It was totally exciting, totally exciting. I remember that in the middle of my first year, there was a proposal to perhaps have summer school at the law school, which we've never had. And the dean sent around a memo asking who would like to teach in summer school. I was the only one who said yes. I was very enthused. Everybody else on the faculty had the good sense to say, 'Let's take the summer off.' But I had never experienced a summer off, so I was ready to go for it.

Hall: What started persuading you that . . . You know, you talked about the notion that you wanted it to be more than just early release to law practice? What kinds of things started focusing your thinking in that direction?

Binder: Well, one thing . . . I can't tell you *why*. It seemed to me that if we were gonna be at the university, there had to be some legitimate reason for being at university. Two, from my ten years in practice, I was frequently unhappy with the level of performance of the lawyers that I encountered. I thought that there must be a way for things to be better than they were. So that was part of it. I guess part of it is I didn't wanna be . . . Frankly, I didn't wanna be viewed as that clinician. I wanted my colleagues to think that I had some legitimate place on the faculty.

So that, I think, played some role in my starting to think more seriously about what an educational program should look like. Those things coalesced somehow in my decisions to start trying to break our courses down according to the kinds of things that lawyers do, rather than just treating every case from the beginning to the end, and processing cases.

Hall: You actually alluded to something which has been a fairly common theme among a lot of instructors. Did you feel like you were viewed as a lesser instructor during those early years by some of the clinical, traditional teachers?

Binder: By the traditional teachers? Surely, some of them. Absolutely. I have to say that look, there were a lot of . . . A lot of my colleagues were willing to help out in this clinical effort. And they were as much excited by the times as I was excited. And there were a lot of young people on the faculty with a lot of enthusiasm for clinical education, albeit none of us really knew what we meant when we used that term. So I don't want to say there was a great deal of hostility, cause I don't think there was. I think there was very little hostility. But there was some. But at the same time, people cannot be hostile, but not think of you as a serious member of an academic faculty. So, there is that potential for distinction.

Hall: In your early steps of going from here were just simply having kids processing cases, to here where there's actually some intellectual underpinning to what's going on here, what were some of the building blocks and steps that you developed?

Binder: Well I think first of all . . . and I'm not sure the order of these things anymore . . . One was the idea that there's certain basic tasks that lawyers perform that ought to be studied and taught. That was one idea. Another idea was that, if we weren't gonna process cases, it made no sense to have one person in charge and then three or four other people who simply process cases. *Everybody* needed to have the same stature as I had. Those were two things that I can think of that drove me in that direction, the direction being . . . Again, we don't have . . . At UCLA, we don't have, for the most part, clinics in substantive law areas. Our courses are built around programs in particular lawyering areas. So, a course on negotiation, a course on interviewing and counseling, a course on trial advocacy, tying all those things in to the clinical work as distinguished from having a landlord/tenant clinic.

Hall: Now, when you said that you thought there was a need to sort of identify that various aspects of what lawyers really do, and then sort of break it down and analyze it and instruct it, at the time, was there any real body of teaching you could draw on to do that? Or did you have to sort of develop those models yourself?

Binder: Well, I think I had to, in part, develop those models myself. But I don't know when Bellow and Moulton's book came out. But they clearly had that take in their book, their lawyering process book. They tried to look at all the various things that lawyers do, and they had readings in most of the major areas. And I think that must have influenced me to some degree. I can't . . . I can't say whether I had those ideas first, or whether I got the ideas out of their book. I just don't know the answer to that question.

Hall: Okay, well that's . . . Locally at UCLA, what steps did you go through to start trying to develop kind of your own theoretical program that you could give to the students?

Binder: Well, I guess a) I started developing, spinning off and doing a course o my own

that had not to do with trial advocacy, leaving other people to do these trial advocacy courses that we started with. That was one thing.

Hall: Which class was that?

Binder: That was an interviewing and counseling class. And at the same time, I was trying to work, if you will, the political grapevine to make sure that every person who came in to do primarily clinical teaching was a full class member of the faculty. So I guess politicking for it maybe is the right word, so that that would allow people to have free time over the summers to do conceptual theoretical work, and that we wouldn't have to be processing cases all the time. The other thing we did was, I think from the inception, we've never had a walk-in clinic where anybody could just come in and we'll service everyone who walks in. We've always gone out and taken cases when we've needed them for educational purposes. That's always been our standard motive of operation. And it's even more our standard mode of operation today than it was in the first instance. So, that allowed a certain amount of free time for thinking and writing that wouldn't have otherwise been available. So, we were originally not closed down over the summer. We still had cases to work on. But we gradually evolved to the point where we almost never have cases hanging over in the summer through a process

which I'll call the borrowing model, which I'd be happy to talk about later, though that's not 100%, too. We do have one person who does some work on a few cases that hang over.

Hall: David, obviously there are a million things a lawyer does, just in the practice of law. How did you focus on the area of interviewing and counseling? You did the class before you moved onto the book. So what was it that drew your attention there?

Binder: It was problems with . . . It's hard to remember, but I think there were instance after instance after instance in which we didn't really get the full facts until later in the game than we should have gotten them. That was one kind of problem. And the other kinds of problems were these cases that we tried in the dependency court were fraught with difficult kinds of decisions that clients had to make. And we didn't seem to have a very good way of talking with the clients about making those decisions. And we certainly didn't have any idea about any clear idea of any kind of a conceptual line about who oughta be making decisions and why. So I think I must have been pretty frustrated by the lack of my own ability to sort of save the students . . . This is how we might approach this problem with this particular client.

Hall: In something like this, it's sometimes just helpful if you can think of any particular case or sort of something that typically happened that would help sort of to illustrate kind of the problems you were seeing.

Binder: No, I really don't think I could tell you about a particular kind of case. If I thought of anything, it was . . . Anything I think of, and whether this was a prompting motivator, I don't know. If it was the catalyst, I don't know, but . . . I think I do a lot from Bellow and Moulton's book on interviewing. I think that helped me think about that a lot. That's more prominent in my mind than any particular kind of case.

Hall: Looking back, what was your sense of what was faulty in how you and the students were going about doing the interviewing in some of these cases?

Binder: On the informational side, I think that we didn't get all kinds of facts that we should have gotten. And I was _____ practice, too. It was a common

phenomenon. So that was one kind of problem. And the second kind of problem was much more on of just worrying about whether or not . . . Who oughta be making these decisions? I could think back to practice, and I look at the whole range of clients I had. And I thought about my own law school experience where it was very common for the professor to say, 'What would you tell a client?' And then I'd find back in my own experiences in practice when I would be representing somebody from a large corporation high up on the corporate hierarchy. I wasn't telling that person what to do. He was telling *me* what to do, and I was trying to worry about, 'Well, wait a minute. Is it just because this client that our student's representing is some poor person I get to tell? The student should tell his client what to do? I certainly wouldn't do that if X was my client,' thinking back to practice. So I started worrying about those problems, and I also started to kind of recognize there are an awful lot of people out there who may not be . . . who may not have a great deal of formal education, but they're awfully smart about an awful lot of things. So that's just something I started to worry about. I can't tell you exactly why I started to worry about. I can't tell you exactly why I started to worry about it, but I could clearly see that there was this problem. What should you tell my client to do? _____ . It just didn't resonate. Sometimes I would tell clients what I thought they oughta do, but it certainly didn't resonate in my experience n private practice where I was always telling clients what to do and how they should do things. It just wasn't the way things were. There was no sense of the real

world that way. You don't tell a president of U.S. Steel what he should do. It's not the way things go down.

Hall: Well tell me a little bit about the class as you started forming this class on counseling and interviewing. What was your actual teaching model for the class?

Binder: Oh, our model had always been, whatever it is, four hours a week of class. And we just started developing materials, writing materials. There were early drafts of material before we ever got around to the book, some of which excerpted readings. Some of the materials were identified by Bellow and Moulton. I went around and did a lot of research and tried to come up with other kinds of materials and started to produce various texts that had some content written by myself. But a lot of it was reading, and that sort of just kept growing until it was more of what I had to say, and *less* of what I found in the readings until we finally had a text. And in class, we would go through. We would start with a particular problem, and the problem might be greeting the client. And students would read about that. We'd probably have some of the transcripts for them to look at. We had a lot of problems for them to role play about just that segment of the interview, and then we'd go two or three steps down the road and stop and have a videotaped exercise in which the students had to go through those two or three steps. And

we'd go over the videotapes, and then we'd move on in the process. That's how the course evolved. So a series of small role plays about various pertinent problems or segments of the interviewing/counseling process, a model which we still follow to this day.

Hall: Actually, I wanna ask you a little bit about that. It seems like some of the programs have stayed very much with the live clients, and some have gone more in the direction of role playing and simulation of some kind. Do you have any thoughts as to the strength and weaknesses of each approach?

Binder: Yeah, the best . . . I have a strong thought that the best is both. It's pretty clear . . . I have a very strong feeling that there needs to be a classroom component. And I'll try to see if I can do a good job of justifying that. I think a lot of these things that lawyers have to do . . . Their intuitions run perhaps in the wrong direction. And I think that if you . . . My job is to give the students a sense of the options that are available to them when they face any particular kind of situation, and to get them to the point where they can consciously choose among those options and execute those options. And if I can get them to that point, then I think they have something they can transfer into practice. If they don't get 'em to that point where they can see the options and actually execute to some degree

of facility the various options, I have little hope that they're gonna be able to transfer what we've done in law school into practice. And therefore, I don't think I've done much to enrich the profession. And I think literature is just replete with the notion, not accepted by many, that students really do need to practice. And they need a lot of repetition in order to develop their skills. I think the learning literature today confirms that fact very strongly. And if you're just simply processing cases, you just don't have time to think about what are the options for this particular kind of problem? And you don't have an opportunity to practice. And if you're gonna practice, you have to practice with feedback. In fact, you have to learn to be self-reflective. And if you're just doing cases, I think those opportunities are just not there. So processing cases just seems to me to be the wrong thing *if* your goal is to try to have the students be able to transfer what they've learned in law school into practice. Nobody, for example, would say, 'Here's how you analyze a case. Okay. Analyze this case. Move on. Let's go. We'll go and talk about something else.' I mean we all, whether we believe it or not, . . . I think this point was originally made by Gary Bellow . . . really do believe that a certain amount of repetition and practice is absolutely necessary in order to hold any kind of analytic skill. And I think a lot of the skills that lawyers are asked to execute requires a certain amount of analysis as well as technical facility. Cause often there are various options. You gotta choose between those options. You gotta understand why you're choosing option A over option B this time. Though the next time, you may wanna choose

B over A because of some change in the circumstance. That takes a lot of thinking. And then you have to execute that on the spot, on the fly. That takes practice and repetition.

Hall: In this particular class, you had said you felt both components . . . some live client as well as the sort of role playing . . . both play roles. What role did any kind of live client play . . .

Binder: (Interrupting) Oh, in those days I didn't do that. I went totally to simulation because they didn't have any settings in which I could find my students experience, primarily to interviewing and counseling of clients. That's no longer true. But I needed to take time out and just go for simulation. That course no longer is solely done by simulation, cause we have found a setting in which students would get an opportunity to repeatedly interview and counsel clients so we can make the two mesh very nicely. That is the simulation and the real world experience.

Hall: Looking back in terms of the way your students grew, what were the best, greatest successes of that counseling class?

Binder: You know, I don't know the answer to that. I think that's the right question. I think that's the \$64 question in clinical education. I just talked for three or four minutes about why I wanna get my students to the point where they can transfer what they've learned in the law school and apply it in practice, I don't know whether they do that or not. I think that's something that clinical education needs to work hard to identify, the extent to which we are being effective. I have recently asked some students in a . . . I've been teaching a course in dep . . . been taking depositions for the past five years, I'll say. That's just an arbitrary number. And I recently have started the survey and asked them do they recall any of this stuff, do they remember it. And the answers have been generally quite positive. But the depth of my questioning doesn't give me any confidence in their answers. All they say, 'Yeah. Yeah, yeah.' It's great except for those who swore up and down they wanted to go into litigation and who are now doing transactions. There's always a whole bunch of that stuff going on. I haven't finished that survey, but it is going on now. And there's some evidence, probably weak evidence, at least that some transfers is taking place. But I think that's something clinical education need to think more about.

Hall: David, I wanna ask two related questions. One more generally is how did the

class become the book? But in the process, you had mentioned a lot that you felt that you started a lot with Gary Bellow's and Bea Moulton's thinking, but then your own ideas kept taking shape beyond that. So in the course of the class becoming the book, where did your idea start differing or moving beyond what you are reading from now?

Binder: I guess I can't say that I had any conceptual disagreement with Bellow and Moulton approach, other than to say I thought, 'Well, wait a minute. This can't be so simple to be a lawyer that I can teach you everything you need to know to be an effective lawyer in one semester. That can't be right.' So there's just more to each one of these processes than can possibly be taught in a semester or three or four hours, even if there is actual casework going on at the same time. So I guess as the more I got into it, the more problems I saw, just it being interviewing and counseling. And so I just sorta stayed with that, and I began . . . It just seemed to me wrong to think that . . . it still seems to me wrong . . . to think that being a lawyer is such a simple process, I can teach you everything you need to know that's important in 15 weeks, whether I have a classroom or not. It just can't be that simple. It's much more complicated than that. So I had to take time out and just focus on one or two processes at a time. And I learned a tremendous amount from watching the simulations of my students, a tremendous amount about what they did well, and what they didn't do well. We used . . .

Most of the interviews were of people from our witness program. That's the program where people from the community come and volunteer to be interviewed. And they could always be de-briefed afterwards about what they thought, and how did *this* particular approach the student used affected them. Did they like it? Did they *didn't* like it? What did they know that the students didn't get at? That kind of thing. So it was a lot of questioning of the people who were playing the role of the clients that helped in the building of the book. And then along came Susan Price who had a whole bunch of wonderful ideas.

Hall: Tell me about her, and what was your first association with her?

Binder: I'm not sur exactly how I found her. But I think I found her through a fellow professor whose name was Chuck McCreery. Again, we were doing these child dependency cases, and we often needed the advice of a psychologist in order to process the cases. And at some point, and I can't tell you now why, I decided, well, let's hear what some psychologists has to say. And this professor McCreery, he gave me five or six graduate students to come up and help out in the class. That's how I met Susan Price. And she stuck out as really smart, and we started working together.

Hall: But she actually was a psychology student?

Binder: Yes. She was working on her, probably her . . . working on her Ph.D. in psychology. She was working in the neuropsychiatric institute, and we just started collaborating, and she would come. There was this group of . . . whatever there were . . . five Ph.D. candidates _____ working with the class originally, and two of them really had interest in staying around. Three of em didn't find it particularly interesting. And then Susan really became interested, and she turned me on to a certain amount of literature with which I was not familiar. And she had a bunch of good ideas, and we just started working together.

Hall: Can I ask you a question? Was that totally inter-disciplinary approach at that time kind of more peculiar to the clinical field? Could you think of anything going on in the mainstream law classes where they were _____?

Binder: I'm sure there were law _____ of one sort or another going on. I don't think it was unique in any way. No, I don't think it was. I can't think of all the law

_____.

Hall: Coming back to something you said a minute ago about when you would actually de-brief people who were sort of being interviewed by students. Just generalizing, what kinds of reactions and feedback were you actually getting during that process?

Binder: A lot of it was on an emotional level, whether they felt the student was interested in them, whether they felt the student was hostile, whether they felt the student was *too* directive, not directive enough. Those were the kinds of reactions. You didn't get feedback particularly on a technique level. You'd have to push them. 'Well, why did you feel they were too directive . . . the student was too directive?' And often they couldn't identify it. Or if they could identify it, it's in front of the student. So they may not want to talk about it, and I found it impossible for me psychologically to tell the student to leave. And if I waited any length of time to de-brief this person, there would be . . . whatever thoughts they had were gone. So the student . . . My compromise was to have the student there and face the music and encourage the witness to be fully forthcoming. I mean, I would talk to the witnesses ahead of time, tell them that they should be fully forthcoming.

Hall: Is it fair to say that a lot of the witnesses didn't feel particularly well understood by the students, oftentimes?

Binder: Sometimes that was true. You know, it's hard for me to remember when things started to get better, because of their preparation. I really can't say.

Hall: In terms of the impact on the students, how educational was this to actually have a witness across the table giving them that kind of feedback?

Binder: Well, if I judge by the looks in their eyes, it was very effective. But, I can't recall specifically. I might have asked them what do they *think* about what the witness has to say after the witness was gone. But I don't think I would say, 'Well, was that really effective?' I just don't think I carried it that far. I *would* ask them, you know, what do they think about that? Sometimes they would think the witness was out to lunch, or whatever. But often they were quite willing to listen.

Hall: Sandy and I earlier were talking just about the whole notion of client-centered interviewing, which seems quite different to my . . . from my notion of traditional lawyer-client interviewing. How do you actually get to that model, and how different was it from what you perceived to be taking place beforehand?

Binder: Okay well, I wanna go back to what my experience was in practice. Okay, *some*, though not all of the clients I represented in practice, were very sophisticated businessmen, okay? And I was *not telling them what decisions they should make*. Maybe it was just out of fear, or maybe it was out of recognition that they had more experience than I had, and that they knew more than I had. Other times, I was being much more suggestive. If I had a middle level manager . . . I represent a lot of credit managers. A lot of my clients were credit managers of large companies . . . Often I would say, 'Now look. This is as good a deal as you're gonna get. You better take it.' But I remember one client in particular was buying a huge portion of MGM S . . . I think it was MGM Studio Lots that MGM was no longer using . . . And he was buying this property. He was writing out a check on the down payment just to close the deal, good faith money for a million dollars. He wrote the check out of his pocket. I didn't tell him whether or not this was a good risk to take? It wouldn't dawn on me. He knew whether this was a good deal or not, and I didn't have a clue about whether it was a good deal. I knew from my own experience there were times when clients

knew more than lawyers knew. And other times when maybe a little advice in a lawyer was right. So then I started to try to . . . With *that* as a background, I started thinking about it. And Susan was very instrumental in talking about helping me understand why as a conceptual matter, clients were often better able to make choices than lawyers, because of the way it impacted . . . the decision would impact on their non-legal concerns. And they knew those far better than I. That's how it came to that. But there was this strong sense from my practice that sometimes I really *did* wanna listen to the client. And then there was a question of, 'Why do you wanna listen?'

Hall: Well let me ask you. When Susan came in, how much of a driving force was she in some of the way your model changed? Did she look at your interviewing and say, 'I see some real problems here?' Or how did that work?

Binder: I think she was not too much of a driving force in the interviewing, but a very strong force in counseling part. I mean, I think her strengths lay in that area, and her insights lay in that area. I'd have to go back and look at Bellow and Moulton and see what kinds of distinctions that their materials said making a distinction between interviewing on one hand and counseling on the other. But I know Susan was enormously instrumental in the counseling part of it.

Hall: Now I know it's always hard for an author or co-author to judge his or her own work. Looking back, how influential do you think that book has been, in terms of the way you've seen teaching happen since?

Binder: I have no idea how other people use it. I know a lot of people use it. I still think it's a good book. We're sort of in the process of writing a second edition of *Lawyers as Counselors*, and bringing on Paul Tr_____ from Boston College as a co-author. Because I'm getting out of that. And so there are some additions that we're gonna wanna make.

Hall: Do you think experience is born out your basic idea that, say, a poverty client needs, deserves, and benefits from the same kind of autonomy that some of the corporate clients used to deal with, Dave? Or are there differences in practice?

Binder: That's a very good question. And the reason I'm hesitating is I have to think back. It's been a long time since I've been involved in cases in which I have actually watched the counseling of the client. And that's the reason I'm

hesitating in answering. I think . . . Again, it obviously all depends. But yeah, I do think there are an awful lot of clients who don't have a lot of money, and may not have the greatest education in the world who are capable of thinking these problems through. On the other hand, I have to say that as we try to point out, at least in _____, look, there are a lot of clients who wanna hear what you think. That's their choice. And what I think is important there is that before you say what you think, you first try to figure out what their value structure is so that you make . . . count your advice in what you hear them say their value structure is, okay? If their dominant concern is peace of mind and get this over with, you might advise, for example, settlement. On the other hand, if their dominant concern is to see the whites of the eyes of the adversary and they don't care about how this case . . . they don't care if they don't get the money . . . your advice probably will be something different. Now, being able to figure out what they say their values are, or in fact their values is a difficult thing. But it is an example going back to something I said earlier. You need to have students go through that process of trying to figure out what the client's value structure is several times before the students can really get a sense of what it means to figure out what the client's value structure is. If they don't practice that and get some feedback about it, the notion that you're gonna get the client's value structure is just an abstract piece of puff, as far as I'm concerned. _____ that last part is not totally responsive, but it makes a good example.

Hall: I'm gonna shift directions a little bit. Did you know Gary Bellow at all?

Binder: Yes, sure.

Hall: What were your associations of him, and what are your memories of him?

Binder: Well I knew him first when he was at the Western Center on Law and Poverty, he was leaving as I was coming in. He was one of the principal people responsible for the decision to hire me in that position. But then he only stayed around USC and the Center in a very limited way after that. He was not deeply involved. The first year when I was at the Center, it moved from USC off campus. And I think after it moved off campus, I really saw him again while I was at the Center. I obviously had many conversations with afterwards when we were both in teaching, but my initial conversation . . . My initial association with him was at the Center, but when it was at USC.

Hall: Any early memories of him during that period?

Binder: I remember when he interviewed me for the job. He asked me a thousand questions. He was very . . . It was a very penetrating interview with a very big heart.

Hall: Obviously, I gather there must have been a fair amount of collaboration once you started going down the road of developing your thoughts on interviewing and counseling. What kind of conversations would go back and forth between you guys?

Binder: Between Gary and I?

Hall: Mm-hmm.

Binder: Almost none, because he'd gone off to Harvard by that time. I do . . . this is probably bragging . . . but I do remember once, several years after he was at

Harvard, he wrote me a little letter saying, 'This is really a pretty good book.'

But we didn't have much. After he went off to Harvard, we had not very much contact at all.

Hall: We talked a little but about Bill Pincus when you first came in the room. What were your actual direct connection with him?

Binder: When CLEPR was originally giving out money left and right, Bill was constantly having little meetings or seminars. I don't remember exactly what they were in New York. He was always flying people to New York, and I was lucky enough to be flown to New York many times at CLEPR's expense. And so that's my primary association with Bill was at those meetings. But I think also that if he was at the Buckhill Falls Conference, I'm sure he must have been at Key Biscayne where I didn't go. He did come to the law school at least once, I guess see where his money was going. So I had many, many conversation with him.

Hall: How forceful was he?

Binder: Oh, he was very forceful. He had a clear idea of what he thought clinical education should do. And he was very much an egalitarian. He didn't think that big schools, the prominent schools should get all the bucks. He thought . . . He very much wanted to spread clinical education. He wanted to have it everywhere in the United States. Obviously he was very successful. If anything created clinical legal education, it was CLEPR and Bill Pincus. He had in mind, as I recall, a model to which the law school would be like a teaching hospital. That was another one of his big pushes. He's a strong guy.

Hall: Did your program meet his approval, or did he have any thoughts that you should be doing anything differently?

Binder: I never heard a word of criticism from Bill about our program. I never think I heard a . . . I don't think I heard a word of criticism about *any* program. I think he would . . . My impressions was that whatever programs were spawned by CLEPR were okay with him provided that their clients were represented. He was not interested in . . . He was *not* really interested in classroom teaching as far as I can recall. He wanted to make sure these were hands-on experiences. He didn't wanna see the money turned into another "stand up" kind of course. I think that would have been a big concern of his.

Hall: I guess that's the reason I was asking, cause it seems like your program started moving down the road of more simulations. Was that something he was okay with?

Binder: I don't know whether he would have . . . Certainly at the time we had CLEPR money, we stayed well within the bounds of any concept that he had. And going back to our simulations, I don't . . . Now we only have simulation when we just absolutely can't get any cases, and we're starting to go, for example, into the business planning area in big ways. We just can't get any clients that will let us work on their mergers and acquisitions. So we have to do all that by simulation. But to the extent that we can have live client interactions, we'll have 'em. But I think Bill would *not* . . . going back to your question . . . I don't think Bill would have funded simulation courses. I just don't think . . . I think that would have been an anathema to him.

Hall: I wanna ask, just in terms of your basic definition of clinical education , do you think it was primarily a social justice movement, or more of a teaching methodology?

Binder: I'm not sure whether your question means how do I see it, or how do I think it should be?

Hall: Both.

Binder: Both, okay. I think for some, for *many* people, it's primarily . . . going back to Buckhills Falls . . . service rather than pedagogy. For others, it's probably more in the line of pedagogy. My own view is that it oughta be more heavily toward pedagogy than it is, because one of the things that always strikes me about law professors, they're always telling somebody else how to clean up their house. But I think the legal profession needs a lot of cleaning, to the extent that we could produce more competent lawyers. I think there's a greater chance that the books have become the law and fact. There's an awful lot of poor lawyering out there. I just read a case yesterday, a Ninth Circuit case having to do with diversity jurisdiction between corporations. The judges in the Ninth Circuit are going on and on and on about how the lawyers for one side and failed to develop evidence about A, and about B, and about C, and about D. And I was thinking to myself, 'Well, there's a classic example of not understanding . . . not only not

understanding the doctrine, but not understanding what kind of facts need to be connected with the doctrine, and not understanding how to get that kind of evidence in front of the court.'

Hall: I'm rushing right into the last 10 minutes. You mentioned the Buckhill Falls conference several times. Do you have any recollections of that conference, and did it seem particularly influential on people . . .

Binder: (Interrupting) I don't know whether it was influential, but it sure was a lot of fun. I remember a lot of people there and a lot of excitement. There was a deb . . . Among the debates there was the question to the extent to which clinical education should be primarily about service or primarily about teaching. I think teaching versus service was the panel. I think I remember that because that was the panel I think I was on. But more than that, I don't know whether it was particularly influential, certainly not as influential in any manner or shape as CLEPR.

Hall: In terms of when a debate like that happened, how . . . Was that a topic, when you were on that panel, that people got very emotional about?

Binder: Oh yeah, oh yeah. And people *today*, I think have very strong feelings about that. I know there are programs in this country, well respected programs, who think that any classroom stuff is just a waste of time. I mean they'll practically say it in those words. So yeah, they feel very passionately. Not so much in a service point of view. But they think the only way you can teach is in terms of the actual cases, and you're just wasting your time in the classroom. And I tried to explain why for, if one has any notions about the effecting transfer, it seems to be a strong amount of classroom work, videotape work is a very important part of students' education.

Hall: I'm gonna turn this . . . You've been there from early on. I mean obviously, when you started clinical education, it seemed like nobody was quite clear exactly what was being done. You're still there now essentially 30-odd years later. What do you think have been the biggest successes that's huge around that time?

Binder: I think the biggest successes is a recognition that clinical education has some place in the law school. I *hope* that there also is a recognition that you can't provide a legal education without going beyond talking about the law that you

have to include clients, and you have to include lawyers and their behavior as a part of their educational process. Otherwise, the legal education has a pretty _____. Now how that works out in any given law school, I can't say.

Hall: At UCLA in the law school, do you feel like the . . .

Binder: I don't know, eight people or nine people or whatever it is, who identify themselves as clinical teachers, and they fill every role that could be possibly filled in the law school. We were very much a school that governs through committees, and clinicians have done just about everything that there is to do . . . Held to the same tenure standards. Not necessarily expected to write about the same things, but held to the same tenure standards. And the university of California has standards which require that one gets peer review outside of the law school. So I think it's been . . . I think people are definitely accepted.

Hall: This may seem a bit whimsical. But what were the physical conditions you operated in at the outset, and how have they changed over the years?

Binder: Well, they were pretty much . . . We used to describe one place that we worked in “The Dungeon.” And then I guess about 10 years ago, the law school built an addition. I don’t know, 13 or 14 or 15 million dollar addition. I remember we had devoted \$1 million almost to videotaping equipment. So, in that sense, we’re living in the laps of luxury.

Hall: If I stepped back into time and walked into The Dungeon, what would I actually physically see?

Binder: A lot of cement walls, cramped spaces, artificial walls put up in order to segment things into rooms. A carpet that was constantly flooded with sewage. Not purposely, obviously, but that was the atmosphere in which we worked. You’d see one black and white reel-to-reel video cassette recorder, or video recorder. It wasn’t a cassette recorder.

Hall: Did you guys harbor the suspicion that perhaps your condition were not quite as on a par with some of the other parts of the law school?

Binder: That just didn't . . . I didn't think that was true. I mean, there was a lot of enthusiasm for clinical education. It just wasn't the space. Nobody was gonna give up what they had in order for us to move in. So that . . . I don't think . . . It was *not* a way of giving a message, 'This is what we think of you.' I had to find spaces, but the school just wasn't big enough. And I couldn't expect people to move out of their off . . . I couldn't expect, for example, the Office of Admissions to say, 'Well, we're going away and you guys now have this space.' That just didn't seem realistic.

Hall: Tell me a little bit about videotaping. How has that evolved over the years, and what have been its . . . What role has it played in clinical legal education?

Binder: Huge role. Huge role in our course. There is probably no clinical course in the law school that does not involve a certain amount of videotaping and critiquing now. One way in which I think we've become more sophisticated . . . and I think it's worked pretty well is . . . before we look at the video tapes of a student's performance, a student must critique their own videotape and write up that critique, something we didn't do in the early years. I think that's proved to be very helpful and very successful. But I think that's the major way in which it's

evolved. And we used to just sit in with them and critique them. Well, I guess originally, we critiqued the whole tape. Well, of course, that became just impossible. It takes an hour to do the tape, and you're gonna sit there and critique it. That takes another three hours. Who can pay attention for three hours? So then we got to the point where we had . . . we could identify . . . I don't know what you all call it . . . but there's time markers so we could skip from place to place. And that was _____ progression. But now we've gone so far as to . . . I think almost all my colleagues require the students to first do their own critiques, line-by-line and turn them in before we meet with the st . . . Then we review the tape, Then we meet with the students.

Hall: And why do you think it is such an effective tool?

Binder: Fair question. Good question. Well one, I think the self-critique, which corresponds with the current literature on learning is very helpful for the students. Because nothing like seeing it yourself rather than being told. Two, seeing is believing. There's no debate about what went down when you see it. And if it's accompanied, as we try to do, with role plays about corrections when they're necessary, then there's a chance to immediately figure out how you might go at this problem a little bit differently.

Hall: David, come back to the interviewing and counseling class. Did you sense that your students became more empathetic to the clients they were working with as a result of this process you put them through?

Binder: I don't know whether they became more empathetic, but they certainly became conscious of empathy. _____ conscious of verbalizing that empathy. I mean, they may have been feeling whatever the client was feeling right along, but their ability to articulate what they were feeling certainly improved. I don't think there's any question about that.

Hall: So you felt they were more effective in dealing with the clients?

Binder: Mm-hmm.

Hall: From . . . cause you've talked a lot about creating an _____ to this, what's the significance of bringing that to the table? Why is the law better when

it's practiced that way?

Binder: Well, I think it's better because if you can understand why you're doing something, you're more likely to do it correctly. If you're just doing it as a matter of mechanics, then I think it's very difficult to decide when to do it and when not to do it, cause you don't understand why you're doing it.

Changing the subject slightly, maybe dramatically, we've gone off in a whole new area now, which is taking depositions. And having a conceptual underpinning to how circumstantial evidence works is just critical for students to understand what they should be trying to accomplish, and understanding what kinds of things to do when they don't get the answers that they want. It's just a dramatic illustration of the importance of having a conceptual underpinning. You can't get into litigation, and talk about getting information, and questioning witnesses without some understanding of . . . a steep understanding of . . . circumstantial evidence and how it works.

Hall: What do you see as the biggest hurdles, having sort of survived and thrived to some degree during its first 30-odd years since CLEPR, what do you see as the biggest hurdles facing clinical legal education now? And just general, what do

you see its future being?

Binder: Well, I saw that on your list of questions, and I was thinking a little bit about that. Or potential questions, I should say. I don't wanna give anyone the impression I had a list and a script. I still think getting out of second-class citizenship is a huge hurdle for clinical education. I don't feel that at my school . . . I don't think people who teach clinically at my school feel it, but I think it would be naive to think that it's not a problem on a national basis. So I think that's *the* major challenge that it faces. And I think things have to change if . . . both on the part of institutions, but primarily on the part of clinicians . . . if that change is gonna come about.

Hall: Do you feel the approach you took at UCLA had any role in sort of helping the acceptance of the clinical program?

Binder: Absolutely. No question about it. Because we weren't just simply seen as processing cases. You're seen as trying to produce conceptual underpinning _____ various processes of being a lawyer. Had we not taken that approach, things might have turned out very differently. I don't know whether they would

have, but there would have been nothing much to write about. We can't write about description of the cases that we handled and received . . . wouldn't have received any respect from faculty. So, if we had not been writing about the processes of being a lawyer, I think it would have been a problem.

Hall: Well what about from within the clinical community, the folks who basically say that the simulation approach is a waste of time. Has that dialogue moved forward at all over the years? Or has it . . .

Binder: (Interrupting) I don't . . . Well interestingly, cause I recently gave a small talk at a clinical theory workshop where I expected to be roundly rejected. And I was interested to see that there wasn't as much hostility toward integrating simulation into clinical teaching as I had anticipated it would go down. You know, there's a lot of current literature out there, and it's in the field of education, which is always subject to suspicion. But it talks about accomplishing transfer. And the role of simulation plays a big part in that. If you go into current medical education as I now understand it, simulation is growing and growing and growing in its use in medical education. So there's a big movement afoot in some of the professions, not including the law school. I mean, just setting the law aside for the recognition of the role of simulation. I've just spent, recently, an hour or so

with one of the directors . . . associate deans at the medical school, talking about the role of simulation in certain aspects of their training. And I was so fascinated by what she had to say. She's come over to the law school to give a talk about why they've moved more heavily toward simulation. So I think there's . . . And they have some good evidence that it does make a difference. So I think it *does* make a difference, and I think we need to move that way.

Hall: Last couple of questions. I'd early asked sort of what you thought the long term impact on the students was. And you said, 'That's the \$64 question.' Is more research needed, or some better way needed of finding out what the actual impact of clinical programs are?

Binder: I think it needs to be more research done. Indeed it seems to me that that's where clinicians could make their mark in academia in a way that they haven't, and that is doing a lot of empirical research. I mean, they're involved in lawyering every day. There are untold, it seems to me, opportunities to design and implement empirical studies and write them up about what lawyers are doing in it, or not doing as the case may be. I think that would help the stature of clinical education to a great degree.

Hall: Actually, that sort of folds into what was gonna be *my* last question before I turn over to Sandy. You said that you felt the second-class citizenship really continues to linger as a primary problem. I think you've already touched on a couple already, but what sort of . . . do you think would be the most effective strategies in sort of transcending that hurdle?

Binder: Well, I think . . . I think I partly have said it. Trying to develop conceptual underpinnings for what is being done would be one thing. Devoting oneself more to empirical research about what lawyers are actually doing.. I myself am engaged in a project to find out how much training lawyers have in taking depositions. And of course there's no surprise in the answer: little or none. And I'm not sure what the impact of that will be, but I think if people will, assuming the study is accepted as at least representative, nobody will any longer say, 'Well they'll get this training when they get into practice,' cause it isn't true. And that *may* _____ the benefit of clinicians, because if it's not happening in practice, and it is important . . . everybody can see taking depositions is important . . . there may be a perceived greater need for clinicians than there has heretofore. There clearly is some notion among a number of academics . . . I don't know how strong it is . . . is, 'Don't worry about this stuff, because when they get into practice, they're gonna get trained.' No they're not. I mean, with certain exceptions.

Their writing will be reviewed quite severely and critically But apart from that, I think the amount of supervision and effective feedback that they get in practice about it. Everything else that they do as a lawyer . . . just about everything else that they do as a lawyer is slim-to-none.

Hall: Sandy, I feel like I've actually asked myself out. Do you have any questions that we're missing?

Hall: Anything else?

Binder: No. I just . . . I'm just hopeful that clinicians will see opportunities to make stronger marks in the teaching of lawyering than they've heretofore made and make a better place for themselves in the Academy, and as a consequence, hopefully we can do a little bit more. A little bit better job of training lawyers to do a good job, regardless of who they represent.