26. Client Counseling Competition. Chapter 18 of my autobiography. Now international with further growth potential. Now includes half the schools in US, Canada, and England. Materials, video-tapes, etc. derived from the competition might be used for research concerning the lawyer-client consultation. Also, consider the "competition" format as a method for presentation by lawyers at bar meetings and continuing education of the bar.

A PERSONAL AND HISTORICAL INTRODUCTION

The basic format of the Client Counseling Competition remains essentially the same as it was when the idea popped into my head several years ago. To the extent that "popped into my head" leads one to believe that it got there without prior thought, concern, worry, and some insomnia is misleading. I had for a number of years been interested (and still am) in trying to engage legal education in the phenomena of the law office. The Moot Court Competition had done so well in dramatizing the appellate courtroom that I wanted to do something equivalent for the law office.

My class work often endeavored to bring the law office to my students. Preventive law, my major field of interest, correlated well because the place for the practice of preventive law is the law office. The significant decisions that are made in that area of practice are made in the law office in the lawyer-client context. One of the lawyer's functions is to guide a client into safer and better courses of conduct. The lawyer-client relationship with all its human, and conceptual, content must be explored, taught and learned. The lawyer-client decisional and behavioral characteristics become central.

Role playing first took the form of a teacher acting as a client, and students being "lawyers". Then came some lawyer-client role playing exercises in class with third parties being "clients". The desire for a method to bring lawyer-client consultations to the interscholastic arena - by analogy to moot court - continued to be a personal speculation. One day the present format popped into my head. I tried it in class. It worked.

The first interscholastic competition in 1969 was between University of Southern California Law School and University of San Francisco Law School. At that time, Professor Jack Bonnano, with whom I had some friendly relation, was teaching the preventive law courses at University of San Francisco. I wrote him a long letter describing the competition idea. We, and others at the USC faculty, discussed it at some length. Then we held the competition. It worked.

In the next year there were five, then ten. In the fourth year, 24 law schools participated in the competition. During that time the task and pleasure of administration and funding was mine. It outgrew me. The American Bar Association Law Student Division, after some discussions and negotiations, took it over. It has been my pleasure to see it continue and attract more and more attention and interest. The effect on legal education has been significant in several ways. If no more, it has helped make the lawyer-client relationship an acceptable area of academic concern.

Though the basic format has continued, there have been several changes.

We now have a committee of lawyers, law professors, a clinical psychologist (with law degree), and a representative of the Law Student Division as committee members. Funding is through annual American Bar Association resources but with current efforts to assure financial permanence with additional private funding. The committee determines policy and continues to set an annual theme.

At the start the activity was called the Mock Law Office Competition, indicating the place of the activity. That place designation also served to compare it with the Moot Court Competition. I also had the thought that the activity could in the future be expanded to include other law office operations; for example, negotiation, internal lawyer-to-lawyer interaction, and drafting. Since the activity centered on the lawyer-client consultation, the American Bar Association Law Student Division, when it took it over, changed the name to the Client Counseling Competition.

The rules have undergone some change. Originally we (or was it I?) required that students prepare a written pre-consultation memo which was submitted to judges at, or before, the consultation. The idea for such written memo was mine, derived from habits in law practice. While I had only rarely prepared a written memo prior to an initial consultation, I had often done research and thought in preparation for a client consultation. That preparation included some book research - perhaps a quick general law survey and a look at a form book or two - and some outline of the facts that might be involved. Of course, I had to know, in advance, something of the client's statement of the client's concern. My secretary was trained to get that information. This is the secretary's memo we continue to use in the competition format.

We dropped the pre-written consultation memo because of several factors. Some members of the committee expressed the view that such preparation tends to rigidify the consultation. A consultation is free-flowing, somewhat unstructured, and personal to both client and lawyer. Others on the committee pointed out that the memo did not structure the consultation process but did emphasize the professional importance of consultations; that decisions are made during a consultation; and that preparation is fully warranted. The second factor, which really accounts for our present rule, is that in inter scholastic competitions we cannot supply the written memos to judges sufficiently in advance to give them adequate opportunity to evaluat them.

At first the post-consultation wrap-up consisted only of the dictation of an intra-office memo. This also was my practice, derived, no doubt, from those lawyers who helped teach me about law practice. A post-consultation wrap-up continues but it is broader. It includes an opportunity for the "lawyers" to address the judges and explain their conduct of the consultation. This is a worthwhile opportunity to re-think and experience a bit of self-learning in law practice.

We have been asked, why two law students as lawyers, rather than one? In law practice, depending on the size of the law office and the probable nature of the matter, two lawyers are sometimes involved in the initial consultation. Of course, the probability is that, by and large, in middle income client matters one lawyer will attend to the initial consultation. We have two law students for a number of reasons: (A) Preparation for a consultation is a vital part of the process. Two can usually prepare better than one. Each student learns from, and educates, the other. (B) In law practice there is frequent need to work with other lawyers, especially lawyers in the same law office. (C) Law school education commonly puts each student in an individual competitive position. Most of the judging (grading) in law school is with respect to individual performance. While this is true in many life situations, there are also, in the life of the lawyer, numerous situations where the group (team work) is judged. There is need to offer educational opportunity for joint effort. Some law school activities do foster joint effort. Two examples - in some law schools law review writing and editing may be a group effort, and moot court is frequently conducted as a team. We add this competition as an exercise where a partnership activity is undertaken. Experience in working together is worthwhile.

We do not limit the manner in which the two cooperate. Both may actively participate. One may be more passive, as associates often are when present with a partner in a consultation. The passive lawyer may become more active in the wrap-up session. They may visualize different "issues" (either legalistic or humanistic) and so separate their participation. However done, there is need to think through the approach to this consultation.

The judges remain solely observers and judges. They are persons, usually practicing lawyers, with experience in the consultation process. We hope to broaden the panel of judges to include non-lawyer counselors who have given special attention to the humanistic concerns of the consultation process. The non-lawyer counselors may be pastors, psychologists, psychiatrists, school counselors, social workers, and others.

The subject that has given us most concern is the Standards for Judging. Law students scarcely realize that evaluating a consultation is relatively new. Prior to the competition, the practicing and academic professions were never confronted with the need to analyze, or evaluate, or to set criteria for a lawyer-client consultation. The standards have been re-written and revised from time to time. We realize more and more that humanistic factors are significant, and these factors enlarge the consultation process from the narrower typical law school and bar examination. (Someday, not too long from now, it may be that law school and bar examinations will broaden their scope.)

This competition requires the judges to compare successive consultations. It does not require the judges to grade each consultation. Even so, comparison evaluations do not get away from

subjective factors. No doubt each lawyer who must choose among successive consultations tends to award highest honors to that consultation which most nearly conforms to that lawyer's successful law office practices. Style cannot yet be quantified. The analogy that has often seemed applicable to me is the judging of the great national, and international, musical performance of highly trained musicians. There are, to be sure, some objective criteria like playing music in time and in tune; in law the basics are recognizing the matters of concern to the client, identifying the human and legal issues, and stating the law correctly. But we expect accuracy in the fundamentals, so that in the end it is style, timing, empathy, and creative solutions that the client can live with. If, as is true, we are far away from recognizing the factors that enable us to evaluate a consultation, how much further are we from evaluating the total competency of a lawyer?

In the early competitions the clients were lawyers. We continue to use lawyers. But there have been some good successes using professional actors, and non-lawyers with experience in the factual area of the consultation. In at least one situation, we were able to use a person who had been the client in an analogous situation.

Experiments in using law students as clients may have been satisfactory in intra-school competitions. In interscholastic competitions students as clients sometimes gave the impression of a partiality (students from a school appearing in the competition were sometimes used). In any event, one of the factors in client selection is to find a person who has some general familiarity with the factual background. In preparing the confidential memo to the client, we cannot foretell all of the matters that will arise. The client should be able to improvise on the spot. Our experience shows that lawyers as clients are generally able to do this, and so are persons with some experience in the general subject matter of the exercise. Actors, professional and amateur, with some who have had some of that general experiences have been excellent clients. Every indication that we have had is that clients thoroughly enjoy the activity.

The consultation situations are written and reviewed by members of the committee. The effort is to replicate life consultation situations. Thus there is as much human involvement as there is law. It is no secret that these consultations are dissimilar from law school examinations. Such an examination problem is characteristically a statement of objective facts culminating in "what are the legal rights of the parties?" We are, of course, concerned with legal rights, but we are also concerned with their direct and indirect effect on the client, with alternative approaches, and with the human concerns of the client.

For the most part, we continue to derive our situations from real life examples. We also continue to use preventive law (nonadversarial) situations in the middle income environment. Middle income clients get little attention in law school work.

Clinical legal education has generally obtained its placements and examples from poor persons. Law cases, the basic hard case material in class work, is often upper-income; or at least the hard pathological case. Our consultations are middle income, relatively average, normal, and humanistic. Also, nonadversarial law is only beginning to find its way into law course work, although we have used that sort of consultation from the beginning.

A few hints regarding preparation of the consultation situations might be helpful:

1. Try to leave room in the consultation for both legal and human matters. This often means that the subject matter should not be too complicated legally.

2. The client is usually a normal person with one or more concerns which the client believes may have some legal involvement, or, at least, where the client believes that a lawyer may help.

3. The secretary's memo to the lawyer may include as much, or as little, as the writer desires, keeping in mind that the anticipated time for the consultation is usually 30 minutes. Sometimes the intention is to have the consultation on some legally narrower issues. To do this it may be necessary to give more information in the memo. See, for example, the Richard Baron consultation (1969) where documents were attached to the memo. Also, J. Blatt (1977) and Larsen (1971). Sometimes the consultation is more open and general so that the secretary's memo gives little factual or personal background (Shaffer, 1973).

4. The confidential memo goes to judges as well as clients. For the clients we sometimes include occasional comments that might help emphasize personal characteristics, or matters to bring to the attention of the lawyers. We cannot always guess in advance what the lawyer will develop. For example, where some course of action might be suggested by the lawyer, but is not, we might want the client to make the suggestion. For example, in Sugarman (1977) we wanted to be sure that non-litigation processes were explored so we included Comment (B), "Sugarman might ask the lawyer if litigation is the only way he can go about protecting his interest." For the judges, we sometimes identify human and legal issues, and on rare occasions we have cited a case or two. We have, in some instances, identified professional responsibility aspects.

5. Competitions in both regionals and finals include two series at each competition. There is in each a group of semi-final consultations, at which winners are selected. Then those winners go through a second consultation. We have tried to develop consultations so that a single advance preparation will suffice for both. The model for this is to use a transaction where the first series is one client; for example, buyer of a parcel of real estate, and a seller of that same parcel in the

second series. Other possibilities include landlord-tenant; two shareholders separately consult a lawyer regarding information of a partnership; two shareholders after death of a shareholder where Shareholder A survives in the first round and Shareholder B is survivor in the second round (Rosen-Freed, 1972); husband and wife have separate consultations about family property matters (Thomas Sawyer and Becky Sawyer, 1974). We have found that the same fact structure lends weight to the point that human factors have a good deal to do with the lawyer's function. Rigid adherence to the "head and tail" sequence is not required. The 1978 competition finals ran smoothly without such fixed pattern. The subject matter was within the theme, and all participating students were simultaneously given the secretary's memo for both the initial and final consultations.

6. The client need not pose a strictly legal issue. Thus, the client, Mr. Shaffer, may be primarily concerned about whether to go into business with Mr. Gomez (Shaffer, 1973). We can imagine consultations that include client concerns even further removed from legal issues - how to get along with a mother-in-law, the need to change sales policy in a business in order to improve sales, etc. The lawyer must sort out the non-legal from the legal and decide what to do about non-legal as well as legal matters.

Louis M. Brown
Professor of Law
University of Southern
California

Schofield, Thomas, Cross-Border Counselling in the age of legal specialization
1992 Detroit College of Law Rev. 1033-1053
[Probably cross-border means within the legal profession. OK, doesn't mean lawyer-accountant-psychologist-etc.].

Stier, Serena. Refining Legal Skills: ~~Rational~~ relational lawyering (review of books)
42 J. Leg Ed 303-323 (1992)