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Ice, Miller, Donadio & Ryan

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Book Review

THE LAWYER IN THE INTERVIEWING AND COUNSELLING PROCESS. By Andrew S. Watson, M.D.
Indianapolis: Bobbs-Merrill Company, Inc., 1976. Pp. xxi, 163.

MARGARET C. ATTRIDGE*

Harkening back to the model lawyer of Robert Traver's *The Anatomy of a Murder*,¹ Andrew S. Watson, M.D. advocates a psychological approach to interviewing and counselling by the lawyer. In a decade in which bar associations and lawyers throughout the country are considering permitting not only specialization and the advertising of specialization, but also group and prepaid legal service contracts, the immediate question arises: Can or should one performing "legal" services for a client additionally provide psychological and counselling functions? A reading of *The Lawyer in the Interviewing and Counselling Process* mandates an overwhelmingly affirmative response.

The main thrust of this book is to point out that lawyers, upon graduation from law school, are generally ill-equipped to deal with the problems, prejudices, and fears of an individual client during the interviewing process, and are woefully inexperienced in the dynamics of an interview and the responses elicited by certain types of questions and activities. Using descriptions similar to the case book method with which law students and lawyers are all familiar, Doctor Watson describes and suggests means by which a lawyer may obtain the information necessary to proper legal representation of the client, while reassuring him without putting him in the position of a child supplying appropriate information to please a parent. While many lawyers will disagree with the various "styles" suggested by Doctor Watson, the alternatives suggested are stimulating, and run a basic theme throughout: First, a lawyer must have a goal in the interview; second, he must learn to listen to both what is said and what is not said, without preconceived notions of the legal niche into which the client will fit; third, he must recognize the client's desires; and fourth, he must attempt to reconcile the client's desires and the legal options available. However, before any lawyer, law professor, or law student adopts *The Lawyer in the Interviewing and Counselling Process* as the "horn book" of interviewing and counselling, several points require comment and consideration.

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¹R. TRAVER, *ANATOMY OF A MURDER* (1958).

First, and perhaps most important, is that Doctor Watson is a psychiatrist, and although the interface between law and medicine is daily recognized as more important, Doctor Watson has written from a psychiatrist's, rather than a lawyer's, point of view. Doctor Watson freely admits this, describing his book as an "abbreviated description." While this reviewer cannot state the degree to which it is abbreviated with respect to psychological considerations, the book is extremely abbreviated with respect to legal considerations, as is especially evident in the questions and problems at the conclusion of each chapter. For example, one of the questions considered is what method should be employed to handle an opponent or a judge in a jury trial who is constantly making a variety of suggestive gestures to the jury during the examination of a witness.² While the point of the question may have been to alert a lawyer that the gestures of an opponent or a judge may have an effect on a jury, the answer to the question posed does not lie with the use of psychological tools learned in the interviewing and counselling process, but rather with the legal tools and objections learned by the lawyer during his law school years. While it is surely an axiom that a trial lawyer must always consider the effect upon the jury of any objection made (Is the jury going to side with him for protecting his client? Is the jury going to believe that the objection is frivolous and merely an attempt to keep out evidence that would lead to "the truth"? Is the objection simply going to call attention to the matter and give it more prominence in the jury's eyes than it deserves?), a trial lawyer must also recognize that he is making a record, and that the record for appeal must be protected with legal, not psychological, objections.

Second, Doctor Watson lays some emphasis upon the counselling process, indicating that a lawyer has a duty to counsel, as well as represent, his client. While the duty to counsel and help a client is present, it is often necessary for a lawyer to "play a role," sometimes to the point of hostility to a client, to obtain a reading on the client's truthfulness and honesty. It is indeed unfortunate, but a fact, that many clients with the type of problems described by Doctor Watson have a preconceived idea of what the law requires for a recovery or a judgement in their favor prior to retaining a lawyer, and such pre-conceived notions often, consciously or subconsciously, affect the client's presentation of the "facts." While the coaxing and almost coddling of a client suggested by Doctor Watson to get to "the bottom of the facts" may assuage the conscience of a not-quite-truthful client, it ignores the pressure on the average lawyer of dealing swiftly with the facts of the case, as presented by the client and revealed by investigation, and the necessity, both in court and out, of rapid-fire decisions. It is the facts of a case, not a client's personality, his problems, or the lawyer's desire to help with the problems which generally result in a favorable or unfavorable judgement.

²A. WATSON, *THE LAWYER IN THE INTERVIEWING AND COUNSELLING PROCESS* 74 (1976).

In this same line, Doctor Watson provides insights into why a lawyer does or does not like his client. While understanding why a client is liked or disliked will help a lawyer present his client to the jury, hopefully with the likeable foot forward, whether a lawyer likes or dislikes a client has nothing to do with whether the client ran a stop sign or was in fact struck when another ran a stop sign.

It must be noted that Doctor Watson throughout recognized a sense of right and sense of wrong. There are discussions of how a lawyer handles a case which he loses, which "should have been won," or wins the case which "should have been lost."³ One of the most difficult adjustments a young lawyer must make in a transition from law school to practice is avoiding the judgmental "should have won" or "should have lost." Few lawyers would ever admit to losing a sense of right and wrong, and there are cases which are lost which surely should have been won. However, in the legal system in the United States, who wins and who loses is for a jury to decide, subject to the appeal of legal issues. If a lawyer makes legal and tactical errors which caused a case to be lost, he should recognize his failures and learn from them. However, for a client or a lawyer to mull over a loss/win vs. right/wrong in the abstract is a misunderstanding of the United States Judicial System.

Finally, in discussing the ultimate outcome of a case and its correctness or incorrectness, Doctor Watson has abbreviated to the point of slighting one of the most important aspects of the practice of law, the settlement procedure. Surely the settlement procedure, whereby a compromise satisfactory to both sides is reached, is equally important as the interviewing process, and in most instances is the ultimate outcome of a proper counselling process. For example, a trial was recently commenced in which the plaintiff alleged certain physical injury and psychological damage occurred to her as a result of assault and battery committed on her while a guest at a motel, allegedly as a result of the motel's failure to provide a safe place for her to stay with adequate locks on the motel door. The verdict range for similar injuries across the country was extremely high; nevertheless, on the third day of the trial the case was settled for substantially less than similar reported verdicts. The lawyer for the plaintiff was professionally disappointed, and, because of the rapport he had established with his client, would have been able to have her choose to turn down the settlement and "roll the dice" hoping for a professionally satisfying jury verdict. Nevertheless, the lawyer, a man of great personal and professional integrity, because of his understanding of his client throughout the interviewing and counselling process, recognized his client's need to settle the case, recognized that the settlement, at an amount suggested by the pre-trial judge, was moral victory for her, and understood that, if the case had been lost, his client would have been psychologically devastated. That lawyer properly concluded the case by settlement—a settle-

³*Id.* at 100.

ment which would not have been reached had he not been sensitive to and aware of the "psychological" implications of settlement. The handling of a settlement under such instances, the lawyer's role with his client, and the lawyer's role with himself, is a phenomenon which deserves more than mere mention in a discussion of the counselling process.

"If wishes were horses, then beggars would ride" and lawyers could be all things to all men. Doctor Watson has suggested and outlined methods which, if employed by lawyers, would undoubtedly improve the legal system. But it must be remembered that lawyers do deal primarily with legal issues, and in many practices, as for example commercial practice or tax practice, the major source of evidence is documentary, rather than coming through the interviewing and counselling process, and that lawyers must rely primarily on the law and evidence, rather than the psychological aspects of interviewing and counselling. Nevertheless, *The Lawyer in the Interviewing and Counselling Process* is an important touchstone for the growing interface between law and psychiatry and the growing recognition by lawyers of the validity of psychological and psychiatric methods. Even if a lawyer disagrees with the methods and alternatives suggested by Doctor Watson, his book will at least make lawyers aware of potential problems.