BOOK REVIEW

LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH By David A. Binder & Susan C. Price. St. Paul, Minn.: West Publishing Co. 1977. Pp. xiii, 232, $9.95.

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The publication of a special issue on client counseling in a major law review demonstrates the growing acceptance of legal interviewing and counseling as a subject worthy of academic discourse and appropriate for study in a law school classroom.[1] David A. Binder and Susan C. Price's *Legal Interviewing and Counseling: A Client-Centered Approach* is one[2] of the widely adopted[3] textbooks available to train law students in these important lawyering skills.

What sets Binder and Price's volume apart from its competitors is its concise and relatively jargon-free exposition of a legal interviewing and counseling model. Binder, a law professor at UCLA, and Price, a Ph.D. associated with UCLA's Neuropsychiatric Institute, refrain from presenting their readers with either a haphazard smorgasbord of abstract generalizations and "helpful hints" or a ponderous discourse on psychological theory. Rather, they provide a paradigm of the legal interview which makes what often seems nebulous, abstract, and even mysterious appear purposeful, structured, and comprehensible. They offer not only a reasoned examination of the goals

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1. Surveys have shown the percentage of law schools accredited by the American Bar Association that offer training in legal interviewing and counseling to have grown from 12 percent in 1964 to about 60 percent in 1982. Stillman, Silverman, Burpeau & Sabers, *Use of Client Instructors to Teach Interviewing Skills to Law Students*, 32 J. LEGAL EDUC. 395 (1982).

2. Others include G. BELLOW & B. MOULTON, THE LAWYERING PROCESS: PREPARING AND PRESENTING THE CASE (1978); L. BROWN & E. DAUER, PLANNING BY LAWYERS (1978); H. FREEMAN & H. WEIHOFEN, CLINICAL LAW TRAINING (1972); M. NELKEN & M. SCHOENFIELD, PROBLEMS AND CASES IN INTERVIEWING, COUNSELING AND NEGOTIATION (1983); T. SHAFFER, LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL (1976); T. SHAFFER & R. REDMOUNT, LEGAL INTERVIEWING AND COUNSELING (1980); A WATSON, THE LAWYER IN THE INTERVIEWING AND COUNSELING PROCESS (1976).

3. In a survey of the 1984 Client Counseling Competition conducted by the Law Student Division of the American Bar Association, Binder and Price's *Legal Interviewing and Counseling* was the book most often mentioned by participating schools as the source they used to prepare for the competition. Law Student Division, American Bar Association, 4 Client Counseling Update 3 (Dec. 1984).

and objectives of legal interviewing and counseling and the problems that attend them, but also precise practical techniques, replete with examples, through which these goals and objectives can be met and the problems overcome. Together, these insights and techniques form the foundation for a model which the student can apply across a broad spectrum of attorney-client interactions.[4] The law student or attorney who has mastered the model and who is able to apply it skillfully will be able to participate in a meaningful attorney-client dialogue in which the lawyer not only utilizes his or her legal competency, but his or her considerable interpersonal skills as well. It is these relational skills, rather than mere legal acumen, that research demonstrates lead to a high degree of client confidence in and satisfaction with lawyer performance.[5]

THE TEXT AS A TREATISE: EXPLAINING THE MODEL

In the view of Binder and Price, many lawyers fail to develop with their clients the appropriate "client-centered" relationship of empathetic understanding. They fail to pay enough attention to their clients' feelings, preferring to see themselves solely as fact gatherers.[6] Accordingly, they ask far too many narrow questions,[7] depriving themselves of not only the rapport-building benefits that open-ended questions provide but also of the advantages that open-ended questions bring to the information-gathering process.[8] By using narrow questions to press the client for detail, attorneys often cause clients to "fill in" the details they cannot remember by imagining facts seemingly consistent with those they do recall.[9] At the same time the lawyers are also "filling in"; having heard similar stories countless times before, they tend to prematurely diagnose their clients' unique problems and misconstrue the nature of the clients' concerns.[10] When the time comes to make critical decisions, these attorneys are often far too directive in their approach, advising or even telling their clients what to do rather than assisting them to reach

4. Binder and Price deal directly, however, only with "cases falling within the context of litigation." D. BINDER & S. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT CENTERED APPROACH at v (1977). *See* notes 83-87 and accompanying text *infra*.

5. *See, e.g.*, Feldman & Wilson, *The Value of Interpersonal Skills in Lawyering*, 5 L. & HUM. BEHAV. 311 (1981) (relational skill contributes more to the formation of a client's perception of his or her attorney than does the attorney's level of legal competence). Excerpts from the tapes produced for this study are shown to client counseling classes at the University of Nebraska College of Law.

6. D. BINDER & S. PRICE, *supra* note 4, at 25.

7. *Id.* at 44.

8. *Id.* at 40-41. *See* note 30 and accompanying text *infra*.

9. D. BINDER & S. PRICE, *supra* note 4, at 52.

10. *See id.* at 54-55.

their own conclusions about which of the possible alternatives will lead to the greatest client satisfaction.[11]

The authors do not use empirical data to support their contention that the approach just described is prevalent; nor do they offer proof that their model leads to greater client satisfaction. Rather their model is a product of their own experiences and observations. The experiences and observations of the authors of this review do not differ significantly from those of Binder and Price.

Binder and Price begin the delineation of their model by identifying certain psychological factors that inhibit or faciliate full client participation in the interviewing process.[12] Among the inhibitors are "ego threat" (information which is perceived as threatening to the client's self-esteem),[13] "case threat" (information the client believes will be harmful to the client's case),[14] "role expectations" (the client's perception of the proper client behavior in the attorney-client relationship),[15] "etiquette barrier" (information the client believes "will be shocking, embarrassing, or discomforting to the lawyer"),[16] "trauma" (recalling experiences that evoke unpleasant memories),[17] "perceived irrelevancy,"[18] and "greater need" (the client's primary need to talk about a concern on which the lawyer is not focusing).[19]

To overcome these barriers and motivate full communication the authors suggest five facilitators. Throughout the remainder of the book they demonstrate how theses devices can be employed in particular instances. The facilitators are "fulfilling expectations" (conveying a strong expectation that the data sought should be revealed),[20] "recognition" (telling the client how helpful he or she is being),[21] "altrustic appeals" (invoking the client's or witness' sense of serving some higher value),[22] "extrinsic reward" (appealing to the client's self-interest),[23] and most significantly, "empathetic understanding" (communicating non-judgmental acceptance).[24]

Binder and Price devote an entire chapter[25] to active listening,

11. *Id.* at 148-49.
12. *Id.* at 6-19.
13. *Id.* at 10.
14. *Id.* at 10-11.
15. *Id.* at 11-12.
16. *Id.* at 12-13.
17. *Id.* at 13.
18. *Id.* at 13.
19. *Id.* at 14.
20. *Id.* at 15.
21. *Id.* at 16-17.
22. *Id.* at 17.
23. *Id.* at 17-18.
24. *Id.* at 14-15.
25. *Id.* at 20-37.

"the technique through which empathetic understanding is most readily communicated to the client."[26] Based on psychologist Carl Roger's theories of client-centered counseling,[27] active listening is the skill of demonstrating that the listener truly understands the speaker's message by reflecting back to the speaker the essence of both the speaker's content and feelings. This key technique not only helps the client deal with his or her emotions which might otherwise interfere with the interview process but also, through the rapport-building, engenders more information from the client than could be gleaned through mere questioning.[28]

Another device which facilitates both the development of rapport and the acquisition of information is the use of open-ended questions which allow the client to select the information he or she believes to be most pertinent and relevant.[29] Open-ended questions enhance client recall by permitting the client to relate his or her story with only limited interruptions; they strengthen rapport by conveying to the client the message that the lawyer is interested in the client and what he or she has to say.[30] In their chapter on questioning,[31] Binder and Price also analyze the advantages and disadvantages of narrow and leading questions.

With that foundation laid, the authors proceed to construct their basic legal interviewing model—the three-staged interview. In the first stage—the Preliminary Problem Identification Stage—the lawyer asks the client to provide a general description of the reasons why the client has come to see the lawyer. In particular, the lawyer attempts to discover the general nature of the transaction which underlies the client's concerns, the nature of those concerns, and the way in which the client would like to see the problem resolved.[32] The attorney's role in this stage is to remain the empathetic listener and not probe for details. The Preliminary Problem Identification Stage is followed by a Preparatory Statement during which the lawyer provides the client with a description of what will take place in

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26. *Id.* at 20-21.

27. *See, e.g.*, C. ROGERS, ON BECOMING A PERSON (1961); C. ROGERS, CLIENT-CENTERED THERAPY (1951); C. ROGERS, COUNSELING AND PSYCHOTHERAPY (1942).

28. D. BINDER & S. PRICE, *supra* note 4, at 15.

29. *Id.* at 38.

30. *Id.* at 40-41.

31. *Id.* at 38-52.

32. *Id.* at 53. For a detailed description of the Preliminary Problem Identification stage *see id.* at 59-64. One suggested approach to obtaining the desired information in the Preliminary Problem Identification Stage is for the lawyer to ask the client to "Give me a brief description of your problem, how it arose, and what solution you hope to find." *Id.* at 59. A multi-faceted question like this may be difficult to answer. It is likely that many clients would respond to only one of the three inquiries.

the remainder of the interview.[33] The scope and content of the statement will vary depending on the degree of the client's sophistication and the client's sense of urgency.[34]

During the second stage—the Chronological Overview Stage—the client is asked to provide a step-by-step chronological description of the events that gave rise to the client's problem.[35] The lawyer's major task at this stage is to provide an atmosphere of empathetic understanding in which the client is allowed to tell his or her story, in his or her own words, with a minimum of interruption. When necessary, the attorney should seek clarification or elaboration, but he or she should primarily be concerned with keeping the client on the chronological track and avoiding chronological gaps.[36]

Once the Chronological Overview Stage has been completed, the attorney mentally reviews what he or she has just heard in order to determine all the legal theories that might be applicable. Then in the third stage—the Theory Development and Vertification Stage—the lawyer conducts a detailed and systematic factual investigation of the substantive elements of each possible theory in order to determine whether it is potentially viable.[37] To conduct this thorough inquiry the authors recommend employing a T-funnel questioning pattern.[38] Each topic is explored by first asking a series of open-ended questions to solicit those facts that the client recalls.[39] These are followed by a series of narrow questions designed to discover the existence of additional facts that the lawyer believes could well have occurred but which were not mentioned previously by the client.[40]

In essence, Binder and Price's three-stage interview entreats the lawyer to engage in three separate explorations of the facts which form the basis for the client's concerns with each successive exploration more detailed than the previous one. Each stage serves as a guidepost to the next, aiding the lawyer in seeing where he or she is heading and helping to protect the lawyer from the ills of premature diagnosis.[41]

Binder and Price conclude their study of client interviewing by discussing techniques that may assist lawyers in dealing with problem clients. The four client types they discuss are those who are re-

33. *Id.* at 64-72.
34. *Id.* at 65-66.
35. *Id.* at 53.
36. *See id.* at 72-85.
37. *Id.* at 54.
38. *Id.* at 92-99.
39. For example, the attorney might ask the client, "What representations did the car dealer make to you?" *Id.* at 92-93.
40. For example, "Did he say anything about the brakes?" *Id.* at 93.
41. *See* note 10 and accompanying text *supra*.

luctant to discuss certain topics,[42] clients who are reluctant to commence the interview,[43] clients who fabricate,[44] and clients who ramble.[45]

Following a chapter on witness interviewing,[46] *Legal Interviewing and Counseling* turns to a discussion of client counseling, defined as "the process in which lawyers help clients reach decisions."[47] Binder and Price's counseling model embraces the position espoused by Rosenthal[48] and others[49] that the client is best served by a decision-making process in which the client participates fully and bears the ultimate responsibility for problem-solving.

Their basic counseling model also consists of three stages. The first stage, which is preceded by a preparatory statement, calls for the lawyer, assisted by the client, to identify all the available alternative courses of action.[50] In the second stage, the attorney and client analyze and predict the positive and negative consequences of each alternative.[51] The consequences explored include both legal ones, about which the lawyer has the superior knowledge, and non-legal economic, social, and psychological ones, about which usually the client, but at times the lawyer or a third party, is in the best position to predict. In the third stage, the lawyer provides a brief and compact summary of all the identified consequences, preferably assisted by a written chart that is prepared as the counseling session progresses.[52] The client should then be ready to weigh the alternatives and make his or her decision.

Although the process appears to be highly structured, the authors admit that it is difficult to keep within orderly parameters. During the examination of the consequences, for instance, the dialogue repeatedly jumps around among the various alternatives and consequences.[53] The transcript of a hypothetical counseling session

42. D. BINDER & S. PRICE, *supra* note 4, at 104-10.
43. *Id.* at 110-12.
44. *Id.* at 112-18.
45. *Id.* at 119-23.
46. *Id.* at 124-34.
47. *Id.* at 135.
48. D. ROSENTHAL, LAWYER AND CLIENT: WHO'S IN CHARGE? (2d ed. 1977). A participatory model of attorney-client interactions yields significantly better results for the client than does the traditional model in which the lawyer exercises predominant control over and responsibility for problem-solving.
49. *See, e.g.*, Kritzer, *The Dimensions of Lawyer-Client Relations: Notes Toward a Theory and a Field Study*, 1984 A. B. FOUND. RESEARCH J. 409 and studies cited therein; Redmount, *Client Counseling and the Regulation of Professional Conduct*, 26 ST. LOUIS U.L.J. 829 (1982).
50. D. BINDER & S. PRICE, *supra* note 4, at 135-36, 157-65.
51. *Id.* at 137-47, 166-83.
52. *Id.* at 183-86.
53. *Id.* at 183.

provided by the authors is most helpful in demonstrating how this complex process takes place.[54]

After explaining their counseling model and providing a detailed description of the techniques they recommend, Binder and Price devote a chapter to devices that can be used in counseling difficult clients, including clients who are extremely indecisive,[55] clients who insist upon obtaining the lawyer's opinion on what should be done,[56] clients who have already reached a decision and are not interested in considering other alternatives,[57] and clients who appear to be making extremely detrimental decisions.[58] The book concludes with a chapter on referring clients to mental health professionals.[59]

Of the book's two major components the counseling segment appears to be the more controversial. One area of debate is the authors' suggested method for describing to the client the possible consequences of going to trial. In their view, the lawyer will need to convey to the client five possible results of litigation—the best possible, the best likely, the most probable, the worst likely, and the worst possible.[60] The authors believe that listing these five possibilities "reaches a sound mid-point between the poles of too much and too little information,"[61] but for many clients five possibilities could well be too many and too confusing. Each of the possibilities is to be described to the client in both mathematical and descriptive terms.[62]

Many practitioners would find such explanations inadvisable, both because they believe such definitive predictions of trial outcomes are not possible and because they fear the strong negative reactions of their client when he or she learns that what materialized was not the seventy percent chance of prevailing, but the thirty percent chance of losing. Binder and Price contend that "a lawyer who has competently investigated, prepared, and analyzed a case will be able to predict the general degree of risk involved should the case proceed to trial."[63] Certainly it is true that cases can and must be evaluated before the decision to settle or go to trial can be made. Where Binder and Price may mislead their readers is in leaving the impression that this is a relatively simple process. Valuing personal

54. *Id.* at 174-83.
55. *Id.* at 192-97.
56. *Id.* at 197-200.
57. *Id.* at 201-03.
58. *Id.* at 203-10.
59. *Id.* at 211-23.
60. *Id.* at 160.
61. *Id.* at 161.
62. For example, "I think you have a fairly good chance, say a 70 percent chance, of prevailing." *Id.* at 161.
63. *Id.* at 144.

injury cases, for instance, is a complex undertaking[64] which has only recently come to be systematically analyzed.[65] It involves a myriad of variables including the type of accident, type of injury sustained, amount of special damages, rate of inflation, local award trends, and a host of other psychological factors including the nature of the plaintiff, the defendant, the jurors, and the witnesses.[66] The process is made easier, but not easy, by the existence of handbooks and pamphlets that assist the lawyer in making these evaluations.[67]

As to the advisability of conveying these predictions to the client, it seems clear that the client deserves more than, "If you go to trial, you will simply be taking your chances."[68] To tell the client that his or her chances of prevailing on trial are fifty-fifty when the lawyer has reason to know they are something else means that either the client will be forced to make a decision on whether to proceed with litigation without accurate data, or that the lawyer, by withholding information, has managed to manipulate the situation so that only the lawyer is capable of making a competent choice. Perhaps a less rigid system than the one Binder and Price advocate might be preferable, for instance a system in which the alternatives are stated in terms of a range of percentages and a range of recoveries (e.g., a 60-70 percent chance of recovering $5000-$8000).

A second controversial area is Binder and Price's insistence that in certain instances the lawyer refrain from giving the client his or her opinion as to what the client should do. Their concern is not so much for the client who simply does not want to be bothered and turns his or her case over to the lawyer; that is the client's prerogative.[69] Nor is it for the client who is an independent decision maker willing to make his or her own choice and seeks the lawyer's opinion only to check it against his or her own.[70] They caution, however, that it is often difficult to know if a client is an independent decision maker. They also believe that a client who has reached a decision that the lawyer feels would likely result in substantial economic, so-

64. *See, e.g.*, G. BELLOW & B. MOULTON, *supra* note 2, at 1004-17.

65. See the studies of the Rand Institute for Civil Justice including A. CHIN & M. PETERSON, FAIRNESS OF JURY TRIALS: WHO WINS AND WHO LOSES IN COOK COUNTY (1983); M. PETERSON, COMPENSATION OF INJURIES: CIVIL JURY VERDICTS IN COOK COUNTY (1984); M. PETERSON & G. PRIEST, THE CIVIL JURY: TRENDS IN TRIALS AND VERDICTS, COOK COUNTY, ILLINOIS, 1960-1979 (1982); M. SHANLEY & M. PETERSON, COMPARATIVE JUSTICE: CIVIL JURY VERDICTS IN SAN FRANCISCO AND COOK COUNTIES, 1959-1980 (1983).

66. *See* JURY VERDICT RESEARCH, INC., PERSONAL INJURY VALUATION HANDBOOKS (1983).

67. *See, e.g., id.*

68. D. BINDER & S. PRICE, *supra* note 4, at 144.

69. *Id.* at 198.

70. *Id.* at 197-98.

cial, or psychological harm for very little gain ought to be urged to make a different choice.[71]

Binder and Price's major concern is with the client who is a passive decision maker, one who will do as the lawyer advises because he or she believes that that is the client's proper role, even though the client may be uncomfortable with that advice.[72] There is no guarantee, the authors contend, that the recommendation the lawyer gives will actually be the best one for the client because the attorney rarely has a full enough understanding of the client's value system to determine which alternative is likely to bring the maximum possible client satisfaction.[73] In the end, however, if the client refuses to act without hearing what the lawyer feels ought to be done, they believe this information should be provided, but only after repeated attempts to get the client to decide.[74]

The issue is a narrow one—whether, in their insistence that a lawyer not recommend a course of action to a passive decision maker until the last possible moment, the author's have raised "the principle of client self-determination to the status of dogma."[75] In support of the proposition that they have gone too far, it can be argued that the lawyer's refusal to give the client the advice he or she seeks may damage the attorney-client rapport which the lawyer has so carefully nurtured. There is also the question of whether a passive decision maker has a right to his or her passivity. There are people who do not like to make decisions and would genuinely feel better if the expert they have hired at considerable expense would at least voice an opinion as to what they ought to do. If the decision reached proves in retrospect to have been the wrong one, many clients, albeit not all, would be less resentful that the lawyer's advice was wrong than if they had perceived that the lawyer forced them into making an independent choice they were reluctant to make.

Furthermore, consideration has to be given to the notion that an attorney's advice bring something of value to the decision-making process—dispassion and objectivity.[76] Because Binder and Price believe that rational decision making is inexorably tied to an understanding of the client's values, they find it unreasonable to speak of a "lawyer's objective viewpoint."[77] Others also argue that given the

71. *Id.* at 203-07.
72. *Id.* at 197-98.
73. *Id.* at 148-50.
74. *Id.* at 153-54.
75. Cihlar, *Client Self-Determination: Intervention or Interference*? 14 ST. LOUIS U.L.J. 604, 605 (1970).
76. D. BINDER & S. PRICE, *supra* note 4, at 186 n.9.
77. "A lawyer should bring to bear upon the decision-making process the fullness

lawyer's personal make-up and his or her own agenda, attorney objectivity is at best difficult to achieve.[78] Yet it seems plausible that there are situations in which, from a lawyer's more detached viewpoint, one alternative appears more in the client's long-term best interest than one which has greater short-term emotional appeal. Many of these cases would fall short of the standard that Binder and Price have set for lawyer intervention—situations where the decision with the short-term appeal would be one which would be extremely detrimental to the client.[79]

Even when the lawyer tries his or her best to maintain a neutral stance by using neutral language and demeanor, the task is difficult. Binder and Price suggest that an appropriate response to a client's request for the lawyer's opinion would begin something like this:

> Mr. Hawkins, I'm not really in a position to evaluate the situation. You're the only one who can really weigh the consequences. For example, you're the only one who knows whether it's more important for you, in the long run, to have the satisfaction of knowing you did all you could rather than having the $2000 now.[80]

Is that a neutral statement? Might not some clients read into this the attorney's opinion that one ought to do all that one can rather than selling out?

In saying this, we in no way dispute the authors' basic premise that the client is the proper individual to make the decision. Perhaps the only fair conclusion is that of a commentator who said: "Quite obviously, distinctions between legitimate intervention and illegitimate interference may become quite fine, and perhaps opaque."[81]

Binder and Price's *Legal Interviewing and Counseling* is not and does not purport to be the definitive work on client counseling. Of the subjects the authors chose not to cover,[82] however, two are dearly missed.

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of his experience as well as his objective viewpoint." MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 7-8 (1981).

78. *See* Chilar, *supra* note 75, at 619-23; Redmount, *Attorney Personalities and Some Psychological Aspects of Legal Consultation*, 109 U. PA. L. REV. 972 (1961).

79. *See* note 71 and accompanying text *supra*. *Cf.* D. BINDER & S. PRICE, INSTRUCTOR'S MANUAL FOR LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH 152 (1979) [hereinafter cited as *Instructor's Manual*]. There are no hard and fast guidelines as to when intervention may be appropriate. A key consideration is a prediction on the lawyer's part that over time the client will come to regret the decision. To make this determination the lawyer will need to have a good understanding of the client's values. This position, which is similar to that expressed in this review, is more clearly stated in the *Instructor's Manual* than in the text.

80. D. BINDER & S. PRICE, *supra* note 4, at 187.

81. Chilar, *supra* note 75, at 605.

82. *See* notes 98-105 and accompanying text *infra*.

The first is the authors' admitted neglect to provide any discussion of the "lawyer-client interaction in planning situations such as the preparation of a will, the formation of a corporation, the preparation of a buy-sell agreement, etc."[83] Their decision to limit "the description of the interviewing and counseling processes to cases falling within the context of litigation"[84] is somewhat ironic in view of the fact that in good measure the same impetus that gave rise to increased emphasis on teaching counseling skills to law students also generated heightened interest in instruction in non-adversarial planning skills.[85] While Binder and Price's explanation of the counseling process focuses primarily on the basic decision of whether to proceed with, settle, or forego litigation,[86] their model is equally applicable to decision making in the planning context. Likewise the authors' basic approach to interviewing—gathering facts in successive stages of increasing detail[87] in an atmosphere of trust—would be an appropriate model for the planning interview as well. However, as most planning interviews do not include a series of past events or transactions upon which the rights and obligations of the parties depend, many of the specific components of Binder and Price's interviewing model, particularly the Chronological Overview Stage, would not be adaptable to the planning situation. While it would have been inadvisable to debilitate the interviewing model by over-generalizing it, it would have been appropriate to devote at least a chapter to how the authors' basic approach to interviewing and counseling could be applied in the planning context.

The second area the book regretfully neglects to discuss is attorneys' fees, a subject on which law students need much instruction. While the authors recommend that the issue of how various fee arrangements might be explained to the client be discussed in class[88] and while they suggest the showing of videotape segments that deal with this subject,[89] they do not provide what could have been a most useful textual treatment of this issue.

THE TEXT AS AN INSTRUCTIONAL TOOL: TEACHING THE MODEL

In their preface to *Legal Interviewing and Counseling: A Client-*

83. D. BINDER & S. PRICE, *supra* note 4, at v.

84. *Id.* at v.

85. *See generally* L. BROWN & E. DAUER, *supra* note 2; Brown & Shaffer, *Toward a Jurisprudence for the Law Office*, 17 AM. J. JURIS. 125 (1972); Brown, *The Law Office—A Preventive Law Laboratory*, 104 U. PA. L. REV. 940 (1956) (discussing the teaching of preventative techniques).

86. D. BINDER & S. PRICE, *supra* note 4, at 135.

87. *See* note 41 and accompanying text *supra*.

88. *Instructor's Manual*, *supra* note 79, at 46.

89. *Id.* at 46 n.*.

Centered Approach, Binder and Price state: "Our intention is that this book will serve as a foundation in a course where the student will have an opportunity to practice the techniques we have described and to receive constructive feedback about the student's actual performance."[90] Whatever its shortcomings as a treatise on client counseling, and they are few, the volume's real measure is how well it achieves its objectives in the classroom. It does so exceedingly well.

Again the key is the authors' use of an interviewing and counseling model, which assists the student to consider, in an organized fashion, what needs to be achieved during the interview and how the student might proceed to accomplish it. Courses in client counseling, as well as other skill courses, are beneficial in that they assure that the student will have an experiential base before he or she encounters real clients with real problems. Their value for this purpose is limited, however, because the experience the students gain in class will soon be dwarfed by "real world" experience when they become practitioners. A legal interviewing and counseling model, however, supplies a structure upon which the student and lawyer can continually build and provides objective criteria against which both the neophyte and veteran can measure their performance.

While Binder and Price's model is not exceedingly complex, it is not easily internalized. In order to be mastered, it must be studied and practiced. In their instructor's manual, Binder and Price advocate using an incremental step-by-step approach in which the students are asked to master discreet concepts and techniques before integrating them into a fluid whole.[91] Their approach utilizes three components: a didactic component during which students read about and discuss basic concepts and techniques, an observational component in which others are observed using the concepts and techniques, and a practice component in which the students practice the techniques and receive constructive feedback.[92] Without all three, the model and its requisite skills will not be learned. Employing Binder and Price's pedological approach, however, carries with it consequences both in terms of the scope of the course and student attitudes toward it.

The authors' suggested approach to the didactic and observational components of the course is to begin with a discussion of the assigned readings followed by the viewing and analysis of videotaped vignettes in which lawyers demonstrate—sometimes well, sometimes

90. D. BINDER & S. PRICE, *supra* note 4, at v.
91. *Instructor's Manual*, *supra* note 79, at 3-4.
92. *Id.* at 4.

poorly—the specific skills that are being covered.[93] The practice component consists initially of short classroom roleplay exercises in which each student serves in turn as lawyer, client, and critiquer. Each roleplay concentrates on the skills necessary to properly conduct the aspect of interviewing or counseling that is being studied.[94] Specific criteria for critiquing the exercise and providing feedback to the lawyer is included with each roleplay. In addition, each student conducts two half-hour simulated interviews which are videotaped and critiqued.

While this is an excellent way to teach legal interviewing and counseling, it does require a substantial commitment of time. The authors conservatively estimate that to teach twenty students a complete course in interviewing and counseling, not including witness interviewing, would take 134 student contact hours. A short course would take 112 1/2 hours.[95] Both these time estimates include two complete videotaped simulated client interviewing and counseling sessions per student at two hours per session. Even conceding that a client counseling course requires less faculty preparation than a substantive law course, a questionable proposition at best, this is a lot of time.

At the University of Nebraska, we require the students to conduct three critiqued half-hour simulated interviews and one uncritiqued interview that constitutes the final exam. While the short classroom roleplays are invaluable learning devices, we find that the longer simulated interviews, where the student is critiqued and graded by the instructors, provide greater motivation to the students to master the skills and perform up to their fullest capabilities. However, where Binder and Price suggest that these interviews be conducted in addition to the normal classroom sessions, we schedule ours in lieu of the regular class for that week. We have also found that we can watch the student conduct a half-hour interview and provide feedback to the student from two or three critiques in 75 minutes as compared to the one hundred twenty to one hundred fifty minutes suggested by Binder and Price. In fact, we question the efficacy of critiques that last much longer than those we provide. It seems to us that a student can absorb only so much feedback at any one session. Of course, the instructor's manual does not describe what takes place in the critique sessions Binder and Price envision; if the videotape is played back during the critique, the use of that much time would be

93. *Id.* at 5.

94. *Id.* at 14-15. The *Instructor's Manual* contains examples of many of the roleplays.

95. *See id.* at 21-23.

more understandable. We opt instead to have the student watch his or her own tape plus that of one other student and prepare a detailed written critique of both interviews. This has the advantage of both saving time and assisting the student in developing a system of self-critiquing that should prove useful in the future.[96] Criteria for evaluating the interview and a suggested critiquing format are provided.[97]

No matter what its exact configuration the use of the incremental skill-building approach will not leave much time to explore other topics that one might wish to include in a client counseling course. Such topics include non-verbal communications;[98] referrals;[99] the planning interview;[100] office arrangement; initial greetings; fact gathering; witness interviewing;[101] preparing clients for trial; mediation; negotiation; group dynamics; malpractice and professional responsibility; the lawyer-client relationship in general;[102] interpersonal relationships within a law office; law office management; interviewing and counseling juveniles; dealing with clients with special problems, such as grieving clients,[103] alcoholics, and those undergoing severe stress; and special interviewing and counseling problems associated with particular areas of the law such as family law. In addition, the instructor may wish to design exercises more experiential in nature[104] than those suggested by Binder and Price or may wish to devote time to activities designed to help the student understand himself or herself better.[105]

If one believes that the mastery of a basic interviewing and counseling model is essential to the training of effective legal counselors, the time necessary to accomplish this task must be expended. Student opinion as to whether the time spent focusing on the model is

96. Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 ARIZ. ST. L.J. 277, 292-93 (1982).

97. The criteria come primarily from the Binder and Price book. The format is adapted from the model used by the National Institute for Trial Advocacy. *See* M. HERMANN, F. MOSS, K. BROWN, & J. SECKINGER, NITA TEACHERS MANUAL AND ADMINISTRATIVE GUIDE TO PROBLEMS AND CASES IN TRIAL ADVOCACY 2-4 (1977).

98. *See* D. BINDER & S. PRICE, *supra* note 4, at 28-30. We assign G. NIERENBERG & H. CALERO, HOW TO READ A PERSON LIKE A BOOK (1971) to further acquaint students with this topic. Despite this book's limitations, it does have the advantage of being co-authored by a lawyer.

99. *See* D. BINDER & S. PRICE, *supra* note 4, at 211-23.

100. *See* notes 83-87 and accompanying text *supra*.

101. *See* D. BINDER & S. PRICE, *supra* note 4, at 124-34.

102. We sometimes require the students to read D. ROSENTHAL, *supra* note 48.

103. We assign E. KUBLER-ROSS, ON DEATH AND DYING (1969) to acquaint the students with the stages of grief.

104. See, for example, the exercises listed in Goodpaster, *The Human Arts of Lawyering: Interviewing and Counseling*, 27 J. LEGAL EDUC. 5, 36-46 (1975).

105. *See, e.g.*, T. SHAFFER, *supra* note 2, at 181-88; A. WATSON, *supra* note 2, at 75-93. Our concession to this viewpoint is to administer and discuss the Myers-Briggs Type Indicator.

worthwhile varies considerably. Many students find security in having a road map that they can follow. This is particularly true of students who are uncertain about their own ability and anxious about their performance.[106] More confident and experienced students may find the model confining, particularly if they have previously developed their own style of interviewing.

While the model should be applied flexibly, the students should not be permitted to lose sight of it. Binder and Price's approach cannot be evaluated until it is learned and it cannot be fully understood until it is practiced. If time permits, other models should be studied and students encouraged to experiment with their own approaches, but this should not be done until the basic model is mastered.

At the other extreme are the students who consider the stages and techniques absolutes and try to follow them like a prescription. Not all clients are the same and not all approaches work well with all clients. Likewise, each law student and lawyer needs to bring his or her own style and personality to the interviewing and counseling process. As students become more conversant with the model and more comfortable with themselves, they learn to be more flexible.

The aspect of the book's approach that creates the most student resistance is active listening. This would come to no surprise to Binder and Price who beat their readers to the punch by cataloguing, and trying to refute, all the common complaints about the technique[107]—it is not proper for lawyers, it is mechanical, it asks lawyers to be empathetic to clients who do not deserve empathy, it invites emotional responses, it is manipulative. The most prevalant student concern—that active listening sounds too artificial and contrived—has some basis in fact. Initial active listening responses can be awkward and often seem ingenuine. These difficulties can be overcome with practice. As student comfort with this technique increases so does the sincerity of the statements. The students need to be encouraged to keep on trying and to develop responses that are genu-

106. [M]ost students cannot learn to be effective legal counselors if they try to approach each client without some basic models in mind. Without basic models, the vast majority of beginning students feel they really lack the knowledge of how to actually conduct the interview . . . . There is an overwhelming feeling of "I don't know what I'm actually suppose to do." Preoccupied with their own anxieties, beginning students usually find it difficult to be responsive to the concerns of their client . . . . On the other hand, when beginning students have a basic approach in mind they can deal with their initial uncertainty about what to by falling back on the basic approach in mind they can deal with their initial uncertainty about what to by falling back on the basic model.

Instructor's Manual, *supra* note 79, at 2.

107. D. BINDER & S. PRICE, *supra* note 4, at 32-36.

inely their own.[108] Students also may feel ill-equipped to identify and label clients' feelings. One device we have found useful is to provide the students with a list of common emotions.[109]

Almost all students show marked improvement in all aspects of the model over the course of the semester, although we tend to emphasize interviewing more than counseling. Even within the interview paradigm, the last stage, Theory Development and Verification, often gets short-changed as the half-hour interview rarely provides sufficient time for a full development of all three stages. Since the Theory Development and Verification Stage includes probing for detail, it is more comfortable than the other stages for many law students. On the other hand, the students often lack the necessary substantive base to handle this stage adequately.

A course in client counseling is, of course, only the beginning of the law students' education in legal interviewing and counseling. Having studied, practiced, and learned Binder and Price's model, they have the necessary foundation on which to build. They can develop into first-rate legal counselors with a genuine style, uniquely suited to their own outlook and personality. Counseling is an art—not a science, but art has a structure. Binder and Price's excellent book provides that structure. Experience develops the art.

108. *See id.* at 33.

109. We have prepared our own list. Another source is J. DAVITZ, THE LANGUAGE OF EMOTION (1969).