



on the basis of which modern procedural law can be reformed and adapted to meet the requirements of present-day social context. The entire field of family law cannot properly be comprehended without a knowledge of the Hindu and Muslim periods.

All this is not intended to belittle Dr. Jain's pioneering work. There was practically no work available on the subject when Dr. Jain wrote this book in 1952. Even thereafter there has been hardly a work on the subject to match Dr. Jain's contribution. Its usefulness for students and researchers of Indian legal history can hardly be over-emphasized.

*Paras Diwan**

LEGAL INTERVIEWING AND COUNSELING. By Harrop A. Freeman
1964. St. Paul, Minn. : West Publishing Co. Pp. 253+xxi.

HOW CAN A lawyer face a client when the advice he knows would be best for the client's interests is not that dictated by the law? What does a lawyer do when faced with a client who has a legal problem but whose psychological state forces him to give half-true facts?

For ages such questions have been considered beyond the purview of legal education. But such questions invariably arise to plague the lawyer anywhere as soon as he enters into practice. *Legal Interviewing and Counseling* is a book which attempts to delve into this realm of the meeting place between law, psychology, sociology and commonsense. The days when a lawyer could be said to speak only "the law on the subject" to satisfy his client and himself are gone, if they ever existed at all. Particularly where there is any kind of a continuing relationship between a lawyer and his client, other problems not purely of a legal nature are bound to occur. How far a lawyer should venture to deal with these problems is a very complex question involving even more varied factual considerations than those relevant to the law alone.

Professor Freeman's book, designed as a semester course at the LL. B. level could profitably be used in conjunction with practical student experience in apprenticeship or in a legal aid society. It doing so it does not purport to be a "how-to-do-it" book on interviewing or advocacy, but rather a work which raises a plethora of questions at the very core of lawyer's position and responsibility in society. As the editor expresses it,

Lawyers are at a crucial juncture in most client problems—the point where client and society meet and influence each other We must become aware of the forces at play and know that we ourselves are working with them maturely, not neurotically and exploitatively.¹

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1. Freeman, *Legal Interviewing and Counseling* 45 (1964).



In a short introductory section² of four chapters is presented the theoretical framework of the psychology of personality development, clinical counselling and, taking a cue from the works of one of the panel of commentators, the sociological framework of the proper or "sane" society. After each section is provided a rich bibliography of articles and volumes to supplement the textual treatment.

At the heart of the book is the second section,³ entitled "Cases with Comments." Under each of four different subject headings⁴ are five cases taken from the files of practising lawyers describing each lawyer's approach to his client and the advice which was offered. Following each of these cases come comments from several members of the panel of fourteen commentators, each of whom is both a lawyer and a social scientist. There are many vantage points from which the commentators examine the cases presented, picking apart the biases and psychological pressures of both the lawyer and his client. Such analysis is of course very helpful for an awareness of the non-legal issues at stake and affecting the legal framework of the facts. Important also is the question whether the lawyer should become involved in giving advice on a particular set of facts. Is it sufficiently close to a "legal problem" to be handled best by a lawyer? From this viewpoint we shall examine several of the cases presented. In the first, entitled "Horace Beane—The Rough Grader,"⁵ the client is a construction subcontractor who consistently demands perfection in the jobs he undertakes and then ends up in legal quarrels with his contractors over the added expense of finishing the jobs. In his summary of the case, the lawyer stated that he had fortunately been able to compromise, though unfavourably, every such quarrel which had arisen over the years, describing his position as in effect "a partner with his client in his business" in the sense that he seemed an indispensable party whenever the request for payment was made. The three commentators generally agreed that this working arrangement was, on the lawyer's part, both well conceived and much within the compass of legal practice, with one commentator suggesting that the lawyer might even have purposely taken a case to court to illustrate the hard way how difficult and wasteful actual litigation can be.⁶

A second case, "The Noises Next Door,"⁷ involves a woman client whose husband has taken out life insurance on her life and who thinks that he is plotting to murder her. While relating some illogical suspicions indicating a paranoid state of mind, the client refused to see

2. *Id.* at 1-58.

3. *Id.* at 59-229.

4. Marital-Family Problems, Criminal Problems, Business Financial Problems and Psychotic-Neurotic Problems. The fourth category appears to serve as a catchall for the more critical cases.

5. *Id.* at 162.

6. *Id.* at 164.

7. *Id.* at 205.



a religious or psychiatric counsellor, insisting that her problems were only legal and that the lawyer should be able to solve them. With the excuse that "I began to feel I was out of my depth," the lawyer withdrew from the case and never heard from the client again. The five comments which follow present a complete spectrum of views on whether the lawyer's counselling in this case was appropriate or not in view of the evident trust she was putting in a lawyer to solve an, albeit non-legal, problem.

The last case we shall mention is that of "Mr. O.—The D. P. Jew,"⁸ a situation in which the victim of a slave-labour camp during the Second World War approached a lawyer to undertake an almost impossible foreign suit for damages for enforced labour instead of accepting a compromise offer. This problem, in which there is a singularly worthy cause which the law is badly equipped to handle, is all too common in practice. Should the lawyer go to court on the slim chance of winning? Should he go even to lose in order to establish the injustice of the "law" in the hopes of legislative change? How far and in what way should he go in discussing and understanding the client's grievance and in suggesting non-legal means of giving it voice? Such questions are obviously very difficult, and cannot be answered apart from concrete facts, but the authors of the comments quite rightly think they are worthwhile asking.

There are two related areas which deserve to be mentioned in connection with the book under review. The first is that of professional ethics. This book itself provides a rich source of problems related to ethics, but in its depth study of only twenty actual cases all facets of this subject cannot be covered. More recently, there have been published works in the nature of "problem books."⁹ The problems given for discussion and resolution by students are not actual cases, but are abstracted from ethical situations actually met or likely to be faced by lawyers in practice. Organized into various chapters, they comprehensively cover the application of the various principles of ethics. The second area is not legal education as such but sociological research into lawyer's working practices, security and status, education and the degree to which a lawyer in his practice engages in the "preventive law" of out-of-court counselling and advising clients. Professor Freeman mentions, to illustrate the utility of his book, that the senior partner of a large New York law firm had stated that nine-tenths of his work was counselling in not strictly legal matters.¹⁰ Research has shown

8. *Id.* at 210.

9. Mathews, *Problems Illustrative of the Responsibilities of Members of the Legal Profession* (1965); Countryman, *The Lawyer in Modern Society* (1965); Smedley, *Professional Responsibility Problems in Family Law* (1963). Copies of many of these materials on education in professional responsibility are available on request from the National Council on Legal Clinics, American Bar Center, Chicago 37, Ill. U.S.A.

10. Freeman, *op. cit. supra* note 1, at 1.



however, that this is not universally true.¹¹ Especially where an advocate is working alone as opposed to in a partnership with others, his income and security of position will be correspondingly less, as also will be reduced the time he devotes to counselling on the non-legal or non-litigious matters of his client.¹²

It seems appropriate to note the perspective from which this book on legal counselling should be viewed. The author himself raises an important point when he states that :

The lawyer has seen enough cases to be aware that most "legal problems" are coupled with socio-psycho maladjustment, and he senses the need for speaking to the "whole man". At the same time the lawyer must remain aware that he is a *legal* specialist and must represent the social interests in upholding the legal system as well as meet the client expectations.¹³

Clearly also there are some branches of the law in which this book will be of more use than in others, and no lawyer should presume to undertake a counselling task which should properly be the job of another kind of counsellor. But it seems almost essential in these days for all lawyers to have some knowledge of the psychological and sociological background in which their advice is given, not only for their own practice but also for assuming a proper role in the development of society.

Secondly and equally important are the merits of the book pedagogically. Does the basic structure — introductory text, long cases with several comments on each and supplementary actual cases—best suit the subject under consideration? A great deal has been left to the teacher's own capacity to keep the class discussion within reasonable bounds. Not only is the subject one which is apt to lead far afield from legal matters, but the organization of the book does not lend itself to easy comparison of cases. To some extent this is compensated for by general discussions of four of the commentators,¹⁴ in which various comparisons are made of the cases as a whole. Secondly, although the beginning theoretical section is well-written, it is not integrated sufficiently into the rest of the work. In the comments on the cases this material is hardly mentioned. In view of the pragmatic approach adopted by most of the lawyers in the cases, the beginning section might very well be abridged to omit some of the more technical material. Alternately and perhaps preferably the chapters might be

11. See, e.g., Ladsinsky, "The Impact of Social Backgrounds of Lawyers on Law Practice and the Law," 16 *J. Leg. Ed.* 127, 142 (1963); Carlin, *Lawyers on Their Own* 204 (1962). See also various pamphlets entitled "Summary Report of Survey of the Economics of Law Practice" undertaken by various American state bar associations in conjunction with the American Bar Association Committee on the Economics of Law Practice.

12. There are notable exceptions to this however, particularly where there is a special relationship between a lone lawyer and the community he serves. See Carlin, *op. cit. supra* note 11, at 93-98, 168-200.

13. Freeman, *op. cit. supra* note 1, at 7.



rearranged in less "legal" fashion by grouping the cases according to the nature of the client's problem in terms of the theoretical categories given in the first part. Moreover, the need for taking actual cases is not so relevant here. Whereas in appellate legal cases it is necessary to show the factual situations in which the law is ambiguous or has not yet been pronounced through the cases which have been decided, the same is not true of legal counselling. Representative but artificial problems in the nature of those included in newer professional ethics books discussed above might profitably be added to give a fuller treatment. Some questions on each of the cases and shorter supplementary problems raised without discussion would also be helpful to round out and illustrate the plethora of difficulties which may arise in the course of legal practice.

It scarcely needs emphasis that Professor Freeman's book is a successful first effort in bringing the attention of lawyers to the importance of education in the counselling of clients. By choosing to present difficult factual situations, the "tough nuts" of legal practice, the author has made a wise decision which will both stimulate students intellectually and force them to consider the role they should play in their client's affairs. The pedagogical difficulties in organizing the material into chapters is only too evident. But the interdisciplinary and pragmatic approach to legal education which Professor Freeman's book represents is a welcome trend towards a more meaningful preparation for legal practice.

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14. *Id.* at 61-79.

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