

5-1-1992

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Recommended Citation

Paul Bergman, *2010: A Clinical Odyssey*, 1992 BYU L. Rev. 349 (1992).

Available at: <https://digitalcommons.law.byu.edu/lawreview/vol1992/iss2/4>

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2010: A Clinical Odyssey

*Paul Bergman**

NARRATOR: Early in the 21st century, a faculty meeting is underway at the U.C.L.A. School of Lawyering. As you know, U.C.L.A. was the first to adopt an all-clinical curriculum after the nationwide student revolts of 1994. Those revolts were ignited when a visiting torts professor at Harvard (it was later discovered that most Harvard instructors were visitors) asked a first semester student whether the theory of the state as exemplified by *Pennoyer v. Neff* conflicted with the theory of liberty as implied by the Rule Against Perpetuities.

After the revolts, the Case Methodists' hymnals, known as casebooks, were systematically gathered and liquified in food processors. Even in liquid form, the casebooks showed amazing resiliency: no matter what the subject, the color of the liquid was always either red or brown with orange or yellow marker streaks. Trying to emulate their mentor Socrates, many Case Methodists bravely drank the liquid in full view of their students. Instead of dying, however, they turned into lecturers for bar review courses.

By the late 1990s, only a smattering of Methodists remained in law teaching, and they were confined to a poorly-subscribed elective course, "Theory of Concurring Opinions." A few of them tried to keep casebooks alive orally. For example, David Binder and Kenney Hegland, who were "outed" as closet Methodists during the 1994 hysteria, still spend their days walking law school corridors, reciting *Fuller & Braucher: Contract Law* from beginning to end. However, any Methodist heard reciting dictum is punished by confinement for one week in "The Hole," a dim, dank and chairless room in each law

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school library containing only U.S. Supreme Court decisions on "Standing."

The facilitator of today's faculty meeting is Carl Rogers, Jr. Rogers took over at U.C.L.A. when the position of Dean was eliminated and replaced by that of Supervising Clinical Therapist. The faculty has just voted to add two upper-level course requirements to the six year clinical curriculum: "Interviewing Techniques XIV" ("Backlighting Strategies for Effective Videotaping of Initial Interviews") and a joint course with the Department of Home Economics, "Negotiation IV" ("Methodologies For Expanding Pies").

The faculty is now to consider a proposal from the law schools' governing body, the ALSS (Association of Lawyering Skills Schools), that at least one Methodist be hired by each member school. Acting Assistant Associate Adjunct Visiting Lecturer Roberto Unger, Jr., Jr., who was initially hired by U.C.L.A. to digest deposition transcripts, had been asked to submit a proposal for a substantive course in Contracts. Unfortunately, he returned with an analysis of how the parties in the "good ship Peerless" case were implicitly rejecting a free market ideology. As we join the meeting Rogers addresses Unger.

ROGERS: All right, Unger, please tell us why U.C.L.A. should hire a Methodist. You are limited to an oral statement: under clinical faculty rules, no writings are allowed. Let me tell you that with respect to the ALSS proposal, I do not want to create second class citizens in the law school. Aside from students, of course. But our students will have 40 years after they graduate to read appellate cases and analyze theory; how can we justify spending precious law school time on that?

UNGER: Well, what reasons can you think of? Oops, sorry—for a moment, I slipped into a forbidden teaching method. Let me put it this way.

SONG: (To the tune of "Those Were The Days"—Archie Bunker TV show version.)

When doctrine was the only news,
Our words made the law reviews,
Words that did our students confuse,
Those were the days.

We liked our reign of terror when,
 Class was Socratic and students were men,
 Brother we could use a Dean like
 Christopher Langdell again.

What's this garbage clinical?
 The thought of practice makes us ill.
 Theory's the only need to fill,
 Those were the days.

We can show we really rate,
 When obscurities we illuminate.
 Showing how some footnote errs
 Convinces us that we're great.

It's time to go back to our roots,
 And show those clinicals our boots.
 Court appearances will all be moots,
 That'll be our days!

ROGERS: That's a very short-sighted view, Unger. Think of the institutional problems. For one thing, what about burn-out? We just can't expect faculty members to be happy sitting in an office and writing year after year without feeling the need to interview clients, file motions, and try cases. For another, think of the costs. All our rooms are small clinical teaching spaces, and our students watch more videotape than the coaching staff of the perennial Super Bowl champions, the Indianapolis Colts. Who would be crazy enough to expect learning to result when large numbers of students are herded into cold, cavernous rooms? I strongly suspect that the Methodists' desire to teach substantive law is a ruse to get into clinical teaching through the back door. Well, maybe not here at U.C.L.A. We lost the back door during those student revolts.

UNGER: But don't you remember how excellent law school teaching was in the days of the case method? I remember everything as if it were yesterday . . .

SONG: (To the tune of "I Remember It Well," from *Gigi*.)
 ("A"- Methodist's verses: "B"- Clinician's verses)

A: We developed theory.
 B: You taught them rules.

A: They learned to think.
B: Silly verbal duels.
A: Ah, yes . . . I remember it well.

A: They spoke in class.
B: They lived in fear.
A: My office was theirs.
B: Only when exams were near.
A: Ah, yes . . . I remember it well.

A: My essay denouncing *Miranda*.
B: It never got a cite.
B: Not even by Rehnquist!
A: That's right, that's right.

B: If you were wise,
B: You'd see that you
B: Should have taught ethics and skills
B: The way we do.
A: Ah, yes . . . I remember it well.

A: Legal analysis . . .
B: Hid a political view.
A: Efficient markets . . .
B: Mattered to a wealthy few.
A: Ah, yes . . . I remember it well.

A: I taught what a court might hold.
B: But not what it meant to sue.
A: Am I getting old?
B: Oh no, not you.
B: How radical you were,
B: In Langdell's day.
B: Case analysis, seemed a scientific way. . .
A: Ah, yes . . . I remember it well.

NARRATOR: At this point, a newcomer enters the meeting.

ROGERS: And who might this be?

UNGER: This is Robert Kennedy, Jr. He's asked for permission to address the faculty.

ROGERS: Of course he can speak. It's always a pleasure to hear the views of the senior Senator from Massachusetts.

UNGER: It's not that Robert Kennedy. This Robert Kennedy was artificially produced in a test tube about 10 years ago by combining the chromosomes of Robert Condlin with those of Duncan Kennedy. The result was something of a misfit who loves only his own work but is unable to understand any of it. He went to Sweden on a film scholarship but had to leave because Ingmar Bergman found his ideas too depressing to film. Later he was hired by the ALSS to administer its year-long "Introduction to Law" program, which is mandatory for the 10% of each year's college graduating class that does not apply to law school.

ROGERS: Well, he can say his piece. I've been a believer in free speech ever since the Supreme Court ruled that I don't have to listen.

KENNEDY: Rogers, that statement of yours is a pristine exemplification of reifying neo-hierarchical indeterminacy, which I'll explain to you if I ever figure it out myself. In the meantime, here's what I think of you clinicians.

SONG: (To the tune of "Kids," from *Bye Bye Birdie*.)

Verse 1

Clinicians—it's time we got rid of clinicians today,
 Clinicians—who can understand anything they say?
 Active listening, problem solving—
 What kinds of rules are those?
 Role plays, counseling, negotiation, feelings—
 And while we're on the subject—

Clinicians—how did law schools these depths reach?
 Without cases, what of any value is left to teach?
 Clinicians are nothing like I was,
 A scholar in every way.
 That's the problem with law schools today.

Verse 2

Clinicians—are making a mockery of law school.
 Clinicians—think that law's a practical tool.
 Socratic questions, abstract theory—
 That's what the law's about!
 Trashing judges, finding dictum, no morals—
 And while we're on the subject—

Kids—there are student minds that we need to train.

Kids—must be taught that practice is one big pain.

We'll make them just like we are,

Scholars in every way.

We can get rid of clinicians today!

ROGERS: Let me make sure I understand your concerns. You feel that the normative values embedded in clinical education ought to be unpacked and epistemologically reconstructed?

KENNEDY: You clinicians use such cold, empty terminology. Who can respond to a meaningless phrase like, "understand your concerns?" By the way, did you hear the one about the clinician who became a trial court judge and refused elevation so she wouldn't have to write?

ROGERS: Careful there, Kennedy, or I'll play the secret tape I have of you agreeing with someone else's opinion. Anyway, when did you get to be such a big defender of the case method?

KENNEDY: Well, as you recall, the Critical Legal Studies movement fell apart in the mid-nineties when the Supreme Court ruled that the legal system had definite meaning and was apolitical. Then I was going to join the Law and Economics movement, but they disbanded after selling all their theories to IBM, which adhered to them and soon declared bankruptcy. So I thought I'd become a feminist scholar, but they wouldn't have me.

ROGERS: Why? A number of males write feminist scholarship.

KENNEDY: Not when they think that the last meaningful narrative story was "Beowulf," they don't. So all that was left for me was to become a Methodist.

ROGERS: Your argument just isn't convincing. The case method hasn't been used ever since law students refused to speak in class unless they were in role and being videotaped. And clinicians just can't forget their treatment at the hands of the Methodists. Remember how law reviews used to be filled

with meaningless essays instead of with trial briefs and sensitivity exercises? I can still hear the party line of the Methodists now.

SONG: (To the tune of "If I Loved You," from *Carousel*.)

(Methodist's Verse)

If you'd written,
Tenure would have been so easy to say,
In our circle you'd be.

If one essay,
Had pushed a few clients out of the way,
Then you could be like me.

Longing to write something that no one reads,
Filled with footnotes fulfills scholarly deeds.

Now we've lost you.
Down you will go to the law firm hell.
And we never will have,
You here sittin'
If only you'd written.

(Clinician's Verse)

We'd have written,
But words do not come in an easy way,
When your caseload is high.

We'd have written,
But what would our students and clients say,
If we kissed them good-bye?

Longing to help our needy clientele,
We saw our tenure chances shot to hell.

We may leave you,
But interviewing, counseling and going to trial,
Are something your students must do.
Teach them skills or,
They won't love you.

UNGER: You think things are so much better with clinicians in charge? Instead of casebooks, clinicians produce the cheap research thrills they call "phone lex." A law student

can dial "1-900-ON-POINT" and listen to district court cases for \$1.50; court of appeals cases for \$4.00; and Supreme Court cases for \$9.95 (\$29.95 for *Dallas Cowboy Cheerleaders v. Pussycat Cinema*¹). First year students need an instructor's permission to call, of course. With orders over \$50.00, callers get a free "Dictum Alarm," which emits a high-pitched shriek whenever it is rolled over a non-essential holding. That's not all. They also get a "Plea Collar," which emits an odor noxious to prosecutors that prevents defense attorneys from entering into plea bargains, and a trial subscription to "Lexis Lite," which claims to provide all the law of regular Lexis but with only half the cases.

KENNEDY: Anyway, Rogers, it's about time for another revolution in legal education. Without Methodists to serve as the enemy, clinicians hardly ever leave the law school. Everything is simulated, even this dialogue. You've lost clinical education's moral values. The last live client clinic was one in which the students were assigned to represent automakers charged with pollution violations. And that clinic ended when simulated exhaust wiped out the entire class. Why not let me join you, and together we can reshape legal education. At heart we have the same interest: we despise the practice of law.

ROGERS: I hate to admit it, but you're right. You know, apart from tradition, there's no reason to maintain clinical training, especially after the first year. It's hard to constantly look out over a sea of four faces and watch them groan as we yell, "Stop! Drop! Role Play!" each day. It's about time U.C.L.A. blazed a new trail. The new vision is the logical successor to the all-clinical law school, the all-apprenticeship law school. We'll admit students, and farm the lot of them out to attorneys. They want to learn how to practice, let 'em learn. We can do whatever we want, watch videotape whenever we want . . . come on, Kennedy, Unger, let's organize a weekly book review club

1. 604 F.2d 200 (2d. Cir. 1979).

NARRATOR: With yet another revolution on the horizon, law school's unwashed masses, the students, reflect on how once again their needs have been overlooked by the law school faculty.

SONG: (To the tune of "Somewhere," from *West Side Story*.)

There's a school for us,
Somewhere a school for us.
Law professors who care for us,
Are fair with us,
Somewhere.

There's a time for us,
Someday a time for us.
Take a case and let's see it through.
Work with us so we will be true,
Lawyers! Lawyers!

We'll share a new way of learning.
Deep in our heart we are yearning,
To role-play.

There's contingent fees for us.
Somewhere contingent fees for us.
Give us clients instead of pens.
We want to drive a Mercedes-Benz.
Someday! Sometime! Somewhere!