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# A COUNSELING MODEL FOR LAWYERING IN DIVORCE CASES

James R. Elkins\*

## I. Introduction

Separation and divorce are significant and traumatic events in an individual's life. The dissolution of a marriage and an ongoing family unit is seldom a happy occasion. Frequently, separation and divorce involve intense anger, bitterness, and disillusionment; ambivalence, anxiety, depression and guilt may also be experienced. Some clients experience an episodic exhilaration, which is often illusory and passes with time.<sup>1</sup>

Separation and divorce involve transition—an end and a beginning in one's life.<sup>2</sup> It is a "splitting off" from one's spouse, children, and friends.<sup>3</sup> The event is highly symbolic and is often accompanied by emotional distress.<sup>4</sup> This

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In the course of writing this article, I have benefitted from the wise counsel and editorial assistance of Marvin Coan, Debbie Kottell, and Katherine Neal.

1 Sometimes loss of attachment gives rise not to separation distress, but rather to its opposite, euphoria; or it may alternate with or be interrupted by euphoria. Some among the separated report that for brief or more extended intervals they felt just marvelous, as though they were walking on air. They had new confidence in themselves, liked themselves better than ever before, and with these changes in self-regard felt that the world was open to them. That anything was possible. Life had become an adventure through which they could confidently sail. They reveled in their sense of freedom.

The euphoria results from the appraisal that the attachment figures is not needed after all, that one can do very well alone. It is another way of managing loss, in which the individual rearranges his or her emotions so that the loss is without significance. Instead of needing the other, the individual feels that he or she needs only the self. Furthermore, removal of the other has made available to the self new opportunities for gratification and self-realization.

This euphoria does not generally seem to be an integrated or lasting aspect of the separated individual's personality. A very few report having been sustained by euphoria for a period of a month, after which they returned to normalcy without any bad times along the way. Most who experienced euphoria report that it proved fragile; when a reverse was encountered that made them question themselves, it gave way to separation distress or objectless depression. One such reverse might be criticism at work. So fragile can euphoria be that some participants in Seminars for the separated report its loss just from hearing in a lecture that it might not last.

R. WEISS, *MARITAL SEPARATION* 53-54 (1975).

Morton Hunt in his study of the unmarried confirmed that a few individuals can avoid feelings of loneliness.

[T]hey are the self-sufficient souls for whom the intimacy and interaction of marriage may have proved uncomfortable and overly demanding and who are happier in limited, uncommitted relationships. Such persons find the FM [Formerly Married] state relatively comfortable, even at the beginning, and may be genuinely pleased to be rid of the parties.

Hunt *Alone, Alone, All, All Alone*, R. WEISS, *LONELINESS: THE EXPERIENCE OF EMOTIONAL AND SOCIAL ISOLATION* 125-33, 126 (1973).

2 See S. KEEN, *BEGINNINGS WITHOUT END* (1975), for a moving account of one man's endings and beginnings.

3 See Miller, *Reactions to Friends to Divorce*, in *DIVORCE AND AFTER* 63-86 (P. Bohannon ed. Anchor Bks. Ed. 1971).

4 In recent years a number of books have appeared which analyze the phenomenon of increasing divorce rates and comment on the emotional aspects of divorce. Two of these works deserve special mention for their exploration of the psychological aspects of separation and divorce. See R. WEISS, *MARITAL SEPARATION* 47-82 (1975); M. KRANTZLER, *CREATIVE DIVORCE* (1974). For a selective review of the literature on separation and divorce, see WEISS, *supra* at 322-326.

event is troublesome in that the change in marital status also profoundly affects one's life-style.<sup>5</sup> Divorce, then, can be viewed as a time of change, a time of loss,<sup>6</sup> a time of beginnings. It is this transitional nature of separation and divorce which causes many of the strong emotional feelings in this period.

Only by being aware of the client's emotional trauma during this transitional period, can the attorney begin to understand and appreciate the dynamics of his<sup>7</sup> relationship with the client. The attorney can learn to avoid the pitfalls of domestic relations lawyers who commonly exacerbate the psychological pain of the client by their role in the interaction. In giving increased attention to the emotional state of the client, the attorney should be able to create a more productive and fulfilling attorney-client relationship. In some instances, it is possible for an insightful lawyer to help the client resolve the dilemmas associated with the loss of a spouse and to prepare for new social interactions.<sup>8</sup>

Due to the variety of societal factors which currently foster family dissolution and variations in individual personalities, this article will be unable to discuss all possible variants in the attorney-client relationship. Moreover, not all domestic relations clients will undergo a traumatic experience or the emotional states which will be discussed here.<sup>9</sup> Some clients experiencing strong feelings during the divorce proceedings will not make them known to the attorney; and in some cases, the client will neither expect nor seek psychological support to deal with his personal problems. Nevertheless, it is assumed that separation and divorce are commonly traumatic and that the attorney should be prepared to deal with an

5 For autobiographical accounts of the divorce experience, see J. EPSTEIN, *DIVORCED IN AMERICA* (1974); E. BAGUEDOR, *SEPARATION: JOURNAL OF A MARRIAGE* (1972).

6 The importance of a stable physical and social environment in maintaining a sense of identity is related to the concept of "losses." "Throughout life the experience of loss, which appears to have its roots in the dread of abandonment, can have profound effects on a person and can evoke despair, lowered self-esteem, sometimes a sense of guilt, and attempts at restitution."

Gelt, *Psychological Considerations in Representing the Aged Client*, 17 ARIZ. L. REV. 293, 300 (1975) (quoting E. WASSER, *CREATIVE APPROACHES TO CASE WORK WITH THE AGING* 18 (1966)).

7 Throughout this article, the masculine pronoun, whether referring to lawyer or client-spouse, will be used for the sake of simplicity.

8 For a positive, optimistic view of the divorce process, see S. GETTLEMAN & J. MARKOWITZ, *COURAGE TO DIVORCE* (1974). The authors begin with the assumption that divorce is not an inherently destructive process, but is rather a "neutral" process which has positive dimensions which have been ignored.

What are the positive benefits? Gettleman and Markowitz argue that it:

Restructures family relationships and often results in new kinship groupings. . . . It also creates the potential for redefining traditional, often oppressive stereotyped sex roles. Divorce potentially opens doors to new kinds of emotional fulfillment, unavailable to people whose energies are sapped by continuous marital conflict in the hothouse of the nuclear family.

*Id.* at xviii.

9 Every divorce does not produce an emotional crisis. Individuals experience different emotions and are affected differently by the process of divorce. The intensity, duration, and impact of the emotional distress on a given individual are difficult, if not impossible, to predict. "The degree to which a separation or divorce can produce . . . [extreme] reactions is in shaping our identities." KRANTZLER, *supra* note 4, at 70. In those cases where the marriage tells us "who we were, what to do, how to behave toward others, what to feel" the emotional trauma will be intense. *Id.* See P. MARRIS, *LOSS AND CHANGE* 37 (1975); E. FISHER, *DIVORCE: THE NEW FREEDOM* 17 (1974). In essence individual subjective factors which ultimately determine the effect of the divorce process, one counselor has noted that "the psychological background and make-up of the person determine to a great extent his reaction to prolonged stress and intensive crises." L. BRAMMER, *THE HELPING RELATIONSHIP: PROCESS AND SKILLS* 115 (1973).

emotional, and at times highly irrational, client.

It is also assumed that increased attorney awareness of the dynamics of the client's emotional behavior will allow a more satisfactory attorney-client relationship to develop. Client anxiety, hostility, low self-esteem, guilt and depression affect not only the client, but the attorney-client relationship as it emerges in response to the legal problems of divorce. By understanding the emotional state of the client, the attorney is in a better position to offer both effective legal services and a professional relationship that provides the client with psychological support. Understanding and concern are crucial during this period of transition; the attorney should strive to ameliorate the client's distraught emotional state.

This article explores the psychodynamics of the attorney-client relationship in the context of domestic relations cases. Common emotional states of the divorce client are described and psychological and counseling theories are then employed to explain the possible impact of the client's emotional state on the attorney-client relationship. Although various models of the attorney-client relationship are described, a client-oriented counseling model based upon that used in other professions will be emphasized as an alternative to the traditional approach.

## II. Fact Gathering

One of the most difficult tasks for a lawyer in a domestic relations case is getting enough facts to form an accurate picture of the client's problem. This includes the basis and nature of the marital conflict and its impact on the client. The manner in which the attorney gets the facts in a domestic relations case sets the tone and structure of the relationship. The success or failure of attorney fact gathering depends upon a number of factors: the attorney's approach to the attorney-client relationship, as a legal advisor or as a counselor; the initial interview(s), how the attorney elicits facts from the client;<sup>10</sup> the attorney's perceptions of these facts as they are being conveyed; the client's expectations and images concerning the law; attorney understanding of client-produced distortions in fact presentation; attorney understanding of the family as a system, or of neurotic interaction in the family;<sup>11</sup> the theories used by the attorney to explain client behavior.<sup>12</sup> Analysis of these factors presents us with the essence of the attorney-

10 The initial interview(s) in the domestic relations case creates a tone and establishes an interaction model which will be followed throughout the relationship. This early stage is important because the client's expectations and images are confronted with the reality of the attorney's perceptions and lawyering skills.

H. FREEMAN & H. WEINHOFEN, *CLINICAL LAW TRAINING* 8 (1972). It is of importance to note here that interviewing is "inextricably linked with counseling and the whole lawyer function. It is both the first step and the first tool in counseling." See generally T. SHAFFER, *LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL* (1976). See also, A. BENJAMIN, *THE HELPING INTERVIEW* (1969); G. MERTON, R. NEWMAN & F. FEDLICH, *THE INITIAL INTERVIEW IN PSYCHIATRIC PRACTICE* (1954); H. SULLIVAN, *THE PSYCHIATRIC INTERVIEW* (1970).

11 See H. TASHMAN, *TODAY'S NEUROTIC FAMILY* (1960), V. EISENSTEIN, *NEUROTIC INTERACTION IN MARRIAGE* (1956). See also Hess & Handel, *The Family as a Psychosocial Organization*, in *THE PSYCHOSOCIAL INTERIOR OF THE FAMILY* 10-24 (F. Handel ed. 1967).

12 Theories about behavior and interaction are fundamental to observation. Knowledge of several theories of human behavior is important, because each theory applies best to a particular realm of behavior. . . . Theories generate hypotheses and ideas. They help you ask yourself questions, and questions are the probes searching out the human environment.

client relationship—an interaction which depends upon an array of conscious and unconscious elements.

The attorney's perception of the appropriate role to be used in relating to a divorce client is important; his role performance is in part based upon this perception, and such performance is, consequently, a primary factor in determining the structure and direction of the relationship.

### A. Defect in Traditional Approach

Influenced by his use of directive interviewing in the context of other legal settings, the attorney traditionally seeks to obtain the "relevant" facts in order to determine grounds for divorce; whether to obtain a divorce *vis-à-vis* an annulment; defenses to the divorce; and factors which will influence the amount of child and spousal support, child custody, and visitation rights. Typically, lawyers want those facts which are relevant to legal problems and are not concerned with facts relevant to the client's feelings. Give this orientation to ascertaining the facts, the lawyer forcefully guides the client's responses by direct questions designed to elicit the facts needed for producing a legal result.

This approach to interviewing the domestic relations client is one aspect of the traditional professional model of interaction.<sup>13</sup> It is this emphasis upon fact relevance and the attorney's rational, logical, analytical approach to problem solving which results in the emphasis upon legal skills and the legal process and eschews client feelings. The detachment and professionalism of traditional lawyers do not provide a relationship in which a client's emotions are recognized or dealt with effectively. The traditional model of lawyering requires that the client be kept rational and as unemotional as possible. Thus, in general, divorce cases and emotional clients do not lend themselves to the traditional model of the attorney-client relationship.<sup>14</sup>

The most serious drawback of the traditional approach is that it does not allow for the expression of client feelings, which is essential to a satisfactory attorney-client relationship. Thus, the initial problem can be viewed as structuring a relationship in which the client can express feelings easily and constructively.<sup>15</sup> Such a relationship will be dependent upon the attorney's understanding that "feelings can be facts," too.<sup>16</sup> The underlying premise that feelings are facts is based upon an understanding that behavior which appears to be irrational or self-destructive may be a tacit way of communicating feelings. Feelings are, in a sense, acted out rather than verbalized. By ignoring his feelings about his spouse, himself, and opposing counsel, the client does not engage in a psychologically

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J. LUFT, OF HUMAN INTERACTION 71-72 (1969). See L. BRAMMER, THE HELPING RELATIONSHIP 28, 37-45 (1973).

13 See generally Redmount, Marriage Problems, Intervention and the Legal Profession, 50 CONN. B. J. 11, 17-23 (1976), D. ROSENTHAL, LAWYER & CLIENT: WHO'S IN CHARGE? (1974). Cf. T. SHAFFER, THE PLANNING AND DRAFTING OF WILLS AND TRUSTS 10-12 (1972).

14 H. O'GORMAN, LAWYERS AND MATRIMONIAL CASES 90 (1963). Attorneys reported to O'Gorman in his study of domestic relations lawyers that: "You can't use logic in matrimonial matters. It's very hard to get marital clients to be objective. They're too emotional and just plain unable to listen to reason." *Id.* at 90.

15 Cf. D. VISCOTT, THE LANGUAGE OF FEELINGS (1976).

16 T. Shaffer, LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL 3-4 (1976).

healthy verbal expression of underlying feelings.<sup>17</sup>

Eliciting emotional feelings as well as legally relevant facts may well be the most effective approach for counseling clients.<sup>18</sup> Suppression of feelings has a twofold effect: unresolved feelings allow biased and nonobjective judgments of interpersonal situations and also affect a person's perception of events and information in interpersonal situations.<sup>19</sup>

### III. Counseling Model

The first issue of concern to the domestic relations counselor is finding an appropriate model<sup>20</sup> by which to fashion a more constructive and growth-oriented relationship. In developing a framework for dealing with domestic relations clients, the attorney can profitably turn to the counselor for guidance.<sup>21</sup> An attorney following the counseling model views himself as a member of a "helping profession"; he is concerned with more than the mere application of technical legal skills.<sup>22</sup> Thomas Shaffer notes that "counselors" are perceptive

17 There seems to be a normal attitude in our society that feelings interfere with a person's ability to handle interpersonal difficulties and to solve interpersonal problems. The assumption is that a person's interpersonal effectiveness increases as all the relevant information (including feelings) becomes conscious, discussable, and controllable. The suppression of feelings leads to ineffective interpersonal behavior.

D. JOHNSON, *REACHING OUT: INTERPERSONAL EFFECTIVENESS AND SELF-ACTUALIZATION* 90 (1972). See H. FREEMAN, *LEGAL INTERVIEWING AND COUNSELING* 53 (1964). A somewhat similar argument has been made with regard to the legal process itself.

One of the reasons that the divorce institution is so hard on people is that the legal processes do not provide an orderly and socially approved discharge of emotions that are elicited during the emotional divorce and during the early parts of preparation for the legal processes. Divorces are "cranked out" but divorces are not "cooled out."

Bohannon, *The Six Stations of Divorce*, in *DIVORCE AND AFTER* 33-62, at 48 (P. Bohannon ed., 1971).

18 See generally, T. SHAFFER, *LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL* (1976).

19 D. JOHNSON, *REACHING OUT: INTERPERSONAL EFFECTIVENESS AND SELF-ACTUALIZATION* 90 (1972).

20 The importance of a working theory or model of human behavior cannot be over-emphasized. One author has suggested that the defensiveness of the legal profession on the subject of human behavior and "distrustful" and "skeptical" orientation may reflect the "lack of substantial skill and knowledge in explaining behavior, and to the lack of an effective critical framework." Redmount, *Humanistic Law Through Legal Education*, 1 *CONN. L. REV.* 201, 210 (1968).

See also Church, *Counselor-at-Law: A Game of Chess?*, 8 *TRIAL* 27, 31 (Sept./Oct. 1972).

21 This suggestion can by no means be claimed by the author to be an original one. Andrew Watson, Robert Redmount and Thomas Shaffer have persistently over the years argued the merits of a more active counseling role for the lawyer. See Watson, *The Lawyer As Counselor*, 5 *J. OF FAM. L.* 7 (1965); Watson, *Professionalizing the Lawyer's Role As Counselor: Risk Taking for Rewards*, 1969 *ARIZ. ST. L. J.* 17 (1969); A. WATSON, *PSYCHIATRY FOR LAWYERS* (1968); Shaffer, *Christian Theories of Professional Responsibility*, 48 *S. CAL. L. REV.* 721 (1975); T. SHAFFER, *LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL* (1976); Redmount, *Marriage Problems: Intervention and the Legal Profession*, 50 *CONN. B. J.* 11 (1976); Redmount, *Perception and Strategy in Divorce Counseling*, 34 *CONN. B. J.* 249 (1960). See also H. FREEMAN & H. WEIHOFEN, *CLINICAL LAW TRAINING* (1972); Church, *Innovations in Legal Counseling*, 49 *FLA. B. J.* 10 (1975).

22 The authors of one family law casebook argue that:

[I]n divorce practice . . . the competent lawyer, in addition to possessing the necessary legal skill, must (1) be sensitive to the critical psychological aspects of his counseling role in dealing with emotionally disturbed clients; (2) be sufficiently aware of the nature of marital discord to be able to diagnose cases where reconciliation is a possibility or where the client is in need of psychiatric therapy or other skilled non-legal counseling; (3) have informed himself of the existence and methods of opera-

to verbal and nonverbal signals, empathic and congruent, adept at listening, and open to the client.<sup>23</sup> An attorney following a model based on counseling theories expresses a preference "for client-centered indices of concern . . . he seeks a capacity for acceptance . . . for understanding . . . and for congruence (awareness of the feelings within himself)."<sup>24</sup>

One of the most difficult tasks for the counseling-oriented lawyer is to overcome the tendency to direct and control the interviews. Carl Rogers maintains that interviews should be structured so that the client, rather than the interviewer, directs the flow or progress of the session.<sup>25</sup> This client-centered approach to interviewing has obvious advantages for the lawyer in domestic relations cases.<sup>26</sup> Important aspects of the client's problem, although not necessarily legally relevant, are elicited. As one observer has noted:

One is more likely to come upon the basic problems by encouraging discussion of the marriage as a whole than by focusing attention on a few problems. One will gain more useful information by general questions or instructions to talk about the marriage as a whole than by highly specific questions.<sup>27</sup>

It thereby becomes possible to elicit informative peripheral factors in the client's personality and marriage which will aid the lawyer in relating to the client in a more effective manner.<sup>28</sup>

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tion of the psychiatric, counseling, and child welfare facilities in his community to which he can refer appropriate cases and have acquired skill in delicate task of accomplishing such a referral; and (4) be able to advise clients of the economic, social, and psychological problems incident to family dissolution.

C. FOOTE, R. LEVY, & F. SANDER, *CASES AND MATERIALS ON FAMILY LAW* at xiv (2d Ed. 1976).

<sup>23</sup> SHAFFER, *supra* note 10, at 57.

<sup>24</sup> *Id.*

<sup>25</sup> See generally C. ROGERS, *COUNSELING AND PSYCHOTHERAPY* (1942); *ON BECOMING A PERSON* (1961). Rogers is one of the founders of the humanistic school of psychology.

<sup>26</sup> I have used the Rogerian framework as a suggestive guide for interviewing and establishing a new attorney-client relationship. The Rogerian model is based upon the capacity of the individual client to arrive at solutions to personal problems within the framework of a permissive client-therapist relationship. It is not suggested here that the legal client is in a comparable position with regards to a legal problem. A legal problem confronts the client with a legal system which in large part requires an advocate and representative. Obviously the lawyer, compared to the therapeutic counselor will play a more active role in directing a solution to the client's problem.

<sup>27</sup> Modlin, *The Client and You—What You Are*, 16 N.Y.C.B. BULL. 151, 153-154 (June, 1958).

<sup>28</sup> If you immediately go after detailed facts, or jump to a premature conclusion, or offer reassurance too soon, or intrude your own value judgment into the conversation, you may have to spend much additional time getting the client back on the track of productive communication.

MODLIN, *supra* note 27, at 157. In the report of one clinical program involving psychiatric residents and law students, a major difference was found in the method of asking questions and in the "listening" skills of the two groups. Baerstein, *Functional Relations Between Law and Psychiatry—A Study of Characteristics Inherent in Professional Interaction*, 23 J. LEG. ED. 399, 406-408 (1971).

The study showed that the residents' techniques of asking questions, which at first seemed vague and irrelevant to the student attorneys, frequently produced important information directly relating to the client's problem. Thus, in many domestic relations cases, questions concerning family history, feelings about family relationships, and the client's health brought forth data relevant to the legal issue.

[T]he resident's questions often revealed either client attitudes that altered the view of the legal problem or other information that showed that the client's legal problem was part of a more complex social-medical problem. In short, the openness of the

### A. Active Listening

A counseling approach to getting the facts requires a skill in listening. In the humanistic, client-oriented school of Carl Rogers, this concept is referred to as "active listening."

Active listening entails listening to determine what the client is really saying. What story is the client using to convey his images of the other spouse and the events leading to the separation and divorce? What are the "mythical" elements of the story the client is weaving around the event? How does the story shape and define expectations and experiences which the client is actually living? What are the client's images of the divorce process? What are his fears? Finding out what the client is "really saying" will require the attorney to "[r]ead between the lines; listen for the metaphors; measure the emotional charge in . . . (the client's) remarks; look for the irrational." "I want a divorce" may really mean "sympathize with me; tell me I've been mistreated, but talk me out of it."<sup>29</sup> Finally, "[w]hat is the client not saying? The omissions, the gaps, the silences are always significant and are usually motivated by unconscious determinants."<sup>30</sup>

Listening has certain therapeutic benefits in and of itself: the passive willingness to listen to a client's story with no interaction produces a cathartic effect as the client is allowed to verbalize his feelings, and in so doing initiates the process of understanding.<sup>31</sup>

### B. Potential Obstacles to the Client-Centered Approach<sup>32</sup>

#### 1. Client Dependency

In response to client expectations and psychological needs, the attorney in

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residents' questions, in contrast to the student attorneys' specific legal questions, frequently obtained a more fully responsive answer from the client. From the nature of the question asked, the interviewer determined, in part, the answer he received.

*Id.* at 407-408.

All of us have a need to tell our own story. S. KEEN & A. FOX, *TELLING YOUR STORY: A GUIDE TO WHO YOU ARE AND WHO YOU CAN BE* (1973). S. KEEN, *TO A DANCING GOD* 70-74, 82-105 (1970). This is especially so when it involves as much pain as does the typical divorce. "All sorrows can be borne if you put them into a story or tell a story about them . . ." Isak Dinesen as quoted in S. KEEN, *TO A DANCING GOD* 83 (1970). Separation and divorce from an attachment figure are of symbolic significance to the individual client. The story (i.e., myth) that the client tells the lawyer becomes impregnated in memory. This story will be repeated to children, parents, friends, and future spouse(s) as an explanation of "what happened." With the client-centered approach, the client is allowed to tell his/her story—stitching a coherent whole by being allowed to move back and forth in time.

<sup>29</sup> MODLIN, *supra* note 24, at 156. "The client is communicating to you as interviewer not merely verbally but non-verbally. He nods, smiles, grimaces, stammers, blushes, sweats, shakes, shows a tie, lights a cigarette, crosses his legs, loosens his collar, etc." This "body language" often carries more content than spoken language. "Listening" thus must become a receptive ear and an observant eye. Pauses, hesitations, silences, averting the eyes (that is, absence of words or action) are also communicative. Here the problem is to try to determine with what these are associated and, as to that, what they are saying. FREEMAN, *supra* note 17, at 11, 12. See BAERSTEIN, *supra* note 28, at 406.

<sup>30</sup> MODLIN, *supra* note 27, at 156.

<sup>31</sup> See O'GORMAN, *supra* note 14, at 86.

<sup>32</sup> For an exploration of legal, ethical, and philosophical issues raised by the client-centered approach in lawyering, see Chilar, *Client Self-Determination: Intervention or Interference?*, 14 St. Louis U. L. J. 604 (1970).



a domestic relations case is often cast in a strong, supportive role.<sup>33</sup> Feelings of dependence on the client's part may arise from a variety of factors: the client's expectation that the lawyer will "step in and straighten things out";<sup>34</sup> the client's attempt to avoid responsibility for making a decision; the client's "magical expectation . . . that the lawyer is able to accomplish any manipulation or transaction which the client desires";<sup>35</sup> the client's inflated view of the legal profession; the client's low self-esteem; and, finally, the attorney's psychological need to occupy a dominant role in the interaction.<sup>36</sup>

In those situations where the client has essentially abdicated to the lawyer all decision-making responsibility, the client may be playing "rescue."<sup>37</sup> Strong negative feelings develop from low self-esteem and dependency on the lawyer which give rise to a perception of helplessness and the need for a "rescuer." The lawyer fits the role perfectly.<sup>38</sup> In the language of transactional analysis:

33 [I]t is commonplace for clients to turn to their matrimonial lawyer for psychological sustenance. . . . After all, the attorney knows the story of the broken marriage, the sadness attendant to dividing household goods, and may even be privy to some of the client's deeply private emotions concerning the separation. At a time when the client may be anxious and afraid to discuss the traumatic experience with friends . . . he or she feels close to the attorney.

Berstein & Zeisel, *Cooperation Between Legal and Psychotherapeutic Communities*, 17 FAMILY LAW NEWSLETTER 5 (Summer, 1976).

The divorce client's interaction with the attorney may provide the initial or first close hand introduction to the legal system. It goes without stating that most individuals in such situations experience anxiety or fear. "Being anxious and afraid may tend to bring back childish feelings of helplessness. . . ." D. VISCOTT, *THE LANGUAGE OF FEELINGS* 61 (1976). In a state of helplessness one often turns to a supportive professional.

[W]hen a client seeks help from a lawyer, he is generally ignorant of the technical aspects of law. His ordinary techniques for judging persons or situations must be suspended, for he has no way of adequately testing the competency of the lawyer he chooses. He may make inquiries about him, and he may be able to investigate past successes and failures; but, generally, he is unable to make any realistic appraisal of skill and trustworthiness. Of necessity, then, he must place himself under the authority and assistance of the lawyer, essentially in blind trust. By virtue of this fact, all the client's previous attitudes about authority and dependency will be stirred up. This will elicit, usually, a certain amount of irrational fear and concern, which the client will be helpless to deal with. He will feel impotent to broach these fears, and will conceive of the relationship to his attorney as one of helplessness although, in reality, he is free to procure a new lawyer any time he wishes.

A. WATSON, *PSYCHIATRY FOR LAWYERS* 17 (1975).

34 FREEMAN, *supra* note 17, at 72. See Cihlar, *Client Self-Determination: Intervention or Interference?* 14 St. Louis U. L. J. 604, 608 (1970).

35 A. WATSON, *PSYCHIATRY FOR LAWYERS* 17-18 (1968). See Redmount, *Law As A Psychological Phenomenon*, 18 AMER. J. OF JURIS. 80, 84-85 (1973).

36 Andrew Watson has noted: "that many selected law as a vocation because it gives them opportunities to operate from a position of power and authority, as they organize, conceptualize, and manipulate the social forces known as law." Watson, *The Lawyer As Counselor*, 5 J. OF FAM. L. 9 (1965).

The parent role of the domestic relations lawyer can also be viewed as an attempt to satisfy the emotionally

powerful desire to be helpful to others and thus secure a supply route to sources of approval, affection, or love . . . such emotional need may become of such overriding importance, that it can distort the professional relationship and produce inappropriate decisions and actions.

*Id.* at 10.

Lawyers, somewhat inclined toward an authoritative stand with their clients, can logically anticipate that they will "cure" some problems merely by virtue of their authority role. This may have advantages in some circumstances, but subsequent difficulties must be anticipated from many such solutions. A. WATSON, *PSYCHIATRY FOR LAWYERS* 16 (1968).

37 Cf. C. STEINER, *SCRIPTS PEOPLE LIVE* 175-185 (1974).

38 Another possibility in the *Rescue* game is that a friend will play the role of rescuer instead of or in addition to the lawyer. See Miller, *Reactions of Friends in Divorce*, in *DIVORCE AND AFTER* 63-86, at 69-70 (P. Bohannon ed., Anchor Bks. ed. 1971). While *Rescue* by a

The victim's position is "I'm not OK, you're OK (I am helpless and hopeless, try and help me)." The Rescuer's position matches the victim's, namely, "I'm OK, you're not OK (You are helpless and hopeless; nevertheless, I'll try to help you)."<sup>39</sup>

The pleasures and danger of this rescue game have been explained as follows:

No one enjoys being one-down, but it is pleasurable to let go and have others take over. One can let others take over for short periods of time without playing the game, especially if one has agreements to reverse the situation later on. The feeling of being a powerless victim, however, is hellish and is only made worse by rescuing. No matter how we feel, it is good to hear that we are not completely powerless; and it is energizing to be asked and expected to take our power and do our part by someone who is willing to help.<sup>40</sup>

How should the attorney approach the client who has a rescue attitude? Carl Rogers points out that the natural tendency in such a situation is to try to convince the client that feelings of powerlessness and low self-esteem are exaggerated, and that there is no logical reason for him to feel that way. This attempt, however, may not always be successful:

The client feels worthless, no matter how many good qualities may be objectively pointed out to him. . . . The counselor is giving more genuine help if he assists the client to face these feelings openly, recognize them for what they are, and admit that he has them.<sup>41</sup>

In addition to squarely facing the client's perceived powerlessness, the attorney is in a position—by virtue of his professional status, knowledge of the legal

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friend may offer helpful support in a time of crisis it too can be dysfunctional if the "rescuer is reluctant to relinquish his rescuee, the divorcee's recovery and forward movement from what would otherwise have been a transitional state is thwarted or at least complicated." *Id.* at 69.

39 STEINER, *supra* note 37, at 176. One extremely manipulative attorney has explained how the dependent victim in the rescue game is managed by the attorney. The attorney author begins by relating a story of a Swedish master spy, who stole NATO secrets, and his agent, a Russian general. "After a while the general succeeded in making the Swede totally dependent upon him. He became like a fish on a hook. The same often happens in matrimonial cases. Merely by indicating there is going to be rejection, a lawyer can get a client to do anything he wants him to." R. FELDER, *DIVORCE* 69 (1971).

Felder's concept of managing the client goes so far as advising the client not to talk to family and friends.

Look, don't discuss this with any friends of yours because it may come back to haunt you. They may be subpoenaed. They may talk to your husband. Don't discuss this even with your mother because the mother sometimes to preserve the family will go to your husband without your knowing it to talk things over.

*Id.* at 71.

Thus by properly managing the client they are soon "isolated."

The only person she can confide in and listen to regarding her case is her lawyer. He will have her under his command like a puppet. This is in the client's interest so there is nothing wrong with it. It is like the Army. One of the reasons for Army discipline and unquestioning obedience to command is so that in a battle the soldier will do automatically as he is told, protecting his life and contributing to victory.

*Id.*

40 STEINER, *supra* note 37, at 185. It should be noted here that "some people are 'pure' or actual victims and are not contributing to their one-down position." *Id.* at 184.

41 C. ROGERS, *COUNSELING AND PSYCHOTHERAPY* 144 (1942).

process, and previous experience with clients—to function in a strong supportive role towards the client. However, support must be tendered in such a way as to discourage client dependency. Attorneys should consider support as an integral part of the “helping” function, especially for clients in crisis arising out of divorce.<sup>42</sup> The value of a strong supportive stance must not be underestimated; it helps reduce the debilitating anxiety arising from the divorce and the discomfort in dealing with a professional.<sup>43</sup>

## 2. Understanding the Client's World

There are two aspects of the client's world which the attorney often overlooks and which have an important bearing on the attorney-client relationship. First are the client's conscious expectations which, if unexplored, become a kind of “hidden agenda.” Also, the client's unconscious motivations for seeking legal assistance should be understood.<sup>44</sup>

In his work with divorced spouses, Robert Weiss, a sociologist, found that individuals with marital difficulties seek lawyers for a variety of reasons:

Some retain a lawyer because they want a specific legal service: a separation agreement to be negotiated, legal pressure to be brought on a nonsupporting husband or on a wife who refuses visitation, or simply a divorce. But others retain a lawyer for all sorts of nonlegal reasons. They may want to demonstrate to themselves and their spouse that they are seriously dissatisfied with their marriage: “I saw a lawyer today” can be of decided dramatic value when dropped into an evening's dispute. Or they may be unhappy and con-

42 Andrew Watson has drawn a useful analogy between the empathetic support of the therapist and the attorney;

For purposes of therapy, the therapist can identify with the patient in a non-critical, understanding way, in order to get inside his problem. Using this identification to understand what is going on with the patient, he is in a better position to help him modify his manner of living. Emphatic identification must also be part of the practicing lawyer's professional skill, if he is to approach the professional goal of being able to represent either side of an issue. He must be able to identify himself truly with his client, to understand the problem with which he is dealing.

WATSON, *PSYCHIATRY FOR LAWYERS* 20-21 (1968).

43 Cf. L. BRAMMER, *supra* note 9, at 115-116.

44 Andrew Watson has noted that:

[a] lawyer may be approached by his client with the underlying and unconscious hope that somehow through the magic of his role, the lawyer will bring about some restitutive change in the marital balance: perhaps counsel will use the imagined power of the law to bring a reluctant spouse to “understand” or “behave” better and then harmony can be restored or achieved.

Watson, *Psychoanalysis and Divorce in MARRIAGE RELATIONSHIP: PSYCHOANALYTIC PERSPECTIVES* 321-339, 324-25 (S. Rosenbaum & I. Alger ed. 1968).

The client's unrealistic, distorted expectations may be derived from his image of the law and the legal system. Esther Fisher, a lawyer-divorce counselor, has observed that:

The law still has aspects of the august, the divine, the authoritarian which can play into the fantasies of embattled spouses. The enraged wife who refuses to settle has a fantasy: the day will come in the courtroom when I will dramatically ascend the witness stand and speak out about what happened. My husband will testify, but he will be shriveled up by the blows of my champion, my attorney. And then will come the pronouncement of the godlike judge. Pointing his finger at me, he will cry out, “Truth is with you, the wife. Justice is with you.” Then pointing his finger at my shrinking husband, the judge will boom, “You, the husband, are a brute and a liar.”

Fantasy, unrealistic confidence, and fear play active roles in the emotions of husbands and wives facing the legal process of divorce.

E. FISHER, *DIVORCE: THE NEW FREEDOM* 92 (1974).

fused, and perhaps fearful of the future, and want the reassurance of having talked with someone knowledgeable. Many among the separated see a lawyer initially just for information regarding their legal situation, without any immediate desire to proceed beyond this. Some retain a lawyer almost against their will, because their spouse has insisted that they do so, or because their spouse has retained one and they believe that in self-protection they must follow suit.<sup>45</sup>

It is essential that the lawyer determine what the client wants and expects.<sup>46</sup> To what degree is the client seeking "information, support, love, friendship, skills, problem solution, decision-making, a way out of unpleasantness, movement toward a goal, change in inner feelings"?<sup>47</sup> What kind of role is the attorney being asked to play in providing what the client wants?<sup>48</sup> Are the client's expectations and role demands compatible with the attorney's image of his professional role?<sup>49</sup>

In all likelihood, the client comes to the attorney with a broad range of expectations. These expectations are often based on a stereotyped image of the lawyer, that is, "what a lawyer is like, what he can and cannot do, and the manner in which he (the client) will be served by him."<sup>50</sup> It is not uncommon for the lawyer to be regarded as an advocate for justice, as a devious professional whose *raison d'être* is financial gain, or some combination of these roles.

When client expectations are unrealistic or distorted, they may severely interfere with the attorney-client relationship. The simplest direct technique for handling this problem is to ask the client early in the relationship, perhaps before terminating the first interview, "what do you want?"<sup>51</sup> During the course of the relationship the attorney may detect unrealistic expectations on the part of the client. When this occurs the client can be confronted with the distorted image, belief or expectation. In this manner the client, with the help of the attorney, can work through these expectations by verbalizing them and bringing them to conscious awareness. More difficult to ascertain and understand are the client's unconscious motivations in seeking to establish the attorney-client relationship and how the relationship is being used to satisfy the client's psychological needs.<sup>52</sup>

45 R. WEISS, *MARITAL SEPARATION* 254-255 (1975).

46 Robert Redmount explains that: "[t]he wanting element has to do with felt needs and expectations, or even demands, that motivate the person." Redmount, *Marriage Problems, Interpretation and the Legal Profession*, 50 *CONN. B. J.* 11, 12 (1976).

47 FREEMAN, *supra* note 17, at 6.

48 Lawyers represent more and different "images" in the client's eyes than do doctors, psychiatrists, marriage counselors, social workers, clergymen. The lawyer may have to play the role of "heroic leader," "parental substitute," protest-absorber, confessor, comforter, law-enforcer, champion, facilitator.

H. FREEMAN, *COUNSELING IN THE UNITED STATES* 166 (1967).

49 "One of the difficulties in making . . . clear judgments [as to client needs] lies in the difference between the practitioner's and the client's cognitive and perceptual frames of reference." F. UPHAM, *EGO ANALYSIS IN THE HELPING PROFESSIONS* 15 (1973). The client's anxiety may be "aroused by lack of congruence between the expectations of the practitioner and those of the client regarding help and their reciprocal roles." *Id.* at 6.

50 WATSON, *supra* note 36, at 7.

51 E. FISHER, *DIVORCE: THE NEW FREEDOM* 106 (1974).

52 One commentator has noted that with the exception of H. FREEMAN, *LEGAL INTERVIEWING AND COUNSELING* (1964), the psychological needs of clients have not been investigated. See ROSENTHAL, *supra* note 13, at 20, n. 42.

The motivation which brings the client to you may be clearly apparent in his problem; then again it may not. Impelled by unconscious as well as conscious

One of the easiest ways to prevent an understanding of the client is to stereotype the client's behavior as irrational or as an emotional overreaction.<sup>53</sup> This view of the client's problem is based on the lawyer's view of the world and cuts off any possibility of seeing and understanding behavior from the client's perspective. For example, the client may confront the attorney with an accusation that the attorney has not pursued his case vigorously or has not worked to negotiate a favorable settlement. A client may also obstinately adhere to unreasonable demands or vehemently attack the attorney. The client may react angrily or seek to dismiss the attorney with little or no provocation.

These examples of client behavior may be viewed as "irrational" if the attorney fails to look beyond the surface to search for underlying motivations. Such behavior may seem irrational simply because the attorney does not understand it or because it makes him feel uneasy. It is helpful to adhere to the theory that all behavior is adaptive and has an underlying motivation linked to the client's view of the world. The client's world and the attorney's world are not mutually inclusive; on the contrary, they are in some respects mutually exclusive. Thus, behavior which is defined as irrational by the attorney may stem from that part of the client's world which does not intersect with the attorney's.

This problem can be corrected by viewing the client's behavior from the observational standpoint of client needs, rather than the attorney's own need system.<sup>54</sup> The proverbial standing in another's shoes is often a good way to view behavior from a different vantage point and to enhance increased understanding.<sup>55</sup>

### 3. Reliability of the "Facts"

A third problem is reliability of facts which the client presents. The client-centered approach to interviewing does not, in and of itself, result in a truthful

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motives, one type of client may try to use the lawyer as a diversion channel for hidden hostile and aggressive impulses. If the lawyer agrees to take his case, even provisionally, he feels abetted and justified in his stand and invigorated to pursue his litigious [*sic*] course. Another client may be unconsciously seeking, behind the conscious facade of his legitimate claim, relief from guilt. If he can get you to agree that his deeds or intentions were wholly or partially justified or could be exonerated through a legal technicality, then he has achieved his goal. You have, in effect, temporarily taken over the functions of his own conscience.

Certain clients may be seeking relief from unreasonably exaggerated anxiety through you. "I can get out of this, can't I?" or "I will get compensation, won't I?" may cry an unconscious need for reassurance disproportionately beyond the gravity of the real situation.

MODLIN, *supra* note 27, at 153-54.

53 [T]he difficulty is that many of us do have stereotypes about other people and, as a result, will sometimes not really "hear" the other person as an individual. Stereotyping may be a particular source of danger to "experts," including lawyers, when dealing with persons of less education and experience.

Sacks, *Human-Relations Training For Law Students and Lawyers*, 11 J. LEGAL EDUC. 316, 333 (1959).

54 On the psychological needs of attorneys see, Leete, Francia, & Strawser, *A Look at Lawyers' Need Satisfaction*, 57 A.B.A.J. 1193 (1971). See generally, A. MASLOW, *MOTIVATION AND PERSONALITY* (1954).

55 "The ability to identify with the client is the ability to see the client's world through the eyes of the client, to perceive the way he is thinking and feeling, and to enter into his psychological and social realities." F. UPHAM, *EGO ANALYSIS IN THE HELPING PROFESSIONS* 67 (1973).

The relationship of traditional legal advice and the client-centered model presented here is succinctly stated as follows:

and comprehensive presentation of the facts. While any client may have trouble being objective about value-laden facts, the trouble is especially aggravated in marital cases.<sup>56</sup> Strong feelings and emotions can only intensify partisan presentation of facts.

Clients do not always say what they mean or mean what they say.<sup>57</sup> Fact distortion occurs both on a conscious and an unconscious level. One approach to get beyond the one-sided picture which the client presents is to simply ask the client to articulate possible explanations of the other spouse's position. This type of role playing allows the client freedom to disengage himself from his own emotionally tied position, thus allowing both the attorney and client a glimpse of the other side.<sup>58</sup>

Often emphasis is placed upon the importance of understanding the "what" of an event and overlooking the "why." Since "what" is perceived as being within the realm of factual or real events, it is assumed that a divorce case should be perceived in a like manner. In no situation is this assumption *further* from reality than in a divorce case, where it is so easy for individuals to distort factual events. The following statements are examples in which the client is suffering from a distorted perception of events: "She never loved me." "If I had tried harder everything would have been OK." "If only the other man had not come into her life, everything would have worked out." "I can never give her up."<sup>59</sup> The distortion of facts and events may be a result of: "(a) wishful thinking; (b) distortion of provokable fact for emotional reasons; (c) an overt lie rationalized as 'OK' in revenge; or (d) a defensive lie because the client doesn't admit (even to himself) what the objective facts are since they would make him feel inadequate, worthless or wrong. . . ."<sup>60</sup>

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Preparation for participation involves presenting clients with a full range of options—even if some are inapplicable to their expressed desires—in order to give them basis for a rational choice. Helping clients decide which of the several options to pursue is the essence of counseling. The lawyer's role is to serve as an alter ego, to understand and accept clients' decisional processes and values. By getting inside clients' thought processes, the lawyer is in a position to help clients clarify their own desires and reach effective decisions with which they are satisfied.

Gelt, *Psychological Considerations in Representing the Aged Client*, 17 ARIZ. L. REV. 293, 299 (1975) (footnotes omitted).

One technique for seeing a problem from the view of the client calls for the role player to assume various roles and act them out, that is, carry on a dialogue as if one were in that role. The purpose in role playing is to promote insight into emotions and behavior associated with the "assumed" role.

56 O'GORMAN, *supra* note 14, at 85.

57 Cf. e.g., Mosak & Gushurst, *What Patients Say and What They Mean*, 25 AM. J. OF PSYCHOTHERAPY 928 (1971).

58 See Eaton, *As the Psychiatrist Sees Him*, 22 U. MO. K. C. L. REV. 37, 43 (1953).

59 "Those who hold onto things beyond their natural, blossoming finish find only bitterness and dried leaves in their tightening grasp." W. Thompson, *At the Edge of History* 59 (1971).

60 Church, *Counselor-At-Law: A Game of Chess?* 8 TRIAL 27 (Sept.-Oct., 1972). Work with divorce clients involving interviewing:

is subject to all the difficulties so often recorded as to facts and witnesses: forgetfulness, chronological inaccuracy, habit and other unconscious behavior, inferential errors both inductive and deductive; that no two persons observing the same happening give the same report; that no report is wholly accurate or complete; that memory is fickle and recall a thief; that emotions and conclusions pose as facts; that a person may assert as true what he knows is not and fail to communicate that which he knows is. We must in interviewing somehow lead communication through these errors of perception, memory, emotional coloration and recall—or we can be sure that at least we shall act on inaccurate, and probably even on essentially false data.

FREEMAN, *supra* note 17, at 13.

Even the best efforts of the attorney to establish rapport with the client, based on trust and understanding, will not necessarily prevent client distortions and untruths. Legal techniques, such as cross-examination, are inappropriate in the interview setting. How then should the attorney handle a client's misrepresentations? Thomas Shaffer suggests that the attorney use direct and open confrontation: "I feel that you are not telling the truth, and I am going to tell you how I feel."<sup>61</sup>

Andrew Watson has found that factual distortions are more frequently due to unconscious factors than intentional deceit on the client's part.<sup>62</sup> The problem is attributable to the tendency of the lawyer "to presume . . . that his client is a rational being, capable of good recall of past events and capable of communicating objectively with little self-serving omission of interpretation of the facts." The lawyer operates at the conscious level and bases the interview on the ability to obtain conscious information from his client.<sup>63</sup> If Watson's thesis is correct, the attorney hoping to be effective from a counseling and legal standpoint in the divorce setting must look beyond the purely factual information. The attorney must expect the divorce client to distort events and omit pertinent facts. These evasions, omissions, or distortions then become facts in their own right to be evaluated by the perceptive attorney. It is this kind of fact which helps explain who the client is and what he wants and needs; more specifically, omitted facts provide insight into the client.

#### 4. Client "Rambling"

A lawyer's time is money, and, quite naturally, there may be some concern that the counseling approach will require additional time.<sup>64</sup> The counseling, client-centered approach does not mean the attorney allows the client to "ramble." Allowing a client to ramble "destroys the concreteness, the focus, and the intensity of the helping experience."<sup>65</sup> Because the theme of the client's story and the supporting facts may present a rambling complex picture, it may be impossible to effectively deal with all of the implications at once. Here, the attorney should be interested and willing to expend time and energy to understand the client so that the client will open up to the truth.<sup>66</sup> When the client feels the

61 T. SHAFFER, *LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL* 84 (1976). Shaffer has offered that "[i]t may be better to be the sort of lawyer who is occasionally taken in by liars and con-men than to be the sort of lawyer who finds it hard to trust his clients." *Id.* at 75.

62 A. WATSON, *PSYCHIATRY FOR LAWYERS* 16 (1968).

63 BAERSTEIN, *supra* note 28, at 411.

64 For a discussion of the economic aspects of the attorney-client relationship and its effort on the lawyer's counseling role, see Redmount, *Marriage Problems, Intervention and the Legal Profession*, 50 *CONN. B. J.* 11, 26-28 (1976).

65 G. EGAN, *THE SKILLED HELPER: A MODEL FOR SYSTEMATIC HELPING AND INTERPERSONAL RELATING* 82 (1975).

66 The following expressions are useful in those situations where the client has spoken at length about a variety of problems.

*Counselor:* This whole thing has really hit you hard. Let's see if we can get at it bit by bit.

*Counselor:* There's a lot of pain and confusion in what you've just told me. Let's see if I have understood what you have said.

*Counselor:* You've said quite a bit. Let's see if we can zero in on what's upsetting you.

counselor may be trusted, communicating techniques can be disregarded much of the time. The attorney, by expressing a willingness to spend time, can actually save time and energy by interacting in such a way with the client.

#### IV. The Lawyer's Image Of Self and Client

This exploration into the dynamics of the attorney-client relationship has thus far largely focused on the client.<sup>67</sup> In addition, however, the lawyer's self-image, his values and attitudes about marriage and divorce, his perceptions of law and other related professions must be taken into consideration. These factors play a part in deciding whether the lawyer will attempt to prevent the divorce, and to what degree he will cooperate with other professions by referring the client to a marriage counselor, psychiatrist, or other trained professionals.<sup>68</sup> The images that the attorney brings into the relationship, his feelings about the client, and how the attorney deals with these images and feelings will be crucial in determining the nature of the attorney-client relationship.

The attorney should attempt to understand his own feelings and emotions which emanate from the attorney-client relationship.<sup>69</sup> The attorney should be aware of his reactions to the client's behavior (i.e., the client's hostility, dependence, depression, guilt, affection). Andrew Watson has offered an instructive means of determining when relationships are being affected by unconscious forces. He suggests that "[w]henever we react with emotion more strongly than the situation would seem to warrant, we may be sure there is some underlying unconscious attitude toward the problem."<sup>70</sup> The attorney should be aware "of how he is relating to the client and how the client's behavior can produce anxiety reactions in his own behavior. This can only be done by being aware of his own (emotional) conscious/unconscious makeup so as to realistically interact with the client."<sup>71</sup>

67 While the primary emphasis throughout the Article has been on the client, the attorney's "feelings" may ultimately be more important in the decision-making that occurs in the law office. See T. SHAFFER, *LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL* 4 (1976). The author has elaborated on the importance of the internal psychological world of the attorney and its relation to lawyering in Elkins, *Humanistic Lawyering Through Self-Awareness* (unpublished ms.).

[I]n addition to the images brought into the relationship by the client, the lawyer will also have a picture of himself, which will largely control the manner in which he performs his professional task. This self-image will be compounded of elements from the remote past, technical skills mastered during the course of learning to function professionally in the law, and many subtle tendencies which are more or less stereotyped and individualized techniques for coping with all interpersonal relationships and the emotional themes present therein.

See SACKS, *supra* note 53, at 324.

68 See Seltzer & Benedek, *Lawyers' Use of Psychiatrist*, 122 *AMER. J. PSYCHIAT.* 212 (1965).

69 One commentator has stated flatly that

No member of the bar should be a matrimonial lawyer or act in a matrimonial cause unless he understands and has come to some resolution of his own emotional problems and those of his marriage. . . . No lawyer should be a matrimonial specialist or handle any appreciable number of matrimonial causes unless he has had some exposure to psychological guidance, some familiarity with clinical and didactic psychiatric literature, and some insight into his own feelings and behavior.

Fisher, *Matrimonial Turmoil*, 7 *J. OF FAM. L.* 31, 44 (1967).

70 A. WATSON, *PSYCHIATRY FOR LAWYERS* 10 (1968).

71 UPHAM, *supra* note 49, at 67. *Id.* at 399.



Watson suggests that when the attorney notes an inappropriate irrational response in himself, he may consult with another professional.

Perhaps a colleague's view will help him clarify the basis for his strong response. If not, this may be the point at which to seek psychiatric or psychological consultation. Sometimes such a blind response provides the stimulus for a new and fruitful avenue of exploration in the case. In that event, the "feeling" of counsel becomes a crucial piece of datum to the case.<sup>72</sup>

An effective way for the attorney to avoid this problem is to constantly scrutinize his own behavior:

The counselor must . . . be aware of his own psychological needs—e.g., his feeling that he must demonstrate his value to the client or his need for admiration or friendship. For instance, a counselor unaware of his own need for admiration or friendship may be reluctant to call his client's attention to unpleasant facts, which the client ought to know and consider.<sup>73</sup>

The relationship is affected not only by the lawyer's self-image, but also by his image of the client. While lawyers are aware that family problems are the source of the client's emotionalism, they simultaneously view the client's behavior as irrational.<sup>74</sup> In the explicit words of one attorney: "No man or woman acts normally when they have a domestic problem."<sup>75</sup> Or, as another states: "People in matrimonial cases are not rational. They're hostile to their own interest. They're irrational. They don't look at it logically or rationally. They demand instead of thinking. They're emotional and so unrealistic."<sup>76</sup> Viewing the client as irrational interferes with the attorney-client relationship, unless the attorney understands the operational aspects of marriage and the family unit.<sup>77</sup>

Numerous theories describe the family unit. One that may prove invaluable for the lawyer is the view of the family as a system.<sup>78</sup> This is known as an interactional or transactional approach to the family. The family is viewed as a feedback system in which all behavior is adaptive. Consideration is made not only of the conscious interaction between two spouses (or spouses and children), but also of the interaction between "inner worlds" maintained by the partners. It is this "inner world" which gives meaning to interaction in the family. Unfortunately, aspects of this "inner world" are projected onto the other spouse. This projection and the relationship of the various "inner worlds" in the family can disrupt and distort communications and create immense difficulties. To understand our client it may be necessary to understand what kind of internal "family" governs the interaction of the real ongoing family.<sup>79</sup> The inner con-

72 A. WATSON, *PSYCHIATRY FOR LAWYERS* 11 (1968).

73 SACKS, *supra* note 53, at 324.

74 O'GORMAN, *supra* note 14, at 89.

75 *Id.*

76 *Id.*

77 See J. GRINDER & R. BANDLER, *THE STRUCTURE OF MAGIC* 126 (1976). The works of family therapist Virginia Satir are notable in their clarity and absence of distracting psychological jargon. See V. SATIR, J. STACHOWIAK, & H. TASCHEMAN, *HELPING FAMILIES TO CHANGE* (1975); V. SATIR, *PEOPLE MAKING* (1972).

78 See Hess & Handel, *The Family as a Psychosocial Organization*, in *THE PSYCHOSOCIAL INTERIOR OF THE FAMILY* 10-24 (G. Handel ed. 1967).

79 See R. D. LAING, *POLITICS OF THE FAMILY* 3-19 (1971).

flict created by this interior "family" is acted on and out within the family itself. The process of acting out becomes patterned over time and is easily detectable by family therapists who see communication and behavior of the family as a group.

The consequences for the lawyer of viewing the family from a systems viewpoint are significant:

1. The "myth of the innocent spouse" becomes exactly that, a myth. No one is at fault; blame cannot be allocated.<sup>80</sup>
2. Without fear of being blamed, the spouse can ask, "What was my contribution to all of this?" Thus, the client can be encouraged to move beyond guilt and anger to understanding.<sup>81</sup>
3. In the "family psychodrama" which is played out at conscious and unconscious levels, behavior can be viewed as functional or adaptive, as opposed to irrational.
4. The attorney sees that divorce cases deal as fully with submerged and unarticulated premises as with superficial legal problems.
5. The attorney gains some understanding about the formation, continuation, and dissolution of marriage by psychological factors.
6. The facts presented to the lawyer are filtered through various images and personal biases of the client.

Moreover, the client's statements of fact may be nothing more than a way to allocate blame. Whether this is accomplished by the client's focus on a few significant events which dramatize what went wrong or by a full litany of perceived wrongs, the attorney can be cognizant of the need for such distortion of the facts.

### V. Sensitivity To Psychological Factors

In the preceding sections various aspects of the attorney-client relationship have been explored and a counseling approach has been set forth as an alternative to the traditional attorney-client relationship which eschews client feelings and emotions. This general overview of the relationship can now be supplemented by specific attention to the psychological problems of the client as they are "played out" in the relationship. Anxiety, hostility, ambivalence, depression, guilt and grief are all feelings which the domestic relations lawyer may confront.<sup>82</sup>

80 The elimination of "blaming" within the relationship is viewed as one of the steps necessary for development of a "healthy" marriage. It is important that the client develop a recognition that neither partner in a relationship is all good or bad. Because marriage is a system of constant interaction neither spouse can be blamed for interactional problems. See W. LEDERER & D. JACKSON, *THE MIRAGES OF MARRIAGE* 395 (1968). The legal system is not in full accord with this approach to the family system. A number of states still have a fault divorce system in which the dissolution of marriage is premised on the fault of the defendant spouse and the innocence of the petitioning spouse. Allocation of blame is still a factor in some no-fault jurisdictions (e.g., Kentucky) in regards to resolution of property rights.

81 One of the most difficult problem areas in moving the client beyond guilt and anger is the adulterous spouse. It is not uncommon for the clients to deny any possibility that they played a role in the other spouse's misconduct. Obviously, such cases may demand other professional therapeutic counseling. On the psychodynamics of adultery see H. DICKS, *MARITAL TENSIONS* 165-174 (1967). See also Bernard, *Infidelity: Some Moral and Social Issues* in *16 SCIENCE AND PSYCHOANALYSIS* 99-126 (J. Masserman ed. 1970).

82 While the focus here will be on divorce clients and their psychological state, the theories are equally applicable to other attorney-client situations.

### A. Anxiety

The client faced with the uncertainties created by separation and divorce is often apprehensive about his changing life-style and growing chaos in his life.<sup>83</sup> General uncertainty and apprehension create a fear of the unknown. In psychological terms, anxiety is "internalized fear"<sup>84</sup> which in the case of the divorce client is also related to the emotional conflict over decisions regarding the spouse and child, hurt pride, loss of self-esteem,<sup>85</sup> and feelings of powerlessness.

Anticipation of the unknown in separation is often threatening. The person anticipating being alone worries about meeting financial needs, about being attractive to the opposite sex, about being able to attract another mate, about what parents will think, about the children, about a decline in self-esteem without a partner, about filling companionship needs, and so forth. You worry, "Do I have the courage to handle single life alone? I did it before." Yet the gnawing fear pervades that somehow this singleness is different from the time before you were married. You now have the contrast of marriage to make single life feel emptier.<sup>86</sup>

Anxiety is both a psychological and a physical reaction.<sup>87</sup> The highly anxious client "may feel fearful mildly or to the point of panic, with a feeling of dissolution, 'of coming apart,' of loss of self or identity, of a sense of doom without being able to tell why. The feeling may be accompanied by heart palpitations, flushing, shaking, chills, sweats, gastrointestinal upsets, severe headache, nausea, neck stiffening, muscle cramps, and so on."<sup>88</sup> The subjective state associated with anxiety is anticipation of future troubles.<sup>89</sup> The unpleasantness ranges from a vague apprehension and being uncomfortably "keyed-up" to an acute anxiety which threatens to overwhelm the person.<sup>90</sup> Anxiety is a manifestation of the tension<sup>91</sup> that comes from the loss of security. We all require security in one form or another. Breaking away from a spouse who has provided this sense of security (even if false) destroys the sense of well-being.<sup>92</sup>

83 See R. WEISS, *MARITAL SEPARATION*, 49-51 (1975).

84 F. ALEXANDER, *FUNDAMENTALS OF PSYCHOANALYSIS* 100 (1963). One psychologist has developed a comprehensive theory of interpersonal behavior around the concept of anxiety. See T. LEARY, *INTERPERSONAL DIAGNOSIS OF PERSONALITY* (1957).

85 Harry Stack Sullivan, the founder of a school of psychotherapy stressing interpersonal relations, views anxiety as an endangerment to self-esteem. In this view "anxiety is a signal of danger to self-respect, to one's standing in the eyes of the significant persons present . . ." H. SULLIVAN, *THE PSYCHIATRIC INTERVIEW* 218 (1970). See KESSLER, *supra* note 86, at 34-36. A lucid explication of the dynamics of self-esteem can be found in the works of Virginia Satir. See, e.g., V. SATIR, *CONJOINT FAMILY THERAPY* (1964); *PEOPLE MAKING* 20-29 (1972). See also D. VISCOTT, *THE LANGUAGE OF FEELINGS* 66-67 (1976).

86 S. KESSLER, *THE AMERICAN WAY OF DIVORCE: PRESCRIPTIONS FOR CHANGE* 33 (1975). See generally, D. VISCOTT, *THE LANGUAGE OF FEELINGS* 50-74 (1976).

87 J. NEMIAH, *FOUNDATIONS OF PSYCHOPATHOLOGY* 97 (1961).

88 T. RUBIN, *THE ANGRY BOOK* 50 (1969).

89 NEMIAH, *supra* note 84, at 99.

90 *Id.*

91 See J. NEMIAH, *supra* note 84, at 99.

92 The anxiety of a woman client can often be traced to the assault upon her traditional role separation and divorce bring. The woman client who occupied a domestic role while the husband provided financial support is especially vulnerable to anxiety and lowered self-esteem. Her domestic duties as a housewife are not readily saleable in the highly educated and skilled job market of today. Moreover, her lack of experience in financial matters, upkeep of house and automobile, etc., plus the various forms of economic discrimination against women all

Parents and intimate friends often provide emotional support which helps control anxiety during the divorce period. In some cases the attorney will find that the client's anxiety serves a positive function by motivating the client to seek both legal and nonlegal therapeutic services as a means of solving the problem.<sup>93</sup>

An anxious domestic relations client can interfere with the attorney-client relationship in a number of ways. Anxiety can overload the client's capacity to evaluate, incorporate, and act through the increasing chaos in his life. This overloading actively interferes with the client's decision-making, which is required for assisting in the legal process and in the client's personal affairs. Anxiety also interferes with the communications which flow between attorney and client.<sup>94</sup> Psychiatrist Harry Sullivan has found that, in psychiatric interviewing, the anxious patient acts to disrupt the interview. The client may become angry; develop a "misunderstanding" enabling him to shift to a different topic; and finally, if all else fails, may experience acute anxiety, which totally impedes businesslike communications.<sup>95</sup>

The most effective way for the attorney to handle the anxious client is to allow the expression of internalized fears.<sup>96</sup> The attorney should avoid attempting to work through the client's anxiety by asking a question like "What are you anxious about?" This would be of no avail because the client can answer truthfully, "I don't know."<sup>97</sup> A good way to uncover the underlying factors relevant to the client's anxiety is to actively listen and appreciate the client's perception of the situation and orientation to the changing life-style brought on by family dissolution.

Underlying sources of anxiety can often be traced to subject matters where the client seems to veer off the subject or to be blocking out the facts. In fact, the client may be "talking about everything but the problem."<sup>98</sup>

One potentially harmful approach the lawyer can take in dealing with expression of anxiety by the client is to reassure him. The client may be obviously insecure and may want to be told that "everything will be fine." The client's need for reassurance often comes at the end of an interview; the lawyer, without

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contribute to her anxiety without special efforts of the attorney.

On the special problem of women created by divorce, see S. GETTLEMAN & J. MARKOWITZ, *COURAGE TO DIVORCE* 5 (1974); Zusne, *Special Problems of Women*, in *CREATIVE DIVORCE THROUGH SOCIAL AND PSYCHOLOGICAL APPROACHES* 71-90 (R. Hardy & J. Cull eds. 1974); Scott & Oken, *Divorce as Survival: The Buck Stops Here*, in *MARRIAGE AND THE FAMILY* 308-312 (C. Perrucci & D. Targ eds. 1974).

<sup>93</sup> FREEMAN, *supra* note 17, at 6.

<sup>94</sup> Cf. H. SULLIVAN, *THE PSYCHIATRIC INTERVIEW* 217-226 (1970). Juen Reusch has noted that the "Overexcitation" found in anxious people "results in a jamming and disorganization of the communication network." J. REUSCH, *DISTURBED COMMUNICATION* 135 (1972).

<sup>95</sup> H. SULLIVAN, *supra* note 94, at 218-19.

<sup>96</sup> In therapy, an attempt is made to have the patient express his anxiety, while it is hoped that during this time the therapist can remain relatively unaffected. Because of the therapist's nonanxious attitude, he is able, through negative feedback, to reduce the anxiety of the patient.

J. REUSCH, *DISTURBED COMMUNICATION* 109 (1972).

<sup>97</sup> J. NEMIAH, *FOUNDATION OF PSYCHOPATHOLOGY* 48 (1961).

<sup>98</sup> SULLIVAN, *supra* note 94, at 230.

thinking, may offer reassurances at that time.<sup>99</sup> Harry Sullivan warns that "you should not attempt any private miracles at the end of the interview." He notes that "(t)here is no justification other than your own insecurity . . . for any attempt to reassure unless you are in a position to document what you say."<sup>100</sup>

The attorney can partially defuse anxiety by avoiding confusion. It is of vital importance that explanations to the client of the legal and procedural aspects of the problem be made as simple and as clear as possible. Here the attorney should be direct, open and honest about the legal assessment. Often a client's anxiety is based simply on the lack of knowledge about his legal status or the legal processes involved.<sup>101</sup> In such cases, the clarification role is an important one and can be illuminated only by a conscious effort on the part of the attorney to avoid unduly complex and legalistic responses to the client.<sup>102</sup> The client is insecure enough at this point without having the additional frustrating burden of figuring out the lawyer's legal analysis of the problem.<sup>103</sup>

During the course of the interview it is wise to proceed in steps making sure the client understands each part before proceeding to the next stage.<sup>104</sup> Whenever the client's anxiety reaches a level which impedes effective communication, the attorney should shift the focus of the interview from the anxiety-producing event

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99 Some interviewers, particularly those who are inexperienced, feel called upon to pour some healing balm on the victim at the finish of an interview, as if finding out what the trouble is were not in itself a life-size job. Such therapists tell a patient that although they are not quite clear on what the trouble is, they are very sure that they can find out what it is, and that it can be fixed, which so far as I am concerned, is utterly gratuitous magic. In fact, it may disturb the patient when he thinks it over, for I don't believe that it is particularly good for a patient to realize how much distance has yet to be covered before the expert knows much of anything about what is going on.

SULLIVAN, *supra* note 94, at 228-29.

100 *Id.* at 228.

101 REDMOUNT, *supra* note 34, at 85-86.

102 Clarification by the therapist has also been viewed by clients in the therapeutic setting to help in understanding feelings. Rogers, *The Characteristics of a Helping Relationship*, in CONTEMPORARY PSYCHOTHERAPEUTICS 95-112, at 98 (M. Stein ed. 1961). Focusing upon a structured solution to a problem and giving a problem direction are skills which the marriage counselor and family therapist use as well as lawyers. In the counseling literature it is known as "directionality in communicating." See R. CARKHUFF, THE ART OF HELPING 135-138 (1972). Lawyers are well trained in problem-solving and the necessary art of defining the problem and structuring a response. Therefore, this vital aspect of the attorney-client relationship will not be explored here. It is interesting to note that Andrew Watson has theorized that the attorney's role in clarifying complex legal datum may serve an unconscious need.

When the lawyer is able to come forward with a clear explanation of the legal situation and formulate it in precise legal terms, surely he must derive some sense of personal adequacy and importance from this act. We could speculate that this might be one unconscious, or perhaps conscious, motivation for an individual to select law as a field of professional endeavor.

WATSON, PSYCHIATRY FOR LAWYERS 12 (1968).

103 [T]he total communications must be put together in such a way as to formulate a problem or problems for solution. Here is one of the lawyer's major roles. From time to time he needs to verbally review and summarize what has been said and so package it that it begins to stand out as compassable problems. *Oftentimes the client's anxiety* stems from an inability to discern pattern in a hodgepodge of pressing information or facts. He will feel that a long step has been taken when the problem is formulated.

FREEMAN, *supra* note 17, at 13; cf. KESSLER, *supra* note 86, at 56-57.

104 See SULLIVAN, *supra* note 94, at 222.

to a more neutral subject topic.<sup>105</sup> The anxiety-producing subject matter can be approached from a different perspective or reserved for future interviews.<sup>106</sup>

## B. Hostility

The domestic relations lawyer is confronted with hostility on two fronts: the client's bad feeling toward the spouse and toward him.

### 1. Hostility Toward Spouse

In a divorce or custody case, a threat to a client's self-esteem<sup>107</sup> or strong feelings of betrayal<sup>108</sup> compel a client to seek vengeance against the departing spouse. Attorney Louis Nizer has found that litigation between spouses "evokes

105 For example, if a man became excessively angry in talking about his mother-in-law he might be asked where he first met her and then asked to describe the place or talk about the other people who were there at the time. This subtle change of subject relieves the anxiety accompanying the emotionally charged subject but still leaves the discussion open whereas an abrupt change of subject to a completely different sphere might not leave open the way for subsequent work.

EATON, *supra* note 58, at 42.

106 In handling emotionally charged subjects one does not wish to end the appointment on a disturbing note and so tends to get away from sources of tension in the latter part of an appointment so that the appointment ends with both clients reasonably calm. Clients may also be reminded not to continue the discussion until the next appointment.

*Id.* at 42-43.

The domestic relations client in a state of confusion or experiencing debilitating anxiety may be helped if he can find a method of quieting the internal "noise," which is interfering with his ability to communicate and to think. One method for "turning off" the noise which is receiving current attention is meditation. "The main feature and principal value of meditation for the helping process is that it stops the active flow of ideas and actions." L. BRAMMER, *THE HELPING RELATIONSHIP* 99 (1973). See generally, C. NARANJO & R. ORNSTEIN, *ON THE PSYCHOLOGY OF MEDITATION* (1971).

Although it would be helpful for the lawyer to have experienced the meditation process, the principles can be used by even an inexperienced attorney to help a client (especially one who is having trouble concentrating on the immediate problems at hand because of anxiety or ambivalence) get in touch with his feelings. The attorney can simply ask the client "to stop talking, close his eyes, get in a comfortable position, and just be quiet awhile. You might ask . . . [the client] to focus on his breathing—how he inhales and exhales and to let the ideas flitting across his awareness just fade away."

BRAMMER, *supra* note 106, at 100.

The primary goal of meditation is to help calm the client and guide him to a more rational approach, which will enable him to better attend to present problems.

107 The threat to self-esteem motivates many clients to seek vengeance. "They don't just want to dissolve the marriage," commented one attorney, "they want revenge, to get even." A vindictive client does not make a lawyer's job any easier; such clients, "in their efforts to ruin the spouse, very often ruin their own cases."

O'Gorman, *supra* note 14, at 85.

108 Vindictive hostility may emanate from hurt pride. Sometimes the connection between rage and pride is easily enough established—for the observer. For instance, a person is enraged against his boss who he feels has treated him cavalierly, or against a taxi driver who has cheated him—incidents which, at most, would account for annoyance. The person himself would only be aware of a justified anger at the bad behavior of others. The observer . . . would see that his pride was hurt by the incidents, that he felt humiliated and then reacted with rage. The patient may accept this interpretation as most likely accounting for the excessive reaction, or he may insist that his reaction was not excessive at all and that his anger was a warranted reaction to the wickedness or stupidity of others.

K. HORNEY, *Neurosis and Human Growth* 99 (1950).

The connection with hurt pride is more easily discernible if the hostility has ingredients of derogation, contempt, or intent to humiliate, what operates here is the straight law of retaliation. The patient, without knowing it, has felt humiliated and

feelings of animosity, revenge, and retribution" and in many instances results in "sheer, unadulterated venom."<sup>109</sup>

The attorney is pulled into this conflict in a number of ways. The adversary nature of the divorce proceedings and the attorney's efforts to secure a settlement "in the best interest of the client" encourages the "neurotic vengeance" of the client's claim.<sup>110</sup> The attorney's negotiating posture can aggravate the situation because he makes demands which are unsupportable in light of prevailing

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returns in kind. After such incidents, it is sheer waste of time to talk about the patient's hostility. The analyst must go straight to the point by raising a question as to what has registered in the patient's mind as humiliation.

*Id.* at 99-100.

109 L. NIZER, *MY LIFE IN COURT* 154 (1944). Nizer offers the following explanation for the destructiveness found in divorce and custody litigation.

The chemical ingredients of rejection, jealousy, and possessiveness certainly play a part in the explosive content [of the transformation from love to hate]. But there is something more, a mysterious element, which unbalances the mind, changes the personality, and distorts the character. It derives undoubtedly from the sexual ties which, if profound and ecstatic, can never be completely severed. The mutual enslavement of love will not tolerate unilateral freedom. Two people joined in intimacy are often like Siamese twins, the separation of one causing the death of the other. By great exercise of will, the rejected sometimes overcome the unbearable ache and readjust their lives.

*Id.*

Karen Horney offers the following explanation for the transformation of love to hate.

If one feels abused by another person, that person suddenly becomes untrustworthy, nasty, cruel, contemptible—i.e., this indignation drastically influences our judgment of others. Here is one source for neurotic suspiciousness . . . Here is also a reason, and an important one, for many neurotic people being so insecure in their estimates of others and for their turning so easily from a positive friendly attitude to one of total condemnation.

K. HORNEY, *NEUROSIS AND HUMAN GROWTH* 56 (1950).

Custody fights specifically provide an opportunity for the client to vent vindictive feelings toward the other spouse.

A man and woman who have hurt each other in marriage may unconsciously continue their war with each other through a divorce and afterward with the child as pawn. Many a harmful decision over custody, many a stubborn struggle over visitation privileges springs not from a concern for the child but from an unconscious wish of one or both parents to get the best of the other.

J. DESPERT, *CHILDREN OF DIVORCE* 13 (1962).

Custody fights are bad enough when both spouses sincerely want custody. They get trickier when one spouse is using the demand for custody as a lever to pry economic concessions from the other, often with sly or blatant blackmailing threats to air all kinds of deplorable and unhappy incidents. For a lawyer to make himself a party to such use of the child in economic bargaining is certainly unethical.

Visitation rights are often similarly used. The custodial parent harboring vindictive feelings can see the opportunity to prevent or restrict visitation as a strategic weapon for implementing his feelings or indulging in pious moralizing.

Or the demand for custody may be a matter of holding on to as much as one can, or a matter of pride. Being granted custody may be seen as a measure of vindication. If the lawyer can help the client analyze his demand and the feelings that actuated it, he may enable the client to see that custody of the child would be harmful to it and a burden to the client.

FREEMAN, *supra* note 17, at 48.

110 Because divorce litigation is so heavily steeped in the adversary system, hostilities are prolonged and intensified; the litigants are provided with weapons to use against one another; lawyers are engaged who usually contribute to the ever-increasing vicious cycle of vengeance; disputes are unnecessarily prolonged; and hardship on both parties is increased immeasurably. Often the divorce proceeding then becomes a more cruel operation and causes greater pain to the parties than the marriage which brought about the decision for a divorce in the first place.

R. GARDNER, *PSYCHOTHERAPY WITH CHILDREN & DIVORCE* 369 (1976).

The partisan representation of the client's best interest may create a problem for the attorney in *overidentification* with the client's cause. Barnett, *Emotional Problems Encountered in Divorce Cases—A Seminar*, 3 J. OF FAM. L. 208, 214 (1963); Ford, *The Harvard Family Law Project: An Experiment in Interdisciplinary Cooperation*, 23 HARV. L. S. BULL. 18,

standards or the realistic needs of the other spouse.<sup>111</sup> The attorney's negotiating

20 (Feb. 1972). Cf. Meltsner & Schrag, *Report from a CLEPR Colony*, 76 COLUM. L. REV. 581, 604 (1976). O'Gorman in his survey of domestic relations lawyers reported that: matrimonial clients, acting under stress, convinced that justice is on their side, and hoping for revenge, tend to look to their lawyers for complete support. They want counsel, we were told, to share their sentiments: "to be bitter," "to hate as they hate," "to have the same grievances toward the spouse as they have." And they prefer that these feelings be manifested in action.

The one thing they all want is for the lawyer to shoot the other side. They'd like it if we went after the other side with a knife, a blade. They would be happy.

The demand for extreme partisan representation exceeds the professional obligation requiring a lawyer to represent his client with zeal; it calls, rather, for an identification of the lawyer with his client's point of view. Should a lawyer comply, this would deprive the client of valuable advice based on professional detachment.

H. O'GORMAN, *LAWYERS AND MATRIMONIAL CASES* 85-86 (1963).

Identification with the client or the client's cause is healthy only insofar as it reflects an empathic approach to counseling and rendering legal skills. Overidentification then, in the domestic relations context, may not be in the best interest of the client. Overidentifying with the client may create:

resentment and ill will, which will not only scar the parties but will also leave its mark upon the children. The broader view would be less difficult to adopt if we would consider that in many and perhaps most cases, what is best for the family will probably prove in the long run also to be best for the client.

FREEMAN, *supra* note 17, at 47.

Overidentification may be related more to the "interest" of the lawyer than the "best interest of the client."

[I]n all of the "helping professions"—medicine, social work, etc.—lawyers are prone to an attempt to work out through a dedication to the needs of others some of their own needs. It doesn't work. It doesn't save either the professional or the client. It results in what is called overidentification—and any practicing attorney knows what happens when he loses all attempts at objectivity and with it, his professionalism, by fighting his client's battle as his own. Notice that "as his own"—not "as if it were his own." If one pursues and hounds the spouse of an unpaid client as if his life depended on it, if he uses a domestic case to let out his own hostilities by latching on to those of the client—then he is in trouble. And nothing is more frustrating and bewildering than for one to feel he is giving his all for a client who is not even appreciative!

Deutsch, *The Family Law Practitioner as Legal Psychiatric Worker*, 48 CAL. B. J. 158, 159-160 (1973).

Allan Fromme, a clinical psychologist and therapist, has observed that: "the defense of the underdog gives us an opportunity to fight with others and express our own hostilities." A. FROMME, *OUR TROUBLED SELVES* 97 (1967).

Overidentification and underinvolvement may be guarded against by adhering to the following advice written for social workers:

He must consistently examine his reactions to his client, to particular problems, in order to become aware of how to guard against overinvolvement or underinvolvement. When the practitioner overidentifies or underidentifies with the client, he needs to inquire into the reasons.

F. UPHAM, *EGO ANALYSIS IN THE HELPING PROFESSIONS* 78 (1973).

111 R. GARDNER, *PSYCHOTHERAPY WITH CHILDREN OF DIVORCE* 377 (1976): "Conflicts over alimony are especially common vehicles for vengeful release because of the practical as well as the deeply psychological significance of money in our culture." On the psychological dimensions of alimony, see Peele, *Social and Psychological Effects of the Availability and the Granting of Alimony on the Spouses*, 6 LAW & CONTEMP. PROB. 283 (1939).

The divorce counselor can play a significant role in reducing the anger and bitterness which so often lead to a wife's extravagant demands and a husband's parsimonious offers. Frightened, angry wives and husbands frequently use newly learned legal concepts and terms as emotional tools to avoid or forestall divorce as they may use religious and psychological concepts and terms to vent their hostility rather than confront what is in fact happening. A primary task of the divorce counselor is to help clients accept their reality. In truth, many families cannot afford separation and divorce. The woman may have to work when she has never worked before or get temporary additional help from her parents. The man may have his income depleted by support payments to where he is seeking out a limited existence. Nevertheless, one or both are determined to get a divorce. Both need to be helped to accept the future with faith in self and life. By and large, for most divorced persons, these initial hardships tend to wear away with time, and families move on.

E. FISHER, *DIVORCE: THE NEW FREEDOM* 77 (1974).



technique may, by encouraging hostility, work against the client's best long-term interest.

The primary goal of the lawyer should be to reduce negative patterns of interaction between client and spouse and minimize the revenge factor in order "to prevent senseless, harmful, and wasteful litigation caused by battling spouses and . . . (to) induce a background for a sensible, reasonable, and viable settlement agreement."<sup>112</sup>

## 2. Hostility Toward Lawyer

Client hostility toward the lawyer may also arise. Hostility may be directed towards the lawyer when the client unreasonably or unjustifiably verbally assails the lawyer for failure to achieve certain desired results.<sup>113</sup> The lawyer's reaction can lead either to a total disruption of the attorney-client relationship and dismissal of the attorney or to a productive interchange.

The client's remark may trigger the lawyer's defense mechanism.<sup>114</sup> An example of this is where the lawyer is relying upon role status to demand respect: "I'm the lawyer. You're the client. Maybe it's time that we got our roles clear." In responding, the attorney has put himself "one up" on the client.

The client's comments may suggest that the lawyer is incompetent; and the lawyer often responds by arguing the case for his competence: "I negotiate 50 divorce settlements a year and I can assure you I always do everything I can." Such a response indicates that the lawyer is forgetting the client and the client's problems, and is seeking to reassert his own self-esteem. The remark shifts the focus of interaction from the client to the attorney. The attorney, in the above example, obviously has no understanding of the psychodynamics of interpersonal relations, for he makes no effort to determine whether the negative criticism stems from the client's fear, anxiety, hurt feelings, or a misunderstanding.<sup>115</sup>

In order to avoid misperception of the client's position, the attorney could inquire as follows: "I get the impression that you are annoyed with me. Are you?"<sup>116</sup> Note that this approach does not express disapproval of the client for his remark, but simply seeks to find out the source of the hostility. This allows the attorney to react to a current fact situation while letting the client know you respect him as a person.<sup>117</sup>

112 FISHER, *supra* note 111, at 72.

113 See SAXE & KUVIN, *infra* note 126, at 401.

114 Psychological defense mechanisms are one means by which we resolve conflict situations and reduce anxiety. These defense mechanisms are primarily unconscious, which means that we have little or no awareness of their existence. They are the means by which the ego, the reality-oriented aspect of the psyche, handles intra- and extrapsychic conflicts. The ego defense mechanism serves "to avoid the painful emotions of severe anxiety, guilt and shame." L. FRIEDMAN, *PSYCHO-ANALYSIS: USES AND ABUSES* 69-70 (1968). "Such defense mechanisms are widely employed by persons under stress and hence are factors with which the lawyer as well as the psychiatrist is directly concerned." Allen, *The Dynamics of Interpersonal Communication and the Law*, 3 WASHBURN L. J. 135, 164 (1964).

115 See D. JOHNSON, *REACHING OUT: INTERPERSONAL EFFECTIVENESS AND SELF-ACTUALIZATION* 96 (1972).

116 *Id.* at 100.

117 *Id.* at 101. In a therapeutic setting in which the client has expressed hostility toward the therapist, the therapist will seek to determine:

[W]hat the behavior represents in terms of what is happening in the client's current

When hostility which a client feels toward the spouse is instead directed towards the attorney, a defense mechanism called "displacement" is at work.<sup>118</sup> Hostility may also be related to an entirely different psychological phenomenon called "transference,"<sup>119</sup> whereby the client transfers onto the lawyer the emotions which the client has about an important figure in his early childhood.<sup>120</sup> These feelings directed toward the lawyer may be either positive or negative. Negative transference of hostility may be expressed in the form of criticism, anger or resentment.

Positive and negative transference may often involve the same individual because of the client's ambivalent feelings toward significant authority figures. For example, in the therapeutic setting, the client with ambivalent feelings toward a parental figure may show admiration for the therapist and seek his love, while at the same time express hostility toward him as an authority figure.<sup>121</sup>

The transference phenomenon has a counterpart known as a "counter-transference" which indicates the attorney's irrational feelings of affection for (positive counter-transference)<sup>122</sup> and/or hostility (negative counter-transfer-

life outside of therapy. He will wonder what the behavior means in terms of conflict in the client's longer history of interpersonal relationships. And, he will wonder what the behavior means in relation to him, the therapist. In that regard, the therapist will reflect on what has transpired in the session itself during the moments immediately preceding the client's reactions. And he will similarly reflect on the possible latent effects of interactions in previous sessions that might have contributed to the buildup of the client's feelings.

W. MUELLER, *AVENUES TO UNDERSTANDING* 67 (1973).

Harry Stack Sullivan notes that "when another person seems annoyed or angry, we are most likely to approach a simple understanding of the situation if we ask ourselves whether what we did had in some way impaired his security . . ." H. SULLIVAN, *CLINICAL STUDIES IN PSYCHIATRY* 96 (1956).

118 Displacement is "[t]he unconscious defense mechanism of transferring emotional reactions from one object to another." R. GOLDENSON, *THE ENCYCLOPEDIA OF HUMAN BEHAVIOR* 338 (1970). For an example of displacement onto an inanimate object, see Deutsch, *The Family Law Practitioner as Legal Psychiatric Worker*, 48 CALIF. S. B. J. 158, 162 (1973).

119 The transference phenomena is not unknown to legal literature, see e.g., FREEMAN, *supra* note 17, at 50; Allen, *The Dynamics of Interpersonal Communication and the Law*, 3 WASH. L. J. 135, 169-173 (1964); A. WATSON, *PSYCHIATRY FOR LAWYERS* 4-22 (1968).

120 In many ways, the attorney-client relationship in the domestic relations case resembles the child-parent relationship. The client is in a relatively helpless situation and has to seek advice from someone who has greater knowledge and the authority which goes with this knowledge:

[W]hen a client seeks help from a lawyer, he is generally ignorant of the technical aspects of law. His ordinary techniques for judging persons or situations must be suspended, for he has no way of adequately testing the competency of the lawyer he chooses. He may make inquiries about him, and he may be able to investigate past successes and failures, but, generally, he is unable to make any realistic appraisal of skill and trustworthiness. Of necessity, then, he must place himself under the authority and assistance of the lawyer, essentially in blind trust. By virtue of this fact, all the client's previous attitudes about authority and dependency will be stirred up. This will elicit, usually, a certain amount of irrational fear and concern, which the client will be helpless to deal with. He will feel impotent to broach these fears, and will conceive of the relationship to his attorney as one of helplessness although, in reality, he is free to procure a new lawyer any time he wishes.

A. WATSON, *PSYCHIATRY FOR LAWYERS* 17 (1968).

121 R. GOLDENSON, *THE ENCYCLOPEDIA OF HUMAN BEHAVIOR*, Vol. 2, at 1322 (1970).

122 Andrew Watson notes that

[d]ue to the psychological tendency on the part of the client to invest the counselor with all sorts of power, authority, and a nearly magical belief in their [*sic*] helpfulness, there will also be a powerful tendency to bestow affection.

Watson argues that these affectionate feelings are "irrational" since they are largely "unrelated to truly personal involvement" and it would therefore be unethical for the attorney to take advantage of these strong feelings of caring. Watson, *The Lawyer as Counselor*, 5 J. OF FAM. L. 7, 16 (1965).

ence)<sup>123</sup> toward the client. Since transference and counter-transference operate at the unconscious level, they are difficult to recognize, much less, control. Watson notes that self-observation is helpful:

The mere acknowledgment of the possibility of such unconscious reactions permits the participants to look more objectively at relationships and to question causes. The capacity to accept the possibility that one's feelings about another may be due to unconscious and unrealistic coloring rather than to the other's reality traits, is a major step toward understanding. Without awareness of transference phenomena, people are over-or-under-convinced by their own emotional responses and have no opportunity to work out any understanding of them.<sup>124</sup>

If the attorney or client is relating in an unnecessarily hostile or overly affectionate manner<sup>125</sup> this is an indication that transference may be present. The lawyer should respond to client hostility, not with anger, but with calm interest and by pointing out what is happening with some remark such as, "You seem awfully upset and angry, let's see if we can determine whether I did anything to provoke those feelings." By recognizing the dynamics of hostility the lawyer can offer the client "a mirror" in which the latter's action is reflected and brought into conscious awareness so that it can be approached rationally.<sup>126</sup>

### C. Ambivalence

Marital problems often create a sense of confusion and ambivalence in the client. In those cases in which the client recognizes this ambivalence, the at-

123 The discussion of hostility has focused on the client as the primary hostile actor in the relationship. There are certainly cases in which the attorney's hostility toward the client may become manifest or the attorney's actions may directly or indirectly provoke client hostility. For example, a client who fails to play the "scripted" (expected) role of a client or who makes demands or has expectations which do not fit the attorney's role performance may trigger attorney hostility. In other instances, the attorney's value system may be threatened either from "deviant" client behavior or the attorney's perception that the client is unnecessarily irrational and overly emotional. ("If you can't get in control of yourself, I'm not going to be able to help you.")

124 A. WATSON, *PSYCHIATRY FOR LAWYERS* 8 (1968). For an analysis of the legal concept of "undue influence" and "confidential relationships" in terms of the transference phenomenon see Shaffer, *Undue Influence, Confidential Relationship, and the Psychology of Transference*, 45 *NOTRE DAME LAW.* 197 (1970). See also, Shaffer, *The "Estate Planning" Counselor and Values Destroyed by Death*, 55 *IOWA L. REV.* 376 (1969).

125 The attorney should try to gain sufficient insight so as to understand the anxiety created by fantasies of sexual relationships with the client. Such fantasies can create anxiety, guilt and hostility on the part of either attorney or client. These anxieties may be intensified by a sexually attractive client or a client that is consciously or unconsciously seductive toward the attorney.

The attorney's response to these anxieties may be acted upon by (1) avoiding the defensive action of the client, or (2) developing a full-blown countertransference in which the attorney seeks greater contact and involvement.

126 The hostility described here can be distinguished from normal, healthy *anger* which may also be present. "The line between anger and hostility is not a sharp one, but the term hostility is usually used in the psychological sciences to denote the kind of aggressive anger or ranking resentment that arises from prolonged frustrations or deprivation." R. GOLDENSON, 1 *THE ENCYCLOPEDIA OF HUMAN BEHAVIOR* 561 (1970). "Feeling angry is a universal phenomena. It is as basic as feeling hungry, lonely, loving, or tired." T. RUBIN, *THE ANGRY BOOK* 17 (1970). Therefore, part of the spouse's vengeful feeling is an inevitable and normal reaction to the situation.

torney's help may be sought specifically to bring some order to the chaos in the client's life. The client's feeling is, in essence, that "I just want to resolve things one way or the other."

Ambivalence is often a sign that divorce is premature and the lawyer often sends the client away to figure out what he wants to do. A common approach of lawyers is illustrated in the following advice of a New York domestic relations lawyer: "'Cool it.' 'If you are undecided, it is better to stay married. Wait for things to become clearer.'" <sup>127</sup> This advice, however, is too simple and may be a great disservice to the client. <sup>128</sup> Almost all couples have "mixed" feelings about divorce. "In any situation of discord between husband and wife there is likely to be a period in which the possibility of divorce hangs in the air, and nothing is certain except that there is trouble." <sup>129</sup> It is vital that the lawyer understand the nature of the ambivalence. There is nothing abnormal about ambivalence; in fact, it is a natural state of affairs. It becomes problematic only when the

127 R. FELDER, *DIVORCE* 33 (1971). Interestingly enough, the same attorney argued that the client should "decide thoughtfully but quickly" on a "course of action because of the distinct possibility that your mate might be working at that very moment to checkmate you." *Id.* at 36.

This advice was premised on the "distinct possibility that at the very moment you are trying to make up your mind, your mate has already hired an attorney who may be preparing surprises for you from which you will never recover." The attorney went on to relate that

[I]n a number of cases where reconciliation was absolutely hopeless and the marriage could not be saved, I carefully prepared such surprises, at the wife's request and without the husband's knowledge. During such a period, we were able to gain possession of the husband's financial records, many times in such a manner that he was actually legally denied access to them, putting him at a distinct disadvantage in the financial area. This is a fair "turnabout" since usually it is the wife who knows very little about the husband's finances. Often an unexpected "lockout" of a mate produces such a psychological setback that the other party capitulates immediately or never recovers his or her bearing during the litigation. And it should be emphasized that all of the initial surprises your spouse's attorney has arranged will have been managed in a way the law finds completely acceptable and proper."

*Id.* at 35-36.

Query, what kind of games was this attorney playing?

128 Psychiatrist Richard Gardner has made a similar argument. He notes that:

It may have taken the man or woman many years to reach the point where he or she has decided to institute the divorce proceedings and it may be a healthy step. The lawyer's discouraging the divorce, under the assumption that maintaining the marriage is in the client's best interests, may be squelching this healthy move and may drive the individual back to many further years of pain and psychiatric trauma.

R. GARDNER, *PSYCHOTHERAPY WITH CHILDREN OF DIVORCE* 372 (1976). Gardner adds:

On the other hand, the lawyer owes it to the client to at least inquire into the reasons why divorce is being sought and to consider the possibility that the decision is being requested for frivolous or inappropriate reasons. If he senses that there is not a justifiable reason for proceeding, he should recommend the consultation of a mental health professional. At times it may even be obvious that the lawyer's suggestion to try to work things out (with or without professional counseling) is the appropriate course. What I am criticizing is the blanket suggestion to all clients that they try to maintain the marriage. The lawyer should be far more discriminating in making such a recommendation and should appreciate that at times it may be deleterious.

*Id.*

129 J. DESPERT, *CHILDREN OF DIVORCE* 24 (1962). The ambivalence may not be derived so much from conflicted feelings about the spouse as in the idea of preserving a marriage vis-à-vis the trauma of divorce. As one author described his personal experience:

You felt yourself driven, split down the middle between the fierce desire to avoid going through the sleazy horrors of obtaining a divorce. The conflict within you was clear, but you haven't the courage to resolve it. Formulated, it involved a bleak case of either/or: either tear away from this awful marriage by undergoing a terrible divorce or avoid the awfulness of a divorce by suffering through this terrible marriage. Six of one, half a dozen of the other, and either way you lost.

J. EPSTEIN, *DIVORCED IN AMERICA* 90 (1974).

feelings are so evenly mixed that they prevent action and leave the client in a state of perpetual indecision.

The most difficult case is presented by the client who masks his ambivalence about the relationship with a sense of superficial certainty as to what course of action should be taken. "I want a divorce, and I want it immediately." Such a verbal statement should be explored, for the client's certainty in seeking a divorce may be an indication of strong ambivalence. The lawyer should be aware of this psychologically defensive behavior. The client that ends up with a divorce after staging such a dramatic presentation of certainty for the attorney may unconsciously blame the attorney for facilitating the final dissolution.

Another example of ambivalence is that of the couple who comes to the attorney to obtain a legal separation instead of a divorce. This "cautious half-step towards divorce" may betray their hope for ultimate reconciliation.<sup>130</sup>

[W]hen the "divorce-minded" clients come into the office with his or her spouse, the attorney would be wise to look a little deeper into the situation. The fact that enough solidarity exists to permit cooperation in soliciting the legal tools to dissolve the union, may indicate that what the parties are unconsciously seeking is the involvement of a disinterested third person to resolve their own ambivalence [sic]. Making the divorce for them by preparing legal documents and starting the (for them) magical and irreversible process of legal action, may work incalculable harm.<sup>131</sup>

A third illustration is that of the client who is seeking confirmation from the attorney that he is doing the right thing. Approval by the attorney (parent figure) can ease the client's ambivalence about the course of action he is contemplating.

Finally, the indecisiveness of an ambivalent client can produce uncertainty for the attorney. In his study of domestic relations lawyers, O'Gorman found that clients make their intentions known, but frequently change their minds.<sup>132</sup> "In the presence of this vacillation, lawyers themselves are uncertain of their clients' best interests."<sup>133</sup>

In the case of the ambivalent client, the attorney therefore should identify what the client expects, assist the client in exploring his "mixed feelings" about his marital relationship,<sup>134</sup> and help the client evaluate the legal and financial

130 FREEMAN, *supra* note 17, at 43.

131 Allen, *The Dynamics of Interpersonal Communication and the Law*, 3 WASHBURN L. J. 135, 136, n. 3 (1964).

132 O'GORMAN, *supra* note 14, at 99-100. Marriage counselors commonly find their clients have "mixed feelings" about the relationship. Their ambivalence results in the decision to "stay married" or "get divorced," to be reevaluated and the decision made over and over again until the ambivalence is at least partially resolved. The "seesaw" effect is common to counseling as well as law.

133 *Id.* at 100.

134 See Appel & Atta, *The Attorney-Client Dyad: An Outsider's View*, 22 OKLA. L. REV. 243 (1969). This advice runs contrary to that of one lawyer who notes that

when women come to see him and are unsure of what they want, he tells them "please come back when you are sure because the step you are taking is an irrevocable one." To talk about divorce without going through with it just means poisoning the marital relationship. It will just never be the same.

FELDER, *supra* note 127, at 110.

aspects of the marital and divorced statuses. This approach will mitigate the problems caused by ambivalent feelings.

#### D. Depression

Everyone has experienced mood swings which, in their downward cycle, are known as depression. Such depression may come about from time to time by events during the divorce process. The client in a domestic relations case who is depressed is usually quiet, pessimistic, and inhibited, with manifestations of loneliness, sadness, and feelings of remorse.<sup>135</sup> Also, he may be experiencing intense feelings of worthlessness and low self-esteem; or physical complaints of sleep disturbances, early awakening, constipation, weight loss, dizzy spells and appetite disturbances. Although the exact relationship between divorce and depression is unclear, the two appear to be linked.<sup>136</sup> A major transitional period such as separation and divorce produces stress. This stress is intensified by feelings of worthlessness, rejection, hopelessness and embitterment.

Depression has a complicating effect upon the client as an individual, the attorney-client relationship, and the divorce process. The depressed client, preoccupied with the prospect of divorce, is no longer able to make decisions due to an inability to think and concentrate. In addition, the low self-esteem and guilt associated with depression may prompt an attitude of "I don't care what happens to me," which can seriously undermine the attorney's efforts to achieve a result in accord with the client's best interest. Examples include the client who neglects to take account of his own financial well-being as it is being affected by the divorce; or the husband who has great affection for his children and has a strong case for custody *vis-à-vis* the mother, but simply cannot tolerate the idea of aggressively waging a legal fight to obtain custody.

The client's interaction with the attorney may deepen these feelings of depression. The depressed client's "feeling of weakness, smallness, helplessness and inefficiency,"<sup>137</sup> low self-esteem and negative self-concept are confirmed by the attorney who exhibits dominant, aggressive behavior and exudes an air of superiority.

The attorney should not respond by limiting contact with the client, since this can have a negative impact upon the client, especially when coupled with a similar reaction from family members and friends. The withdrawal response simply increases the client's desperation and quickens "the depressive drift."<sup>138</sup> Instead, the attorney can play an active preventive role by structuring the attorney-client relationship to promote greater client involvement. The client-centered, nondirective, approach to interviewing is a start; and shared re-

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135 The term depression is most often used to designate a complex pattern of deviations in feelings, cognition, and behavior which is not identifiable as a discrete psychiatric disorder. Rather, it is regarded as a syndrome, or symptom complex.

136 See WEISS, *supra* note 83, at 51.

137 F. NEMIAH, *FOUNDATIONS OF PSYCHOTHERAPY* 148 (1961).

138 *Id.* at 36.

sponsibility in decision-making can also be helpful.<sup>139</sup> Client feelings of isolation and powerlessness may be offset by keeping the client more active and involved in the legal matters which are being resolved through the attorney's efforts. Finally, an attorney who feels comfortable with the counseling role can help the client fight mild depression by helping the client discover and face the hidden causes of depression.<sup>140</sup> This will necessitate working through the client's distortions and misperceptions about himself which have been created as a result of the separation. It is important for the attorney to recognize that the profound sense of loss experienced by the client may extend beyond the loss of the spouse; even if there is a resolution of the loss of the spouse, there may be a loss of ideals.<sup>141</sup>

### E. Guilt

While the client's decision to obtain a divorce may provide a sense of relief for at last dissolving an unfulfilling marriage, it may also create strong guilt feelings.<sup>142</sup> Both spouses are likely to feel guilty about divorce if there are children involved. "Many counselors report that this guilt (about children) is the first strong reaction expressed by parents."<sup>143</sup> These conscious and unconscious guilt feelings have an impact on the attorney's handling of the divorce proceedings. For example,

A mother who feels guilty about the divorce and who believes the children will necessarily be harmed thereby may try to ease her guilt-edged conscience by demanding as much support money as she can get. She may insist that the children be assured all the benefits they would have had without the divorce. The issue of support payments thus becomes the stage on which conflicting neurotic complexes about money are played out.<sup>144</sup>

139 The goal of shared responsibility of attorney and client for decision-making becomes extremely difficult where the client is deeply depressed. The depressed person is often indecisive and indifferent to the task of solving problems. See CAMMER, FAMILY FEEDBACK IN DEPRESSIVE ILLNESSES, 12(2) PSYCHOSOMATICS 127, 128 (1971). If the client is totally indecisive and this state is thought by the attorney to be a sign of depression, a referral should be made. If for some reason this cannot be accomplished and the divorce proceedings are to continue, it may be necessary for the attorney to play a more traditional dominant role in the relationship. Cf. CRAMER *supra* note 139, at 131.

140 Anxiety, from whatever source, if severe and prolonged can be an underlying factor in the depression. See D. VISCOTT, THE LANGUAGE OF FEELINGS 30 (1976). The depression becomes a substitute for the anxiety. Wolpe, *Neurotic Depression: Experimental Analogy, Clinical Syndromes, and Treatment*, 25 AMER. J. OF PSYCHOTHERAPY 362, 365-366 (1971).

The attorney can be of help in cases of "anxiety-masked" depression by attempting to alleviate the stress in the attorney-client relationship and exploring apprehensions the client may have about the legal proceedings and the client's life-style.

141 "If, as in divorce, the rupture may have been sought, it is not so much the lost relationship itself whose meaning needs to be retrieved, as the hopes and purposes it betrayed." MARRIS, *infra* note 148, at 164. Cf. D. VISCOTT, THE LANGUAGE OF FEELINGS 50 (1976).

142 Women particularly are susceptible to feelings of guilt and failure stemming from unrealistically high demands society has placed on them in their roles as wife and mother. Wives are supposed to be the tenders of the hearth, the nurses of the fragile male ego, the ameliorators, the smoothers-over. Even when a husband abandons his wife for his mistress, she is still made to feel that the breakup is somehow her fault: it was something she did, or more often something she didn't do. If only she had been better in bed, kept the house cleaner, asserted herself less—or asserted herself more—the marriage would not have ended.

M. KRANTZLER, CREATIVE DIVORCE 57 (1974).

143 DESPERT, *supra* note 129, at 12.

144 FREEMAN, *supra* note 17, at 47.

"Some men and women, under the press of guilt, agree to a grotesquely uneven property division as partial reparation."<sup>145</sup>

A client's feelings of guilt should be allowed to surface and should be treated openly by the attorney. Guilt is an emotion related to the idea of wrongdoing—a violation of individual and/or social conscience. Perhaps as societal views toward divorce change, clients may be less inclined to view their action as wrongdoing.

### F. Grief

Grief and mourning, the psychological reaction associated with the death of a loved one, is similar to depression.<sup>146</sup> In both depression and grief, "there is the same inner anguish, the same loss of interest in a dreary, empty world, the same loneliness and feeling of inner emptiness."<sup>147</sup> The emotional trauma associated with separation and divorce has often been equated with grief and mourning:<sup>148</sup>

Next to the death of a loved one, most of us find divorce to be the most traumatic experience in our lives. . . . Divorce is indeed a death—a death of a relationship; and just as the death of someone close to us brings on a period of mourning during which we come to terms with our loss, so too a marital break-up is followed by a similar period of mourning.<sup>149</sup>

The profound significance of separation and divorce lies in the notion of loss and change which provoke a sense of grief.<sup>150</sup> Grief is frequently ac-

145 R. WEISS, *MARITAL SEPARATION* 94 (1975).

146 Grief can be viewed as "a reactive depression" which is brought on "by a meaningful loss to the person, one that adversely affects his future and total well-being . . ." CAMMER, *FAMILY FEEDBACK IN DEPRESSIVE ILLNESSES*, 12(2) *PSYCHOSOMATICS* 127 (1971).

147 NEMIAH, *supra* note 37, at 152-153.

148 See FISHER, *supra* note 111, at 16-18; M. KRANTZLER, *CREATIVE DIVORCE* 68-95 (1974); P. MARRIS, *LOSS AND CHANGE* 43-46 (1975); Bohannan, *The Six Stations of Divorce*, in *DIVORCE AND AFTER*, 33-62, at 42 (P. Bohannan ed., Anchor Bks. Ed. 1971). *But see* Westman, *Role of Child in Divorce*, 23 *ARCH. GEN. PSYCHIAT.* 416, 417 (1970); W. GOODE, *WOMEN IN DIVORCE* 184 (1956). The following biographical account is expressive of the relationship between separation and divorce and the "grief" one experiences upon the death of a loved spouse.

I have been sitting in the kitchen with the help-wanted ads for most of the morning—staring at a pile of dirty laundry and trying to decide if I should wash the clothes or look for a job. They both seem equally important—and equally meaningless. I simply couldn't work up the energy to do one or the other, and when I saw those words, "death of a relationship," I suddenly realized that's exactly how I felt, as if part of me were dead. Since Bob left I had been walking around the house like a zombie; I hardly slept or ate or went out of the house if I didn't absolutely have to. Food has no taste. Except for a stomachache that wouldn't go away, I felt numb, as if someone had shot me full of Novocain. I could see the real world, but I was way off there somewhere in the distance.

KRANTZLER, *supra* note 148, at 68.

149 KRANTZLER, *supra* note 148, at 70.

150 When a pattern of relationships is disrupted in any way for which we are not fully prepared, the thread of continuity in the interpretation of life becomes attenuated or altogether lost. The loss may fundamentally threaten the integrity of the structure of meanings on which this continuity rests, and cannot be acknowledged without distress.

MARRIS, *supra* note 148, at 24. Marris uses the descriptive phrase, "the irretrievable loss of the familiar." *Id.* at 26.



accompanied by physical symptoms similar to those previously described as accompanying depression<sup>151</sup>—restlessness, loss of sleep, exhaustion, loss of appetite, and other somatic symptoms of chest and digestive illness, headaches and rashes.<sup>152</sup>

Sociologist Robert Weiss has identified these symptoms as part of what he calls "separation distress." Such distress is frequently "marked by a focusing of attention on the lost figure, together with intense discomfort because of that figure's inaccessibility. There is likely to be unhappiness stemming from feelings of desolation. There may also be apprehensiveness, anxiety, or panic."<sup>153</sup>

The most important problem after a divorce is reestablishing the "continuity of life," but such continuity cannot be reestablished until the loss itself has been explored or worked through:

Recovery from grief depends on restoring a sense that the lost attachment can still give meaning to the present, not on finding a substitute. The purpose and feeling it expressed has somehow to be abstracted from its past setting and reformulated so as to make present and future behavior interpretable as rewarding.<sup>154</sup>

This involves experiencing the conflict which existed in the marriage and which led to the dissolution. There are two extreme tendencies accompanying this feeling of grief: to "preserve the relationship in face of loss, and to abandon it without a backward glance. . . ."<sup>155</sup> The relationship involves both positive and negative aspects, and as long as neither positive nor negative fantasies dominate present life, the mourning process will be psychologically healthy.<sup>156</sup>

Sociologist Peter Marris describes three common patterns of grief which may become problematic for the client: delayed, inhibited, and chronic grief.<sup>157</sup> In delayed grief, he explains:

[T]he bereaved express little sorrow. They set about reorganizing their lives with practical busy-ness, and accept their loss calmly. Sometimes the morbid nature of this busy activity betrays itself by haste and poor judgment, or is even perversely self-destructive. It often seems hollow, as if concern for everything but the superficial day-to-day management of life had been suppressed. But much later, often in response to a less important or trivial loss . . . the bereaved person is overwhelmed by intense grief.<sup>158</sup>

Inhibited grief is characterized by permanent inhibition about expressing feelings of loss. "It becomes displaced into physical disorders or neurotic conditions not recognized as grief, and never finds full expression."<sup>159</sup> In contrast, chronic grief is "an indefinite prolonging of the acute phase of yearning and despair. The

151 See text accompanying note 146 *supra*.

152 MARRIS, *supra* note 148, at 28.

153 WEISS, *supra* note 145, at 48.

154 MARRIS, *supra* note 148, at 159.

155 *Id.* at 45.

156 For case studies in which the "mourning" of divorce client is analyzed see KRANTZLER, *supra* note 148, at 68-95.

157 MARRIS, *supra* note 148, at 30-31.

158 *Id.*

159 *Id.* at 31.

bereaved settles into a lasting depression—anxious, irritable, apathetic and obsessed by memories."<sup>160</sup>

In the face of delayed, inhibited, or chronic grief, the client may employ a strong psychological defense mechanism which therapists refer to as denial.<sup>161</sup> Denial is used to suppress "intolerable thought, wishes, actions, or events and the anxiety which they produce."<sup>162</sup> The domestic relations client may use denial as a means of handling the loss which is a part of separation and divorce.

Denial in its milder forms may serve a valuable protective function in giving a client "time to gather strength and establish perspective on a fact of life too threatening to face immediately."<sup>163</sup> The danger of denial is that it may inhibit a psychologically healthy mourning process. "Mourning will take place in any event; if denied or suppressed, however, its healing powers will not be effectively utilized. To restore physiological and emotional balance, we must accept all the feelings engendered by a loss."<sup>164</sup>

## VI. Referrals

The effective use of referrals by the attorney to other helping professionals<sup>165</sup> and community groups<sup>166</sup> should be an integral part of any domestic relations

160 *Id.*

The pathological aspect of grief may be brought on by repressed feelings of guilt toward the lost person, or shame due to repressed hostility . . . It is these unconscious feelings that prolong the reaction and exert an incapacitating effect on the depressed individual. Instead of merely regretting and mourning his loss, he may derogate himself, harbor suicidal thought, and become so despondent that he can hardly work or carry on social relationships.

GOLDENSON, *supra* note 119, at 518. "If the bereaved cannot work through this process of grieving they may suffer lasting emotional damage." MARRIS, *supra* note 148, at 30.

161

Denial is a normal and necessary human reaction to a crisis which is too immediately overwhelming to face head-on. Denial provides time for a temporary retreat from reality while our internal force regroup and regain the strength to comprehend the new life our loss has forced upon us. During this time we withdraw into fantasies in which the loss has not occurred, and the absent person is still with us. In an effort to regain the lost person, we become preoccupied with the past in dreams and reverie. The more barren and frightening our present lives, the greater the appeal of a fantasy life.

KRANTZLER, *supra* note 148, at 80.

Although the term denial is usually reserved for an unconscious mechanism, it shades almost imperceptibly into a conscious or half-conscious process in which we screen out unpleasant thoughts and disagreeable realities by a variety of devices. We postpone decisions we do not wish to face, suddenly become intensely preoccupied when disagreeable topics arise. Through these devices we do not deny the existence of problems, but we deny them our attention. This may sometimes help to protect us from stress, or give us time for making decisions—but as a regular pattern of behavior, denial is bound to interfere with our adjustment since it is a way of dodging difficulties instead of facing them.

GOLDENSON, *supra* note 119, at 312.

162 GOLDENSON, *supra* note 119, at 312.

163 See KRANTZLER, *supra* note 148, at 39, 71.

164 *Id.* at 39.

165 See generally, T. SHAFFER, LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL, 312-319 (1976); Isaac, *The Family Lawyer and Extra Legal Resources*, 1 FAM. L. QUART. 13 (Sept., 1967); Rutledge, *Guidelines in Referring Counseling Cases*, 44 MICH. ST. B. J. 16 (Apr., 1965).

166 See Zacher, *The Professional Responsibility of the Lawyer in Divorce*, 27 MISSOURI L. REV. 466, 476-477 (1962). In reference to the focus on "professional helpers" it should be noted that the mental health field now encompasses a variety of "helping" services which are provided by nonprofessionals. Examples of alternative services provided by nonprofessionals include: hot lines, rap houses, youth crisis services, sex information and counseling services,

practice. One of the most valuable assets of a lawyer attempting to incorporate the counseling model is the ability to recognize when and to whom the domestic relations client should be referred for other professional help. A lawyer will often find it necessary to direct a client to other sources of professional help, for example, to help the client determine whether divorce is an appropriate solution to his problem or whether custody of the children by the client is in the children's best interest.

There are three cardinal points which must be emphasized in any discussion of attorney referral practices in domestic relations cases. The lawyer should be aware that qualified professional helpers are available in the community; he should know when to make a referral; and he should know enough about the professional helpers to be able to advise the client how to select a counselor or therapist.

The attorney should be familiar with community resources—the names, locations, and services of counseling and mental health agencies and persons to whom he can make such referrals. By knowing who the professional helpers in the community are, the attorney can avoid the uncertain outcome associated with sending his client to the yellow pages for a counselor.<sup>167</sup>

The attorney should also realize the dynamics of both the client's problem (and, therefore, his needs) and his own limitations in the counseling role. The limits of the attorney's counseling role are debatable; but, at the very least, it can be argued that the lawyer's objective is to play a more active counseling role.<sup>168</sup>

One question which will inevitably face the attorney is whether to recommend marriage counseling because family circumstances seem to suggest that the marital unit should, if possible, be maintained. For example, if the client is a 38-year-old wife with four young children, who has sought legal advice at the behest of her husband who has been having an affair with his secretary, the attorney may feel that the financial and emotional impact of a divorce would be so great that a final decision should be made only after counseling. The elements of this example—emotional and financial dependency of one spouse or young children—may indicate the need for some kind of counseling.<sup>169</sup>

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and drug counseling. See generally Baldwin, *Alternative Services, Professional Practice, and Community Mental Health*, 45(5) AMER. J. PSYCHIAT. 734 (1975). Baldwin distinguishes alternative helping services from professional psychotherapy. Alternative services are "provided through emergency or crisis intervention, mobilization of present supports and resources, and aiding in definition of alternatives and practical steps to help cope adequately with problems in living."

167 Any attorney who is prone to send clients to the yellow pages as an approach to professional referrals has obviously not reviewed the yellow pages of a phone book in a major metropolitan area. The diversity of counselors available (including, of course, those who are grossly incompetent) should be sufficient warning to any attorney using such an approach. Cf. J. KOCH & L. KOCH, *THE MARRIAGE SAVERS* 235-36 (1976).

168 One suggestion that has been made to help the attorney in recognizing client problems is to discuss problematic cases with a psychiatrist, or other "helping" professional. This method has been used by social workers and would be equally helpful for the lawyer in gaining insight into the client's problem. Bower, *Psychiatrist*, in Barnett, *Emotional Problems Encountered in Divorce Cases—A Seminar*, 3 J. OF FAM. L. 208, 215 (1963).

169 A succinct description of marriage counseling can be found in Baum, *A Trial Judge's Random Reflections on Divorce: The Social Problem and What Lawyers Can Do About It*, 11 WAYNE L. REV. 451, 457-459 (1965). For a collection of comprehensive materials describing marriage counseling, see B. ARD & C. ARD *HANDBOOK OF MARRIAGE COUNSELING* 10-14 (1969). An updated survey of the various approaches to marriage counseling can be found in Berman & Lief, *Marital Therapy from a Psychiatric Perspective: An Overview*, 132(6) AM.

Other cases which indicate the need for referral are those where one or both spouses want reconciliation; where a substantial degree of affection exists between the spouses or on the part of one spouse; where excessive hostility is present; where one spouse is frigid or impotent;<sup>170</sup> or where mental illness may be involved.<sup>171</sup>

An active interest in other professional helpers and an understanding of the theoretical bases of such professions will allow the attorney to refer his client to the most appropriate sources. There is a growing body of literature available as resource material for the lawyer concerning the process of selecting a counselor or mental health professional.<sup>172</sup> The lawyer would be well advised to become

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J. PSYCHIATRY 583 (1975). See also Harper & Harper, *Lawyers and Marriage Counseling*, 1 J. OF FAMILY L. 73 (1961).

One of the most recent comprehensive source references for marriage counselors is the appendix to J. KOCH & L. KOCH, *THE MARRIAGE SAVERS* 251-269 (1976) which lists the various schools of therapy which have been applied in marriage counseling and the accrediting association for therapists and counselors who follow a particular school.

The authors point out the largest accrediting association for marriage counselors is the American Association of Marriage and Family Counselors, 225 Yale Avenue, Claremont, California 91711 (714) 621-4749

The Kochs note that the AAMFC will supply a caller with a list of three (or more) accredited marriage counselors in their geographical area over the phone at no charge. Marriage counselors who belong to this association often list the initials AAMFC after their names in the yellow pages of the phone book. The AAMFC requires its members to have at least a master's degree in one of the behavioral sciences (psychology, sociology, education, etc.), plus two years of clinical experience in marriage counseling under the supervision of an approved agency or a member of the AAMFC. *Id.* at 252.

On the limitation and pitfalls in therapy see W. LEDRER & D. JACKSON, *THE MIRAGES OF MARRIAGE* 405-409 (1968); J. KOCH & L. KOCH, *THE MARRIAGE SAVERS* (1976); S. ADAMS & M. ORGEL, *THROUGH THE MENTAL HEALTH MAZE* (1975).

Given the uncertainties in marriage counseling and psychotherapy from the standpoint of both the effectiveness of the therapist and the method of treatment it is well advised for both attorney and client to be aware of the signals which indicate that the therapist-patient relationship should be terminated. See e.g., Ehrenberg & Ehrenberg *How, When, and Why to Fire Your Shrink*, 73 NEW YORK 69-70 (May 12, 1975).

170 Sexual dysfunctioning is both a cause and effect of marital problems. Regardless of whether the original problem was individual personality, marital interaction or specifically sexual in origin, sex therapy may be helpful. "In sex therapy, the goal is clear: overcoming the sexual dysfunction in a specific, short period of time." Koch & Koch, *A Consumer's Guide to Therapy for Couples*, 9 PSYCHOLOGY TODAY 33, 36 (March, 1976). One of the most successful regimes for sexual therapy was originated in the late 1950's and early 60's by behavioral therapists. The most famous for this approach are sex researchers and therapists William Masters and Virginia Johnson. The result of Masters and Johnson's history-making scientific sex research is presented in *HUMAN SEXUAL RESPONSE* (1966) and *HUMAN SEXUAL INADEQUACY* (1970).

The scientific medical jargon of these books is a major obstacle for the lay reader. The works have been simplified for lay readers. See F. BELLIVEAU & L. RICHER, *UNDERSTANDING HUMAN SEXUAL INADEQUACY* (1970). Masters and Johnson and other behavioral therapists now treat many cases of sexual dysfunction separate and apart from any neurosis or other psychiatric disorder which may be present. See generally, Laughren & Kass, *Desensitization of Sexual Dysfunction: The Present Status*, in *COUPLES IN CONFLICT* 281-302 (A. Furman & D. Rice eds. 1975).

171 The factors indicating a need for referral have been taken from Johnstone, *Divorce Dismissals: A Field Study*, 1 KANSAS L. REV. 245, 257 (1953).

172 See, e.g., J. KOCH & L. KOCH, *THE MARRIAGE SAVERS*, 231 (1975). The Kochs suggest an initial phone inquiry which can be structured as follows:

1. State who recommended you and very succinctly why you will be coming. (We have a serious marital problem, a family problem which includes our two teen-age sons, a sexual problem, etc.) Do not go into a lengthy history of the problem or a detailed description of how it manifests itself.
2. Will you have time to see the two of us within the next few weeks?
3. How much do you charge per visit and how long is each session?
4. If the therapist states that he/she is too busy to take on any additional clients, ask him/her to recommend two other therapists.

familiar with this literature and to spend the time necessary to differentiate between methods and approaches of different schools of professional therapists and the theories which they use to explain their work.<sup>173</sup>

The attorney wishing to make referrals to marriage counselors should seek out counselors with certain basic skills, training, and appropriate academic background, such as a licensed clinical psychologist, psychiatrist, or social worker. Since even a professional degree and clinical skills training do not guarantee the ability to provide effective therapy, the lawyer should seek as much feedback as possible from clients, other lawyers and professional counselors. In this way, the lawyer may make a more informed judgment as to which professional counselors effectively help couples accomplish their goal of keeping the marriage together or gain a divorce with the least amount of emotional distress.

## VI. Conclusion

Unlike other helping professionals, such as marriage counselors, psychiatrists, and social workers, the attorney often lacks training in human relations skills and therefore feels unprepared to adopt the counseling model of the attorney-client relationship.<sup>174</sup> The question often raised by lawyers and students is whether an interested but untrained lawyer should even attempt "counseling." Andrew Watson's reply is that "this is a purely academic question since, for better or for worse, the very nature of a lawyer's activities forces him into this role."<sup>175</sup> In no area does this statement have greater truth than in the case of a domestic relations lawyer. Some suggest that marriage counseling is beyond the

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5. If you do not know what affiliations this therapist has, ask the therapist if he/she is connected with a hospital, professional association, or university in the area. Write this information down and check to be sure the therapist has been accurate.

*Id.* at 240-41.

The most important part of the decision follows the initial inquiry, as the client must determine whether to proceed with counseling or therapy. The client can begin by simply asking, "Do I trust this person?" *Id.* at 241. "If you spend the initial hour feeling wary and uncomfortable, your chances of opening up and taking care of the problems at hand are slim. You may want to feed back any adverse reactions to the therapist, otherwise the visit to the marriage counselor can itself become another source of marital conflict." *Id.* at 241. Even among reputable therapists there are personality differences which may affect the decision to continue. Thus

[t]he same therapist who seemed to work wonders for one couple may be offensive or ineffective for another. So the "gut reaction"—while not the only test—is ultimately a deciding factor.

*Id.* at 241.

The reader's immediate reaction may be that there should be a more scientific way to select a "helping" professional. That an objective selection process is not available lies in the fact that "all forms of psychotherapy, including marital therapy, are more art than science, the personality, the stability, and the skill of the therapist—which cannot be objectively evaluated—are all-important." W. LEDRER & D. JACKSON, *THE MIRAGES OF MARRIAGE* 397 (1968).

173 There are a variety of sources to which the attorney can obtain the necessary information. For the major theoretical orientations in psychotherapy, without specific reference to marriage counseling, see L. HAVENS, *APPROACHES TO MIND* (1973); *CONTEMPORARY PSYCHOTHERAPIES* (1961); R. HARPER, *PSYCHOANALYSIS AND PSYCHOTHERAPY* (1959). The more esoteric approaches to therapy are cataloged in S. PETERSON, *A CATALOG OF THE WAY PEOPLE GROW* (1971); *Getting Your Head Together*, 88 *NEWSWEEK* 56-62 (September 6, 1976); H. RUITENBECK, *THE NEW GROUP THERAPIES* (1970). For specific references to therapy and marriage counseling, see W. LEDRER & D. JACKSON, *THE MIRAGES OF MARRIAGE* 395-449 (1968) (contains dialogues from marital counseling sessions); J. KOCH & L. KOCH, *THE MARRIAGE SAVERS* (1976); B. GREENE, *THE PSYCHOTHERAPIES OF MARITAL DISHARMONY* (1965).

174 O'Gorman, *supra* note 41, at 89-90; WATSON, *THE LAWYER AS COUNSELOR* at 7.

175 WATSON, *supra* note 174.

skill of most lawyers and should not be undertaken.<sup>176</sup> Others, including the author, do not find that the absence of formal training precludes all counseling or a counseling orientation in the attorney-client relationship.<sup>177</sup> This article has been presented to show that "[o]ne need not become a psychologist or therapist to do legal counseling ably and helpfully."<sup>178</sup> A lawyer who has an intellectual interest in understanding human behavior, is sensitive to human problems, and is willing to analyze his own actions in the attorney-client relationship, can and should perform a valuable counseling role.<sup>179</sup>

176 See BAUM, *supra* note 169; Bridgman, *The Lawyer and the Marriage Counselor Pari Passu—Partners in More Effective Service to Ailing Marriages*, 4 KAN. L. REV. 546, 553 (1956), Walzer, 1 FAM. L. QUART. 62 (Book Review) (Sept. 1967). Judge Baum finds several factors which limit the lawyer's counseling role. First, modern theories of marriage counseling are increasingly oriented toward conjoint marital therapy. (See COUPLES IN CONFLICT, *supra* note 127.) The adversary nature of the legal system and the Code of Professional Responsibility pose questions as to the propriety of conjoint sessions by the lawyer. Baum observes that

The adversary system requires the lawyer to become the champion of the spouse he represents. It takes one with extraordinary talent indeed, perhaps with superhuman powers, to be champion of one spouse and at the same time an effective mediator. This is especially true where there is fighting over alimony, support, property, or custody. The lawyer must be his client's shield and sword in this matrimonial warfare. It is not easy to doff the armor and don the velvet glove of the peacemaker.

Judge Baum goes on to point out that both time and lack of expertise are further limitations.

[I]f by some miracle a lawyer were born with or acquired the skills necessary to do good psychotherapy, one essential ingredient of good marriage counseling would still be lacking—time. In those difficult personality conflict situations, where changes are sought in attitude and behavior, hour upon hour must be spent counseling. Not being able to give this kind of time to individual divorce cases, it is important that, as a profession, we lawyers and judges be aware of our limitations.

There are many cases in which the marital problems are too complicated to yield to the lawyer's advice giving administrations. In such cases, for a durable reconciliation, the help of a trained behavioral therapist is necessary. Failure to use one may be a disservice to your client because the reconciliation obtained without behavioral therapy is often illusory. The divisive force which originally brought the partners to the brink of divorce may continue to plague them until brought to heel by a good behavioral therapist.

177 The pros and cons are set out in Kargman, *The Lawyer's Role in Divorce Reconciliation*, 6 THE PRAC. LAWYER 21 (March, 1960).

178 CHURCH, *supra* note 60, at 31.

179 A lawyer can be a wise guide in maintaining intelligent and amiable family functioning. That he can do the same in many areas of family law seems to be supported by investigations from the field of counseling. For example, a lawyer may decide to help a client obtain a divorce. Since divorce has far-reaching social reverberations, especially when children are involved, it certainly is in the service of the public good for him to make whatever efforts he can to insure that the decision to obtain a divorce is an appropriate one. He need not make it his mission to help his clients arrive at the "right" decision, but he can help them inquire into the adequacy of their thinking about marriage and into their reasons for wishing divorce. For the lawyer to attempt such a function raises several problems in regard to his potential role as counsel for one of the adversaries. However, it is sheer fiction that he plays a neutral role, only implementing the wishes of one of the contesting parties. While a spouse may "wish" a divorce, this is but rarely the whole story. For him to act on this wish may tip the scales in a direction which may, in fact, run counter to the main desires of the parties involved, and can hardly be seen as the best solution in regard to social issues. For these reasons, it seems clearly indicated that public policy is best served by the lawyer who makes an attempt to help the parties arrive at a solution which reflects *all* of their feelings and attitudes—not just the tempest of the moment.