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BOOK REVIEW

LEGAL INTERVIEWING AND COUNSELING. By Thomas L. Shaffer. St. Paul: West Publishing Co., 1976. Pp. ix, 353. \$5.95.

*Reviewed by James R. Elkins**

One of the most persistent students and critics of the attorney-client relationship in recent years has been Thomas L. Shaffer, former Dean and now Professor of Law at Notre Dame University. Professor Shaffer has consolidated his work on this aspect of legal practice in *Legal Interviewing and Counseling*. In his new work Professor Shaffer focuses on attorney-client decision-making in the law office and on the factors that enhance and distort the attorney-client relationship.

The reader should be warned that Professor Shaffer's approach is one of gentle persuasion, rather than a diatribe against traditional legal practices. The approach is seductive, because the author provides practical tools for what amounts to a new paradigm for the practice of law. These tools are especially useful for guiding students toward a variety of techniques that allow the student to formulate satisfactory and helpful ways of relating to their future clients. The book also serves as a practical guide for the lawyer interested in structuring a more productive, satisfying, and creative relationship with clients and provides the theoretical framework within which such growth can begin. The reader should be warned, however, that *Legal Interviewing and Counseling* is more than a pragmatic approach to interviewing. Professor Shaffer weaves a masterful web around current counseling and psychology literature and artfully integrates this scholarship into useful statements about the problems of relating to clients.

The practice of law generally is viewed in terms of what lawyers do for clients, such as drafting legal forms, writing briefs, and conducting litigation. The question that concerns Shaffer is how the lawyer structures the relationship that in turn influences the legal work the client receives. Looking at the attorney-client relationship presents law practice in an entirely different perspective. Shaffer explores the images clients and lawyers carry into the relationship and how these images shape their respective roles. Legal practice is

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the result not only of direct interaction between lawyer and client in the solving of legal problems, but is patterned also on the attorney's perception of the client, the client's problem, the appropriate role of law in resolving the client's problem, and finally the attorney's self-concept and view of his role in law.¹ These perceptions and images determine the lawyer's "world view," which in turn influences perception and problem-solving. Law and the practice of law, then, can be viewed as a function of the world view of individual lawyers and that of the profession as a whole. Shaffer's immediate concern with the lawyer's world view is the structuring of attorney-client relationships.

Shaffer initially proposes that traditional notions of fact and fact relevance are too narrow for productive examination of the attorney-client relationship. The pigeonholing of facts that emanates from a legalistic world view, the author believes, blinds attorneys to a different source of factual data: client and attorney feelings. The attorney's underlying fear is the fear of being "soft." Thus lawyers eschew emotion and feeling both in themselves and in their clients, because feeling and intuition are related in the lawyer's mind to "softness." Clients are "soft;" lawyers are objective and rational. Clients feel; lawyers think.² Shaffer suggests that only one side of the lawyer is the hard, objective, rational being; the complementary side is the equivalent of the client's feeling, intuitive "softness."³

Shaffer begins with a basic premise that "feelings are facts"⁴ and then demonstrates that the attorney can make use of this fundamental proposition. The conceptualization of feelings as facts carries Shaffer to the core of the attorney-client relationship. Traditionally lawyers have viewed themselves as analytical problem-solvers who advise clients on such matters as the rights, obligations, and liabilities imposed by the law and sanctioned by the legal process. The main attributes of the lawyer's skills are thought to lie in problem-solving by conscious, rational, logical, analytical, linear thought processes.⁵ Shaffer's view of the attorney-client relationship is substantially different. In his view the interpersonal relationship

1. See T. SHAFER, LEGAL INTERVIEWING AND COUNSELING 106-08 (1976) [hereinafter cited as LEGAL INTERVIEWING & COUNSELING].

2. *Id.* at 60-63.

3. *Id.* Clients, Shaffer points out, also have a "lawyer" element in their personalities.

4. *Id.* at 3-7.

5. Lawyers should note the warning, "He who lives solely by intellect, by cognition and routine, is not only a fool—he is empty and will never create." D. SCHNEIDER, THE PSYCHOANALYST AND THE ARTIST 93 (1950).

created in the attorney-client situation consists not only of attorney-to-client advice, but of a process as well. By "process" Shaffer means "the feelings of lawyer and client toward one another, and each toward himself, and all of the ways they act toward one another which do not pertain in words to the business they transact."⁶ The process of the interactive setting forms the central core, or the psychodynamics, of the attorney-client relationship.

Shaffer explores the nature of the attorney-client relationship from an interpersonal perspective, because the psychodynamics affect the ultimate goal of "a mutually satisfactory resolution of the business which the client brings to the lawyer."⁷ Results depend upon how the attorney and client feel about each other and upon how feelings and perspective are acted out and are acted upon during their relationship.

The factors effecting the interaction of attorney and client are multifaceted, and Shaffer has made an effort to present the interaction in all of its complexity. He finds the interaction to be a function of:

- Each party's view of the *law*. Lawyers tend to regard the law as something sacred; clients may regard [it] as oppressive, intrusive, or tyrannical.
- Each party's general philosophy of *human value*
- Each party's view of *lawyers*
- Each party's view of the *client's situation*⁸

Shaffer correctly notes that although these socio-psychological factors are important, they also must be assessed in terms of the environment in which they occur.⁹ Thus an understanding of the attorney-client relationship must go beyond an inquiry into what occurs between attorney and client to consider *where* the interaction occurs.

The underlying thesis of *Legal Interviewing and Counseling* is that the practice of law is in part defined by factors and conditions beyond the immediate awareness of, but accessible to, the lawyer. The first step in exploring the attorney-client relationship simply is to gain an awareness of these factors that bear on the interaction and its outcome.¹⁰ Shaffer presents tools and available theories for

6. LEGAL INTERVIEWING & COUNSELING, *supra* note 1, at 19.

7. *Id.* at 29.

8. *Id.* at 106-07; see Redmount, *Law as a Psychological Phenomenon*, 18 AM. J. OF JURIS. 80, 98-99 (1973).

9. LEGAL INTERVIEWING & COUNSELING, *supra* note 1, at 84-105.

10. A preeminent legal academician of the modern era, Karl Llewellyn, reportedly believed that all lawyers should have an articulate and coherent working theory of "lawyering." Llewellyn thought it essential for a lawyer "to understand his situation and his

gaining a thorough working knowledge of the psychodynamics of attorney-client interaction.¹¹ *Legal Interviewing and Counseling* is an important resource and guide for achieving increased understanding of and raising to conscious awareness the psycho-social dimensions of legal practice and legal decision-making.¹²

Shaffer has used both sociological and psychological concepts throughout *Legal Interviewing and Counseling*. The book relies upon a number of concepts that can be used to study such external influences on legal practice and decision-making as profession, role, status identity, and role conflict. A sociological perspective is helpful in determining the meaning of being a member of a profession.¹³ Sociologists traditionally have defined professionalism in terms of the acquired status derived from the study of a body of knowledge inaccessible to laymen and an organization with emphasis upon providing public services.¹⁴ The effects of professionalism on legal practice are pronounced. The "profession" serves to structure legal

role, to clarify his aims and have a general conception of how to set about attaining them, and to be able to see all this in a broad perspective." W. TWINING, *KARL LLEWELLYN AND THE REALIST MOVEMENT* 173 (1973).

11. The task should be initiated during the course of legal education, and *Legal Interviewing and Counseling* should accelerate that endeavor. The psychodynamics in the attorney-client relationship also is being exposed to some students in clinical law courses. Meltzner and Schrag, clinical law teachers at Columbia, have indicated that they attempt to expose students to intergroup and interpersonal dynamics in the practice of law through simulations in the clinical law program. They ask students during their participation in clinical exercises

. . . what is going on between these people or in this group and how does it affect the work at hand? How is authority vested and responsibility assumed in these encounters? What covert messages are being communicated, and by what means? The aims of such inquiry are to clarify and explore both the definitions which students give the roles they adopt, and the distance they maintain from typical role behavior, to enrich their consciousness of how and what people communicate, and to give the instructors an opportunity to reinforce role behavior which they want to perpetuate.

Meltzner & Schrag, *Report from a CLEPR Colony*, 76 *COLUM. L. REV.* 581, 601 (1976).

12. Shaffer's *Legal Interviewing and Counseling* is part of a growing body of literature directed toward the psycho-social dimensions of legal practice. H. EDWARDS & J. WHITE, *PROBLEMS, READINGS AND MATERIALS ON THE LAWYER AS A NEGOTIATOR* (1977); H. FREEMAN & H. WEIHOFEN, *CLINICAL LAW TRAINING; INTERVIEWING AND COUNSELING* (1972); A. WATSON, *THE LAWYER IN THE INTERVIEWING AND COUNSELING PROCESS* (1976); A. WATSON, *PSYCHIATRY FOR LAWYERS* (1968).

13. Examples of studies of professions from a sociological perspective include E. HUGHES, *MEN AND THEIR WORK* (1958); MAX WEBER ON *LAW IN ECONOMY AND SOCIETY* 198-223 (M. Rheinstein ed. 1954); W. MOORE, *THE PROFESSIONS: ROLES AND RULES* (1970); *PROFESSIONALIZATION* (H. Vollmer & D. Mills eds. 1966); F. ZNANIECKI, *THE SOCIAL ROLE OF THE MAN OF KNOWLEDGE* (1940); Parsons, *The Professions and Social Structure*, in *ESSAYS IN SOCIOLOGICAL THEORY* 34 (rev. ed. T. Parsons ed. 1954).

14. See A. WATSON, *PSYCHIATRY FOR LAWYERS* 11-14 (1968); Shaffer, *Christian Theories of Professional Responsibility*, 48 *S. CAL. L. REV.* 721, 733 (1975); Watson, *The Lawyer as Counselor*, 5 *J. FAM. L.* 7, 8 (1965).

activities and to provide a sense of identity with a larger community.¹⁵ As David Apter has pointed out,

Professionalization creates a sense of obligation among individuals, which by becoming moral is therefore much more significant than a simple contract and more reliable. A feeling of custodianship derives from this professional form of obligation, for it is the profession, the body of theory, the set of ideas that contain universals and represent the human intellectual inheritance that need to be enlarged by the incumbents of professional roles. Older professional roles that cannot make this kind of contribution become more mechanical rather than professional; become trades rather than professions.¹⁶

Finally, the profession establishes autonomy for the lawyer and shields his work from public scrutiny.¹⁷

The impact of professionalism on the practice of law has received little attention from the legal profession and sociologists.¹⁸ Neither the legal profession nor legal education offers opportunities to analyze the fundamental constructs underlying the legal system or the dynamics of the "lawyering" process.¹⁹ The failure to explore

15. The effect has been described as follows: "Professionalization . . . gives identity to the role and solidarity to the organization. Such organizational identity and solidarity link the professional to the 'establishment.' Once in the 'establishment,' the individual has 'arrived.'" Apter, *Ideology and Discontent*, in *IDEOLOGY AND DISCONTENT* 15, 42 (D. Apter ed. 1964). Furthermore,

[a] profession is not a collection of individual professionals. It is something more than the sum of its parts. It has an integrity, a "community," which characterizes it as a profession. As William Goode has indicated, a profession is a "community within a community." As a community, a profession can be expected to exhibit organizational characteristics common to other forms of organized behavior.

Wallace, *An Excursion into the Affinities Between Law and the Behavioral Sciences*, 18 *J. LEGAL ED.* 43, 47 (1965) (citing Goode, *Community Within a Community: The Professions*, 22 *AM. SOCIOLOGICAL REV.* 194 (1957)).

16. Apter, *supra* note 15, at 42.

17. As Howard Becker has pointed out,

[p]rofessionals, in contrast to members of other occupations, claim and are often accorded complete autonomy in their work. Since they are presumed to be the only judges of how good their work is, no layman or other outsider can make any judgment of what they can do. If their activities are unsuccessful, only another professional can say whether this was due to incompetence or to the inevitable workings of nature or society by which even the most competent practitioner would have been stymied. This image of the professional justifies his demand for complete autonomy and his demand that the client give up his own judgment and responsibility, leaving everything in the hands of the professional.

Becker, *The Nature of a Profession*, in *EDUCATION FOR THE PROFESSIONS* 38-39 (N. Henry ed. 1962).

18. Exceptions include: Parsons, *The Law and Social Control*, in *LAW AND SOCIOLOGY* 56-72 (W. Evan ed. 1962); Parsons, *A Sociologist Looks at the Legal Profession*, in *ESSAYS IN SOCIOLOGICAL THEORY*, *supra* note 13, at 370; Parsons, *A Sociologist Views the Legal Profession*, in *UNIVERSITY OF CHICAGO LAW SCHOOL, CONFERENCE ON THE PROFESSION OF LAW AND LEGAL EDUCATION* 49 (Conf. Ser. No. 11, 1953); Riesman, *Toward an Anthropological Science of Law and the Legal Profession*, 57 *AM. J. SOC.* 121 (1951).

19. For critical analyses of legal education, see Kennedy, *How the Law School Fails: A*

these constructs and the relationship between law and other societal institutions has been attributed to insufficient time or to a lack of need. Greater analysis of the profession and more self-analysis by those engaged in the practice of law are very much needed, however. Arguably "[o]ur professional responsibility is to confront conventional images of what is supposed to be true with functional images—established by appropriate research—depicting what in fact is so."²⁰

The possibility of increasing awareness to gain understanding begins with a scrutiny of role.²¹ In the most superficial sense "[a] role is a pattern for conduct in a particular social position."²² The lawyer's role, by definition, constitutes an external influence on his practice, because it is derived from societal forces beyond the immediate control of the lawyer. The role is patterned on the demands and expectations of those who interact with the lawyer: clients, other attorneys, judges, and other professionals.²³ The concept of role, however, should not be considered without reference to the concept of identity, which is in part internal or psychological in nature.²⁴ Shaffer has noted in a previous work that "[t]he role

Polemic, 1 YALE REV. L. & SOC. ACT. 71 (1970); Savoy, *Toward a New Politics of Legal Education*, 79 YALE L.J. 444 (1970); Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392 (1971); Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, U. CIN. L. REV. 93 (1968).

20. A. ROGOW & H. LASSWELL, *POWER, CORRUPTION, AND RECTITUDE* 67 (1963).

21. The legal literature on attorney roles is extensive. On the policymaking role, see *Educating the Lawyer as a Policy-maker*, 6 TRIAL 41 (April/May 1970); Mayo, *The New Technology and National Goals: Some Implications for Legal-Policy Decision Making*, 37 NOTRE DAME LAW. 33 (1961); Mayo & Jones, *Legal-Policy Decision Process: Alternative Thinking and the Predictive Function*, 33 GEO. WASH. L. REV. 318 (1964); Szanton, *Public Policy and the Law: Legal Training as 'Perverse' Preparation for Policymaking Role in Government*, 6 ANTITRUST L. & ECON. REV. 51 (1973). On the economic policymaking role, see Donahue, *Book Review*, 70 MICH. L. REV. 195 (1971). On lawyers in politics, see D. RUSCHEMEYER, *LAWYERS AND THEIR SOCIETY: A COMPARATIVE STUDY OF THE LEGAL PROFESSION IN GERMANY AND IN THE UNITED STATES* 71-75 (1973); Agger, *Lawyers in Politics: The Starting Point for a New Research Program*, 29 TEMP. L.Q. 434 (1956); Green, Schmidhauser, Berg, & Brady, *Lawyers in Congress: A New Look at Some Old Assumptions*, 26 W. POL. Q. 440 (1973).

22. L. FRIEDMAN & S. MCCAULAY, *LAW AND THE BEHAVIORAL SCIENCES* 824 (1969). See also D. MELLINKOFF, *LAWYERS & THE SYSTEM OF JUSTICE* xv-xvi, 1-7 (1976); A. WATSON, *PSYCHIATRY FOR LAWYERS* 11-14 (1968); Ritzer, *Professionalization, Bureaucratization and Rationalization: The Views of Max Weber*, 53 SOC. FORCES 627, 629-33 (1975); Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUMAN RIGHTS 1 (1975).

23. Thus to a large degree "[w]hat a lawyer does is defined by the society in which he practices. It defines the limits of his operations and imposes various expectations upon him which he has no power to alter." Watson, *supra* note 19, at 104-05. The lawyer's role, then, as viewed from the outside, in large part is determined by the society in which he or she exists.

24. The lawyer's self-identity is important and is closely related to his or her identity as an individual. This identity is "the detailed and complex internal image which each person must develop of himself as he matures, which becomes a kind of model by which he patterns

concept is sociological—seen from the outside in; the identity concept is psychological—seen from the inside out.”²⁵ In that work he offered a clear example by which one can visualize the difference between role and identity:

If I close my eyes and imagine a lawyer, I expose myself to a *role*. If I close my eyes and see me, I expose myself to an *identity*. And if I close my eyes and see myself as a lawyer, I expose myself to the conflict between my role and my identity.²⁶

The concept of increased awareness has a further socio-psychological component in the relationship of self to others. The quality and direction of interpersonal relationships and the understanding of those relationships depends not only upon their dynamic interactional aspects but also upon one's self-concept²⁷ and the perception that one has of others viewing self during the interaction.²⁸

his life.” Watson, *supra* note 19, at 103. Norman Cameron has concluded that

[t]he self-image is a product of an infinite number of interactions with other human beings. These interactions have in the past led, and go on leading, to internalizations of the experiences of interaction as *ego identifications* and as *superego identifications*. The identifications, modified or transformed by the ego or superego organization into which they enter, also interact with each other within the personality system. Among other things, the self image represents one's status as an organism, as a unit in a series of social systems (family group, neighborhood group, school, religious and work groups), as a person toward whom, within the different social systems mentioned, other people have many different and conflicting attitudes, and toward whom the person himself has his own complex attitudes.

Into the formation of the self-image the early hierarchical systems of value judgments of mother, father, siblings and other close associates enter, in relation both to ego functions and to superego functions.

N. CAMERON, *PERSONALITY DEVELOPMENT AND PSYCHOPATHOLOGY: A DYNAMIC APPROACH* 347 (1963).

25. Shaffer, *supra* note 14, at 731.

26. *Id.*; see Hermann, *Patterns of a Life in Law: A Consideration of Contemporary American Legal Biography*, 24 DE PAUL L. REV. 853, 859-66 (1975).

27. The lawyer will have a picture of himself, which will largely control the manner in which he performs his professional task. This self-image will be compounded of elements from the remote past, technical skills mastered during the course of learning to function professionally in the law, and many subtle tendencies which are more or less stereotyped and individualized techniques for coping with *all* interpersonal relationships and the emotional themes present therein.

Watson, *The Lawyer as Counselor*, *supra* note 14, at 7. See also Watson, *The Psychology of the Professional Self-Image*, 38 CHEM. & ENGINEERING NEWS 84 (Mar. 21, 1960).

28. The concept of self viewing others viewing self as stated here has been referred to as the “recycling dyadic process.” In this process

[t]he perceiver, in some sense aware of many of the general properties of the other person (consciousness, mind) or of his specific attributes (for example, generosity), has to allow for the fact that he himself, with similar properties, is also the object of perception and thought and that, as such, he influences his own object of perception. Observer and observed are simultaneously observed and observer. Their reciprocal feedback pro-

Thus the lawyer cannot scrutinize effectively himself or herself in the absence of the contextual overlay of relational counterparts. Lawyers interact with other lawyers, clients, authority figures (such as judges or senior partners), parents, spouses, children, friends, and various other significant counterparts. In the broadest sense, awareness for the lawyer involves the scrutiny of self in a variety of relationships of varying intensity and meaning.

Two interacting frames of reference are involved in the concept of increased awareness. The first is derived from the interpersonal school of psychiatry, which places primary emphasis upon the emerging relationship between the personalities in interaction.²⁹ The second frame of reference is from the vantage point of the sociologist, who views the interaction between individuals as one between players upon a stage. The sociologist defines interaction in terms of role, status, and reference groups and allows increased awareness based upon an intellectual understanding of these concepts.

Erving Goffman, a social psychologist, has written extensively about the sociological implications of personal interaction.³⁰ Goffman, whose works are recommended for the lawyer interested in self-scrutiny, argues that

every person lives in a world of social encounters, involving him either in face-to-face or mediated contact with other participants. In each of these contacts, he tends to act out what is sometimes called a *line*—that is, a pattern of verbal and nonverbal acts by which he expresses his view of the situation and through this his evaluation of the participants, especially himself. Regardless of whether a person intends to take a line, he will find that he has done so in effect. The other participants will assume that he has more or less willfully taken a stand, so that if he is to deal with their response to him he must take into consideration the impression they have possibly formed of him.³¹

The work of social psychologists like Goffman, operating from the sociological frame of reference, suggests a scrutiny of interaction by ascertaining the roles lawyers play and the special status lawyers are accorded as individuals because of their profession.

cesses modify their self-presentation and, in turn, their reciprocal perceptions, in a continuous recycling but varying process during which each person uses the variations in himself and the other person as a means of validating his hypotheses about the other.

Tagiuri, *Person Perception*, in 3 THE HANDBOOK OF SOCIAL PSYCHOLOGY 395, 426 (2d ed. G. Lindzey & E. Aronson eds. 1969).

29. Cf. H. SULLIVAN, *THE PSYCHIATRIC INTERVIEW* (1954).

30. The following works of Goffman are illustrative: *FRAME ANALYSIS: AN ESSAY ON THE ORGANIZATION OF EXPERIENCE* (1974); *INTERACTION RITUAL: ESSAYS IN FACE-TO-FACE BEHAVIOR* (1967); *RELATIONS IN PUBLIC: MICROSTUDIES OF THE PUBLIC ORDER* (1971); *STRATEGIC INTERACTION* (1969).

31. E. GOFFMAN, *INTERACTION RITUAL* 5 (1967). See generally E. GOFFMAN, *STRATEGIC INTERACTION* (1969).

Sociologist Anselm Strauss has pointed out that in interactions between lawyer and client, both the attorney and the client "perceive the situation, observe what is required with respect to the status of each and carry out the requisite or selected line of action."³² The awareness of status in the attorney-client relationship, however, does not describe sufficiently the complexities of the relationship. As Strauss has observed, "[t]he interactional situation is not an interaction between two persons, merely, but a series of transactions carried on in thickly peopled and complexly imaged contests."³³ Part of the difficulty in self-scrutiny of interpersonal relationships is that

[f]ace-to-face interaction is a fluid, moving, "running" process; during its course the participants take successive stances vis-a-vis each other. Sometimes they fence, sometimes they move in rhythmic psychological ballet, but always they move through successive phases of position. The initial reading of the other's identity merely sets the stage for action, gives each some cues for the his lines.³⁴

The primary means of studying the attorney-client relationship is by focusing the attorney's attention upon self.³⁵ Shaffer correctly

32. A. STRAUSS, *MIRRORS AND MASKS: THE SEARCH FOR IDENTITY* 55 (1959).

33. *Id.* at 56-57.

34. *Id.* at 55.

35. See *LEGAL INTERVIEWING & COUNSELING*, *supra* note 1, at 182. Shaffer emphasizes the need for self-awareness throughout *Legal Interviewing and Counseling*. He does not attempt to explore all of the labyrinth of psychological literature on the self. The term "self" is used by different writers and schools of psychology to refer to personality, person, mind, ego, the life theme, "I," and subjective life in general. A review of the extensive literature on the self can be found in R. WYLIE, *THE SELF CONCEPT: A CRITICAL SURVEY OF PERTINENT RESEARCH LITERATURE* (1961). See also, J. DIGGORY, *SELF-EVALUATION: CONCEPTS AND STUDIES* (1966). Roy Schafer has reflected on the diverse usage for the concept of self and found that when "[u]sed this loosely, 'self' is of little use in the quest for clarity of thought." Schafer, *Action: Its Place in Psychoanalytic Interpretation and Theory*, 1 *THE ANNUAL OF PSYCHOANALYSIS* 159, 172 (1973).

For a review of the views on self predating modern psychological formulations, see DIGGORY, *supra*.

The importance of self is found in the fact that ". . . the career of every sentient person is definable in terms of the building and nurturing of a self and of his selfhood." O. TEAD, *THE ART OF ADMINISTRATION* 45 (1951). Lawyers are not engaged only in "saying what the law is, or doing things for clients that involve applying law, because . . . saying or doing 'under law' is involving one's self, necessarily, in the complexity of lego-ethical experience." W. PROBERT, *LAW, LANGUAGE AND COMMUNICATION* 211 (1972).

The process by which one explores self will be referred to as self-scrutiny or self-awareness. For an example of the process of self-awareness employed in the classroom as a method in teaching counseling techniques, see Watson, *Professionalizing the Lawyer's Role as Counselor: Risk-Taking for Rewards*, 1969 *LAW & Soc. ORD.* 17, 29-33. Freeman and Weihofen have assessed the value of self-awareness to effective counseling:

If he is to be really good in the art of counseling the lawyer must know himself, must know his own reactions to various situations and to the people with whom he communi-

notes that lawyers spend too much time looking at the client's side of the relationship and thereby avoid their own feelings as lawyers and as human beings.³⁶ "In the practicing of law," he writes, "one has to find out about the person doing as well as the person done to."³⁷ Self-awareness can be used as the basis for increased awareness of others³⁸ and of the attorney-client relationship in general.

Awareness of the "rhythmic psychological ballet" of interpersonal relationships is hardly possible if one views only the roles we play, and Shaffer's *Legal Interviewing and Counseling* is not so limited. The author explores a number of promising techniques that promise the lawyer greater awareness of interpersonal relations. His fundamental suggestion for achieving greater awareness is the observation of certain aspects of one's own behavior that suggest the need for caution. What can the lawyer look for within himself or herself to indicate the need for greater self-awareness? Shaffer reminds us that barometers of a need for greater awareness include:

- Feelings of discomfort during or after interviews with the client. . . .
- Carelessness and discourtesy toward the client, such as being late for appointments, permitting avoidable interruption, or making appointment arrangements which are inconvenient for the client
- Strong affectionate feelings for the client . . . [especially a client] of the opposite sex
-
- Avoidance of the client and neglect of his case
- Gossip with others about the client
-
- Boredom or drowsiness³⁹

cates . . . [and] he should strive to know himself well enough to be aware of his own sensations, to acknowledge them, and then try to discover the reasons for them. If he can do this, he has at his command a most useful facility for gaining rapport with his client—understanding his own patterns of reaction to the client's emotional vibrations.

FREEMAN & WEIHOFEN, *supra* note 12, at 98-99.

36. LEGAL INTERVIEWING & COUNSELING, *supra* note 1, at 184.

37. *Id.* at 5. "When you want to recognize and understand what takes place in the minds of others, you have first to look into yourself." T. REIK, *THE SEARCH WITHIN: THE INNER EXPERIENCE OF A PSYCHOANALYST* 255 (1956). "No deep insight into human minds is possible without unconscious comparison with our own experiences. The decisive factor in understanding the meaning and the motives of human emotions and thoughts is something in the person of the observer. . . ." *Id.* at 263.

38. Richard Abel, the new editor of the *Law and Society Review*, has called for research in the relationship between lawyers and social change. He asks,

What have been the consequences of the indubitable change in the consciousness of lawyers which transpired during the last decade? How differently do lawyers now conceive of their role? How is this conception affected by background, by law school experience, by the nature of the market for legal services, by work experience? What new institutional forms are available to lawyers who wish to play nontraditional roles, and how effective are each of these structures in advancing social change?

Abel, *From the Editor-Elect*, 10 *LAW & Soc'y REV.* 489, 493 (1976).

39. LEGAL INTERVIEWING & COUNSELING, *supra* note 1, at 204-06.

Shaffer also suggest nonverbal communication, or body language, as another means of increasing awareness.⁴⁰ The study of nonverbal behavior in interpersonal relationships offers the lawyer a valuable analytical tool not only for observation of others but for self-observation as well.⁴¹ The pioneering works of Edward T. Hall⁴² and Raymond L. Birdwhistell⁴³ suggest that body language can be used by the lawyer as a tool to gather fuller meaning of a client's communications. Nonverbal communication permits the perceptive lawyer to gain greater awareness of the underlying feelings and emotions that arise in an ongoing interpersonal relationship.⁴⁴ Body language also can be used in negotiations between lawyers, in attorney-client relationships, and in settings in which the lawyer is interacting with judges and juries.

A second technique explored by Shaffer to analyze interpersonal relations is transactional analysis (TA),⁴⁵ a form of conscious level self-observation that can help the attorney understand his relationships with clients and with others.⁴⁶ TA is both an analytical framework for categorizing individual emotional states during the course of communication and a popularized form of psychotherapy. TA attempts to explain interpersonal relationships in terms of po-

40. *Id.* at 130-33.

41. Useful studies of nonverbal behavior include: M. ARGYLE, *SOCIAL INTERACTION* (1969); R. BIRDWHISTELL, *INTRODUCTION TO KINESICS: AN ANNOTATION SYSTEM FOR ANALYSIS OF BODY MOTION AND GESTURE* (1952); R. GORDON, *FORENSIC PSYCHOLOGY: A GUIDE FOR LAWYERS AND THE MENTAL HEALTH PROFESSIONS* 51, 57-59 (1975); E. HALL, *THE HIDDEN DIMENSION* (1966); E. HALL, *THE SILENT LANGUAGE* (1959); A. LOWEN, *PHYSICAL DYNAMICS OF CHARACTER STRUCTURE; BODILY FORM AND MOVEMENT IN ANALYTIC THERAPY* (1958); *NON-VERBAL COMMUNICATION* (R. Hinde ed. 1972); J. RUESCH & W. KEES, *NONVERBAL COMMUNICATION: NOTES ON THE VISUAL PERCEPTION OF HUMAN RELATIONS* (1956); A. SCHEFLEN, *BODY LANGUAGE AND THE SOCIAL ORDER: COMMUNICATION AS BEHAVIORAL CONTROL* (1972); Allen, *The Dynamics of Interpersonal Communication and the Law*, 3 *WASHBURN L.J.* 135, 173-75 (1964).

42. See, e.g., E. HALL, *THE HIDDEN DIMENSION* (1966).

43. See, e.g., R. BIRDWHISTELL, *INTRODUCTION TO KINESICS*, *supra* note 41. The popularized version of the Hall and Birdwhistell findings was presented in J. FAST, *BODY LANGUAGE* (1970).

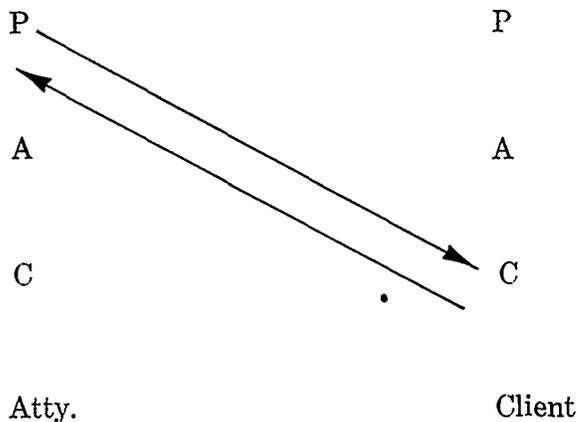
44. A. WATSON, *THE LAWYER IN THE INTERVIEWING AND COUNSELING PROCESS* 53-69 (1976).

45. *LEGAL INTERVIEWING & COUNSELING*, *supra* note 1, at 229-33.

46. A popular guide to transactional analysis that lawyers should find useful is T. HARRIS, *I'M OK—YOU'RE OK: A PRACTICAL GUIDE TO TRANSACTIONAL ANALYSIS* (1966). Both Harris and Berne have identified sufficiently the basic characteristics of the Parent, Adult, and Child ego states and have demonstrated that they easily are learned by individuals unskilled in psychotherapy. Once the Parent, Adult, and Child modes in which communication is initiated and received are identified, communication can be affected by making a conscious effort to change the ego state. The Parent, Adult, and Child ego states are somewhat analogous to the superego, ego, and id of the structural theory presented by Sigmund Freud. As Berne has noted, "script analysis is Freudian, but it is not psychoanalytic." E. BERNE, *WHAT DO YOU SAY AFTER YOU SAY HELLO? THE PSYCHOLOGY OF HUMAN DESTINY* 58 (1972).

tential ego states from which communication (and action) are transmitted and received.⁴⁷ A content analysis of interpersonal communications led Eric Berne, the founder of transactional analysis, to develop a classificatory scheme that can provide insight into message communications. Berne observed that all communications take place from either a Parent, Adult, or Child ego state. The Parent, Adult, and Child ego states were found to be common in both the initiating and the responding communication. All interactions can be diagrammed as stimuli and responses between ego states.

The paternalism reflected in many traditional attorney-client relationships would be diagrammed:



The patterns of interaction derived from extended communication and behavior between Parent (P), Adult (A), and Child (C), ego states constitute "games"⁴⁸ and collectively make up the individual's "life script."⁴⁹ Participants in the interaction must analyze only the content of their communication and, unlike other forms of psychotherapy, not its underlying motivation.

47. See E. BERNE, *TRANSACTIONAL ANALYSIS IN PSYCHOTHERAPY: A SYSTEMATIC INDIVIDUAL AND SOCIAL PSYCHIATRY* 17-20, 22 (1961).

48. *Id.* at 23. For an examination of a variety of these "games," see E. BERNE, *GAMES PEOPLE PLAY: THE PSYCHOLOGY OF HUMAN RELATIONSHIPS* (1964).

49. The term "life-script" was used by Berne to denote the repetitive nature of the "games people play." Berne described the life-script as "an going life plan formed in early childhood under parental pressure. It is the psychological force which propels the person toward his destiny, regardless of whether he fights it or says it is his own free will." E. BERNE, *supra* note 46, at 32. Individuals "carry their scripts and their counterscripts around in their heads in the form of Parental voices telling them what to do and not do, and the aspirations in the form of Child pictures of how they would like it to be, and among the three of them they put their shows on the road." *Id.* at 53. See generally C. STEINER, *SCRIPTS PEOPLE LIVE: TRANSACTIONAL ANALYSIS OF LIFE SCRIPTS* (1974).

Two threshold questions in the effort to increase attorney self-awareness are whether lawyers have special needs that are fulfilled by practicing law and whether these needs, conscious and unconscious, may bring individuals into the profession.⁵⁰ The emotional gratification that lawyers derive from their professional role as lawyers has not been explored fully.⁵¹ The very nature of professionalism, however, suggests that lawyers are involved intimately with power and control within society. Myers McDougal recently described the central aspect of the practice of law as being a "specialist on authority and control."⁵² McDougal further notes that

[t]he function of the lawyer is to assist in the establishment and maintenance of the totality of a community's public order—reduce the number of decisions taken by mere naked power, to manage authority and control in a way that will maximize the production and sharing of all values, and to increase the civic domain in which people are free from all forms of coercion.⁵³

Ironically enough, individuals may select law as a profession in response to unconscious emotional needs.⁵⁴ Andrew Watson has found that law becomes one's vocation in part "because it gives them [lawyers] opportunities to operate from a position of power and authority, as they organize, conceptualize, and manipulate the social forces known as law."⁵⁵ Beyond the power drive, Watson found

. . . a powerful desire to be helpful to others and thus secure a supply route to sources of approval, affection, or love. All human beings need such guarantees of attachment to the group, and professional activities are one of the surest sources of supply for this need.⁵⁶

Watson also observed "the wish to create orderliness in ideas, institutions, and relationships"⁵⁷ and noted that "perhaps some of this need for order, still rests latently in most, where it may occasionally cause problems through forcing premature decisions about clients, their needs, and their wishes."⁵⁸ Finally, Watson ascribed to the

50. LEGAL INTERVIEWING & COUNSELING, *supra* note 1, at 194-206; see Reisman, *supra* note 18, at 131.

51. An exception is Leete, Francia, & Strawser, *A Look at Lawyers' Need Satisfaction*, 57 A.B.A.J. 1193 (1971) (discussed in *Legal Interviewing and Counseling* at 196-200).

52. McDougal, *Beware the Squid Function*, 1 LEARNING AND THE LAW 16, 18 (Spring 1974).

53. *Id.*

54. See Nachmann, *Childhood Experience and Vocational Choice in Law, Dentistry, and Social Work*, 7 J. COUNSELING PSYCH. 243 (1960); Thielens, *Some Comparisons of Entrants to Medical and Law School*, 11 J. LEGAL ED. 153, 159-63 (1958).

55. Watson, *The Lawyer as Counselor*, 5 J. FAM. L. 7, 9 (1965).

56. *Id.* at 10.

57. *Id.*

58. *Id.*

attorney a wish for certainty and order that becomes additional "psychological components of the lawyer's self-image"⁵⁹

The personality of the lawyer also plays an influential role in the attorney-client relationship and in the resolution of legal problems.⁶⁰ For example, Robert Redmount has noted that the attorney

. . . may seek to induce his client to take demanding action, conciliatory action, or no action at all. He may inspire his client to more or less militancy. He may stress the opportunity, or lack of it, for economic gain or recoupment. Or he may argue the virtues of personal and moral integrity. He may counsel his client to conciliatory behavior, whether from personal conviction and disposition or because of crass or stern professional judgments about the client's situation. He may handle his adversary contentiously, with tact and consideration, with contempt, or with fear. He may be amiable toward him, or hostile and suspicious. He is, withal, a tactician, but one whose dispositions and judgments must reveal something of the predominating personality that lies within.⁶¹

By coming to grips with the subjective impact of one's self on the attorney-client relationship, Shaffer contends, the attorney can avoid "the peril of being manipulated" by his or her own personality.⁶²

Shaffer's concern with self-awareness is an integral aspect of his humanistic approach to the practice of law, which emphasizes the growth and development of the client and the attorney as individuals. The focus throughout Shaffer's work is that the lawyer is a unique being whose personal significance lies both within and beyond the legal profession. An integral aspect of the humanistic approach to law, lawyers, and law practice is the need to achieve greater self-insight, insight into the interrelation of self to others, and insight into the relation of self to society and of society to self. Through awareness, Shaffer maintains, lawyers attain the necessary knowledge to become humanistic counselors.

The essential problem is that a lawyer's legal education and training "does not necessarily make him an educated man," for his specialist knowledge may be of only limited influence on the formative aspects of decision-making and largely "unrelated to true self-knowledge."⁶³ Harold Lasswell, one of the foremost interdisciplinary

59. *Id.*

60. LEGAL INTERVIEWING & COUNSELING, *supra* note 1, at 301-02.

61. Redmount, *Attorney Personalities and Some Psychological Aspects of Legal Consultation*, 109 U. PA. L. REV. 972, 973 (1961). *See also* Redmount, *supra* note 8, at 83-84.

62. LEGAL INTERVIEWING & COUNSELING, *supra* note 1, at 301. *See generally* WATSON, *supra* note 44, at 29-31, 42, 79-88, 93-113, 154.

63. A. MITSCHERLICH, *SOCIETY WITHOUT THE FATHER: A CONTRIBUTION TO SOCIAL PSYCHOLOGY* 17 (1969).

legal scholars, has stated that the purpose of self-scrutiny is the clarification, formulation, adoption, and employment of "procedures whose principal role is to prepare the thinker to endure or attain a higher level of rationality."⁶⁴ He further observed that "[i]f rationality includes the notion of freedom of choice and hence of freedom from obsession and compulsivity, it is obvious that rational thinking requires the use of appropriate procedures by means of which the thinker obtains access to pertinent facts about the Self."⁶⁵

The process of gaining increased awareness has both theoretical and practical implications for the lawyer⁶⁶ and for the jurisprudential scholar.⁶⁷ The first goal of self-awareness, then, is to liberate the practice of law and the legal decision-maker from influences that are not readily obvious. The underlying premise is that factors out of awareness affect both the process and the end product of one's participation in the legal system.⁶⁸ An awareness of the role that these conscious and unconscious factors play in legal decision-making is essential, therefore, for any attorney concerned with decisions in-

64. Lasswell, *Clarifying Value Judgment: Principles of Content and Procedure*, 1 *INQUIRY* 87, 96 (1958).

65. *Id.* at 92.

66. Some of these implications have been enumerated by Meltsner and Schrag: Analysis of the interpersonal transactions between students, clients and other actors in the legal process may serve a variety of ends, such as enabling students better to predict and control their actions in a professional context; sensitizing them to social cues and non-verbal communications; helping them to be aware of their own anger, passivity, concern, distrust and other feelings about lawyering and of how those feelings affect what they do.

Meltsner & Schrag, *supra* note 11, at 585; cf. Kelso, *Steps Toward a Lawyer Oriented Jurisprudence: Problems, Promises, Procedures, and Pitfalls*, 19 *U. FLA. L. REV.* 522 (1966-1967).

67. The role of self-scrutiny should be obvious if

. . . what we think of as theories are in fact personal orientations to all or part of reality. No matter how impersonally phrased, a theory has its origins in an individual faced with an array of phenomena. It is only this that permits a difference of opinion about theories along with full accord on the facts. In this view, logical implication is not a property of propositions but of a relationship between proposition and person. A theory is always an ordering of facts into figure and ground, important and unimportant, and such as ordering may follow from personal predilections and emotional investments as well as from the dictates of reality.

Church, *Language and the Discovery of Reality*, in *LAW, LANGUAGE, AND ETHICS* 918 (W. Bisbin & C. Stone eds. 1972).

68. Personal unconscious biases are perhaps the best example:

Unconscious biases act like filters between our perceptions and our intellects. They enable us to screen out observations that do not fit in with our preconceived notions and to see causal relationships where none exist. Worst of all, they blind us to their own presence so that we are quick to defend our erroneous hypotheses with shouts of "I saw it with my own eyes!"

A. WEIL, *THE NATURAL MIND* 9 (1972).

volving important value preferences.⁶⁹ Greater awareness through self-scrutiny serves not only as an analytical tool to the lawyer and scholar but produces benefits separate and apart from any professional use. Karen Horney, founder of a major school of psychoanalytic thought, has pointed out that

[a]ttempts at constructive self-analysis can be important in the first place, for the individual himself. Such an endeavor gives him a chance for self-realization, and by this I mean not only the development of special gifts that he may have been inhibited from utilizing but also, even more important, the development of his potentialities as a strong and integrated human being, free from crippling compulsions.⁷⁰

Another observer, George Wald, has concluded that "[o]ne cannot examine what is going on in the self without the examination's being a new experience, enlarging and changing the self that is under observation."⁷¹ A likely direct and natural result of this process of self-scrutiny is movement toward the maximization of human potentialities.

One of the most challenging tasks for the lawyer, and for any individual, is the realization of full potential growth as an individual human being. The task is made more difficult because of our professional status as lawyers. A number of questions are raised by the lawyer's quest for self-realization. What kind of impediments does the practice of law create for psychological growth?⁷² What meaning do we attach to law practice and how does that meaning affect our psychological growth? How can we perform as lawyers and

69. The ultimate barrier in decision-making is lack of awareness. This is generally true whether the decision-making is individual or organizational in nature. In the case of organizational decision-making the term refers simply to the inability to know all of the options or alternatives that would be workable. This may result from a failure in organizational communication or simply from inadequate generative means for securing the information. Similar factors are present in individual decision-making in that barriers arise from the psychological defense mechanisms that have the adaptive function of fitting the individual for his or her day-to-day existence. See generally, A. FREUD, *THE EGO AND THE MECHANISMS OF DEFENCE* (1946) (summarized in Allen, *supra* note 41, at 164-69). A description of a human relations training program for law students using both small groups and individual psychodynamics can be found in Sacks, *Human-Relations Training for Law Students and Lawyers*, 11 J. LEGAL ED. 316 (1959).

70. K. HORNEY, *SELF-ANALYSIS* 10 (1942).

71. Wald, *Determinancy, Individuality, and the Problem of Free Will*, in *NEW VIEWS OF THE NATURE OF MAN* 16, 41 (J. Platt ed. 1965).

72. The practice of law presents special problems that may act as obstacles to growth. Lawyers live their work; thus the cliché that the law is a "jealous mistress." Lawyers' lives tend to be crowded, rushed, and complex, characteristics that in turn interfere with their ability to see who they are, what they do, and where they are going. Success in the status-prestige game tends to blind lawyers to "what is going on in the real world." (How can lawyers experience success without being caught up in it?) Finally, the profession subjects lawyers to stress (physiological and psychological), which further isolates them from the inner self.

grow psychologically and interpersonally? Can lawyers achieve congruence in their personal and professional lives?⁷³ Can humanistic legal education be used to promote the lawyer's quest for self-actualization?⁷⁴ Will the legalistic paradigm continue to structure the attorney-client relationship?⁷⁵ Professor Shaffer had not answered nor attempted to answer such questions in *Legal Interviewing and Counseling*. He has provided, however, a theoretical and practical frame of reference for exploring the psycho-social aspects of law practice, the lawyer as an individual, the lawyer as a professional, and the lawyer as individual and professional in society.⁷⁶

73. The following discussion seems to present the most salient points of concern: [E]ven if on balance the role-differentiated character of the lawyer's way of thinking and acting is ultimately deemed to be justifiable within the system on systemic instrumental grounds, it still remains the case that we do pay a social price for that way of thought and action. For to become and to be a professional, such as a lawyer, is to incorporate within oneself ways of behaving and ways of thinking that shape the whole person. It is especially hard, if not impossible, because of the nature of the professions, for one's professional way of thinking not to dominate one's entire adult life. Thus, even if the lawyers who were involved in Watergate were not, strictly speaking, then and there functioning as lawyers, their behavior was, I believe, the likely if not inevitable consequence of their legal acculturation. Having been taught to embrace and practice the lawyer's institutional role, it was natural, if not unavoidable, that they would continue to play that role even when they were somewhat removed from the specific institutional milieu in which that way of thinking and acting is arguably fitting and appropriate. The nature of the professions—the lengthy educational preparation, the prestige and economic rewards, and the concomitant enhanced sense of self—makes the role of professional a difficult one to shed even in those obvious situations in which that role is neither required nor appropriate. In important respects, one's professional role becomes and is one's dominant role, so that for many persons at least they become their professional being. This is at a minimum a heavy price to pay for the professions as we know them in our culture, and especially so for lawyers. Whether it is an inevitable price is, I think, an open question, largely because the problem has not begun to be fully perceived as such by the professionals in general, the legal profession in particular, or by the educational institutions that train professionals.

Wasserstrom, *supra* note 22, at 15.

74. See Savoy, *supra* note 19; J. Himmelstein, Reassessing Law School—An Inquiry Into the Application of Humanistic Educational Psychology to the Teaching of Law (unpublished paper presented at Society of American Law Teachers Conference, Dec. 3-4, 1976).

75. Events of recent years raise the possibility that legalism as a world view may be subject to further attack. One must surely question whether the traditional images and symbols of the practice of law are secure. Are such images currently providing form and meaning for significant numbers of law students? Are we watching the demise of the paradigm of legalism via the public-interest lawyer who identifies with a *cause* and *clients* instead of the legal establishment? Can legalism survive the influx of women who, after years as token figures in our profession, have a different image of their potential life in law? Can the masculine orientation (hard, tough, "cool," rational) survive an androgynized legal profession?

76. The task of evaluating and critically scrutinizing the lawyer's role in society is in its infancy. One layman, Daniel Berrigan, has argued that professionals "must ask themselves if they are responding to the needs of people for medical care or legal assistance or spiritual energy—rather than giving them a hypnotically pacifying ritual." D. BERRIGAN, THE

Shaffer suggests a new paradigm for law practice that is not based on rigid control of clients in an impersonal attorney-client relationship. He argues forcefully that disregard for the client's emotions ignores important "facts" that can be used in the law office and the legal process. Shaffer's work suggests the possibility of gaining personal satisfaction and of providing more adequate legal services by actively counseling and understanding clients. Such a humanistic approach to the practice of law can be rooted only in an awareness of the psychological and social defenses erected against both the attorney's clients and the attorney's impact on society. Attorneys must learn to deal with the human emotions and feelings of clients primarily through managing their own greatest fear—the fear of knowing who they truly are. Shaffer's prescription for law practice allows attorneys to ground and center themselves in "authentic" human experience through their work with clients. *Legal Interviewing and Counseling* offers a preliminary blueprint for that process.

GEOGRAPHY OF FAITH: CONVERSATIONS BETWEEN DANIEL BERRIGAN, WHEN UNDERGROUND, AND ROBERT COLES 103-04 (1971). This question cannot be approached until the legal profession and the "lawyering" role are submitted to fuller scrutiny and evaluation.