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# Law and Sensitivity

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the attorney assigned to defend the case. But again any problems arising in this area are brought to the attention of the staff attorneys. Rarely is there a unique case.

The usual case in Part X does not require such extensive treatment. The charges are common: assault, robbery, theft, false pretenses, unauthorized use of a motor vehicle, and occasionally soliciting. The attorney has tried many cases involving similar factual situations and knows best how to proceed with a defense.

In many instances the evidence is so great against the accused there is little doubt in the attorney's mind that his client will be found guilty. In that situation and with the full agreement of the accused, the attorney attempts to "get a deal" for his client through plea negotiations with the state's attorney assigned to prosecute the case.

It is my opinion that the public defender is in a better position to obtain favorable concessions from the state's attorney than is a privately-retained counsel. The public defender and the state's attorney must deal with each other every day. The majority of each day's docket is tried by the public defender. The public defender knows the personality of the state's attorney and the appeal most likely to succeed with him.

With the recommendation from the state agreed upon, the case proceeds to trial on a "Not Guilty- Statement of Facts." The defendant pleads not guilty and the state's attorney reads the facts of

the case (i.e. the police report in most cases) allegedly sufficient to support a guilty verdict. If the presiding judge feels that the facts do not support a finding of guilt, he will grant the public defender's Motion for Judgment of Acquittal. This seldom occurs. The judge then finds the defendant guilty and passes sentence after hearing the state's recommendation as well mitigating factors such as education, employment, and the general background of the defendant. Almost invariably the sentence coincides with that recommended by the state.

If there is no agreement between the state's attorney and the public defender, or if the defendant insists on a trial, the state proceeds by calling its witnesses, usually the victim of the crime and/or the arresting officer. At the close of the state's case the trial is just about over. The defendant seldom has witnesses to testify in his behalf and usually elects to remain silent.

At the close of a few cases the judge may have some doubts about the length of sentence he should impose. He will therefore order the Department of Parole and Probation to formulate a Pre-Sentence Report on the defendant. This report covers in depth the defendant's home life, education, psychologically-motivating factors of his personality, attitude toward society, prior criminal history (adult and juvenile), and concludes by recommending probation or incarceration.

On the date of the defendant's sentencing the judge considers the Pre-Sentence Report and any mitigating factors the public defender or the defendant care to point out. He then passes sentence.

Criminal Court Part X has been criticized as being a place where criminals are processed rather than a forum where an accused receives justice. Cases may seem absurdly brief and the number which are resolved through plea negotiations is great, yet because of the expert competence of the public defender and state's attorneys who seek to achieve justice rather than merely winning cases, Part X is an example of the fair, impartial administration of justice.

*note:* On Sept. 1, 1975 Part X was changed to Part XI.

# Law and Sensitivity

by Tom Duvall

Three or four years of law school are successfully completed. The bar exam is passed. Suddenly you find yourself an attorney.

Incredible power is then at your disposal. You have the ability to effect change in peoples lives, and in the society in which they live. The authority vested in an attorney can touch virtually every aspect of a client's life. His physical, intellectual, and emotional needs can either be positively or negatively reinforced by you, in your chosen role as a lawyer.

How you as a person are prepared to deal with this power and all of this power's corrupting side effects is one of the issues in the series of articles 2 will be writing. Basically, the series will attempt to deal with you as law student and person making many moral and ethical decisions throughout the course of your professional as well as private life. These decisions are crucial; they are fundamental to the ethical practice of law. I believe that being an integrated, sensitive individual directly relates to your abilities in being a successful, competent and fulfilled attorney.

In our contemporary, complex, and highly mobile American society the word lawyer has several synonyms; counselor is one of the more flattering ones.

It is ironic that members of our professional community are called counselors. No law school that I am aware of either offers to our requires of its graduates any formal professional counseling skills. There are few practicing attorneys with any formal education in the art of interviewing or in personal sensitivity. A rare exception might be the undergraduate psychology or sociology major who went into law. The profession of counsel-

ing in terms of psychology is a valuable and essential aid to the client-oriented attorney. Law schools should at least seriously consider, if not start to implement, a course or series of courses dealing with the skills involved in interpersonal communication.

Many people have very real difficulty articulating their own feelings. This problem is amplified many times when an attorney, inept at dealing with his own feelings, is called upon to interpret the words of a disturbed client. Feelings are legitimate in human behavior. They often are not easy to identify or to understand. Anger is often-times a mask for feelings of ineptness or futility. A counselor-at-law who has had psychological training to sharpen his skills of perceiving and dealing with feelings, (his own as well as the client's) will be much more effective on all levels.

These levels' the physical, the intellectual, and the emotional/are rarely separated. Almost any client-oriented legal crisis will involve elements of all three. Take for example the entire field of domestic relations. For most people a

divorce is a stressful psychological period in many ways. A sensitive skilled lawyer can better give a client total service. This concept is the idea of the attorney as counselor. A total divorce from start to finish would deal with both preparation for and after-effects of the divorce. This is a serious side of human nature that the profession of law has for too many years tried to remove itself from with one rationalization or another. The times have changed. The professions of law and psychology increasingly grow more interrelated. A concept like the total client service is needed now for the client of tomorrow.

The need for lawyers to start thinking and acting sensitively must immediately start in law school. Hopefully the first year student is a sound ethical individual; he is a person capable of making rational and sound decisions where the study of law affects the personal as well as the professional life.

The key to a happy or at least a palatable three or four years of law school is knowing one's self. These words are easy to write, yet the process of getting to

know ourselves as well as others is important. When people think they've found the answer to who they are in the study or in the profession of law many unhealthy mental attitudes may develop. It is extremely important to enter the study of law as a total person not seeking yourself in the codes or ethics of the profession. The high incidence of alcoholism and divorce in the profession of law speaks for itself. Learning constructive methods for dealing with the serious pressures that attorneys face in practice should begin in law school. At least a fundamental awareness of how to deal with anger and frustration would be useful.

Ultimately the reciprocal goals of law and counseling arrive at the same conclusion: a satisfied client. The profession of psychology, with its specialized area of professional counseling, can be of great value to the attorney. However, the needed skills of the helping profession must be studied and practiced by lawyers. Once these skills are employed in the attorney's public and private life, two important changes will take place.

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