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Client Counseling Competition

THE CLIENT COUNSELING COMPETITION IS AN INTRA-scholastic competition among a number of law schools in the United States and Canada. Its development and techniques in legal education are described in an earlier chapter (chapter 12) in this book. Here I describe its administration and growth in law school education.

The First Competition

After experiences in my own classroom, the first intrascholastic competition, in 1969, was between the University of Southern California Law School and the University of San Francisco Law School. At that time Professor Jack Bonanno, with whom I had friendly relations, was teaching the preventive law course at the University of San Francisco School of Law. I wrote him a long letter describing the competition idea. At my invitation he came to Los Angeles to discuss it with Professor Gary Bellow, Professor Chris Stone, and others at the law school. It was generally felt that the competition between the two law schools would be a good idea. The dean, Dorothy Nelson, approved. Jack Bonanno had no funds available to finance the travel of the students and himself to Los Angeles for such a competition, so I provided those funds. I was able to obtain the services of the following persons as judges: Professor Harrop Freeman (Cornell Law School), who had written a book on legal interviewing that was published by

West Publishing Company; Professor Walter Weyrauch, who had done some teaching of the consultation process at the University of Florida School of Law; and Mr. Marvin Lewis, a practicing lawyer in Los Angeles who had fine familiarity with the general subject matter of the consultation. At the suggestion of Jack Bonanno, I invited other schools to come and observe. The first competition went very well, with the University of San Francisco as the winner. Although I wrote the consultation situation and prepared the persons who role played the clients, I tried to make certain that my students had no greater advantage in the competition than those from the University of San Francisco School of Law.

Getting Going. Administration

Student observers from the University of San Diego School of Law sent back a favorable report of the competition, indicating that they hoped that their school would join the next year. With the further encouragement of Jack Bonanno and others, I made the competition known, by correspondence with several other schools. Whether as a result of this or other factors, five schools participated in the competition the next year. Following the financial framework of the first intrascholastic competition, I agreed to finance the transportation and other travel costs. In the third year the competition grew to ten law schools.

Even in the second year, the competition began to give rise to some problems of administration. The idea was to have a single winner. With five schools participating, a single winner result was more complicated. By random selection, two schools participated in one semifinal and three schools participated in another semifinal. Then the winners of those semifinals met for a second consultation. Successive consultations meant that I needed to prepare a series of consultation situations. In order to enable students to do a single preparation, I developed the idea of back-to-back consultations; for example, first consultation (semifinal) with a seller of a parcel of real estate, second consultation (final) with prospective buyer of the same parcel. In the third year when the competition grew to ten law schools, the logistics problem became even greater. I did not think it was feasible to have ten law schools come to Los Angeles for the competition. The thought occurred to me of having a regional competition at a law school outside of Los Angeles and then having the regional winner come to Los Angeles for a final competition. One of the schools outside of this community offered to act as the regional host school.

Ideas from Law Practice

In the early years of the competition, I followed a pattern that came out of my law practice. My secretary, in making an appointment with a client, or prospective client, obtained as much information as would be reasonably possible. I used that preliminary information in preparing to meet the client. This aspect of giving the students advance information concerning the consultation still continues.

In the earlier years I had the students prepare a written memorandum in advance of each consultation. That memorandum consisted of two parts (a) the area of facts that might be explored with the client, and (b) any legal issues that were somewhat evident, supported by preliminary references. The written memorandum was distributed to the judges at or before the consultation took place. The idea of the student-prepared preinterview written memoranda ceased as the competition expanded. It was not feasible to distribute the memoranda in advance to the judges in various communities, therefore the judges could not properly take them into account in judging the competition.

Role-playing Clients

In the earlier years I had obtained the persons to act as clients. In the first competition I had as clients the husband and wife lawyer team, Neil and Mary McCarroll, both of whom I knew in professional work in Los Angeles. I spent a good deal of time with them to explain the idea of the competition and the role that they were to enact. In subsequent years, wherever possible, I went through the same preliminary review with persons who agreed to act the role of client. When the competition expanded to other communities, it was not possible for me to do that. That experience gave me some assistance in determining how clients could be instructed in writing. "Clients" do remarkably well in connection with acting their roles.

Growing Pains—Administration

The competition took place in the spring of each year but it was necessary to prepare for it several weeks in advance. By the third year I had established an administration routine involving invitations to law schools, replies, procedural routine for administering the competition, and follow-through with answers to any inquiries. In the third year

when ten law schools entered, I was in correspondence with two or three times that number of schools. Also, if the competition were to expand further, it would be necessary to enlarge the number of regional host schools. I had employed Mr. Hugh John Gibson, a graduate of law school in Ireland with an LL.M. degree from Harvard, as my research assistant. He took over a great deal of the work of administering the competition. As a member of the faculty, the law school provided me with an office, a telephone, mail, and a room to hold the competition, but nothing beyond that. The problems of administration began to be a matter of deep concern to me. I was not so troubled by the $5,000 of out-of-pocket cost for travel and other expenses, and the salary I was paying to Hugh John. I became considerably concerned about the time, effort, and responsibility of the administration of the competition.

In the fourth year of the competition, twenty-four law schools were enrolled. The finals continued to be held at the University of Southern California but two other host schools conducted regional competitions. It was no longer feasible for me to have meetings with role-playing clients in advance of the competition. Experience showed that the instructions given to the clients were reasonably adequate. I attended to all of the mailing and made reasonably certain that the confidential profile to the clients remained confidential. I am very pleased to report that in the several years of this competition there never has been any indication that the confidentiality of the profiles was violated.

What to Do with Success

My personal concern about the responsibilities of administration increased in that fourth year. So I began to think in terms of shifting the administration of the entire competition to some other organization or person. I approached University of Southern California School of Law. While I was still a member of the faculty I could continue to assist in a number of respects, but I did not want the administrative responsibilities. In order to make the transfer seem more feasible, I offered to continue to advance $5,000 a year for the next five years for out-of-pocket expenses or any other use of that money except for the cost of the administration itself. The dean, Dorothy Nelson, advised that she did not see the possibility of taking on the administration of the competition as an additional administrative responsibility. My law office, Irell and Manella, was endeavoring to become a kind of national law office, so it seemed to me that if the law office would undertake the administration,

it would add to the general prestige of the law firm. I had a few meetings with some of my partners, but this resulted in a clear negative response. I suppose that my partners felt that this law school activity was remote from their primary interest in law practice. The cost that would be incurred in administering the competition bore no relation to any law business. The negative result did not surprise me.

Research disclosed that the National Moot Court Competition was administered through the New York City Bar Association. So I approached the Beverly Hills Bar Association where I had been president, to see whether that group would undertake the administration. Negative. I also met with a committee of the Los Angeles Bar Association with a like effect.

At that time I was the chairman of a Standing Committee Legal Assistance for Service Personnel of the American Bar Association and so became acquainted with some of the administrative staff in Chicago. I began to discuss possible administration of the competition by the A.B.A. It was my suggestion that perhaps the proper group for this competition would be the Law Student Division, although I knew very little about the division. I outlined the competition to the staff at the A.B.A. The thought occurred to me that I would probably not continue to administer the competition in the fifth year, and if I decided not to do so, I would send a communication to each of the participating twenty-four law schools, and perhaps other law schools, advising them of the offer I had made with respect to the administration of the competition. I had, in fact, prepared such a letter, but as events developed, I never did send it. The A.B.A. finally replied sometime about June or July, which was in time for the administration of the subsequent and fifth year of the competition. The A.B.A. agreed only to take it on for one year. That was the best offer I had received to that point, and I was grateful for it.

The A.B.A. Takes Over

The first year of the competition by the A.B.A. presented some problems that did not immediately surface. The competition was now within the Law Student Division, an entity that had its own governing group. Its board considered the competition, and one of the first things that happened was a change of name. Mock Law Office Competition, the original name, became Client Counseling Competition. I was asked whether I agreed to that change, which I did, although I pointed out

that the competition would be narrower in scope than I originally visualized. I visualized the possibility that maybe in the future the competition would include some aspects of law office activities other than counseling, such as contract negotiation, settlement negotiation, and drafting of documents.

The other significant side effect rather surprised me. In setting the initial rules for the competition, I decided that it would be open to all A.B.A.-approved law schools. It turns out that the Law Student Division did not have a similar standard for membership. So, when the notices of the competition were sent out by the Law Student Division, nonapproved schools were included. In order for the project to go forward and receive necessary funds from the A.B.A. for administration and other expenses, the budget committee of the A.B.A. required that the competition as administered by the A.B.A. would be opened only to approved law schools. In the fifth year of the competition—the first year it was administered by the A.B.A.—we scarcly had more than the number of schools we had in the fourth year. There were twenty-seven schools enrolled. Later the A.B.A. clarified its rules to that only A.B.A.-approved schools could participate.

The manner in which the $5,000 a year would be used was not something that I had rigidly set forth. While I administered the competition, I provided funds for student travel. But when the A.B.A. took it over, that was modified. Furthermore, the A.B.A. decided that it would be well to have some amount as an application fee.

Another change that was made by the A.B.A. was the elimination of the award money for the winners which I had provided.

A.B.A. administration is well performed. Of staff directors in the past, I remember best Alice Fried, now a member of the New York Bar, and Anne Campbell, who by an odd coincidence is the granddaughter of Morton Campbell, a professor who taught the class in negotiable instruments in which I was a student at Harvard Law School.

Having a Committee—My Idea

Something should be said about the committee set up for the competition. At first I was the only outsider directly involved with the competition. The Law Student Division helped to excite interest among the various law schools. In keeping with the general framework of associations, I very much wanted to have a committee. One of the purposes of a committee is to test ideas before they are otherwise made

public. Another important aspect of a committee is to establish a structure such that the activity can be carried on for an indefinite number of years.

I appointed the first committee consisting of Professor Thomas L. Shaffer, then of Notre Dame Law School; Harold Rock, a lawyer in Omaha, Nebraska, who is a partner in the law firm of Kutak, Rock and Huie; and Professor Walker Blakey of the University of North Carolina in Chapel Hill. Harold Rock had been a judge in a prior competition. Walker Blakey had evidenced considerable interest in the competition once when I discussed it at a law teaching clinic. Each year a member of the Law Student Division is liaison to the committee.

The number of members of the committee is somewhat controlled by the budget for travel and other similar expenses of committee members. It should be generally known that committee members of the A.B.A. receive no compensation and only receive reimbursement for travel expenses in accordance with the A.B.A. schedule.

The committee verifies the proceedings and processes of the competition. The committee has control of the annual theme of the competition. Since the inception of the competition there has been an annual theme, one reason being that I wanted the students to be able to concentrate their legal preparation for the competition on some predesignated area. The theme may be a typical category of law, or a typical client (widow or widower) or a typical aspect of lawyering (advising a client about a proposed deal). Many of the consultation situations are within the preventive law framework.

Standards for Judging

Standards for judging have undergone considerable revision. Law students scarcely realize that evaluating a consultation is relatively new. Prior to the competition, the practicing and academic professions were never confronted with a need to analyze, evaluate, or set criteria for a lawyer-client consultation. The standards have been rewritten and are revised from time to time. We realize more and more that humanistic factors are significant, and these factors enlarge the consultation process beyond the narrower typical law school and bar examinations. The typical law school and bar examinations present a set of facts and ask "What are the legal rights of the parties?" or some similar question. We ask the students in a consultation to consider not only what are the rights, but also what are the other opportunities; what are the alterna-

ves; what are the human aspects of the situation; what are the costs exercising rights or exercising alternatives including expenditures r lawyers' fees and any collateral costs that may be involved.

We have sought to make another kind of change. Initially I had only awyers act as judges. Ideally they were all practicing lawyers with xperience in the consultation process in the particular area of the onsultation. We have now broadened the panel of judges to include onlawyer counselors who have given special attention to the humanistic actors in the consultation process. Nonlawyer counselors may be astors, psychologists, psychiatrists, school counselors, social workers, nd others. One aspect remains the same, the persons who judge the ompetition remain solely observers and judges.

The analogy that has often seemed applicable to me is the judging of great musical performances of highly trained musicians. To be sure, there are some objective criteria like playing music in time and in tune; and in law, there are certain basics such as identifying the legal issues and stating the law correctly. We expect accuracy in fundamentals of the law so that in the end it is style, timing, empathy, and creative solutions that the client can live with that count most. 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?

Writing the Consultation Situations

In the beginning years I wrote all the consultation situations. Now they are written by others as well. Robert Redmount of Hamden, Connecticut, who is both a member of the bar and a practicing clinical psychologist, wrote many for the interscholastic competitions. Professor Robert Rhodes of Notre Dame has assisted in supplying the request-for-consultation situations for intraschool competitions. Thomas Shaffer kept us in touch with the ethical and professional responsibility aspects. Harold Rock was a constant reminder of the practicing profession. Walter Blakey came up with ideas about the mechanics of the competition.

Forrest Mosten Becomes Chairman

On the committee we also had Mr. Forrest Mosten who is a practicing lawyer in Los Angeles, having taught consultation at Mercer

Law School in Georgia and also at U.S.C. Law School, Southwestern Law School in Los Angeles, and U.C.L.A. Law School. He has assisted in a number of respects, including the preparation of an instruction manual for law schools that participate in competition. Ten years is more than any person should remain as chairman of a bar association committee. With the concurrence of the members, and my best wishes, Forrest Mosten became the active and interested chairman I had hoped. I stepped into a consulting capacity.

In 1979 and 1980 there were over 120 law schools in the competition; almost three-quarters of the approved law schools in the country. We now have twelve regional competitions. The total administration is handled from the Chicago office.

Some Observations

EFFECTS IN LAW SCHOOLS. It is difficult to trace the effects of such a competition in law school education, but some observations can safely be made. Lawyer-client consultations are now recognized as plausible and feasible components of the education of law students. Perhaps I have said elsewhere in this autobiography that when I went to law school I do not remember that I ever once heard the word "client." I think that students now not only hear that word in law school, but receive some amount of conceptual education about the significance of the lawyer-client relationship and the importance of the client in the total legal process. Over the years, video tapes made of the consultations are available. A course in lawyer-client consultations is offered in many law schools. In a few of those law schools the materials in this competition are the basic ingredients of the course work. This competition was the impetus for a special issue of *Creighton Law Review* (Vol. 18, No. 5, 1984–1985) entitled "Client Counseling and Interviewing."

THE COMPETITION FORMAT. The committee has explored the notion that this is a "competition." The general feeling among some of the committee members is that the activity is a noncompetitive activity and that the project should be run as a noncompetitive one. It seems to me, as I expressed to the committee, that the fact that this is a competition has encouraged a number of law schools to participate in it. I do recognize that a lawyer-client consultation itself is not a competitive activity. Neither is playing a musical instrument. Certainly if one compares this with the Moot Court Competition, the appellate court argument appears to be more of a competitive activity.

MINICONFERENCE. One of the experiments was a kind of miniconference on the lawyer-client consultation process. The persons who attended these were primarily the participants in the national competition itself. But that no longer continues.

Of the ingredients that go into the project, some are evident, others are not.

STARTING WITH AN EXPERIMENT IN TEACHING. The idea must, of course, be "invented." Because the idea concerns legal education, a law school environment is axiomatic. The invention comes, in part, from a desire to expand the teaching process as well as to enlarge the substance of legal education to include the law and practice of the lawyer-client relationship.

The classroom was used as a place to experiment with teaching. Thus, even if it were possible to state the concept and details of simulated lawyer-client consultation in a competition format, the consultation teaching had to be tried. It had to be put to the test in order to be believed and to demonstrate its validity. There still are law teachers unfamiliar with teaching the lawyer-client consultation whose eyes, and minds, are opened upon observing students perform the exercise.

MONEY. In order to become an interscholastic activity, some money was needed. What could be the source of funding? So far as I know, there is no source of funds for development and experimentation with law school teaching methods. One organization, Council for Legal Education for Professional Responsibility (CLEPR), which existed during the years of development of Client Counseling Competition might have been a possibility. However, CLEPR, as it was guided by William Pincus, was primarily interested in finding ways for law schools and students to provide lawyer services for economically disadvantaged persons. CLEPR poured millions into clinical legal work. It was apparently not originally interested in simulated methods of education. Mr. Pincus saw a video tape of an early competition and although he expressed some enthusiasm and a bit of amazement, CLEPR did not assist the competition.

Willingness to devote personal funds to Client Counseling Competition was necessary. There was no other way. I was unwilling to devote time and effort to seeking funds for such an unusual project. Those close at hand (the law school, the law office, CLEPR) offered no direct financial help. My reaction at having to devote personal funds is not disappointment. Rather it is the realization that there must be other

teachers with significant ideas who may not have personal resources to devote to experiment and inventions. I do not know whether the A.B.A. would have undertaken the project, even after four successful years of operation, had it not been for the pledge and payment of $25,000.

LAW STUDENTS. A good guess is that law students had much to do with the expansion of the project. Left only to teachers, it is unlikely that much would have been done. The lawyer-client relationship is outside the appellate opinion and not included in the typical Langdell teaching dialogue. But students soon realized that lawyers need to be familiar with the client, and that far more of their lawyering activities will be thus involved. The era of the '60s and '70s was filled with student concern for the "relevant."

The competition activity, a consultation, preceded the establishment of that skill in law school education. By contrast, the moot court argument was an outgrowth of the appellate case material. So for the Client Counseling Competition, there were virtually no existing teaching materials. The early effort by Professor Harrop Freeman, *Legal Interviewing and Counseling* (1964), contained discussion of counseling and thirty expository statements by lawyers of lawyer-client relationships, but no actual or hypothetical dialogues.

MORE ON JUDGING STANDARDS. That the most difficult and debatable aspect of the competition is the set of rules and standards for judging, should come as no surprise. The profession seems rarely to have been previously confronted with criteria for determining lawyer competence. The judging of the moot court argument flowed graciously from the teaching of the appellate case and from the judging, by actual judges, of briefs and arguments in appellate cases. But the lawyer-client consultation is an activity that was never before subjected to open scrutiny of peers. Teaching the consultation, and especially putting it in a competitive framework, compelled the formulation of standards for judging. The problem is made more difficult when we realize that the consultation is an extremely complex activity—more complex by far than an appellate court argument. The appellate process is, by comparison, severely structured—the facts are fairly solid, the issues come fixed, the order in which a brief is written is predetermined, and the scope of the judge-lawyer dialogue is largely confined to the issues presented. By contrast, the consultation is free-flowing. The order is not standardized. The content includes law, facts, nonlegal factors, human differences, decisions, evaluations of personal integrity, and on and on. Traditional

law school education does not require a student to segregate legal issues from nonlegal issues. Parenthetically, it should be pointed out that preventive lawyering does require recognition of that separation.

1984—The Year of Change

All of this, through the competition in 1984, has been a far more successful venture than I originally expected. Some A.B.A. Law Student Division differences surfaced during the academic year, 1983–84. Objection was made that Canadian law schools participated during the past few years and that schools in England were to send a winning team to the finals at Case Western Reserve University Law School (Ohio). The budget (only about $30,000 per year) is processed through the Law School Division. The budget was stated as a factor in demanding the withdrawal of the English law schools and possibly also the Canadian schools, although their participation was at their cost. The committee, its chairman Mr. Mosten, and I were embarrassed by the development. We were not even invited to appear at the Law Student Division Board to give our views of the place of the competition within the profession and legal education, and the unusual benefits derived from cross-fertilization of ideas and activities across international boundaries. The committee has been restructured.

International Competition—1986

Independently of the A.B.A., Professor Gerard A. Rault, Jr. (Loyola University School of Law, New Orleans) with the support of Mr. Mosten, brought about the first international competition. It was held after the conclusion of the March 1986 A.B.A. national competition at St. Mary's University School of Law (San Antonio, Texas). The winning teams of Canada (eight schools participated), England (twenty schools participated) and the United States (120 schools participated) competed. Arrangements were made so that the British team extended their visit to include judicial, lawyering, and academic activities in Los Angeles and New York which benefited them and the several persons they met.