

IMAGINATION AND CREATIVITY IN LAWYERING: A REPORT ON A LAW SCHOOL SEMINAR*

The intellectual history of the seminar entitled "Imagination and Creativity in Lawyering"¹ can be easily traced. The direct impetus for the seminar was a conversation between myself and a first-year law student. As are so many of today's entering students, she was articulate, intelligent and eager to begin the arduous task posed by three years of legal studies. But she

was also concerned about what law school does to creativity and whether it is possible to be creative in law. My immediate reaction was to say that the rigid analytical approach of first-year law is a serious limitation on creativity but that this approach would mellow out; and in the end, one could be creative in law school and law. Yet as I listened to this student's concerns, I began to doubt my own answers. I resolved on the spot to go public with the question as to whether one can be creative in law. On the premise that this student's concern was shared by others, the need for carrying out this inquiry seemed important.

It is necessary at the outset to explore an earlier idea for a seminar which was in large part unsuccessful. In 1975, I had become interested in developing a course in law and psychology and gave notice to the student body of a "Psychodynamics of Lawyering Workshop" involving the exploration of a number of ideas with no set format and no expectations about who would attend or why.² Roughly, the idea was to form a study group of students who would meet one afternoon a week. I would provide xeroxed handouts and would follow up on student interest by finding additional materials where necessary.

The "Psychodynamics of Lawyering Seminar" presented a number of problems very early. Some fifteen to twenty people attended the first session, with the more vocal voicing the crucial question, "What is this Seminar all about?" While there seemed to be an interest in the subject matter, a question was raised as to whether we were going to limit our discussions to the materials assigned for discussion or whether we were going to deal with the on-going problems that students face in law school. I was concerned that the group would degenerate into a "once-a-week coffee break" and pointed out that these concerns would not be predominant, although I took no definite

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¹ First offered weekly at DePaul University Law School, 1976-1977.

position. On reflection, I see that I was as ambiguous as the students about what the group would be doing.

The general consensus was that the psychodynamics of lawyering was a worthwhile area of study. The second question students asked was, "How are you going to conduct this seminar?" and "Who are you, and how are you going to relate to us as students?" My reaction again was one of ambivalence. "Yes, I'm the leader." But at the same time indicating that "I want this to be a joint venture among all those present." The group, even in the first meeting, seemed confused by this approach; some arguing that the group would be unable to function without my leadership with others contending that they weren't interested in anyone lecturing to them about psychology and law. During the course of these early meetings, I commented on these problems but did not try to resolve them.

The Psychodynamics group met for five or six weeks with declining attendance and decreasing satisfaction of those present, including myself. In short, the group died on the vine--a failure, for all practical purposes.

After my conversation with the student about creativity and the tentative decision to put together a second group, a bit of self-study seemed to be in order. The Psychodynamics workshop had not been a major success, and I did not desire to repeat the experience of frustrating the participants and myself. In reflecting on the earlier experience, it seemed that there were three major problems that had to be confronted in the new endeavor.

(1) Seminar Goals

What will the seminar try to accomplish? What is it designed to do? Since all students attend the group voluntarily and receive no credit, they are less restrained in demanding that the goals of the group be well defined and that the group be capable of achieving these goals.³

(2) Conducting the Seminar

Of immediate concern to those who attended the first sessions was "How is this seminar going to be conducted?" "Who will be a teacher here?" "Are we going to be students?" "Who is going to lead this group?"

(3) Student Expectations

A problem underlying both questions of seminar goals and group governance (1 and 2 above) was the fundamental question: Why should busy law students participate in such an informal seminar? What would they give to the seminar? What would they get out of it?

With an awareness of these problems, the "Imagination and Creativity Seminar" was launched. I began to survey the literature on small groups and the psychology of group processes. What follows is an effort to describe both my own experience with small groups and how that experience

has paralleled the dynamics of small group processes reported in the psychology and sociology literature.

Group Leadership

My experience with two small groups has demonstrated clearly the necessity to confront the problem of leadership. In the first session of the "Imagination and Creativity Seminar," I was challenged after ten minutes and reminded that I was "lecturing" and that wasn't what I should be doing for the group. An understanding of the conflicts which arise over leadership must be achieved prior to leading a group. Unless this is worked through at the outset, the group is confused by conflicting signals of the individual forming the group. The teacher conducting such a seminar must determine whether traditional teacher-student roles will be maintained in the seminar; and, if not, whether the teacher will act as a group leader, facilitator, or only as a participant.⁴

Seminar Goals

The primary goal of the "Imagination and Creativity Seminar" was to alleviate some of the boredom which comes from the rigid analytical approach to law study. The seminar was designed to provide an on-going group to share the joys and anxieties of law school experiences. Secondly, I felt that a large body of material from psychology, sociology, anthropology, and linguistics would be of interest to law students and would form a bridge from their undergraduate studies to legal studies. One purpose of the seminar was to determine whether these materials could be used by the group to facilitate a better understanding of law and the lawyering process. The seminar was designed to encourage a search for new perspectives on law and lawyering. Topics suggested for group discussions were offered to suggest ways of integrating the personal and professional aspects of lawyering. The emphasis throughout the seminar was to be upon humanistic expression in and through the educational and professional lives of the participants. The goal was to foster a more humanistic identity for lawyers.⁵

These goals were openly articulated; and a consensus, with no vocal critics, was reached that these were worthwhile goals. Students were not asked to make a commitment to attend regularly; and throughout the year, students dropped in and out of the seminar group as the particular subject matter under discussion changed and the group itself evolved.

The seminar goals, while posing few initial problems, needed continuous re-evaluation. Simply put, the group repeatedly raised questions about the allocation of seminar time to the topic/materials and about on-going group processes. Materials on the psychology of small groups should convince even the most ardent skeptic that small groups, such as this seminar, have a life of their own.⁶ The life of the group raises questions common to all group processes: the roles of participants, the dynamics of interaction in the group, and the development, or lack

thereof, of a kind of group ethos. The primary choice facing an instructor is whether to allow discussion of the emerging group process problem (i.e., the group is not always aware of the exact nature of the problem) or to stay with "intellectual" topics and discussion. In this case, the cognitive content of the seminar material and the raison d'etre of the seminar seemed to require an investigation of group dynamics.⁷

The group survived. One or more participants would frequently urge the group to quit "bull-shitting" so that we could discuss the topic under discussion. There was often a concern expressed by the participants that we were "just talking" and that no one was learning anything.⁸ Often these rejoinders were accepted by the other participants, and an intellectual discussion would follow. Other participants seemed to be concerned by any shift in group orientation from cognitive to emotional⁹ and the absence of any assurance that one or the other would predominate.

No doubt this approach resulted in some individuals dropping out of the group; but a core of about eight accepted this approach and, in the final months, seemed to agree that neither strict study group nor encounter group orientation should predominate. Two statements were reflective of this concern. One person said, "I'm sure glad we can come to the meetings without having read all of the materials you're handing out." Another announced on more than one occasion, "I get very tired of this 'T' Group Stuff." In summary, the group evolved to study a number of social sciences which relate to law and in doing so confronted the problem of using a small group for that purpose. In a sense, the group followed a pattern of stitching "back and forth between intellectual considerations and emotional experiences, between intra-psychic and interpersonal involvements, between intragroup and outside world phenomena, between strict adherence to the theme and free association and interactions."¹⁰ (H. Ruitenbeek, The New Group Therapies, 208. 1970)

A Summary of the Sessions

The initial sessions of the seminar were used to explore student feelings about law school. The participants were asked:

- How does it feel to begin the process of becoming a lawyer?
- How are you experiencing the process? What does it mean to you? How do you convert the experience into meaning?¹¹

The group then focused on questions concerning human values in lawyering.

What are the human values at stake in becoming a lawyer? How do public ideals and individual values affect lawyering? How do lawyers view their relation to the legal profession and the legal system as a whole? How can one carry personal principles meaningfully into a professional identity?

From these questions, the seminar moved to consider legal education as a process of socialization and scrutinized this process for its psychological effects on law students, lawyering, and the legal profession. Finally, a paradigm of the prototypical lawyer's orientation to self, clients, and society was constructed. The discussion of these topics occupied a semester--where the meetings were weekly and lasted for two to three hours.

In the second semester, more eclectic and diverse topics were chosen after consultation with the seminar participants. The following notice to the student body announcing the seminar suggests the cognitive materials considered:

The participants in the Fall Seminar on "Imagination and Creativity in Lawyering" have decided to continue the Seminar through the Spring semester. The Seminar is unstructured, informal and non-credit.

You are invited to join the group. Participation in this semester is not dependent upon attendance at the Fall meetings.

The agenda for our future meetings will include:

- 1) "Thinking Like a Lawyer." What Does It Mean, How Do We Learn To Do It and How Does It Effect Us As Individuals?
- 2) The Lawyer as Artist--The Artist as Lawyer: The art, craft, and style of Lawyering.
- 3) Women in the Legal Profession: Impetus For a New Paradigm for Lawyering.
- 4) Myths, Images, and Archetypes: Law from a Jungian Perspective.
- 5) A Transactional Analysis of Legal Education: An Analysis of Communication and Interpersonal Interaction Patterns in Law Schools. (or Games Law Schools Play).
- 6) Humanistic Legal Education.

Our agenda is flexible and you are welcome to suggest topics and lead the Seminar in group discussion.¹²

Students Expectations

Each student entered the seminar with a variety of personal needs and intellectual interests, and there was a noticeable tendency to use the group to achieve those needs and pursue those interests. The diversity of needs and interests created the potential for conflict among student participants and between students and the instructor. Student motivations for attending such a seminar and the personal and goal conflicts must be considered in regard to the way individuals participate in groups.¹³ Generally, participants were allowed to contribute, or not, as they saw fit. Little effort was made to draw the quiet people into the discussion. The approach paralleled that of Carl Rogers who allows participants to determine their commitment and participation in the group. "If a person wishes to remain psychologically on the sidelines, he has my implicit permission to do so."¹⁴ (C. Rogers, On Encounter Groups, 50. 1970.)

I have done no empirical research to document the range of motivations, conscious or unconscious, of students participating in the seminar. However, extensive conversations with the participants both in and out of the seminar suggest a broad range of needs and concerns.

For both the "Creativity Seminar" and the "Psychodynamics of Lawyering Workshop," notices were posted on school bulletin boards announcing the formation of the groups. In both, those attending the initial sessions were, with a few exceptions, first-year students and students from the instructor's first-year criminal law course. One third-year student, a student in the instructor's course in "Family Law," attended all of the meetings of the Psychodynamics group. No second or third-year students permanently joined the "Creativity Seminar." Upper-class students, when attending, have been generally quiet, taking little part in the discussion.

My experience with the seminar suggests that the regular participants, those who attended the entire year, are seeking to fulfill a psychological need which is not being met by the traditional law school curriculum. It appears to me that the student motivations may be clustered in several groups. One group seemed to be both curious and concerned--expressing the belief that there is more to life than immersing oneself in law study. This group was not entirely homogeneous. Some liked and enjoyed law school but were simply concerned about cutting themselves off to such a large extent from the rest of the world.¹⁵ Others seemed to be frustrated by the law school experience and suffered from a high level of anxiety about the awesome task of learning a new "world-view." A third group was alienated by the Socratic method, the competition among law students, and the open pursuit by many of a course in law solely to secure financial rewards. The participants seemed to share a sense of boredom and lack of inspiration from their first-year course work. They, like other students, appear to be "in search of a professional identity to match their aspirations and disappointed in what they find. They seek a way out of the ethical emptiness of their educational environment, without having to trade their ideals for cynicism. They seek a professional identity that allows for the expression of those human principles and values they most cherish, rather than a role that becomes increasingly divorced from who they are as people."¹⁶ (Mimmelstein, Reassessing Law Schooling, I.5, unpublished, 1976.)

Conclusions

The "Creativity Seminar" has been a valuable experience for me, both personally and intellectually. It is highly improbable that the total experience can be reduced to writing; and I will, therefore, only point out the lessons which can be drawn from the experience.

First, it is clear that law school teachers generally fail to recognize and account for the pervasive anxiety, frustration, alienation, disorientation, and poor functioning of so many in the law school setting. In the "Creativity Seminar," a "safe climate" was created so that

students and some concerned faculty (about four others attended sporadically, and were treated as co-equals by the students) could openly express their feelings about law school, law teaching, fellow law students, and the experience of law school.

It was apparent from these sessions that law students thrash around looking for a way to relate to the law school experience. Arguably, this process of orienting oneself in a new world, the world of legal education and lawyering, should not be left to chance; and law schools should provide an orientation program for law students which extends beyond the Dean's welcoming speech and in the introduction of the faculty. Students have pressing questions about their selection of law as a career, selection of a particular law school, the method of legal instruction, required levels of performance, and the student-teacher relationship.¹⁷ With such fundamental questions left largely unattended, there is little wonder that first-year law students suffer from anxiety.¹⁸

One suggestion for alleviating this anxiety is a workshop for the first-year student, "A Workshop on How to Survive in Law School." The workshop would be designed to begin in the Fall semester and would be open to the entire student body although oriented toward entering first-year students. The workshop would begin by simply scheduling weekly meetings in which students would be encouraged to talk through their new experiences--what is happening to them "here and now" as they begin law school.¹⁹

Other sessions could be devoted to coping with anxiety²⁰ and the psychological perils of law school. In essence, the sessions would be designed to "enable those involved to find a means of continuing to relate, however critically, to existing social institutions, as opposed to retreating in embittered alienation, destructiveness, or self-destructiveness."²¹ (R. Lifton, The Life of the Self, 162. 1976.)

In summary, there is a demonstrable need to help first-year law students preserve their idealism, understand in greater depth the nature and processes of their first year of law school as it is unfolding (in essence to give meaning to their experience congruent with their expectations and perceptions), and to provide an intellectual challenge over and beyond the classroom experience. Students should be encouraged to explore the tension which exists in the demands of legal education and competing personal interest and fears. Through such explorations, the "person" in legal education is given it's proper emphasis.

FOOTNOTES

1. Several participants in the group expressed concern over the physical settings in which the seminar was being conducted. In essence, these individuals found the physical setting not to be conducive to group discussions.

There is currently a growing recognition of the relationship between physical environment and human behavior. The psychodynamics of small groups is also effected by physical setting. See e.g., Wolfe & Proshansky, "The Physical Setting as a Factor in Group Function and Process," in The Group As Agent of Change, 206-227 (A. Jacobs & W. Spradlin, eds. 1974).

For the effect of environment on the attorney-client relationship, see T. Shaffer, Legal Interviewing and Counseling in a Nutshell, 84-105 (1976).

2. It should be pointed out that the author has no formal training in psychology, psychotherapy or counseling and is not an expert on group processes. The qualification for engaging students in a dialogue on the psychodynamics of lawyering include an active interest in the law and psychology interface and ten years of active reading of psychology and psychiatry literature.
3. "In most small, face-to-face groups . . . the members undergo a good deal of initial confusion, anxiety, and discomfort because they have no clear knowledge of group goals."

G. Egan, Encounter: Group Processes for Interpersonal Growth, 71 (1970).

Human relations training groups which have as their goal, learning of group processes, use the initial ambiguity confusion, anxiety, and goallessness as a pedagogical tool. Id. at 71-75.

4. The instructor has found the following statement of the leader's role helpful. The role of the leader is to focus on:
 - "1. The meaning of an idea to the group.
 2. The issues that the group seems to be in disagreement over and that they feel a need to resolve.
 3. The feelings they are expressing through behavior rather than their spoken words.
 4. The ways they are forcing others into roles or behaviors.
 5. The actions or problems which the group raises and needs to solve.
 6. The continuity between group sessions and themes raised."

W. Lifton, Groups: Facilitating Individual Growth and Societal Change, p. 66-167 (1972).

5. One of the classical but forgotten purposes of legal education, is to preserve law as a liberal and humanist discipline. The bulk of legal education does not serve this classical goal, rather it promotes a view of the lawyer as a talented technician, knowledgeable of technical legal rules and skilled in their application.
6. I share Carl Rogers belief that "the group seems like an organism, having a sense of its own direction even though it could not define that direction intellectually." C. Rogers, On Encounter Groups 44 (1970).
7. In general, the instructor's position was one of attempting to reveal to the group its own dynamics as it moved through various crisis.
8. As instructors, we often lose sight of the fact that sitting and talking as well as sitting and listening is often boring. C. Phillips & E. Erickson, Interpersonal Dynamics in the Small Group, 27-28 (1970).
9. There were no significant observable problems with the personal and emotional aspect of the discussions. Why? The seminars were not designed as "intensive" group experiences and deeply personal disclosures were neither demanded nor expected of any of the student participants. Self-disclosures, if made, occurred during the flow of the discussions and undue attention was not called to the disclosure. At times, there was a follow-up to a self-disclosure by a student participant or the instructor, but there was no effort to push the group into such areas. See Rogers, supra note 6, at 48. Person and inter-personal problems were dealt with only insofar as they inhibited free communication within

the group or obstructed the realization of group goals. In this sense, emotional issues were not ignored but were dealt with to the extent necessary for group survival and participant satisfaction.

10. H. Ruitenbeek, The New Group Therapies, 208 (1970).

The work of the seminar participants in charting the use of seminar time involved small group decision making. See generally, M. Burgoon, J. Meston & J. McCroskey, Small Group Communication: A Functional Approach, 107-142 (1974).

11. In addition, the following questions were explored:

1. What does it mean to be a lawyer? More specifically, what does it mean to you to be a lawyer? What kind of image do you have of yourself as a lawyer?
2. How do you experience the socialization process in becoming a lawyer?
3. Do you perceive a difference between the image of yourself as a lawyer and how you feel about being a lawyer?
4. Do you see being a lawyer as a means of accomplishing certain goals? What are those goals?
 - a. What are your specific goals as a lawyer?
 - b. Are there special goals which being a lawyer makes possible?
 - c. What are your goals in life as an individual apart from professional goals?
 - d. Do you think being a lawyer will in any way pose obstacles to achieving the personal goals that you might have?
5. What do lawyers do? How do they go about doing it?
6. What kind of images do lawyers have of themselves, clients, and the law? How do these images effect lawyering?
7. What kind of images do client's have of lawyers? How do these images effect lawyering?

12. All of the topics set forth in the notice were discussed in the seminar except "A Transactional Analysis of Legal Education . . ."

13. Participants can be divided into three categories:

"the dependents, those who look to the trainer for cues; the counter-dependents, those who solve their dependency needs by opposing the leader; and the independents, those who are 'not threatened by the prospect of intimacy . . ."

Egan, supra note 3, at 129.

14. Rogers, supra note 6, at 50.

15. "Indeed, what the student learns as the role of the lawyer in modern day society and the way in which he learns that role appear to lead inevitably to abuses in the profession. For although the law and the lawyer are "constantly dealing with human beings . . ., continuously concerned with the adjustment of human relations," lawyering is too often learned as a skill cut off from human beings and human values, and the legal system too often acts, as one Federal judge recently put it, "as if it is divorced from humanity."

It is in the law schools that the prospective lawyer learns more and more to separate his humanity from his professionalism for in both what is taught and, particularly, in how it is taught law schools foster a particularly narrow professional role.

Mimmelstein, Reassessing Law Schooling--An Inquiry Into the Application of Humanistic Educational Psychology to the Teaching of Law, p. 1-5 (unpublished 1976).

16. Id. at I-13.

17. "The law teacher-law student interaction, by the endemic character of legal education, is mostly in the nature of a vigorous intellectual assault. Initially, it is an assault by the agency of the law teacher upon the student's emotional and moral sensitivities. The student's reaction is likely to be one of hurt, resentment and bewilderment. However, survival demands the suppression of feeling, and identification with the aggressive masticating process. In time, and with the aura that power and authority is given in law anyhow, the student learns to identify with and even to admire the law teacher who is overpowering. They are arm-in-arm combatants and a strong sense of fraternity develops. There are later divisions and mutations of loyalty that witness strong, insular fraternal bonds among practicing attorneys, among judges, and among law teachers."

See also, Redmount, A Clinical View of Law Teaching, 48 So. Calif.

L. Rev. 706, 706-709 (1975). For a comparison of the student-teacher relationship in law schools with other graduate studies, see Reisman, Law and Sociology: Recruitment, Training and Collegueship, 9 Stan. L. Rev. 643, 646-647 (1957).

18. Rollo May has appropriately suggested that anxiety "comes from not being able to know the world you're in, not being able to orient yourself in your own existence."

R. May, The Courage to Create 61 (Bantem, ed., 1976).

19. The "here and now" time orientation is patterned on Gestalt therapy. This approach uses three rules to maintain the proper time orientation. Egan, supra note 3, at 96.

1. Use of "I."
2. Concreteness--"The speaker should avoid vagueness, abstractions, and generalities . . . In general, one should talk about one's own experiences." Id.
3. Avoid the question "why?" which "usually demands an interpretation on the part of the respondent." Id.

20. The relationship between fear and anxiety and learning is curvilinear. (Yerkes--Dodson Law).

"The level of anxiety or drive which stimulates optimal performance lies somewhere in the middle: the anxiety level must be neither too high nor too low."

Stennett, The Relationship of Performance Level to Level of Arousal, 54 J. of Exp. Psy. 54 (1957).

What is the source of the anxiety? One's inability to ascertain whether they are going to make it.

1. Expect anxiety;
2. Recognize it for what it is;
3. Use it to promote higher performance;
4. Realize that your anxiety level is going to be different than your colleagues.

Relate the anxiety of the law student to anxiety of the lawyer. Disclosure of anxiety--what it feels like--can be important. Allow the anxiety to surface so you can deal with it.

21. R. Lifton, The Life of the Self 162 (1976).