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Lawyers, Counselors, and Counselors at Law

by Thomas L. Shaffer

Few lawyers make good counselors, but few counselors would make good lawyers. Because a lawyer's training stresses aggression and order and a counselor's training emphasizes acceptance and understanding, it is difficult for the two to work together. But for the best interests of the client, the two fields must learn to work together and borrow ideas and skills from each other.

MOST LAWYERS often act as counselors. Prof. Harrop Freeman's survey, *Counseling in the United States* (1967), suggests that some lawyers spend as much as 80 per cent of their professional time in what they classify as counseling—talking with clients on subject matters that do not result in documents, lawsuits, or negotiations with third persons. The average lawyer spends about a third of his time in counseling. As the nature of the profession changes under various no-fault reforms in traditional fields of litigation, lawyers of the 1980s probably will spend even more of their professional time in counseling. This professional activity is probably already the largest consumer of a lawyer's time; it clearly will become even larger in the next five years.

Counselors in nonlegal fields generally share a common professional identity. They range from employees of the neighborhood school, who help children make decisions, and social workers in the county welfare department or legal aid office to polished professionals—psychologists and marriage counselors—who dress and talk like lawyers and doctors, inhabit offices, charge fees, and seek to establish comity and areas of common interest with the legal profession. These counseling professions provide insights and models, literature, and formidable experience for lawyers. They also are beginning to feel enough professional muscle to ask that lawyers not invade their professional territory; they seek to negotiate with lawyers for standards of proper function and guidelines for referral. In many ways the counseling professions ask for the understandings that property lawyers made with bankers, accountants, and insurance underwriters.

So counselors at law have two agenda in this modern climate.

One goal is to establish an appreciation of counselors that lawyers thoroughly accord physicians and that most lawyers accord some insurance men. This aim may be in part in the interests of peace, but a more important reason is the welfare of clients. There are areas in which psychologists, marriage counselors, and social workers can do our clients more good than we can. We need to learn how to recognize these areas, how to respect the competence of other counselors, how to refer a client to them with ease and with some assurance that the client will follow our advice. The other goal for counselors at law is the development of counseling skills within the law office.

These two objectives can be pursued by the appreciation of psychological realities that have been formally neglected, although informally respected, in the training and continuing education of lawyers.

Lawyers are counselors—some of them are good counselors; some are bad. Most of the attitudes they bring to their professional training are poor attitudes for counselors, and most of their training in law school is useless training for counselors. The lawyer in me sees myself, whether I admit it or not, as an expert in aggression. Law—I was told when I was admitted to the bar—is the difference between a debate and an alley fight. My aggression is sanctioned, licensed, and sanctified aggression, because it is better than a fist fight. Law is an alternative to chaos, and I am a specialist in this alternative.

Order Is a Way to Control Aggression

The lawyer in me prizes order. I need to get things lined up. That is probably because, although I am aggressive, I am also afraid of aggression. Order and lots of words are ways to get aggression under control. I am also concerned about being accepted and liked. I am concerned that my professional bent—the bent toward aggression and order—not make it impossible for people to get close to me. I may, because I am so articulate and orderly, deny that need, but I feel it.

These points are illustrated in the following law students' insights into themselves as counselors:

A law review problem has a beginning, footnotes, and, eventually, an end. But when you get into the subject of yourself and others, you get into a problem that has no end, no pat answers, and a great deal of pain from time to time.

* * *

I find in myself the tendency not to listen to what someone is telling me. When I reply to what the other person has said, I find that I am not being responsive; I have not "read" what the other is saying. I think I know why. I feel I have been so concerned about what I will say next—or so concerned at whether what I will say will sound good—that when it comes time for me to respond I can't, because I haven't listened.

* * *

Not listening is part of it. There's another part, too. I find that at times I say things not because I feel strongly about them, but because I think they are what the other person wants to hear. I have thought about this problem, too, and I think it arises from my own strong desire to be accepted by the other person or by a fear that he will reject me. I don't have enough confidence to think that other people will accept me for what I am and, as a result, I try to be something that I am not.

* * *

I had an interview with a lawyer from a large Wall Street law firm. I was not impressed with that lawyer's keen mind nor with his personality. He seemed to be more interested in impressing the midwest farm boys than in me as a person or as a candidate for an associate member of his firm. I'm sure he must be accustomed to thinking of the associate as a machine and not as a person.

The traditional ideal of a lawyer is one of a person who is sharp, objective, takes charge, and wins arguments. The ideal of a counselor, as Carl Rogers puts it, is of someone who is accepting, understanding, and congruent. The two ideals are not entirely compatible. Lawyers suffer some difficulty in reconciling them. Maybe, as a result, we lawyers often function poorly with people. Let's consider the clash more specifically by comparing seven dimensions between lawyers and counselors:

<u>lawyers are:</u>	<u>counselors are:</u>
Conscious of facts (keep your eye on the ball)	Perceptive (conscious of human facts)
Conscious of relevance (only the key facts, please)	Empathic (feel what the client feels) and congruent (aware of their own feelings)
Comprehensive (leave no stone unturned; be prepared)	Careful listeners (try not to miss what's in the room)
Foresightful (be aware of the consequences; plan ahead)	Resilient (recover quickly, stay in the room)
Verbally sophisticated (be accurate in expressing what you think)	Open (are accurate in expressing what they feel)
Orally aggressive (win your arguments) and	Reflective (understand what is said) and
Thorough (get the job done).	Accepting, caring (try not to learn how to face a problem as much as how to face a face).

Counselors are perhaps softer people. (I was trained and trained well, and loved being trained, as a lawyer;



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I find that I am a softer person since I started invading psychological territory.) Nonlegal counselors seem skeptical about lawyers and even about the law. The law seems formal, insensitive, rigid, and inhuman. Lawyers are manipulative, overbearing, and sneaky. (Lawyers who can withdraw to objective perspective on their environment can sense sources for those feelings around the courthouse.) But the description also suggests the possibility that counselors who feel that way about law and lawyers are using the law and lawyers as movie screens for their personal projections. A resentful counselor has a tendency not to see himself in anything as demanding as the law and in anyone as competent and self-assured as the average lawyer. This is a way for him not to see the unbending, sneaky, aggressive, orderly, and insecure parts of himself. It is easier to see unappealing qualities in other people, in systems, or in law itself.

Law Students React to Self-Awareness Training

This point about projection has its parallel in lawyers who are asked to develop counseling skills in their preparation for the bar and to look into themselves. Here are some student reactions to self-awareness training in law school:

All I can say is that I get nothing out of this stuff, except maybe the fear that I am being analyzed. And I am lost as to *why* I am being analyzed. I see no reason, purpose, goal, or objective.

* * *

One of my classmates said this about another of my classmates: "He was able to see right through my personality shell." My reaction was anger. I felt that *I* was found out. After thinking about that incident, I am a little scared by that student. Are we dealing with total openness and honesty with the client or do we learn how to use psychological skills on him? Even before getting into reinforced behavior, which bothers me, things like body language can get a little creepy. I think the ad-

vancement in psychological skills must be contemporaneous with re-emphasis on respect for the client's human dignity. Carrying things to one extreme, my mind boggles at that horrible bit of purging of Alex's violent tendencies in *Clockwork Orange*.

* * *

I suppose that if I want someone to come to me and open himself up, I must be willing to open myself up in the sense that I care so much about this individual and convey this to him so that he will have no hesitancy in disclosing himself to me. In order to tear down the barriers between him and me I must first be willing to tear down some of my own personal barriers.

* * *

Do you mean the lawyer should open up the client's psyche? Is he trained to do that? [He made the human spirit sound like a gall bladder.] I don't think clients go to lawyers for psychoanalysis. Clients want advice on a legal problem. I find it difficult to reconcile that with my own concept of what a lawyer does. If we have the tools to fix a situation, we should use them. If we don't have the tools, I still don't think we should leave the nail hanging in the wall, but we should find somebody else—somebody who can do the job.

* * *

Ordinarily when a problem crops up in the domestic relations area, emotions are involved and there has been some severe trauma. The lawyer's attempt to manipulate the client into saying what is "really" the matter may have disastrous effects.

* * *

More than that is involved. I may not have the time needed to do any type of effective job. The approach you seem to suggest also indicates distrust of the problem the client states he has. He may feel threatened by questions he believes are none of my business. The client may close up or get out entirely.

"We Close Out the Effectiveness of Ourselves"

There seem to be resistances in counselors to the skills we lawyers traditionally have tried to develop in ourselves and resistances in lawyers to the counseling skills that counselors value and that seem to be important in preparing for the law practice of the future. The psychological reality in these resistances, I think, is internal; the counselor in me is afraid of the lawyer in me, and vice versa. The lawyer is afraid to let himself be soft; the counselor is afraid to let himself be sharp. Part of our interprofessional problem is that we cut off the effectiveness of one another, but the heart of it is that we close out the effectiveness of ourselves.

The consequence of these psychological currents is a diminished respect for what a nonlegal counselor can do. But it begins with a diminished respect in the lawyer for what the lawyer can do. I suspect that we will not call honestly for help from marriage counselors, for instance, until we begin to be honest about what we are doing with our clients, what we could do if we tried, and what our limits are. And a marriage counselor will not begin to respect the qualities a lawyer can bring to domestic relations cases until he begins to have respect for the rational, orderly, and manipulative side of himself.

Carl Jung taught that one human person contains within himself most of the kinds of people there are. Jung talked about the psychological functions by using a cross image of vertical and horizontal functions. One of these was a vertical thinking-feeling axis.

A person operates habitually at some point on that axis, and each person is able to operate at other points. Thinking is the function that tells him what things are. Feeling is the function that tells him what things are worth. The lawyer side of me operates at the thinking end; my counselor side operates at the feeling end. I, as a whole person with free choices, can operate at almost any point on the scale. When I see my own strengths, especially those strengths I do not use habitually, I am able to respect and to gain from somebody else whose habitual function is elsewhere on the scale. That is where my lawyer respects your counselor, and my counselor respects your lawyer.

The horizontal axis is a sensation-intuition axis. Sensation is receptive of the world as it is presented to the senses. Using this function is a matter, as I was told in law school, of keeping your eye on the ball. Lawyers are supposed to be good at it. We are supposed to be sharp—not to miss things that are there to see.

Intuition, Jung said, is the ability to see around corners. It is an altogether softer function. Popular culture usually attributes it to women and treats it as a mystical consequence of bearing children. My lawyer operates well on sensation; my counselor is intuitive. If I respect my intuition, though, I will respect intuition in others—even in clients. And if I respect my lawyer, I will realize that it is useful to see what is right in front of me.

Counselors and lawyers therefore complement one another. Just as a professional and his client complement one another and just as the infinite possibilities within a human person—a counselor at law, for instance—complement one another, teach interprofessional respect, and make it possible for him to go on growing. ▲

Lawyer-Pilots to Meet

THE Lawyer-Pilots Bar Association will meet August 7-10 at the Playboy Club, Lake Geneva, Wisconsin. The seminar portion of the program will include a trial demonstration of an aviation accident case. The meeting chairman is Jack MacManus, 235 King Street, Madison, Wisconsin 53703 (telephone 608/257-7103).

The Lawyer-Pilots Bar Association is composed of lawyers who are pilots, but practice in aviation law is not required for membership. Information concerning membership may be obtained from Donald R. Krag, Box 427, Alhambra, California 91802 (telephone 213/282-1164).