

# An Inquiry Into Legal Counseling

Robert S. Redmount\*

Legal counseling, in the larger sense of the term, refers to the broad range of consultation lawyers can provide clients. This may be in a number of contexts (law offices, community boards, courtrooms) and may involve a variety of functions (planning, advice, legal action). In a narrower sense legal counseling is that group of particular attitudes, skills, and strategies that a lawyer utilizes mostly in his office to help individual clients to meet specific needs and resolve specific problems. This is the sense in which legal counseling is used throughout this presentation.

An inquiry into legal counseling seems appropriate at the present time because of increasing general concern about how professions operate, to what end and with what effects. Further, there is some sentiment that an understanding of the lawyering function and lawyering process in the context of lawyer-client transactions has been eclipsed by concerns about the authoritative operations of law in more visible and accountable legal institutions, most notably the courts. And, it may be noted, clinical legal education also has raised consciousness of lawyering, including legal counseling, as a process, through the exposure of law students to what lawyers in fact do. The time is ripe for some conceptual framework, or several of them, through which to understand the character of legal counseling, its aims and methods, and the competences that make it a viable and important form of problem solving and service to human needs.

## I. THE CHARACTER OF LEGAL COUNSELING

### A. *Implicit Political and Legal Philosophy*

Legal counseling does not occur in a vacuum. It operates in a context and it is not just legal. It is a form of political control, or, as a directed activity, it participates in a process of political control. The lawyer, in one sense, is an instrument for the translation and utilization of law, and of appropriate response to it, by citizens otherwise engaged in the pursuit of their private affairs. Law, the standard and the directive, impinges or may impinge, and lawyers

---

\* Ph.D. Clinical Psychology, New York University, 1949; J.D. Yale Law School, 1957.

are utilized to maximize or minimize the effects of law on personal well-being and on different kinds of transactions.

The counseling process is more subtle or more difficult than it might appear to be. Clients are typically not directly interested in knowing or upholding the law; their concern is how the operation of law does or may affect them. Their need for a lawyer may involve, from their point of view, the circumvention or subversion of law, or the extension or elasticization of it, to ends that are questionable in the pursuit of justice or in the upholding of principles of law. Lawyers, in the normal conduct of their professional activity, are servants to two masters whose interests may be disparate. The lawyer, in the purview of society and in the eyes of his client, upholds and properly implements the law; but the lawyer also contracts with a client to serve the latter's interests as best possible. The "best" service views law as a matter for dispensation, but "proper" counseling requires that the law be respected and upheld. Political control, then, is a matter of whose wants and whose philosophy guides the legal counseling process. Is it society's, that seeks order, fairness, and regularity by the dictates of its laws, or is it the client's, who seeks self-service and advantage or protection, or is it the lawyer's, who may lean toward either or both of his masters?

In the context of a two-party relationship, lawyer and client, political control may be understood differently. Here, issues of temperament, strength of desire, knowledge, and wealth or social position may determine who, in effect, "controls" the counseling process or whether it is a consensual undertaking. The fact that the client consults the lawyer for his expertise initially seems to direct control to the lawyer, based upon the latter's fund of special skills and knowledge. However, this may be license only for narrow purposes—to clarify and explain, and perhaps later execute—and the matter of ultimate control may be determined by which priorities govern: client intentions, lawyer's self-perceived role, the urgency of legal parameters, decision complexities extending beyond legal considerations, personal and additional professional resources and judgments, or psychological dispositions in matters of problem-solving and decision-making.

The implicit or explicit espousal of legal philosophy and of consultation philosophy by the lawyer also provides a kind of infrastructure for the character and methods of counseling employed by him. The lawyer who is highly disposed to legal analysis, and this is the essential character of most legal training, commits him-

self to counseling as a matter of applying (client) facts to the law as it governs. There is then an extrapolation of what is possible for the client, at least in legal terms. The lawyer here views law as authority and himself as its agency. Counseling is characterized by the rigor of analysis or, at the very least, it is an analytical method grounded in logic and in law.

The lawyer whose stronger disposition is to help clients, and it is the strength of his psychological disposition and/or social experience that probably tilts him in this direction, engages in the process of facilitation and realization for the client. To this end, the lawyer contemplates the law as one of many considerations that bear on attaining maximum benefit for the client. His counseling reflects greater concern for end results than for procedural dogmas, and for the primacy of client interest perhaps more than the primacy of legal authority and constancy.

Legal counseling is an exercise in value choices; in the choice between equality and authority, between historical tradition and immediate needs and circumstances, between transcendent social values and immediate private preferences, between possibility and compulsion, between humanistic concern and the values of rigor and discipline, between concern for self and concern for others, between self-limiting honesty and self-aggrandizing seeking, between the exercise of power and the predominance of humane concern, between change and constancy, and the list of opposites could go on. The tendency to view counseling as a simple ministerial act or an essentially technical exercise misses the richness and complexity of the choices and interchanges in value that go on, both procedurally and substantively, as the enterprise is transacted from beginning to end by lawyers and clients.

On the matter of value perspectives one may observe another source of emphasis or distortion that characterizes legal counseling, typically conducted in privacy, as a quite different enterprise from legal advocacy, conducted mostly in public and especially in the courts. The purview of legal counseling is typically the self-oriented perspective and private needs of the client. It is these, in the aggregate, that tend to determine the subject matter of counseling and, at least to a degree, the attitudes and methods that will be utilized to deal with (process) the subject matter. Missing is a public view of legal counseling analagous to the public view of and interest in social problems and legal institutions that affect everybody. Little is observed about procedural safeguards, or the propriety of inter-

ests, or the representativeness of issues defined in counseling. Problems and methods in dealing with the law may be defined differently in the law office than in the courts and legislatures, especially if there is no problem progression from the law office to some more public forum. The scope of problem definition and treatment is, in a social sense, probably narrower in legal counseling, but these concerns are also likely to be more detailed and intimate. In a sense, legal counseling provides a view of social and political problems from a massive territory funneling upward rather than from a majestic perch—courts and legislatures—emanating downward. The contrast is a fit subject for inquiry into political and social process and into the character of legal and political decision.

#### *B. A Form of Intervention in Client Affairs*

Lives in being are dynamic and evolving. When, for instance, a husband and wife contemplate the purchase of their first home—on its face a simple act—they affect their economic condition by contracting for debt financing. Debt payments may result in some economic scarcity in their lives. Purchasing a home may also involve social upheaval and uprooting from an established community of relationships and interests. The uprooting may affect not only the immediate purchasers of the home but also their family. Children in the family may feel politically disenfranchised, so to speak, in a new and alien community. The contemplated move may produce tensions between spouses and within the family, especially if there is some residual of conflict and uncertainty about such drastic change.

The point at which a lawyer is consulted to investigate the legal protections and the legal procedures required in a real estate transaction represents a significant intervention in client affairs. Neither lawyer nor client may appreciate the extent to which a seemingly simple and straightforward real estate transaction can affect client economic, social, political, psychological, and physical well-being. These are matters that bear investigation, in counseling, if risk and prudence are to be considered in determining the client's best interest and whether and how to proceed with legal undertaking.

The spectrum of intervention may range from the restrictedly narrow and technical to the speculatively broad and inclusive. One view of lawyer's intervention is that it should evidence a self-restricted concern to that which is specifically legal. If a party contemplates the purchase of a home the uncertainties relating to the

transaction are in the party's private domain. The lawyer's only substantial concern is to see that the client has been thoroughly protected legally and that legal requirements are properly executed. The broadest view of legal counseling, on the other hand, contemplates that a lawyer help his client to more fully comprehend his circumstances and the likely risks and effects of a contemplated (legal) transaction, that lawyer and client evolve a decision that is fully cognizant of various client circumstances and considerations, and that the lawyer implement a decision that has thoroughly reflected and probably balanced the client's interest.

Does it make a difference, in terms of client well-being, not only when a lawyer intervenes in client affairs but also how he intervenes? The 'when' of intervention is characteristically the client's initial choice. If the client chooses to consult a lawyer early in the consideration of a home purchase then perhaps the client contemplates that the lawyer will aid in refining problems and issues in home purchase and will do more than act ministerially. On the other hand, the client's choice of a late lawyer entry into the matter of home purchase may contemplate that the lawyer's technical services are sought more than his reflectiveness, breadth of knowledge, or analytical skills. It could also be, of course, that the client contemplates the lawyer more in technical than advisory terms because he is not aware of (does not think it necessary to consider) all of the ramifications of the contemplated change he will affect in his life; or, he does not regard a lawyer as an appropriate person to consult on these matters. This raises the interesting point of the lawyer's professional obligation, if any, to inform or try to inform the client of the nonlegal consequences that his contemplated legal action may invite.

The matter of how, as distinguished from when, a lawyer intervenes in client affairs does make a difference. Husband and wife, in the case of a new home purchase, may have doubts about their psychological and economic readiness to purchase a home. There may be conflict between them with the husband being more assertive about the matter and the wife being more reticent and less articulate. Since husband and wife ostensibly come to a lawyer to determine legal protections and legal procedure in a home purchase a lawyer may, with some legitimacy, proceed directly to the issues in negotiating a contract to purchase a home and, ultimately, he may arrange for closure of the deal. He has, in a very narrow sense, provided a legal service and, without doubt, it is a technical service

that he may feel entirely secure about and comfortable with.

Preemptive legal counseling of this kind runs the risk of producing more problems than it solves for the client. The price of certainty and definition may be new and unanticipated stresses, exacerbated conflict, and dissatisfaction. Preemptive handling of affairs in the home purchase transaction may result in increased conflict between husband and wife, in the excessive rebelliousness of children because of the uprooting, in the need and pressure of additional debt financing to cover additional living expenses, in home maintenance costs and fees that were not contemplated, and more. These reactions may eventuate slowly, albeit that they were foreseeable, so that the lawyer may not feel in any way responsible, and the client may not perceive that legal decisions on his behalf and even at his behest are working against important interests. Through legal intervention he may have evolved to an unhappier state notwithstanding that he appeared to solicit the change.

A more empathic and knowledgeable view of legal counseling contemplates the lawyer will consider, and help the client to assess, the various ramifications of a prospective legal transaction or a legal event. This is in the character of concern for the client's total well-being as it relates to legal intervention. Client problems and risks rendered foreseeable by inquiry in counseling are refined and understood to a degree that the client has meaningful foreknowledge. The problems may or may not be entirely resolved and the risks significantly reduced—the likelihood is that these will be, in substantial degree, the effects—but he at least need not and should not be ignorant of the effects of legal intervention on his well-being. Thus, intervention by the lawyer may contemplate broad inquiry into client affairs, sufficient in the contemplated home purchase so that husband and wife may be in unison about their intentions, estimating and budgeting of economic resources may have occurred, and consideration of the social effects of change and the impact on children will have been considered.

In the broader, and therefore less "safe," perspective on legal intervention, issues may be raised about client consent for an elaborated examination of his life circumstances (including consent for extended consultation time, added fees-for-time-spent, invasion of privacy, and complication). Issues may also be raised about lawyer competence to engage in the requisite economic, psychological or other exploration. There are answers of a dialectical sort. One may say that the client did not consent (did not intend) that the impact

of legal intervention on his life circumstances *not* be considered by the lawyer. One may say that the lawyer's professional stature and perhaps his imputed fund of wisdom and experience give him some basis for inquiry into nonlegal matters, at least beyond the competence or too narrowly involved perspective of the client. Matters of consent and competence deserve fuller inquiry and, in the case of competence, perhaps more education and a different kind of education for lawyers. In any event, consent and competence may be considered in relation to the likely benefit or detriment to the client of the kind of legal intervention that is contemplated in his behalf.

On appearance, and at times in truth, legal intervention in client affairs may not need or require a broader perspective on client affairs and a large spectrum of inquiry. There may be (may seem to be) few hidden snares or conundrums in a businessman's engagement of a lawyer to execute a contract for a purchase of goods or in a criminal defendant asking counsel from a lawyer to defend his case. The issues would appear to be explicit and mostly legal. This may often be but it is not always the case. The businessman may be making an imprudent purchase with possible or predictable negative consequences for his business. Query, what is the lawyer's obligation, and competence, to bring this matter to the attention of his client in the form of legal counseling? The criminal defendant may be subject to choices of strategy in litigation, *i.e.*, the matter of whether his character should be brought in issue by placing him on the witness stand, or there may be choices of outcome based upon plea bargaining. How much consultation and reflection should the lawyer engage in with his client, in the context of legal counseling, on the psychological life adjustment and other considerations that exceed merely legal consequences for the client?

Legal intervention in client affairs is a matter of some complexity no matter how simplified the actual ministration may be. The surpassing issue is not technical feasibility or even certifiable competence but client well-being, an observation that may too frequently escape the attention or interest of the legal counselor.

### *C. Relationship Between Parties*

Counseling, including legal counseling, is a quality of relationship between human beings. Implicitly, the relationship derives character from such assumed values as a concern for dignity, sensitivity to feelings, respect for rights, freedom of choice, and equality of standing.

Counseling distinguishes itself, however, in being a directed relationship toward a helping purpose. One party needs help and the other party has the means to provide the help. Either party may structure, more or less, the direction that the relationship takes in its helping function.

This character of counseling, legal counseling being one instance of personal counseling, raises some troublesome issues of a psychological, social, political and ethical nature. The element of vulnerability, uncertainty or need in one party (the client) so far as legal matters are concerned, and the strength of the other party (the legal counselor) to deal with the situation reflects a condition of inequality between the parties. This inequality contributes to the psychological dependency of the client upon the counselor, regardless of the fact that the counselor and client may have contracted that the client may depend upon the counselor for expertise and help, and that the latter may depend upon the former for a fee.

A state of psychological dependency reflects anxiety in a person that needs relief or reassurance mostly through the helpful reactions of another stronger person. Implicit is the need for support, reassurance, clarification, information, suggestion, solution, and similar measures that relieve the anxiety and uncertainty of the client. How the legal counselor chooses or is able to deal with the matter of psychological dependency affects both the character and the outcome of counseling. The counselor may choose not to notice or attend to the feelings of the client, preferring to deal with the more objective parameters of the client situation. He may perhaps hope that this procedure in itself will resolve the client dependency needs, and this may indeed occur. Such a view narrows the range and kind of helping the lawyer provides the client and heightens the importance of producing objective or concrete results to help and to satisfy the client. Alternatively, an effort to deal with the client's feelings of dependency by a response directed to client feelings as well as to objective circumstances may mitigate the burden on the counselor to produce an unerring and winning result for the client. Contrariwise, the failure to relate to client feelings of an anxious and dependent quality may produce feelings of frustration or dissatisfaction with the counselor notwithstanding that the ostensible (more viable) help sought is that of a legal character.

An example may be helpful. Tom Jones comes to Lawyer Sagacity with a heavy burden of anxiety because of his indebtedness. Tom is worried about his reputation, concerned that his home may be taken away from him, and he does not know how he can possibly

manage to pay all the bills he owes. Sagacity, who does not like emotional displays of fear and upset—they bother him—fairly quickly recommends to Client Jones an action in bankruptcy. He explains the procedure and the legal consequences. Jones isn't sure, but he assumes the lawyer knows what he is doing. He depends on the lawyer. Jones' debts are shortly thereafter discharged in bankruptcy, but he is still unhappy. Not having "worked through" (processed) his feelings he wonders whether it all was necessary. He still feels a sense of shame and he cannot face his friends, at least not yet. Then, when he learns that his credit has been impaired—he cannot take out a small business loan to start a new business—he is incensed at Lawyer Sagacity. He blames Sagacity for his situation and is thinking of suing the latter. Since Sagacity did not help Jones to resolve his anxieties, doubts and fears, it is a fair psychological interpretation that Jones projects onto the lawyer the fault for his misfortunes. Had Sagacity counseled Jones effectively, Sagacity likely would have been perceived as a helpful professional and friend. Jones would have fairly allocated responsibility and resolved his feelings rather than remain with unrequited needs to find a scapegoat.

Inequality of knowledge and know-how, in a situation where the legal counselor has these and the client is in need, creates an imbalance in the political relationship between counselor and client. It may also contribute to serious ethical problems. One may say, correctly I think, that the lawyer has, by the nature of things, more relevant power than the client in the counseling situation. That is, the lawyer has the power in the counseling situation to affect the client and the client's total well-being in ways that the client cannot do in kind to the lawyer. This disproportion of power, especially if there is no effort to share the knowledge with the client and relate the skills on which it is based, may contribute to abuse. It is at this point that ethical problems in the relationship may clearly emerge. A paternalistic or authoritarian counselor, banking on his superior knowledge and experience, notably in legal matters, may deny his client the element of freedom of choice in matters that clearly affect the client and are within his province. A failure of information, such as a withholding of information from the client, may operate without the latter's consent or without respect for the latter's "right to know." The counselor may seek to justify his unilateral exercise of power on grounds that his esoteric knowledge is too complicated to explain, that he is in the best position to judge what is in the client's

best interest, that the client's knowledgeability is irrelevant to the essential employment of the lawyer's skills that must take place, and that the client does not need, want or expect to know, and, sometimes, that the client is better off not to know. *Arguendo*, are these not judgments—most or all of them—that should be shared in and decided by the client as well as the counselor, as a matter of ethical (fairness) and political (equality) considerations?

Counseling, in another sense, is dealing with the resources of both counselor and client in terms of who they are and in terms of what they have. In a social and economic context inequality again may exist between counselor and client that may militate against sensitivity, consideration, and fairness on the part of one party or the other (mostly the lawyer) in the counseling relationship. An economically poor client, in the ordinary private office consultation, probably gets less counseling. If a lawyer is unduly disaffected by a client's poor economic circumstances one likely result is that the client may receive more authoritarian and preemptive counseling. The counselor exercises license, perhaps because he is on "safe" grounds, since he is not threatened politically by the poor client, nor can he expect a handsome social or economic reward, nor does he expect to be challenged. A well-to-do client, with ample access to and knowledge of a variety of professional services should he need them, and perhaps himself being more educated and aware about his own circumstances, may insist on minimally intrusive or more specific involvement in his affairs by the legal counselor. At the very least, he is more likely or better able to assess the lawyer's service. He may opt for the legal counselor, unless he knows him well, to exercise a primarily ministerial rather than a counseling function. At his worst, he may disdain or ignore the counseling help of lawyers, perhaps as a kind of derogation in which he may regard his own social, political, or economic position as superior.

For some counselors, principally psychological as distinguished from legal counselors, the element of relationship in counseling may be deemed as preeminent. This may not be just for the kinds of reasons mentioned heretofore but because of a psychological bias. This bias states that what a person feels, wants, and then does is determinative of objective states. Typically, a divorce is not sought to maximize one's social or economic circumstances but because there is personal frustration sufficient to dictate a desired change in one's objective condition. Motives for business transactions are often not so much a matter of hard calculation but of personal

satisfaction in acquiring, dominating, or some similar psychological characteristic. It is the conscious or unconscious manipulation of these psychological biases that are the essential determinants of the direction and success of counseling, since the biases reflect best what the client feels, wants, and expects. The relationship between counselor and client, if it is sufficient and well-attuned to personal dispositions, becomes the fulcrum for effective legal counseling. It is the key to working meaningfully with, helping and satisfying the client.

The importance of relationship may be minimized by those counselors (legal counselors) who construe their function to be one of dealing with the client's objective reality or of helping the latter deal with his objective reality. There is brief deference to "intent" (a very complex concept, if seriously investigated) but mostly the lawyer is concerned with the fitness of the action taken or to be taken on the client's behalf. "Fitness" may be viewed in a brief context of client affairs and in objective terms with perhaps some notation of client intent. It is most likely to be viewed in terms of legal possibilities and limitations as these pertain to client circumstances. For example, the lawyer, in making an estate plan for a client, will recognize the client's intent to protect his family, assess the client's wealth factors, and draft documents (will, trust agreement, etc.) to fit the wealth factors to the general intent. In this process, he will be especially attentive to the fit of the plan to legal desiderata, such as those related to estate and gift taxation, limitations on future interests, and the like. In this ministration to clients the lawyer is more likely to do and to emphasize what it is conventional for lawyers to do and what available and known legal methods clearly provide.

The option for more personal relationship in legal counseling runs the risk of intrusiveness into uncharted areas, but it also serves to enlarge upon and expand the client's needs, possibilities, and circumstances. It may also serve to delineate how much and in what way the client can decide and resolve his own affairs (self-help) and how much and to what extent he truly needs and benefits from "subjective" (support-oriented, attitude-clarifying) and/or "objective" (decision-making, implementative) counseling. In truth, decisions about the extent and quality of relationship between counselor and client probably turn more on counselor training (or the lack of it) and counselor and client temperament and bias than on studied consideration of what the counseling situation requires or what the client needs.

*D. Utilization of Technical Means and Competences*

The bias in favor of technology, whether it be legal or industrial technology, appears to characterize "advanced" society. As a matter of simplification, where there are just too many matters and affairs to be accounted, reliance on technology for short-hand answers tends to become characteristic. One question is whether legal counseling when used as a handmaiden to legal technology is or can be made to be a good vehicle for dealing with private human experience. Legal technology here refers to the refined and systematized procedures for dealing with problems that have been developed in the context of such formal legal apparatus as trial process, appellate process, administrative or legislative process, and the like.

Legal technology is certainly available for short-hand answers to numerous problems. Prosecuting a law suit may be (may appear to be) a short-hand solution to conflict between parties. Issuing an injunction may be an easier and faster solution to a nuisance than working on the relationships involved to reduce the misunderstanding and hostility. Pursuit of divorce can be a quick answer to marital conflict, especially where there seems to be prohibitive hostility.

Technical means of problem solution court their own risks and consequences, such as delay in result, inappropriate resolution, or excessive cost. Technical means, however, are popular because of more assured feelings of competence in the lawyer to provide a result. There is greater visibility of some issues and results for the client; there is an assured availability of mechanisms for problem solution and there is the promise of more certainty of outcome. On the other hand, technical solutions may lack sensitivity, relevance, and scope to be sufficiently appropriate for the client. The lawyer may garner approval from his brethren for his "professionalism" in doing a good technical job but the client's situation may be layered in legal and nonlegal complexities, and solutions must be layered in strategies, if results for the client are not to be one-dimensional, simplistic, inadequate, and even inappropriate.

On its own terms, not all technology is equally competent. Some aspects of technology, or some applications of technology to problems, are more advanced than others. In law, it is clearer what may be done from a technical point of view in dealing with a tortious act than in legally defining some new relationships (such as the relationship of unmarrieds). For one thing, tort law, though constantly evolving, is also more settled in its choices whereas domestic

relationships between parties appear to reflect new forms, hitherto unexplored values, and are more in a current state of flux and unfamiliar change. This latter is one area, and there are others, where legal counseling, if it contemplates intentions, risks, and uncertainties in depth, may do more to explore and arrive at viable or possible solutions to client problems than a fairly mechanistic application of law.

The use of legal counseling in legal technology, and to some extent vice versa, would appear to depend upon how client problems are defined. It is clear and certain that client problems (such as marital conflict) can most often be "brought around" to fit the conceptual mold of a divorce case by the lawyer. It is less clear whether this is the way the problem ought to be treated, or whether this is what the client clearly wants, or whether it would be in his best interest. Technical means so far do not exist for the clarification and delineation of problems in terms that do not reflect a bias (bias for a legal solution, a psychological solution, or some other). It is here that legal counseling could uniquely benefit the client by affording not only an opportunity for clearly and even-handedly defining issues and choosing decisions but also for seeing and defining problems in a manner that comes closest to dealing thoroughly with a larger range of relevant client feelings and dispositions, interests, and circumstances.

There are other pertinent perspectives on the relationship between legal counseling and the use of legal technology. Where matters are reasonably clear and certain, and legal technology is to be involved, there is also the matter of counseling clients in dealing with consequences and effects. It is one thing to set up the mechanisms of divorce; it is another thing to deal with the myriad legal and other consequences of divorce. An attuned legal counselor recognizes both an opportunity and a responsibility not only before but also after the event occurs to deal with the effects of legal intervention on a client's life and circumstances. This becomes a function of the counseling process.

#### *E. Legal Counseling As Part of a Complex Professional Operation*

The greatest structural simplicity in legal counseling is one in which counselor and client both define and resolve problems without resort to any outside agency or other party contact. The lawyer and client discuss the making of a will, the lawyer prepares and the client then executes the will. This may be the full range and sub-

stance of the transaction. A substantial amount of legal counseling may take place in this kind of "closed" transaction. The negotiation and determinations are essentially private and are not immediately and may never be subject to other than a perfunctory professional or social review or contest. The relationship between counselor and client deals directly and mostly uninterruptedly with their subject states. The substantive issues in counseling are fully determined by the counselor and/or client as either or both see fit.

There are other possibilities in the structure of legal counseling where there is increased involvement due to negotiation with third parties. This may involve the client's lawyer in a negotiation on behalf of the client with a third party. (Example: Lawyer negotiates with a creditor on behalf of the client.) It may involve the lawyer negotiating with another party through the latter's lawyer on a matter involving negotiation or dispute between the client and the other party. (Example: Client and other party, through their attorneys, negotiate and execute a business agreement.) Counseling in these sets of circumstances is intermittent in one sense and continuous in another. It may also involve counseling functions of a different kind. The legal counselor deals with his client, then with a third party or the latter's representative, perhaps and probably then again with his client, etc. Each counseling contact with the client may involve dealing with new or altered facts or other considerations and the development of new sets of feelings and expectations to be processed, at the same time that there is a continuing sense of purpose and a continuing relationship in the counseling experience. In part, too, counseling involves a consideration on the part of client and counselor on how best to deal with outside parties who may be directly involved in problem definitions and solutions. The counselor faces two ways in alternating fashion, toward his client for the purpose of counseling and toward third parties for the purpose of negotiation. He may even find himself negotiating with his client in order to achieve understanding and results that may be ultimately beneficial to the latter. The character of the counseling relationship is sustained by loyalty, but the counselor is likely to be more persuasive and challenging in dealing with the client and the latter's expectation in the counselor-client interaction. Because of the more forcing character of negotiation the possibility exists for a more adversary kind of relationship, between negotiators, and occasionally even between the counselor and the client.

Counseling that contemplates negotiation with another party, recognizing the risk of sustaining or even increasing disagreement,

may have to consider the possibility of litigation if negotiation fails. Counseling then may act as precedent to or as a complement to a process of litigation. Here, counseling has a different perspective. Litigation possibilities, both procedurally and in terms of outcome, may be more or less fixed. The counseling function in litigation (not to be confused with the interviewing function to get information from the client for the purpose of litigation) is to help the client choose from and adjust to the narrowed range of alternatives. Counseling here entails less of the client's preference and more of what juridical institutions will permit and create. There are only certain procedures and so many available remedies. The counselor must utilize his relationship with the client to condition the latter to objective realities and possibilities that are to be anticipated. The substance of counseling may shift somewhat from the intent of the client and consideration of his circumstances to the intercession of "outside" forces and decisions which he must accept and integrate. It is here that the client, with the help of his legal counselor, must contemplate and adjust to a narrow range of possible legal consequences and resultant practical possibilities. Counselor and client, working together, may seek to co-opt the effects of litigation by surrendering or striking for a negotiated solution but, even here, the narrowing, limiting, and hardening effects of a prospective litigation outcome are likely to be experienced to a substantial degree. The prime example is, of course, plea bargaining.

It is notable, too, just as counseling and negotiation may be intermittent in the relationship between counselor and client so may negotiation and litigation be intermittent. Negotiation may occur in the process of, may substitute for, and may ultimately preempt further litigation. The counselor is here in the position of apprising, persuading, and even demanding of his client in the counseling function.

## II. LEGAL COUNSELING AS PROCESS

There are certain internal regularities in the legal counseling process that are capable of description. These reflect counseling as procedural technique and skill aimed at producing certain results in or for the client. There is both an immediate counseling outcome and there may be longer range effects for the client.

### A. *Counseling As Procedural Technique and Skill*

Procedural technique and skill in legal counseling involves a

series of steps that are usually sequential, though given steps also may operate interdependently with other steps. This will become clearer further on.

1. *Empathy.* Empathy is a quality of interest and caring that one person may feel and perhaps express toward another, and two parties may reflect empathy toward one another. It is a quality of relationship somewhere between indifference and love and affection, but closer to the latter. A degree of empathy, usually at the outset, appears essential in counseling if the counselor is to be adequately concerned for and inquisitive about the client, and if the client is to be reasonably open and cooperative with the counselor. Counseling without empathy very often ignores the human dimensions of experience and is likely to be a technical exercise, sufficient for technical problems but hardly so for complex, risk-bearing human involvements. The argument for empathy in counseling is essentially an argument for caring but, more than that, the quality of counseling—the quality of information-sharing, investigation, advising, and decision-making—may depend upon it.

It is relevant here to distinguish between counselor and client liking or not liking each other, or simply being discreet in their mutual attitudes. A counselor who remains personally remote from his client (uninvolved and perhaps unaccepting), but punctiliously correct in his approach, does as much as seems required and not necessarily as much as is needed or wanted by the client. He does not construe liking his client as being important to his work and, at least some of the time, it may not be important. A client who is not comfortable in his relationship to his legal counselor is likely to be less candid and less participatory than would best serve his interests. This may be a function of not liking a lawyer, and it may have important consequences. The relevant question is asked, then, whether the counselors have to like their clients in order to serve them well. May one argue that a party's cause rests on its own foundation and not on a subjective state of feeling? The answers in counseling and in advocacy often may be different. Client well-being and satisfaction contemplate subjective as well as objective components in experience. In counseling, where the legal counselor answers mostly to the client and there is little public awareness or interest, satisfying the client may be a more vivid matter and feelings may turn more on what counselor and client do with (toward) one another. In advocacy, where there may be a more public matter or public exposure, objective considerations and objective outcomes may loom larger in importance.

2. *Impression and Information.* Usually in sequence following empathy, but also as a reflection of it, a process of establishing information occurs. The process is complex. There is a need simultaneously to *elicit* and *evaluate the reliability* of information, and to differentiate "hard" information from values, biases, preferences, and similar attitudinal characteristics that distinguish objective and subjective desiderata. Further, there is information to be elicited relative to an immediate circumstance or set of events, and there is other information that fills out a broader framework in the client's experience and has more recessed but perhaps broader implications. And there are also facts not yet fully developed or not entirely clear and capable of articulation that need to be recognized.

The voluntariness of the client in rendering information and the receptiveness of the counselor in receiving it form an important foundation on which legal counseling and intervention in client affairs takes place. Clients may err in their self-knowledge or, for strategic reasons, they may restrain or distort information. Counselors may be preemptive and too narrow in what they seek to know about clients. They may be too direct in their questions and unwilling to listen to clients and subsequently unable to separate wheat from chaff. They may prefer "hard facts" and have disdain or discomfort in the midst of heightened subjectivity and expressions of emotion. These attitudes, of both client and counselor, are sources of distortion that go both to the character and extent of information acquired, and to the total reliability of information. Glib impression or narrow conception may substitute for reflective inquiry into facts.

The complexity of the information-gathering and information-sifting process suggests that it may be preeminent in importance in legal counseling. This is probably true though not familiar or perhaps acceptable to a legal counselor who values his skills of legal analysis above all else. He tends to feel constrained to limit his interest in facts (interest in the client?) and to mold facts to legal categories of experience to a degree that may be unacceptable to a client-centered legal counseling function. The issue may be one of training, in which there is lopsided attention to legal analysis and inattention to information-getting processes focusing on the client.

3. *Analysis.* Analysis is a generic term for, among other things, the processing of information. The question is: what kind of analysis and to what end? Legal analysis, or here specifically the analysis of the impact of legal rules and practices on private interests, is one kind of inquiry germane to legal counseling. Another is the analysis of client and social facts as these bear on problem

definitions and problem solutions for the client. Another kind of pertinent analysis is the analysis of professional intervention possibilities and their attendant risks and consequences for the client. And, finally, there may be an analysis of predicated outcomes in terms of immediate and remote consequences, and in terms of impact in different sectors of client experience.

Analysis in legal counseling may deal with a variety of needs and desires, facts, issues, risks, effects, and consequences. There are exaggerated or conflicted needs and desires, "hard" and "soft" facts, legal and nonlegal issues, different degrees and kinds of risks, immediate and remote effects, and possibly hidden or diffuse consequences. Analysis is a kind of sharpening and arranging of all of this data but its aim is not so much for a correct solution as for a viable and acceptable solution. The wise counselor often aims at skillful composition of all pertinent considerations rather than at ultimate answers based on a quasi-scientific rigor. It may be said of counseling, as it is said of politics, that it is the art of the possible.

One may say that *legal analysis* generates an increased rigor in comprehending and dealing with problem situations that are otherwise murky, diffuse and perhaps too complex to make out. Legal analysis, then, would seem to be the instrument that provides both sense and direction for the resolution of client problems. This is only a partially correct statement, for analysis that is substantially legal in character or legal analysis by itself does not adequately represent the spectrum of experience with which the legal counselor must deal if he is to fully and substantially serve client needs. It is only in very narrow ventures, so defined by client or counselor, that legal analysis suffices. It may not even be the kind of analysis that is preeminent in many legal counseling situations and, so far as this is true, may be distinguished from legal advocacy. Analysis in legal counseling may investigate motives, outcomes, and effects in far more detail than may be characteristic of advocacy.

4. *Suggestion and Decision.* Suggestion and decision involve the bringing together or closure of prior counseling experiences in information-gathering and analysis. Closure may also involve a congruence of attitudes between counselor and client where they agree as to the assessment of a client's situation and a course of action.

The process is one first of suggestion and then of decision. Suggestion is in the nature of a hint, advice or trial balloon, most often recommended by the counselor but sometimes by the client. Suggestion invites reaction, sometimes reformulation and the proffering of alternatives. It is instigative and aims at decision. Deci-

sion, characteristically, involves commitment and a degree (but only a degree) of finality in the counseling experience. Decision is commitment to a risk and result; the risk mostly undertaken by the client and the result usually contemplated by both counselor and client.

Legal counseling, characteristically being most often directed to some reasonably clear purpose and largely objective circumstance, may come off best in the decision-making phase of the counseling process. Lawyers are able to be and are taught to be decisive. Empathy may be slighted and analysis may be narrow but decision, at least in the sense of certainty and commitment to action, is likely to be characteristic. Decisiveness can be preemptive, however, and it can distort experience, where a full range of counseling inquiry has not anticipated and substantially helped to structure decision. This is a major risk in legal counseling where ready-made legal answers are often available that do not seem to necessitate other kinds of client consideration or nonlegal outcomes.

5. *Implementation.* Implementation is, in substance, the translation of decision into action. Mostly, it is incumbent on the legal counselor, as distinguished from the client, to implement. It is he who must draft a will or contract, file a complaint or an answer, or whatever. In some instances, implementation may mean to undertake a negotiation or construct an elaborate business or estate plan. Implementation in these latter instances is more than perfunctory, often enough not in a traditional or well-patterned mold, and involves a breadth of intellectual, organizing, and possibly influencing and management skills.

If decision is the ending process in most legal counseling then implementation produces the end product. It typically produces a viable result that encompasses and briefly expresses what has gone before in the counseling process. The product, however, does not adequately indicate the creativity and choice that are the true substance of counseling. Though it has practical and legal consequences it is in the nature of a memorandum of the counseling experience and of itself may throw only a little light on what went on between counselor and client.

Implementation, for some, is the crux of the matter and a sufficient criterion on which to judge the adequacy or appropriateness of a lawyer's work and legal consultation. This belies the fact that counseling choices and actions may be taken in contemplation of considerations that are hardly public and that in some respects may be personal, unique, and compelling. The counseling solution may

be "right" for the client, in terms of subjective and privately revealed desiderata, though it may be "wrong" when viewed in terms of logic and custom. Legal counseling, for all the generality that can be made of it, must remain an idiosyncratic and substantially private experience if it is to serve individual clients in terms of individual needs and circumstances. It is not that the perspectives and procedures in counseling are so irregular or unfamiliar as to defy description and conventional processing and evaluation. It is that the wealth of desiderata funneled into the counseling process may, permissibly, produce unique results.

6. *Reconsideration.* The fact of visibility of the implementation process may bring to light, because of the sharpening of issues for practical action, inadequacies in the assessment and decision process in legal counseling that were heretofore not sufficiently seen or noted. On the other hand, implementation is also the testing of a decision against subsequent reality experiences and may retrospectively suggest flaws and inadequacies in decision and implementation. The need in both instances may be to go back to the drawing board, if this is possible.

True finality in consultation is elusive and only relative as events and experiences continue in life. One possibility is that reconsideration is merely or mostly a small calibration in decision and implementation, perhaps involving further brief legal counseling. Another view is that reconsideration frames or at least predicts what will next be the substance of legal counseling at some later time if a given matter is not substantially resolved or client expectations are not met.

Reconsideration may call into account, though perhaps on a smaller scale or in a more selected area, the need for further information gathering and sifting, more analysis, and perhaps the reformulation of some suggestion and decision. It is in the nature of follow-up and concern for outcomes that legal counseling not be thought to end absolutely, nor is the process irrevocably negotiated, at a first definable end-point. Ending is mostly a matter of choice and subjective judgment, perhaps more often than it is a matter of facts and circumstances speaking for themselves. This is not always the case, of course. There is sometimes self-evident finality in law and legal counseling. The prevailing tendency, especially among lawyer-advocates, is often to favor ending rather than to inquire closely about its consequences. Legal counseling, in this respect, may be or ought to be different. It ought to show more consideration

for the essential continuity of experience. It ought not to model itself after litigation, where the outcome is often arbitrarily conclusive for a client. This is not to disavow that some sense of an ending or having achieved a goal in legal counseling is important.

### *B. The Ends of Counseling*

The ends of counseling deal with the client's current feelings, expectations, circumstances and/or status. Some expected transformation occurs either within or on behalf of the client.

1. *Persuasion and Advice.* One possibility is that the client may receive some form of advice. The term, construed broadly, can mean that the client is somehow influenced—perhaps through support and encouragement or information and clarification—to see things in a particular or changed perspective. He may be encouraged or led to take or authorize certain actions on his behalf. In the first instance, it is attitude change that may take place; in the second, it is a change in “external” characteristics or circumstances that may occur. The first may lead to the second but the reverse does not necessarily hold.

Persuasion and advice, as a product of counseling, may be sufficient to direct the client in his own cause. He may not need or want additional intervention in his affairs by the counselor. On the other hand, persuasion and advice may be prefatory, to be followed by further intervention or action by or on behalf of the client. Persuasion and advice may precede decision and then lead to implementation, or it may be or be construed as a decision in itself to be accepted and to govern.

Advice is, of course, more than off-the-top-of-one's head judgment. It may be a product of helping the client, through counseling, to derive greater or different insight into himself and his circumstances. Sagacious and prudent advice, by the legal counselor, is likely to be the product of a studied inquiry into the client, analysis of circumstances and possible resolutions, and consideration of risks and outcomes. Good advice may be a kind of summation of a large part of the counseling experience.

2. *Facilitation.* Most often, legal counseling is an instrument to facilitate some change or development in the client's condition or circumstances that the client enunciates and hopes to achieve. Counseling is utilized to delineate what this change or development might be and how it might be achieved. In this way, facilitation occurs.

Facilitation can mean the development of attitudes, the modification of circumstances, and the constitution of procedures all of which are focused on bringing about change to serve the client's best interest. In this, there is a substantial element of creation, planning, and/or improvisation in order to bring about change for the client within a legal framework that is acceptable. Imagination and risk-taking are more likely to characterize lawyers whose major legal counseling activity is to facilitate client interests.

Facilitation implies that, to begin with, there is a definition of intention. The problems are ones of feasibility and it is this that counseling may determine and evolve. It is not that the counselor patterns the client's life for him, but that he helps the client to realize the latter's desires in a concrete form, if that is at all legally possible. The client seeks and the counselor renders, if it can be done.

Facilitation in legal terms may be a difficult requirement. Typically, however, where facilitation is the goal, a variety of practical considerations may have to be met in order to achieve success for the client. This may mean studied attention to economic, psychological, social, ethical, and perhaps other kinds of considerations if the client's goals are to be adequately met. Facilitation is, therefore, a reasonably complex exercise where technical legal solutions, if they occur, must be implemented in a broad foundation of understanding of the client's problem, needs and desires.

3. *Protection.* Protection, when it is an objective in legal counseling, is most often a narrower aim. It is a kind of reinforcement of the client's best position, given his immediate circumstances, through legal means. One defines the client's situation in legal terms—a function of counseling. One next considers and implements what is legally needed to secure the client against harm.

Protection does not deal with an expectation of or a possibility for the client so much as it deals with the here and now. It works with the immediate and the observed in client experience and proceeds more or less directly to safeguard the client. This most likely will be done through the exercise of legal instrumentalities—a needed will, a proper contract. It may also be done through legal advocacy (preparation for litigation) or it may require some practical adjustment in the client's condition or circumstances.

Legal counseling, with the objective of protection, is most often a matter of objective fact ascertainment correlated with an assessment of the risk of harm to the client. The lawyer then invokes the

law to protect against substantial risk, having counseled or advised the client on what is probably a narrow range of possibilities.

4. *Prevention.* Prevention is protection, but with a larger ambit. The legal counselor seeks to protect the interests of the client first by assessing the client's situation, but he additionally projects future risks and possibilities that may be as much speculative or probable as they are real and immediate. In this function, the legal counselor runs the gamut of processing experiences in counseling: fact inquiry, various analyses, suggestions and decisions, and may conclude with planning and implementation that is largely future-directed.

Legal counseling with a preventive objective is something like looking into a crystal ball and forecasting what may befall the client in the event of certain occurrences. The legal counselor's function is then, in part, to plan for and prevent against these foreseeabilities. A large measure of prediction is involved.

Prevention, if it is not to be a totally unstructured fishing expedition, must contemplate a range of different kinds of needs and problems facing or likely to face the client. A somewhat specific range of information about the client is solicited relative to such needs or problems. Appertinent and predictable law is then determined as a basis for forecasting the kinds of preventive measures that may be deemed desirable or essential. It is all of this that constitutes the counseling function with the client as counseling proceeds through its processing stages.

5. *Correction.* Correction, like protection, tends to be a more specific and delimited function for which to engage legal counseling. In matters of correction, the risk or harm is generally known and immediate. The need is to identify and implement the legal principles and procedures that will serve to rectify. The follow up is to observe that correction has taken place.

In legal counseling attuned to correction, essential information is largely specific and determined. The client's situational framework is defined, needs may be relatively self-evident, and the range and direction of the lawyer's application may be quite limited. It may be more his access to power than the use of his inquiring and systematizing intelligence that is required. The counseling function here is generally simpler, clearer, and more concrete. Less may need to be known about the client, his expectations and his circumstances, than may be true in facilitative or preventive counseling. Client needs, expectations and circumstances, and perhaps even realistic possibilities may be largely self-evident.

### III. COMPETENCE IN COUNSELING

Training in a profession is characteristically training in the technology (knowledge of the law, knowledge of medicine) of that profession. Training in the skills of professionalism, on the other hand, is mostly a function of exposure to a simulated or real life context in which the profession renders services and students are given the opportunity to gain experience in rendering these services. Professional training, then, as distinguished from technical training, is a product of doing, and skill is, at least in part, a function of length and breadth of experience.

The probing and synthesizing capacities of the intellect are the means to technical skill and knowledge. Professional skill development, on the other hand, requires some intellectual inquiry but a lot of something else. It is the "something else" that is mostly the focus of this phase of inquiry into counseling.

#### A. *The Lawyer As Counselor*

The lawyer as counselor optimally possesses a cohering network of:

- concern for other human beings
- inquisitive capacity
- ethical sensitivity and moral disposition
- modest temperament devoid of exceptional needs and thrusts
- analyzing and synthesizing intellectual capabilities
- intuitive disposition
- capacity for projection and developing perspective
- and ability to translate and articulate
- perceptions and insights

He must be able to work comfortably between a psychological framework of dispositions, needs and demands, an empirical framework of impressions, events and urgencies, and a legal framework of rationality, order, and compulsion. It is the composition of these, as his own private undertaking, that is his essential work as a counselor.

An essential qualification of the legal counselor is self-knowledge and knowledge of others in terms of personal feelings, biases, powerful needs and demands, and limitations on perception and performance. The counselor likely has all the palpabilities of other human beings. These need to be identified as much as possible if the lawyer is to avoid too much intrusiveness of personal factors,

his or the client's, in the counseling process. Some capacity and knowledge to recognize and deal with disruptive and distortive personal feelings, biases, and conduct is also essential.

Another essential qualification of the legal counselor is that he be reasonably knowledgeable of the economic, social, ethical, psychological, and perhaps other frameworks in which clients operate. Solicitation here is not for knowledge at a theoretical level that would interest students in these fields but for a kind of applied or practical knowledge within some viable but simple theoretical framework that makes facts understandable and assessable. One conceptual view of the counseling process is that counselors operate within, and back and forth between, frameworks of client experience, while holding their own framework of experience relatively constant. A certain consciousness of meshing and coordination among these (client) frameworks is required, and the counselor has to provide the means for integration if the client is to get a whole result in counseling.

Still another qualification of the legal counselor is that he knows how to construe, combine and integrate his knowledge of law into the configuration of other frameworks of experience, economic, psychological, etc., that characterize the client's situation. Synthesis as well as analysis are essential skills here and the counselor must be able to associate and interchange various levels of facts and concepts in legal, economic, psychological, ethical and social spheres of client experience.

Since legal counselors are no more paragons than other human beings one may ask how realistic these requirements are. The suggestions for competence are, of course, idealized conceptions. Realistically, one can ask and expect only some degree of approximation to the ideal. What is essential is mindfulness of the full range of attributes that constitute the capable counselor. One might reflect, too, on the possibilities for training of good legal counselors. This implies a need for a more concerted focus on professional (as distinguished from technical) training and, even before this, there needs to be an inquiry as to which characteristics and skills are trainable, which are "given," so to speak, and which evolve substantially through increments in professional experience. Subsequent inquiry would then posit the kinds of training programs that would do most to develop professional competences and, conceivably, even develop a degree of mastery.

Given that the legal counselor is part lawyer (as well as part

counselor), and committed to the larger profession of law, a question may be raised as to the kinds of commitments about law, and about practicing as a lawyer, that might best suit the legal counselor. Is his first professional allegiance to his client, or to law, or to society in general? As a practical matter, is he more guided by the mores and folkways of lawyers (including lawyers' canons of ethics), by his relationship with his client, by the character of the client's needs, by his own independent and separately developed dispositions and biases in human affairs, or by some other concerns? In a sense, the question is, which comes first in his personal commitments to his work: person or lawyer or client. Since the legal counselor functions partly as a lawyer in the traditional sense, how strong is his obligation to consider and investigate legal desiderata that are or may be part of the client's situation, whether or not they are of strong concern to the client or consequentially affect his well-being? Is the lawyer responding to a client as if the client is saying, "I have a problem; I need some help," or is he responding as if the client were saying, "I have a legal problem; I need a lawyer?" When does a legal counselor generically become more a counselor than a lawyer, and is this important to the client, the lawyer, the legal profession, and/or society? These issues and problems include but go beyond the matter of adherence to canons of professional ethics in law.

### *B. Persons As Clients*

The client is both subject and object in the legal counseling process. In this ambiguous circumstance he both directs and is directed, supplies information and is given information, has his own analytical perspective and is subject to the analytical perspective of others, and so on. What qualities does a person as client need (should a client have), or need to avoid, to utilize legal counseling to best effect?

The quality of passivity in a person ill-suits a client who may need to (ought to) participate actively in the counseling process. Counseling for both counselor and client is or ought to be an active interchange of feelings, thoughts and preferences, and of information, ideas, decisions and solutions. Client passivity, or a reluctance or fear to inquire and participate, tends to encourage preemptive or authoritarian counseling that, in the long run, may not adequately comport with the client's needs and desires since the latter has not sufficiently expressed himself.

Emotional distention is another quality that may ill-serve the

person as client. An excess of hostility or fear or anxiety or emotional confusion acts to distort true needs and desires, and clear understanding and choice. Counseling, in largest part, is intended to be and needs to be a rational process. This does not contradict the notion that feelings are present and are to be expressed—they are desiderata—but excessive emotionality has the effect of blinding a person to reality and even dislocating that reality.

Intellectual limitation is another quality that ill-befits a client or the client's interest in the counseling process. Intellectual limitation may be a function of restriction or distortion of information, sometimes intended as self-imposed, or it may be a function of incapable or careless thinking. Uninformed and unreflective clients, and counselors who encourage or tolerate such a condition where it is not essential in their clients, do little to bring about understanding. Counselors merely resolve client problems on their own terms without benefit to the client of understanding or anticipation presently or in the future. The client who is not encouraged or disposed to reflect may not even see the implications and ramifications of present legal intervention clearly enough.

Deception and manipulation reflect another characteristic that tends to undermine the legitimate purposes and assumption of candor and reason in counseling. Either the client or counselor may deceive the other (they also, of course, may deceive themselves). Manipulation against the client's interest or to the exclusion of the client's participation is a potential source of misunderstanding and dissatisfaction. Manipulation by the client to coerce the lawyer to see matters a certain way or take certain actions may only complicate problems. Personal relationship, social intercourse, and most transactions are based on assumptions and on regularities in communications and clearly stated or apparent intentions. When these are fouled by deception and harmful manipulation the fabric of trust and understanding, so essential to counseling, is seriously undermined.

Issues of client competence, such as those just mentioned, raise significant moral issues about the enterprise of counseling. Can it serve its meaningful and intended purpose if there are serious personal distortions, inequalities in relationship, and deceptive practices that affect the counselor-client interaction? What is the purpose of counseling? If it is to help the client then what are the prerequisites of "client" needed in order to make helping sufficient, meaningful, and ultimately as well as immediately beneficial? Asking the question in these terms already posits the assumption of

moral responsibility; moral responsibility for the counselor to do more than take the client as is and render solutions that are merely legally congenial and convenient.

Even granting that one should do more to establish client competence, what assumptions can one make about the client's ability to change? An idealized client does not exist any more than does the ideal counselor. The answer, again, lies in the art of the possible and this is in part a function of training and education. Some degree of client education, by the counselor or by other means, may be essential for the client to be able to deal sensibly and knowledgeably with his situation and the problems to be resolved therein. A function of counseling, therefore, and of the counselor's responsibility in it, is (a) to encourage client participation and understanding and to share decisions, (b) to make the client aware and to relieve, so far as reasonably possible, distortive emotions that prevent adequate and proper understandings, (c) to insist on a full or fuller exchange of information and on clear reasoning, the latter to the limits of the client's innate abilities, and (d) to be constantly vigilant about deception and manipulation and to require that these devices be exposed and made conscious as a basis for rectification of distortions and for reinforcing trust and belief. Even beyond these requirements, it would seem essential and desirable that clients be taught how to deal with lawyers, what to realistically expect from them, and what possibilities and limitations exist in professional consultation. The aura of omniscience and omnipotence that attends the professional because of his special knowledge and skill is not altogether deserved and mostly does not serve the client's best interest.

The complexities of legal counseling exceed current general understanding. Clearly, legal counseling is more than the application of technique, whether it be legal technique or counseling technique. It is a ministerial and helping enterprise, but that is easier said than understood. The legal counseling enterprise involves moral and political issues as well as emotional and intellectual competences. It concerns both the client and the counselor in a fairly intimate and searching relationship. It may affect the well-being of numerous parties who are subject to its outcome. Beyond this, it may have implications for the operation of law in society.

This inquiry invites more inquiry and concerted study of what happens between two human beings and what happens to their circumstances when they engage in the process denominated "legal counseling." It suffices for the present to raise consciousness among

theoreticians, practitioners, and students alike so that they may recognize the complexities and manifold significance of an already widely practiced professional art.