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Experience-Based Teaching Methods in Legal Counseling

Robert T. Grismer* and Thomas L. Shaffer**

LAWYERS SPEND MORE TIME in their offices, in person-to-person encounters counseling troubled individuals, than in any other single area. The alternative to this is litigation, an expensive, inefficient, dysfunctional process. Lawyers are counselors, in the most Sartrean sense of the word; whether they intend to be or not.

Legal educators like Harrop Freeman¹ and Andrew S. Watson,² and legal psychologists such as Robert S. Redmount,³ have pointed out the inevitability of legal counseling in practice, and the lack of adequate preparation we give our students for their lives as counselors. What students need is the emotional and intellectual equipment to deal positively and helpfully with troubled people. They need the personal growth to prepare for their lives as counselors.⁴ As law professors we are aware of both needs. Professor Freeman's empirical research indicates that counseling is an integral part of the lawyer's work.⁵ Legal advice is usually counseling, and often not even *legal* counseling; if by "legal" counseling one means counseling which involves significant amounts of information about the substantive law. There is less difference between what our graduates do and what developmental or therapeutic counselors do than we may like to admit. Two persons interact, one seeks help as a person and the other seeks to provide help as a professional. Any "law" that is communicated in the process, as well as the non-legal affective content that is communicated, passes between two people in a personal relationship.⁶ The closer the "legal" problem approaches the client's personal life, the more counseling expertise is *assumed* in the lawyer. This is obvious in areas such as domestic relations and personal "estate" planning,⁷ but

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¹ Freeman, *Legal Interviewing and Counseling* (1964).

² Watson, *Psychiatry for Lawyers* (1968); Watson, *Some Psychological Aspects of Teaching Professional Responsibility*, 16 *J. Legal Ed.* 1 (1963); Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 *U. Cin. L. Rev.* 1 (1968).

³ Redmount, *Humanistic Law Through Legal Education*, 1 *Conn. L. Rev.* 201 (1968), and *Humanistic Law Through Legal Counseling*, 2 *Conn. L. Rev.* 98 (1969); Redmount, *Attorney Personalities and Some Psychological Aspects of Legal Consultation*, 109 *U. Pa. L. Rev.* 972 (1961).

⁴ Tyler, *The Work of the Counselor* (3d ed. 1969); see, Koopman, *Curriculum Development* (1966).

⁵ Freeman, *Counseling in the United States* (1967).

⁶ Redmount, *op. cit. supra* n. 3 (*U. Pa. L. Rev.*).

⁷ Shaffer, *The Estate Planning Counselor and Values Destroyed by Death*, 55 *Iowa L. Rev.* 376 (1969); Shaffer, *Will Interviews, Young Family Clients, and The Psychology of Testation*, 44 *Notre Dame Law.* 345 (1969).

is also present in business planning, criminal law, and the unending, infinitely varied, human encounters we generalize as civil litigation.⁸ One of our students expressed negatively something he observed of trial lawyers in a clinical trial-practice seminar:⁹

We have talked to a lot of lawyers around town. And it is very interesting to note how . . . these lawyers react. Some of them I am just, as you would say, turned off to. Because I think they're only there to hear their own words . . . not . . . to give back and forth.

The presence of the counseling element in *most* of what lawyers do is subtle, which is probably why we have tended to overlook it. "The more we transform our ways of walking and talking, the better professional people we're going to be," one of our students said, ". . . better able to capitalize on our dealings with other people." His point is something law professors should bring into the arena of conscious decision on curriculum and course content. Here, we generalize on an approach to the subject we have taken in third-year legal counseling seminars taught with affective (encounter group) teaching methods.

Assumptions in the Course

First, the student is a learner who has affective needs of his own, quite aside from the future needs of his clients. Learning, in this sense, is something which brings about changes in behavior—as a result of both psychological factors and of previous behavior in similar situations.¹⁰ Law students should, and do, undergo behavioral change,¹¹ and this change should be integrated in thought, feeling, and action. The successful result will be an efficient person. The alternative may be a superstructure which lacks foundation and framework. Developmental needs are relevant to all of education. It is especially important that human growth be part of the education of students whose careers will bring them into intimate touch with the personal lives of those they serve. Doctors and lawyers share, in an emphatic degree, a need to be aware of themselves, and to grow, as persons, toward the human qualities required for service in intimately valued areas of people's lives. Dr. William R. Coulson, of the Center for Studies of the person,¹² puts it this way:

People don't talk about their feelings, and the reason you don't talk about your feelings is because it makes you vulnerable. . . . A feel-

⁸ Freeman, *op. cit. supra* n. 1, at 61-229.

⁹ Quotations from students are from partially-transcribed tape recordings of 1968 and 1969 legal counseling seminar session at the Notre Dame Law School. Negative self-perception among lawyers is illustrated in Weyrauch, *The Personality of Lawyers* (1964).

¹⁰ Redmount, *op. cit. supra* n. 6.

¹¹ Watson, *op. cit. supra* n. 2 (U. Cin. L. Rev.).

¹² Several quotations herein, including this one, are from a tape-recorded group-leadership session at the Western Behavioral Sciences Institute, July 14, 1967; Dr. Coulson led the session.

ing is whatever it is that's hard to say. . . . It's a rare thing in our culture when we can talk about what we don't know already. . . . I don't think we (leaders) have to produce the vulnerability. I think it's natural for us to long for it.

The Missouri Bar Survey¹³ demonstrated that clients realize this. Those researchers reported that *lawyers* thought service factors, such as efficiency and results, pleased clients most but that *clients* ranked higher personal factors offered by the lawyer. Fifty per cent of the clients surveyed mentioned simple friendliness. Personal human growth in the law student seems necessary for the adequate personality base from which to respond to this sort of client need. There can be no effective legal counseling unless there is effective human functioning. The recognition of effective human functioning as a specific curriculum objective is one means of helping focus on this development.

We find verification of this insight in reactions of our students after a semester of experimental training. As one student put it:

I find . . . that I can be . . . more alive with people I never thought I could be. . . . And it doesn't only relate to this group, because I've noticed it in terms of other people at school, people who normally I would just say "hi" to . . . who I've . . . just taken time and sat down and talked to, even if it's just for five minutes. . . . I think it has . . . sort of broken down this caste system that I had . . . I think I would tend to give people more of a chance (now), instead of categorizing them. . . . I think if there's anything this course had done, it has done that. . . . It has given me a sort of excuse to say what I needed to say; and at the same time taught me that I really don't need an excuse. . . .

A classmate responded:

I feel it has been more constructive than many of the things I have done in law school, even though I have been bothered by some of the things we have done and not done and some of the uncomfortable feelings. . . . There was a lot of discomfort. . . . But I have found it rewarding, because . . . I feel much more aware of people now. . . .

At a minimum, "What we've done in here has been as interesting as much of the work I have done (in law school). I was so disturbed," he added, "that I had to go back into the big world . . . go back and study. . . . I tried to carry it over . . . how can I apply it to other people? The simplest thing is just to be open to people and to listen. . . ."

Second, counseling theory is relevant to legal counseling theory. Various definitions of counseling have been presented.¹⁴ Differences are

¹³ Turner, *What Your Client Thinks of You*, 29 *Alabama Lawyer* 132 (1968).

¹⁴ Krumboltz, *Behavioral Counseling, Rationale and Research*, 44 *Personnel and Guidance J.* 383 (1965); Patterson, *Theories of Counseling and Psychotherapy* (1966); Rogers, *On Becoming a Person* (1961); Tyler, *op. cit. supra* n. 4.

present in these definitions, representing different orientations, but there would seem to be agreement on these four features: (1) counseling involves an interpersonal relationship; (2) in this relationship, one person seeks help, with a problem affecting him personally, from one who is trained to provide that help; (3) supportive acceptance and understanding usually characterize the relationship; (4) the counselor provides an interacting framework in which the client can gain better self-understanding or insight, resolve emotional blocks, gather pertinent information and correct misinformation—all oriented towards both personal growth and appropriate decisions leading to more effective behavior.

These positive gains come about for students in encounter groups, partly because of a heightened "groupiness," an atmosphere of warmth and trust which encourages members to demonstrate their feelings. In our first seminar, for instance, one of the authors (Shaffer) felt wary of students because he had just given an extremely unpopular examination in another course. He was encouraged, however, because of a feeling of mutual trust, to discuss and resolve the problem, thereby dissolving, rather easily, what could have become a serious block to interaction, perhaps not unlike the blocks created by clients who resent lawyers, or lawyers who resent the demands of clients.¹⁵

Counseling objectives are not realized automatically. They assume that the counselor has basic human-relations equipment. He must have accurate awareness of himself. A counselor's clouded information about his needs, values, and emotions clutters up his relationships with his clients. The counselor who has accurate self-awareness allows for, and controls, his biases and emotional soft spots and avoids exploiting the relationship to satisfy his own needs rather than the client's needs. The counselor must possess perceptual sharpness toward the client—empathy for him—as to his view of himself and the degree of congruity or incongruity between the client's self-percept and his behavior. The counselor must be able to recognize the elements that influence his client's decisions and development. He must be able to develop rapport with his client. Finally, he must be able to get across to his client. He needs the difficult skill to be timely and appropriate in responding to the demands of the counseling moment. All of this equipment or skill involves some operational grasp of counseling theory.

Third, experience with teaching legal counseling in law schools is virtually nil. What relevant history there is must come from those who have trained counselors for other professional purposes. In Professor Freeman's questionnaire, 80 per cent of the law schools responding affirmed the importance of counseling for the lawyer, but only about eight per cent, using psychologists or psychiatrists in some way, seem

¹⁵ Reisman, *Some Observations on Law and Psychology*, 19 U. Chi. L. Rev. 30 (1951).

to have given any specific attention to counseling in their curriculum.¹⁶ Counseling is not even mentioned in the 79 subject categories listed by the American Association of Law Schools in its annual inventory of law teaching personnel, although several legal educators, from different points of view, see the need for some kind of human relations or counseling training for future lawyers.¹⁷ An example is the need for delicate expertise in interviews dealing with estate planning. Carl Rogers' description of the steps involved in successful client-centered counseling, expresses analogously a desirable pattern for a beneficial lawyer-client relationship in that delicate science.¹⁸

Dr. Andrew Watson, both a psychiatrist and a professor of law at the University of Michigan Law School, stresses that a sense of professionalism in law students assumes self-exploration of attitudes, values, and feelings toward clients. He believes students should explore their self-image in all of their law-school courses.¹⁹ However, the human-relations course may, sadly, be the only course in the curriculum where these feelings of self-image can fight through the maze of authority and Socratic method. "There have been times," one student said, "when I just feel that I'm never going to say anything again because every time I do I get in deeper and feel worse." The seminar, he said, "made me feel less afraid." The experience has often included both law school self-images and the more nebulous images students have of themselves in the profession. Here is a negatively stated example, by a student who really cannot see himself as what he thinks lawyers are:

It seems to me that if I could shut off my insides, I could be a reasonably successful lawyer. I could understand enough to get by and do rather well. But I can't shut off my insides. . . . I feel that I would be prostituting myself if I caught myself up and said, "If you just master this tax stuff and join some firm, just learn to like it and practice it for ten years, you'll gradually make a lot of money and you'll forget how you feel about it."

This is an admission of vulnerability. Dr. Joseph B. Simons sees this as expectable; "People really want to . . . make themselves vulnerable to one another."²⁰ A stage-by-stage description of the program of counseling, including legal counseling, is given by Dr. Robert S. Redmount, who is a legally-trained clinical psychologist. As he sees it, the process of legal counseling moves in relatively consistent order from perception to intelligence through clarification technique; from intelligence to decision through the use of persuasion; from decision to planning and operation through technical application; and from planning and operation to

¹⁶ Freeman, *op. cit. supra* n. 5, at 91.

¹⁷ *Supra* notes 2, 3 and 8.

¹⁸ *Op. cit. supra* n. 7 (Iowa L. Rev.).

¹⁹ Watson, *op. cit. supra* n. 11.

²⁰ *Supra* n. 12.

adjustment and completion through appraisal. He stresses the need for adequate preparation in legal counseling to assist in the effective resolution of legal problems seen in their human content.²¹ With all this scholarship though, only a few law schools, e.g., Michigan, Yale, and Pennsylvania, recognize a need for courses in counseling. Their educational responses differ in numbers of students involved and format followed, but they recognize the need and provide some few programs to meet it.

Fourth, affective teaching methods have proved useful in training developmental and therapeutic counselors and are therefore worth consideration in legal education. What we propose is experimental; it is the use of experience-based learning activity, an educational experience which stresses learning garnered from the here-and-now interaction of participants. This interaction serves as axis on which learning pivots; the direction of the learning is occasioned by the experience that is immediately involved. "I find myself with people more . . . feeling very close," one of our participants said of the result of this learning experience—"kind of an alternating current. Not so much how I want to affect you or how I feel I want you to be. I think there's a shift that way . . . I learn what's really going on with me." This experience-based learning can take place in a variety of teaching environments, from the highly structured to the relatively unstructured.

Experiential counselor training offers particular advantages for preparation of legal counselors, partly because this method serves the task of all education, i.e., a maximum transfer of learning.²² Human relations courses which are experience-based should effect this sort of transfer. To demonstrate this we have considered three aspects of the transfer of learning listed by Bigge and Hunt and applied them to experiential counselor training.

Their first point is that "transfer is dependent upon methods of teaching and learning which use life-like situations."²³ If the class includes potential lawyers, who want to be able to counsel effectively, the learning experience should simulate essential characteristics of counseling: interpersonal relationship; acceptance and understanding, for the establishment of rapport; and an atmosphere in which the client can gain better self-understanding—all towards personal growth or decisions which lead to effective behavior. These elements are as appropriate to the troubled person who is trying to decide whether to divorce his wife, or to sue his neighbor, or to give his homestead to his brother, as they are to psychological "clients." Experience-based human relations courses provide a life-like setting for these counseling characteristics; these

²¹ Redmount, *op. cit. supra* n. 3 (Conn. L. Rev.).

²² Taba, Curriculum Development, Theory and Practice (1962); Rogers, The Group Comes of Age, *Psychology Today*, Dec., 1969, at 27.

²³ Bigge and Hunt, Psychological Foundations of Education 393 (1962).

courses by design are based in the here-and-now interacting relationships of the group members, with professional supervision. They simulate the skillful and componential human interplay found in person-to-person counseling. As one of our students put it, "People find each other more interesting than books."

Bigge's and Hunt's second point is that "transfer is not automatic; opportunities for transfer must be recognized and the person concerned must want to use them."²⁴ Experience-based human relations training builds upon interpersonal relationships in the life of the law student involved, relationships which parallel those of his later professional career. The student *wants* to use these opportunities, partly because he has made an investment of himself in the program. He is usually eager to use the change to transfer what he has learned. This eagerness is sometimes expressed in frustration. "We can get angry, and at the same time we don't discuss the anger," one student complained. He said he thought members of the group should explore their anger at one another. A few minutes later he said, "What I have learned . . . is that with some people it is really difficult . . . to get close to them." This same student, though, stimulated a significant exchange with another student who had repeatedly dismissed affecting situations with caustic remarks:

A: Well, if you think I'm caustic, the next statement will sound funny, because I was kind of hurt . . . because I don't want to—I don't like to come across that way to people. I like to be friendly to people, you know.

B: When you make these caustic remarks . . . I think they are almost a cover-up . . . a statement hiding what you're thinking . . . I'd rather sneak up behind it and say "why the hell did you make a statement like that?"

The third Bigge and Hunt observation is that "insights need not be put into words for this transfer to occur."²⁵ One of the significant emphases that emerges in an experience-based course is the recognition of the role that non-verbal experience plays in one's life. A participant experiences seemingly intuitive, non-discursive understanding, and he becomes aware that his experience is sometimes wordless. An example is the insight that attitude, or feeling-tone, is centrally important in relationships between persons. For the most part this insight is wordless. If a student lawyer repeatedly experiences it in an experiential program, he should begin to realize that he will convey attitudes or feeling-tone to his clients.²⁶

²⁴ *Id.*

²⁵ Bigge and Hunt, *op. cit. supra* n. 23. See Lambert and Lambert, *Social Psychology* 44-45 (1964), discussing the unpublished research of Ragnar Rommetveit on the development of non-verbal social concepts through direct (largely non-verbal) experience; one of Lambert's examples is a young lady who learns clothing fashions to a functionally sufficient extent, although she cannot express them verbally and did not learn them verbally.

²⁶ Redmount, *op. cit. supra* n. 6.

Models

Several models for an experiential law-student course are possible, some of them from experiments already initiated in law school; others are suggested by Watson and by Redmount.²⁷

At the University of Minnesota Law School, Professor Levy and his associates drew up a Family-Law clinical seminar with domestic-relations and child-neglect cases, and divorce counseling. The counseling involved actual interviewing and group discussion of the lawyer-client transaction. The latter aspect was given two hours a week throughout the year. Professor Levy, in a one-way viewing room with taping facilities, interviewed divorce clients; students were free to interview their clients in this laboratory, or elsewhere, or not at all. The interviews served as a take-off point for interacting exchanges about the human relations and counseling elements evidenced in law-office interviewing. A psychiatrist-consultant was on hand; he encouraged explorations of personal feelings about the interview situations, and of variations in the perceptions of the clients with comparison of their possible bearing upon the response of the legal counselor. The students recognized influences in the lawyer-client relationship which had many of the features of what teachers of experiential human relations refer to as "group encounter." Professor Levy's sessions were successful enough to be offered for two years, with plans for continuation in the future.²⁸

Professor Walter Probert of the University of Florida Law School recognized a need for some kind of interpersonal relations attention and development in his courses. He assumed that lawyers *do* counsel regularly and *do* influence their clients, whether they are aware of this activity or not. He set up a free-wheeling, semi-structured seminar, which encouraged interpersonal exchange of feeling and attitudes. Fifteen students were involved; a psychiatrist was present, observing and giving his reactions. Professor Probert and his medical colleague emphasized that they were not dealing with forensic psychiatry, but rather with the elements present in all lawyer-client relationships. Again, this trial course seemed to meet with enough success to continue and to justify further experiment.²⁹

Our students say that they feel legal education is largely a dehumanizing experience that blunts sensitivity to personal feelings and diminishes their ability to see all of the human ramifications of the legal problems clients bring to lawyers. Professor John Mixon of the University of Houston detected the same dehumanizing result. As a result of his personal reaction to a "T-Group" session, he applied human relations

²⁷ Redmount, *op. cit. supra* n. 21; Watson, *op. cit. supra* n. 11.

²⁸ Levy, The Family Project at the University of Minnesota Law School, address given at the Asheville Conference of Law Deans, 1965.

²⁹ Probert, Psychology and the Training of Lawyers; A Modest Experiment, *Human Relations in Law Newsletter*, 1969 No. 8, at 5.

elements to a trusts class of fifty students. He split his class into groups of five and initiated an "agree-disagree" format on ten legal questions; the groups were to try to come to unanimous agreement on each question. Later, representatives from each group formed a larger group to accomplish the same result, while the others observed. Both phases of the Mixon experiment engaged the students, professor, and psychologist-participant in content-oriented discussions, but the participants also experienced their relations to one another. Their personal experience was processed in discussions which attempted to get at what took place. The students learned through analysis of their own experience, including their feelings, reactions, perceptions, and behavior. Professor Bates thought his sessions were similar to a group encounter or "T-Group" session. In fact, he intended that result; he advocates that all law courses begin with one or two days of intensive encounter sessions.³⁰

The Notre Dame Model

The Minnesota, Florida, and Houston experiments are oriented toward the qualities needed in a legal counselor. It may be possible to do that in a format which more directly concerns itself with self-exploration or self-awareness, perceptual acuity of the client, recognition of the human elements that influence a person in his decisions, development of rapport, and interactive appropriateness—all of which are necessary for effective counseling. This was the goal of the Notre Dame experiment.

For the last two years at the University of Notre Dame, the Law School and the Counseling Center have joined forces in the spring semester, to offer an elective human relations seminar for third-year students. The authors and Mrs. Shaffer conducted the seminar in 1969. Dr. Joseph B. Simons, Dr. Jeanne Simons, and Professor and Mrs. Shaffer conducted it in 1968. Most of the students participating were married and their wives were invited to attend; the 1968 group sessions included as many as 23 participants, the 1969 sessions about 18 (a bit too large, as our experience seems to show). The number of students participating has now been limited to ten.

Invitation of wives was deliberate. We felt they formed part of the real life situation of the students, and we assumed that sexual heterogeneity would provide balance and add perspective to the group members' interaction. At Michigan, to cite a parallel experience, Dr. Watson stresses the influence of wives in a law student's life. Once a year he presents the opportunity for students' wives to air and share their complaints about the affection-stunted situation they often find themselves in because of the demands of the curriculum upon their husbands.³¹

³⁰ Mixon, T-Grouping at the University of Houston's Bates College of Law, *Human Relations in Law Newsletter* 1969 No. 1, at 1.

³¹ Watson, *op. cit. supra* n. 11.

The Notre Dame group met with a psychologist and a law professor once a week for a two-hour period. At the beginning of each course there was a week-end group encounter of four two-hour sessions. The doctors Simons directed these introductory sessions in both years. They were designed to model and facilitate a process in which each student (and we use "student" here to include every member of the groups) could explore his own feelings, check his perceptions from the reactions of others, and perceive experientially what it means to relate to another and what the problems are in doing so. This puts the "teacher" or "leader" in a unique situation. He is no longer *prima inter pares*. As one experienced leader put it:³²

You have to be willing to suffer with your group, to suffer personally too—to be afraid, to be subject to attack, to lose your euphoria and maybe feel kind of miserable, uncomfortable. And I think there's a kind of correlative there, too. No one of us wants to hurt somebody, but maybe we have to be willing to have someone else suffer through something and learn from it.

We had back-up professionals available if needed. This was true during both introductory and regular sessions. Very little supervision was attempted in this early phase of the seminar; the developing group did most of the structuring.

The weekly two-hour sessions were somewhat more structured, though, than the introductory session. In 1969, except for two sessions when counseling cases taken from Freeman's Legal Interviewing and Counseling were used, the interaction did not explicitly take off from points of law, but rather dealt with the experienced aspects of human relations as they arose in the group itself. Sometimes we used group-building technique,³³ psycho-drama, and the like, followed by discussion to sift out reactions and pinpoint new learning. The focus was the attitude and qualities important in counseling; accurate self-awareness; sharpened perception of others; alertness and responsiveness to cues that make for rapport; ability to recognize influence on decisions; and a sensitivity for what is appropriate in responding to people. Even with this very loose structure, some students complained of too much control.

Results

What were the results of these courses? Both the law professor and the psychologists concurred in the observation that there appeared to be significant changes in a number of the participants; we were more tolerant and less dogmatic; we were better listeners, more open to the contributions of our fellows. We were more aware of our own feelings and

³² *Supra* n. 12.

³³ This session was directed by Father Daniel Boland, C.S.C., Ph.D., of the Notre Dame Counseling Center. See Weyrauch, *Law in Isolation—The Penthouse Astronauts*, *Trans-Action*, June 1968, at 9.

the part feelings play in our reactions to one another. We seemed more respectful of the self-decisional processes of one another. As one of our members summarized her experience in the seminar, and what it taught her about experiences:

I found out several times that . . . I want that other person to change. I don't want—I won't accept him as he is, and I want him to be something different, and he's not going to be. It might even be—I might even be right, that it is desirable for him to be different, but I am trying to change him and I'm asking him to do something. . . .

She discovered for herself something Dr. Carl Rogers emphasized from his experience: "I personally, don't think much of trying to give insights to another person. I think that either frightening or futile."³⁴

Our observations are not unbiased, even though supported by self-reports from our students. In the second year we began to attempt more objective data. We arranged for a series of three tests: the Fundamental Interpersonal Relations Orientation-Behavior test devised by Schutz;³⁵ Rokeach's Dogmatism—Opinionation Scale;³⁶ and Shostrom's Personal Orientation Inventory.³⁷ All three of these tests were administered before the course began to those in the seminar and to a control group of twenty law students who were not in the seminar but were in the same law class. In the middle of the course the FIRO-B was given again to both experimental and control groups. We hoped to use this instrument to trace the process of change, as well as to identify change. At the end of the course, all three tests were given again to both groups. This data is now gathered and is being processed. Using the FIRO-B test for significance of differences between two variances, we discovered that we had samples from the same population of law students; there was not any difference, at the .05 level of significance, in the first pre-treatment tests between those in the course and the control group.

It is too early to evaluate our experiment, but not too early, at Notre Dame or elsewhere, to suggest *guidelines* for evaluation. If one accepts that legal counseling goes on within explicit or implicit counseling framework, there is justification for some kind of professional preparation for lawyers as counselors. But what constitutes adequate preparation?

One way to answer the question would be to examine the job performance of lawyer-counselors after graduation. Campbell and Dunnette, in their study of "T Group" effectiveness in industry,³⁸ and Cron-

³⁴ *Supra* n. 12.

³⁵ Schutz, FIRO: A Three-Dimensional Theory of Inter-Personal Behavior (1958).

³⁶ Rokeach, *The Open and Closed Mind* (1960).

³⁷ Shostrom, *Personal Orientation Inventory* (1962).

³⁸ Campbell and Dunnette, *Effectiveness of T-Group Experience in Managerial Training and Development*, 70 *Psychological Bulletin* 73 (1968).

bach, in his study of educational experimentation,³⁹ suggest that measuring instruments should be developed and used toward an external, operational test of affective teaching devices. Our internal measures cannot assess ultimate professional performance of lawyer-counselors but rather deal with personal and social behavior-orientations we logically assume will influence professional performance.

For either internal or external measures, a control group of comparative law students is needed, to determine if the experimental seminar is responsible for outcome differences in the measures. Ideally randomization in the selection of students should be used, at least in their assignment to the different groups. We found this design criterion difficult to achieve for a variety of reasons—e.g. course scheduling conflicts, other time commitments, willingness to take the experimental course. In view of this we tried to obviate the problem with statistical measures (e.g. analysis of covariance), to insure equalization of both groups and their representativeness of the same population (third-year Notre Dame law students). To attempt to control for maturation effects we tested both groups before and after the program; for further control and to check the perseveration of the possible effects, we suggest tests administered six months, a year, or even longer, after the end of the program.

The internal criteria must also be concerned with what specific variables or elements are the target or critical ones. In the Notre Dame experimental program we were mainly concerned with the self-perceptual changes in relating to others (FIRO-B), with self-actualization orientation (POI Scale), and with certain attitudinal characteristics (Rokeach's Dogmatism-Opinionation scale). We were also interested in how these variables might interact.⁴⁰

What is needed in reference to external criteria for validating programs for future attorneys in their counseling? Dr. Redmount provides some skeletal outlines in his suggestions for researching what goes on in formulative legal counseling. These include securing taped interviews (with consent from clients and safeguards for confidentiality) and analyzing them from suggested categories for effective legal counseling, together with a questionnaire from the attorneys to ascertain their perception of the consultation.⁴¹ Judges would be needed to rate the correlation between the interview and the criteria. Judges could assess the effectiveness of the legal counseling sampled by the tapes of both lawyers who experienced a specified human relations program and of lawyers who did

³⁹ Cronbach, *The Psychological Background for Curriculum Experimentations, Modern Viewpoints in the Curriculum 19* (A. Rosenblood ed., 1964).

⁴⁰ *Supra* notes 36-38.

⁴¹ Dr. Redmount has not published these materials, but has communicated them to the authors and to Professor Louis M. Brown of the University of Southern California.

not; this, of course, would involve some simulated legal counseling interviews before the training program begins.

Difficulties abound. To treat a few: How real would the simulated legal counseling situations be? How consistent and identifiable are the various elements in the training program? How do they interact with one another? What effect can be attributed unmistakably to a given identifiable element in the program? These questions and the doubts they suggest may save some of us who are interested in this sort of teaching from dogmatism in assertions that we have developed or discovered the program for effective legal counseling.⁴² Humility is at least one blessed by-product of exposure to critical analysis of anyone's pet proposal. The effort is worthwhile enough to survive and to justify some humility. We law professors are at least beginning to realize that, as Louis Brown put it: "One of the major realities of legal practice, rarely covered by law school courses, is that a lawyer's job involves not only the application of law but also a relationship with the client as a human being."⁴³

⁴² One piece of negative dogmatism that should be mentioned is the assertion that encounter-group methods foster a sort of psychological collectivism. The opposite appears to be the case; we agree with Dr. Gerard V. Haigh, president of the American Association for Humanistic Psychology (letter in "Input," *Psychology Today*, Dec. 1969, at 4):

Much of the work in an encounter group is focused on affirming the identity of the individual. Participants in intensive encounter groups report as outcomes a stronger sense of self, not a lesser. . . . My own observation is that most intense self-transcending experiences always follow upon painful encounter in which participants find new dimensions of self through intense emotional involvement with others.

There is convincing theoretical and clinical basis for that result in 16 C.G. Jung, *Collected Works* 265-66 (Bollingen, 2d ed.); Jung, *Modern Man in Search of a Soul* 95-115 (W. Bell and C. Baynes tr. 1933).

⁴³ Brown, *Planning by Lawyers—A Law School Course in Legal Counseling, The Practical Lawyer* (March 1969), at 70.