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Clients, Empathy, and Compassion: Introducing First-Year Students to the "Heart" of Lawyering

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Clients, Empathy, and Compassion: Introducing First-Year Students to the “Heart” of Lawyering

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I. INTRODUCTION

If I have been charitable in my judgments of my fellow man; if I have tried to help him as best I could; if I have done my utmost to truly understand him, I know why I have taken this course—I could not help it. I could have had no comfort or peace of mind if I had acted any other way. I have been interested in the study of man, and the motives that move and control his life. I have rejoiced with him, and have grieved with him; I have followed my instincts and feelings and sought to rescue the suffering when I could. But I know that I have done it more or less involuntarily as a part of my being, without choice, and without stopping to weigh which were most deserving or worth saving. If I had paused, I should probably still be wondering and doing nothing. I claim no credit, and I want no praise.¹

In September 2006, Karen J. Mathis, President of the American Bar Association, commented:

Ultimately, lawyering is a delicate balancing between a constantly evolving world, and the fundamental principles that define our legal system. It calls upon your compassion as well as your intellect, your heart and [sic] well as your head. . . . [C]aring is as much a part of the legal profession as intelligence. . . . [I]t is *every* lawyer’s responsibility in *every* setting to serve others.²

Professionals, including lawyers and doctors, must not only practice the science of their craft but must also incorporate caring if they

1. CLARENCE DARROW, *THE STORY OF MY LIFE* 450 (Charles Scribner’s Sons 1932).
 2. Karen J. Mathis, President, American Bar Association, Keynote Address at the Drexel University College of Law Inaugural Celebratory Dinner (Sept. 27, 2006), *available at* http://www.abanet.org/op/mathis/speeches/drexel_univ_dinner_speech_0906.pdf.

want to be successful. To professionally embrace “[t]he ethics of caring requires [the professional to] feel as well as reason. Our natural impulse to care comes from compassion and human love.”³ Caring is not merely an emotional response because it requires analysis and reasoning, but “true caring . . . cannot be reduced to problem solving. It emphasizes as much the motivation as the consequences of an action. . . . Moreover, an orientation to caring incorporates the attributes of attentiveness, honesty, patience, respect, compassion, trustworthiness, and sensitivity into all aspects of moral behavior.”⁴

In this piece I explore the need for instruction and experience with the “heart” of law practice within the first year of law school.⁵ According to the report on legal education prepared by the Carnegie Foundation, the two major limitations in American legal education are 1) a lack of attention to practical education, including a marked lack of understanding client problems, and 2) failure to support development of ethical and social skills.⁶ With the release of this report it is likely that law school faculties throughout the United States will be looking at their curricula to see how to better fill these gaps and better prepare the students to be practicing lawyers rather than legal scholars. This presents an important opportunity for law faculty, many of whom already recognize that legal education means more than teaching students the complexities of legal analysis, often referred to as how to “think like a lawyer,” but also how to communicate, work with people, and advocate for their clients like lawyers do. But, what they may not recognize is that they are also perfectly suited to teach the “heart” of lawyering. Whether it is helping students to see their clients as real people with real problems or helping students to realize that empathy and compassion are critical for successful law practice, the first year of law school is the ideal place to begin to fill this gap in legal education.

Understanding clients and exercising empathy and compassion comprise the “heart” of lawyering. The Oxford English Dictionary defines “empathy” as “the power of projecting one’s personality into (and

3. William T. Branch, Jr., *The Ethics of Caring and Medical Education*, 75 *ACAD. MED.* 127, 128 (2000).

4. *Id.*

5. I am certainly not the first to suggest that legal education needs to pay more attention to teaching future lawyers about interpersonal relations, clients, and empathy. One of the earliest articles to address these issues was Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 *U. CIN. L. REV.* 91, 129 (1968) (observing, among many other things, the importance of lawyers being able to relate with others, including clients, and noting that “[t]here is no profession which is more involved with people and their problems than the practice of law”).

6. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW: SUMMARY 6* (The Carnegie Found. for the Advancement of Teaching 2007).

so fully comprehending) the object of contemplation.”⁷ The English word “empathy” comes from the German word “Einfühlung,” which literally translated means “feeling into.”⁸ According to Carl Rogers, the founder of the client-centered therapy movement, to demonstrate true empathy is “[t]o sense the Client’s private world as if it were your own, but without ever losing the ‘as if’ quality.”⁹ Whereas compassion, which is often mistakenly seen as synonymous with empathy, is “[t]he feeling or emotion, when a person is moved by the suffering or distress of another, and by the desire to relieve it; pity that inclines one to spare or to succour.”¹⁰ This definition refers to the compassion given “towards a person in distress by one who is free from it, who is, in this respect, his superior.”¹¹

Unfortunately, the traditional law school curriculum devotes little emphasis to teaching students about clients or about the role of empathy and compassion in law practice.¹² Yet law is not alone as a profession that calls upon its practitioners to understand and care about people. Medicine also requires this “heart,” and medical schools often do focus on training students to deal effectively with patients. There are numerous parallels between a doctor’s “bedside manner” and a lawyer’s ability to interact with her clients, and as such, law faculty may learn from how medical faculty attempt to teach such things without having to vastly expand the existing curriculum.

II. CLIENTS, EMPATHY, AND COMPASSION: DO THEY REALLY MATTER?

A. What Students Think

In order to try to gauge what our students know about clients and their perceptions of what clients need and want from lawyers, as well

7. OXFORD ENGLISH DICTIONARY (2d ed. 1989), available at <http://dictionary.oed.com>.

8. Carrie Menkel-Meadow, *Is Altruism Possible in Lawyering?* 8 GA. ST. U. L. REV. 385, 389 (1992).

9. John L. Barkai & Virginia O. Fine, *Empathy Training for Lawyers and Law Students*, 13 SW. U. L. REV. 505, 507 n.12 (1982) (quoting CARL R. ROGERS, ON BECOMING A PERSON 284 (The Riverside Press 1961)).

10. OXFORD ENGLISH DICTIONARY (2d ed. 1989), available at <http://dictionary.oed.com>. The Oxford English Dictionary gives two definitions for “compassion.” The first is very similar to the definition of empathy; under this definition, compassion is “[s]uffering together with another, participation in suffering; fellow-feeling, sympathy.” *Id.* However, this first definition is to be used “between equals or fellow-sufferers.” *Id.* It is this second definition of compassion, the desire to relieve distress or succor another, which is most applicable to lawyers.

11. *Id.*

12. See Jamison Wilcox, *Borrowing Experience: Using Reflective Lawyer Narratives in Teaching*, 50 J. LEGAL EDUC. 213, 213 (2000) (“[P]rofessors and practitioners agree, law school falls far short of preparing its graduates for law practice and of giving them the sense of the practitioner’s experience that is important to successful work in a profession.”).

as what they think about the “soft” skills of interpersonal dynamics, empathy, and compassion, I decided to see what a group of students at my law school thought. My survey was not meant to be particularly “scientific,” but rather was intended to show students’ initial reactions and to raise questions for law professors to consider.

During fall semester 2006, 150 first-year law students enrolled in Introduction to Legal Research and Writing were asked to complete a survey about what they believe clients want from lawyers and how the general public perceives the legal profession. The survey was conducted in preparation for a class session on lawyer-client relations that included a guest speaker representing a “typical” client. One-hundred-and-eighteen students completed and returned the survey.¹³

First the students were asked to weigh the importance of seven lawyering “skills”: substantive legal knowledge, oral communication, written communication, interpersonal skills, negotiation skills, litigation or case strategy skills, and research skills. Not surprisingly since the survey was given in conjunction with their legal writing class, the students weighted written communication as the most important lawyering skill, followed by oral communication and substantive legal knowledge. These first-year law students ranked interpersonal skills next, showing that they at least intuitively recognize the importance of a lawyer’s ability to relate with people, including clients. Research skills followed closely; with negotiation skills and litigation or case strategy skills ranking last.

The next part of the survey asked the students to weigh the importance of a set of values, characteristics, and skills from the client’s perspective. The students were asked to place themselves in a client’s shoes and think about what would matter most to them: their lawyers’ honesty, respectfulness, legal knowledge or expertise, responsiveness (defined as returning phone calls promptly, moving the case forward, etc.), willingness to look out for the client’s best interest, reputation, and win/loss average (which also included the average monetary award in successful cases where applicable).¹⁴ Here the students weighted legal knowledge and expertise highest, followed by honesty. These students, looking through the eyes of a client, weighted a lawyer’s willingness to look out for the client’s best interest third, responsiveness fourth, and respectfulness fifth. Coming in at the bottom of the ranking were reputation and win/loss record.

13. The survey was conducted in October 2006. All survey instruments and results are on file with the author.

14. The question was not meant to imply that clients would hire a lawyer who lacked any of these traits, but rather to gauge the students’ impressions of which characteristics would matter the most to the client during their professional relationship.

The final section of the survey asked students to rate how they thought the general public views lawyers with regard to several character traits ranging from their honesty to their interest in justice and whether their pay is commensurate with the work they perform. Two of these traits deal directly with the “heart” of lawyering. Students were asked to rate, on a scale of 1 to 10 (with 10 being very high or very strong sentiment), whether the general public believes that lawyers care about their clients and whether they believe that lawyers respect their clients. Here the students’ responses were somewhat surprising. When asked whether the general public believes that lawyers care about their clients, the average rating was 5.27 with 14% of the students rating 3 or lower. When asked whether the general public believes that lawyers respect their clients, the average rating was 5.85.¹⁵

After reviewing the students’ responses, the question arises, what do clients really think? How important are things like empathy, compassion, and interpersonal dynamics to actual clients embroiled in real disputes, and how does the public at large really view lawyers?

B. The Clients Speak: Studies of Client Satisfaction and the Public Perception of Lawyers

Both formal and informal studies uniformly show that the quality of the client-lawyer relationship may be at least equal in importance

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15. After surveying the first-year students, I decided to administer a similar survey to willing third-year students to see if their three years of law school and two summers of work experience changed any of their perceptions. The survey was placed on the law school’s Internet page and all third-year students were invited and encouraged to complete it. Fifty students completed the survey during early March 2007. When these third-year students weighed the importance of the given lawyering skills, they ranked written communication first, followed by research skills. Substantive legal knowledge ranked third, followed by interpersonal skills, oral communication, negotiation skills, and litigation or case strategy. When asked to weigh the importance of values, characteristics, and skills from the client’s perspective, the third-year students believed that a lawyer’s responsiveness (as evidenced by returning phone calls promptly etc.) was the characteristic clients value most. This was followed by the lawyer’s honesty, legal knowledge/expertise, reputation, willingness to look out for the client’s best interest, respect for the client, and win/loss record. Finally, when asked whether the general public believes that lawyers care about their clients, the average third-year student rating was 4.07, with 34% giving a rating of 3 or lower and 90% giving a rating of 6 or lower. When asked whether the general public believes that lawyers have respect for their clients, the average third-year student rating was 4.65, with 30% giving a rating of 3 or lower, and 80% giving a rating of 6 or lower. Compared to the first-year students, the third-year students believe that the general public’s perception of lawyers’ care and respect for their clients has diminished significantly.

with a lawyer's substantive legal knowledge.¹⁶ In fact, the relationship may even surpass the lawyer's legal expertise in the client's mind. According to the Illinois Bar Journal, in 1999 the most important thing clients wanted from their lawyers was neither superior legal skills, reasonable legal fees, nor a proven track record; what the clients wanted was to know that their lawyer cared.¹⁷

Over the last fifteen years, four major studies have been conducted in an attempt to find out what the public really thinks about lawyers and the legal profession and what clients really want and expect from their lawyers. While these studies varied in focus and approach, the general results are similar: there is a high level of dissatisfaction with the legal profession and with individual lawyers, and much of that dissatisfaction stems from the relationships lawyers have with their clients.

The American Bar Association commissioned a nationwide telephone survey to assess the public's view of the legal profession in January 1993.¹⁸ The survey included responses from 1,202 adults, with survey respondents corresponding to their demographic and geographic distribution with the 1990 census.¹⁹ In conjunction with the telephone survey, two focus groups were convened so that researchers could collect specific comments.²⁰

The opinion of most survey respondents (approximately 66%) was that lawyers were "smart and knowledgeable" about the law.²¹ Other results of the survey and focus groups, however, showed that the public had "mixed feelings" about lawyers and the legal profession, and that "public perception seems based on strongly rooted dissatisfactions with some aspects of the way the system works and how lawyers practice their skills."²² Among the more discouraging of the study's findings was that the most negative perceptions of lawyers and the legal profession were held by those people who had the most regular dealings with lawyers.²³ In fact, the survey showed a "disturbing pat-

16. Melissa L. Breger et al., *Teaching Professionalism in Context: Insights from Students, Clients, Adversaries, and Judges*, 55 S.C. L. REV. 303, 327 (2003) (citing Leo J. Shapiro & Assoc., *Public Perceptions of Lawyers: Consumer Research Findings*, 2002 A.B.A. SEC. PUB. LIT. L. REP. 2, available at <http://www.abanet.org/litigation/lawyers>) [hereinafter *Public Perceptions*].

17. Anne E. Thar, *What Do Clients Really Want? It's Time You Found Out*, 87 ILL. B.J. 331 (1999).

18. Gary A. Hengstler, *Vox Populi: The Public Perception of Lawyers: ABA Poll*, 79 A.B.A. J., Sept. 1993, at 60, 60. The study was conducted by Peter D. Hart Research Associates Inc.

19. *Id.* at 61.

20. *Id.*

21. *Id.*

22. *Id.* at 60.

23. *Id.* at 62. It should certainly be noted that people who have the most regular interactions with lawyers are likely predisposed to be critical of those lawyers. In

tern that the more a person knows about the legal profession and the more he or she is in direct personal contact with lawyers, the lower an individual's opinion of them."²⁴ The bottom-line results of the survey were that 40% of respondents had "favorable feelings toward lawyers," 34% had "negative feelings," and 26% were neutral or were unsure about their feelings.²⁵ Of those survey respondents who had personally worked with a lawyer in the recent past (the last ten years), only two-thirds were satisfied with their lawyer's performance, and less than half were "very satisfied."²⁶

Particularly disturbing, survey respondent complaints about lawyers focused significantly on a "perception that lawyers lack caring and compassion."²⁷ The majority of respondents believed that lawyers are "less caring and compassionate" than they once were.²⁸ Less than 20% of respondents agreed that the phrase "caring and compassionate" was an accurate description for lawyers, and nearly half (46%) felt that the phrase was not an appropriate description of lawyers.²⁹

Summarizing the overall results of the survey, Gary Hengstler opined: "The picture drawn from the survey shows a public perception of a profession that has become, at worst, contemptuous, and at best, indifferent, to the people it seeks to serve. Apparently, too many surveyed have been exposed to that segment of lawyers whose deskside manners smack of arrogance."³⁰

Two years after the ABA survey, in 1995, *Consumer Reports* attempted to gauge the public's feelings about lawyers. The publication asked its subscribers about their recent experiences with lawyers; nearly 30,000 people responded.³¹ Nearly one-third of those who re-

very broad terms, those who have regular interactions with lawyers are likely those who are frequently involved in litigation (likely as the defending party) and those who are involved in prosecution or law enforcement. These groups would likely have strong feelings toward the legal process generally, and those feelings understandably bleed over to their opinions of their lawyers. Further, the opinions of those involved in frequent litigation are likely influenced by the lawyers for their adversaries and by their general dissatisfaction with the legal system.

24. *Id.* at 62.

25. *Id.* at 61-62. "Compared to lawyers' favorability rating of 40 percent, teachers received 84 percent; pharmacists, 81 percent; police officers, 79 percent; doctors, 71 percent; accountants, 60 percent; and bankers, 56 percent. The only other professions in the survey that tested with less than majority favorable feelings were stockbrokers (28 percent) and politicians (21 percent)." *Id.* at 62.

26. *Id.* at 61.

27. *Id.* at 62.

28. *Id.*

29. *Id.*

30. *Id.*

31. *When You Need a Lawyer*, CONSUMER REP., Feb. 1996, at 34, 34. Again the study is not without its limitations, chief among them being that it did not employ a valid sample population because respondents self-selected. Usually people who self-select have very strong opinions one way or the other. Further, these self-

sponded noted dissatisfaction with their lawyer.³² In reporting the results of the study, the editors noted a marked difference between the opinions of clients involved in transactional issues (like taxes or estate planning) and those involved in adversarial proceedings. Transactional clients were generally satisfied with their lawyers' work, while adversarial clients "often felt a great deal of frustration and dissatisfaction."³³ Similarly, about 20% of adversarial clients complained that their lawyers "didn't return phone calls promptly or paid too little attention to the case."³⁴

A third study was conducted in 2001 by the American Bar Association Section of Litigation. The Section commissioned the study "to better understand the public's perception of lawyers and the bases of those perceptions."³⁵ In April 2001 a national survey of 450 U.S. households was conducted.³⁶ That summer ten focus groups were held in five cities throughout the country. Each focus group had between eight and ten participants evenly divided by gender and representing the demographic composition of their communities. Within the focus groups, approximately half of the members had hired a lawyer within the past five years.³⁷ The final part of the ABA study involved a January 2002 telephone survey of 300 U.S. households.³⁸ This survey repeated some of the questions from the April 2001 survey, but it also "gauged the potential demand for personal legal services, consumer avoidance of lawyers, . . . consumer satisfaction with different aspects of working with lawyers, . . . [and] perceptions of the legal profession's response to the events of September 11, 2001."³⁹

The survey yielded both positive and negative opinions from its respondents. Positive perceptions included a general belief that lawyers are knowledgeable and that they "can help clients navigate through difficult situations."⁴⁰ Similarly, those respondents who had hired lawyers themselves were generally satisfied with their lawyers' services.⁴¹ Respondents appreciated lawyers who "appl[ie]d significant

selected respondents did not necessarily indicate whether their opinions were based on their interactions with their own lawyers, their opposition's lawyer, or the legal profession in general (much of which may have based on views from the media and other external sources).

32. *Id.*

33. *Id.* This result is likely explained at least in part by the greater emotional toil of adversarial proceedings. There is certainly a great difference in the emotional impact of litigation and transactional work.

34. *Id.*

35. *Public Perceptions*, *supra* note 16.

36. *Id.*

37. *Id.*

38. *Id.* at 3.

39. *Id.*

40. *Id.* at 4.

41. *Id.*

expertise and knowledge to their cases, identif[ie]d practical solutions, and work[ed] hard on behalf of their clients.”⁴² Unfortunately, despite their general satisfaction with their lawyers, many survey respondents reported that they viewed lawyers in general as “greedy, manipulative, and corrupt,” and some related experiences with lawyers who “misrepresent[ed] their qualifications, overpromise[d], [were] not upfront about their fees, charge[d] too much for their services, [took] too long to resolve matters, and fail[ed] to return client phone calls.”⁴³

The final major study was conducted in 2005 by BTI Consulting Group, a leading provider of strategic market research for law firms and other professional service firms.⁴⁴ The most significant of its findings was that “[l]ow client satisfaction plagues today’s legal industry.”⁴⁵ This finding is easily demonstrated by examining client satisfaction rates among the Fortune 1000, as these rates fell by nearly 13 points between 2004 and 2005.⁴⁶ The BTI study based client satisfaction on recommendation rates, believing that such rates “are one of the most powerful and reliable indicators of client satisfaction.”⁴⁷ The study showed that nationally 70% of Fortune 1000 companies do not recommend their primary law firm.⁴⁸

In addition to its survey, BTI conducted more than 200 interviews with corporate counsel “to shed light on the key factors driving this deep decline in client satisfaction.”⁴⁹ These interviews combined with the survey data show that three major failings underlie the decrease in corporate client satisfaction: 1) “[n]ot [k]eeping [u]p [w]ith [c]hanging [c]lient [n]eeds”; 2) “[d]oing [a] [p]oor [j]ob [o]f [a]rticulating [a]nd [d]elivering [v]alue” (showing the client exactly what they are getting for their money); and 3) “[p]oor [c]ommunication [b]etween [l]aw [f]irms [a]nd [c]lients.”⁵⁰

In addition to these formal studies, scholars have conducted smaller surveys and have shared anecdotal reports of what clients say they want and need from their lawyers. While they don’t have the statistical and scientific reliability of the larger studies, their findings

42. *Id.*

43. *Id.*

44. Marcie Borgal, *How to Prevent the Dreaded ‘Dissatisfied Client Syndrome,’* 2 COMPLETE LAW. NO. 2 (2006), available at <http://www.thecompletelawyer.com/volume2/issue2/article.php?ppaid=55>.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* “Client satisfaction rates among Fortune 1000 companies plummeted in 2005, dropping to 30.7% from a 5-year high of 43.5% last year.” *Id.* It is certainly possible that some large corporations do not recommend their law firm for purely selfish reasons—they want to be a bigger part of the firm’s client base—than because of dissatisfaction with the representation given.

49. *Id.*

50. *Id.*

can inform the practicing lawyer and the law student in meaningful ways.

In 2003 Professor Melissa Breger and her colleagues interviewed both adults and children who had experience as legal clients, seeking their impressions of what constitutes professional and unprofessional lawyer behavior.⁵¹ They observed that both the adults and children interviewed focused less on the lawyers' legal knowledge and expertise and more on "the interpersonal skills and behaviors of the lawyers."⁵² These clients placed great weight on what they characterized as "good outcome[s]" (likely "winning" the case), and in having the lawyer's "unwavering trust" and "loyalty."⁵³ Further, the clients interviewed "unmistakably emphasized being treated with respect, both in word and manner, and appreciated their attorneys' adherence to regular communication with clients."⁵⁴

Professor Breger also cited a study conducted at a Wisconsin prison that involved twenty-two inmates who were asked about their satisfaction with their lawyers.⁵⁵ Respondents said that their satisfaction had less to do with their lawyers' "conventional advocacy skills [or] the outcome of their case," but instead was directly related to their assessment of the relationship they had with their lawyers.⁵⁶ Respondents spoke favorably of lawyers who gave "expressions of respect, caring and emotional involvement with the client's case," and those who showed empathy and compassion, "visited their clients while incarcerated, and assisted their clients by doing nominal personal favors."⁵⁷

Stephen Ellmann summarizes what both the formal and the anecdotal surveys show about what clients want from their lawyers: "The features that clients seek in their lawyers . . . include loyalty, respect, warmth, advice, and understanding. These are elements that tend to enhance the efficacy of the lawyer's performance on the client's behalf, and that also speak to the inescapable personal needs at play in any human encounter, however ostensibly goal directed it may be."⁵⁸

51. Breger, *supra* note 16, at 324.

52. *Id.*

53. *Id.*

54. *Id.* at 327 (citing face-to-face interviews in Queens County Family Court, New York, in May 2003).

55. *Id.* at 323 (citing Katherine R. Kruse, Engaged Lawyers and Satisfied Clients: Lessons Learned from the Gaines Thesis (Feb. 2, 2002) (unpublished manuscript, on file with the William S. Boyd School of Law)).

56. *Id.*

57. *Id.*

58. Stephen Ellmann, *Empathy and Approval*, 43 HASTINGS L.J. 991, 994 (1992).

C. Why Public Perception Matters: How Meeting Client Needs and Expectations Affects the Practice of Law

One expected response to the clients' views summarized in the last section could be "So what? Why should that matter to me?" For many lawyers the answer speaks for itself—meeting client expectations and increasing satisfaction is inherently desirable. As Professor Breger aptly stated, "Effective lawyering must be more than rote memorization of rules of law or 'winning' in court. It is a careful consideration of ethics and obligations coupled with an acute awareness of the interests and needs of clients."⁵⁹ For many lawyers, working with people and helping them solve their problems is valuable and important. So too are the referrals that come from satisfied clients. But for lawyers for whom such inherent value is insufficient motivation, there is a more objective, and potentially costly, reason for responding to these client concerns. Simply put, those lawyers who neglect the interpersonal and relational elements of their representation are more likely to be sued for malpractice.⁶⁰

Many legal malpractice claims find their root in poor lawyer-client relationships despite perfectly acceptable legal performance.⁶¹ According to the Illinois Bar Journal,

Poor client-relations skills, such as unreturned telephone calls and constant interruptions during client meetings, plant a seed of discontent in the client's mind. From there, it is a small leap for the client to assume that her matter was neglected, the fees were unreasonable, or that an unfavorable outcome was somehow the fault of her uncaring lawyer.⁶²

Lack of caring, which is often manifest in breakdowns in communications, is at the root of many of the most common malpractice and disciplinary complaints against attorneys.⁶³ It is often said that "[m]ore malpractice claims arise from poor client relations than from true errors of judgment."⁶⁴ Poor communication and lack of caring

59. Breger, *supra* note 16, at 321–22.

60. Thar, *supra* note 17.

61. *Id.*

62. *Id.*

63. See Harry W.R. Chamberlain II, *Why Attorneys Get Stung by Juries in Legal Malpractice Cases: The Seven Deadly Sins* (Stephan, Oringer, Richman & Theodora, P.C., Los Angeles, Cal.), Spring 2001, at 1, 7, available at www.tocounsel.com/resources/publications/chamberlain_0401.pdf (citing James M. McCormack, *Good Ethics, Smart Tactics: Avoiding the Top 10 Grievance-Prone Mistakes*, 21 LAW PRAC. MGMT., Sept. 1995, at 22; Harry H. Schneider Jr., *See You in Court: Follow These Ten Rules and You, Too, Can Be Sued for Malpractice*, 80 A.B.A. J., Mar. 1994, at 98; Duncan C. Smith, *Total Quality Leadership: Building Your Team, Keeping Your Clients*, 19 LAW PRAC. MGMT., Mar. 1993, at 34; Erica Tabachnick et al., *Attorney-Client Pitfalls, How to Avoid Malpractice and Disciplinary Complaints*, LOS ANGELES LAW., Nov. 1994, at 15–16). While lack of caring may not be the sole reason lawyers fail to communicate with their clients, it seems fair to conclude it is an ingredient in nearly all such problems.

64. Schneider, *supra* note 63, at 98.

can be seen in lawyers' "[f]ailing to properly advise the client of settlement offers, settling without the client's consent, inadequate explanations of the client's legal rights or a potential conflict of interest, . . . and unauthorized withdrawal."⁶⁵ Among the most common lawyer behaviors that signal lack of caring to clients is the simple failure to return client phone calls.⁶⁶

Even when the causes of the client dissatisfaction are not entirely the lawyer's fault, showing empathy and care can help the lawyer avoid trouble:

When clients are dissatisfied, they may feel that their lawyer does not hear them or that the lawyer has ignored, humored, or simply used them for frivolous profit. These clients may harbor such feelings even when the lawyer has given them undivided attention and the case has been handled in an exemplary fashion. . . . Avoiding legal malpractice claims can be best achieved by (1) knowing how to interact with and appease the demanding client through an informed understanding of the client's dissatisfaction, and (2) knowing how best to respond with professionalism.⁶⁷

The same correlation between client dissatisfaction and malpractice litigation is found in medicine where physicians are often told that the most effective prevention for malpractice suits is a good doctor-patient relationship.⁶⁸

For physicians, empathy "is appreciation of the patient's emotions and expression of that awareness to the patient . . . [and] is believed to

65. Chamberlain, *supra* note 63, at 7.

66. In John F. Van Bolt, *Michigan's Discipline System: Yours, Mine, Ours*, 85 MICH. B.J., Sept. 2006, at 24, 25, Bolt notes:

a majority of the 3,500 or so written grievances (also known as "requests for investigation") submitted each year to the AGC contain some variation of the complaint, "I don't know what is going on" or, worse, "My lawyer won't return my phone calls." Of these, in 2004, over half arose from criminal or domestic relations matters. In emotionally charged cases like these, the lawyer is often perceived as the client's champion; literally, a "knight in shining armor." To expand upon an old adage, "hell also hath no fury like a client whose knight in shining armor is too busy slaying someone else's dragons to return phone calls."

See McCormack, *supra* note 63, at 24, where McCormack states:

A pattern of failing to return calls generates more ill-will between lawyer and client than actual, actionable neglect of the client's business. Many of the grievances filed each year probably started out as mild irritations with the lawyer for poor phone etiquette. That irritation soon developed into a symbol for all that went wrong in the attorney-client relationship.

See also Schneider, *supra* note 63, at 98 ("Failing to return phone calls, ignoring client concerns over a matter's progress and not including your client in significant decision-making are all proven methods of increasing your malpractice profile.")

67. Mark S. Silver, *Avoiding Legal Malpractice Claims: Knowing How to Interact with and Appease the Demanding or Dissatisfied Client*, THE CHAMPION, Jan.-Feb. 2007, at 18, 19-20.

68. Allen E. Smith & Patrick Nester, *Lawyers, Clients, and Communication Skill*, 1977 BYU L. REV. 275, 279.

significantly influence patient satisfaction, adherence to medical recommendations, clinical outcomes, and professional satisfaction.”⁶⁹ In fact, a physician’s empathy or bedside manner is often seen as an indication of his or her clinical expertise.⁷⁰ Researchers who have examined the role of empathy in the physician-patient context have concluded that empathy influences both diagnosis and patient care.⁷¹ Empathic physicians are more likely to correctly diagnose patient ailments because patients who feel their doctors care and listen to them explain their complaints and symptoms more fully, providing the details necessary for complete diagnosis.⁷² The research shows that “[e]motional as well as intellectual engagement may help physicians attend to aspects of patients’ health that might otherwise go unnoticed.”⁷³ Further, patients who feel empathy from their physician are more likely to be satisfied and adhere to their doctor’s directions, and less likely to sue for malpractice.⁷⁴ And, not insignificantly, physicians who are empathic tend to report higher professional satisfaction.⁷⁵

As early as 1977, Allen Smith and Patrick Nestor noted the relevance of doctor-patient relationship factors to the lawyer-client context.⁷⁶ They observed that some of the same behaviors that patients disliked in their doctors, and which led them to be more likely to sue for malpractice, also applied to lawyers.⁷⁷ These behaviors included “(1) ‘overbooking’ and making the . . . [client] wait, (2) taking a casual attitude toward the . . . [client’s] complaints, (3) failing to respond quickly to emergencies, (4) using harsh collection techniques, and (5)

69. Kathy A. Stepien & Amy Baernstein, *Educating for Empathy: A Review*, 21 J. GEN. INTERNAL MED. 524, 524 (2006).

70. See John Langone, *Medical Schools Discover Value in Dispensing Compassion*, N. Y. TIMES, Aug. 22, 2000, at F7, where Langone indicates that:

Without a doubt, for many patients, the worth of their doctors has more to do with their ability to listen than with where they went to medical school or how many years they have been in practice. Indeed, a national survey conducted in 1999 for the Association of American Medical Colleges found that only 27 percent of patients cited prestigious medical schools as a factor in choosing doctors, while 85 percent attributed their choices to the doctors’ communication skills and caring attitude, and 77 percent cited the ability to explain complicated medical procedures. It was a wake-up call for the nation’s physicians. As Dr. Nancy Angoff, associate dean of student affairs at Yale Medical School, tells her incoming students, “None of us here has any doubt that you will be able to speak the speak. What we don’t want to happen is for you to forget the human element, the patient’s story.”

71. Stepien & Baernstein, *supra* note 69, at 524.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. Smith & Nester, *supra* note 68, at 279.

77. *Id.* at 280.

being unwilling to discuss problems that arise during the course of the professional relationship.”⁷⁸ Perhaps not surprisingly, “[e]ach of these is a behavior that is likely to communicate a lack of empathy and understanding.”⁷⁹

So, both the clients themselves and the lessons from the medical field suggest that empathy and compassion are important for lawyers and by extension for law students. But what roles do and should these two traits really play in law practice? There is certainly room for differing opinions, but at least according to ABA President Karen J. Mathis, “[C]aring is as much a part of the legal profession as intelligence.”⁸⁰ Also speaking of lawyers, Karl Llewellyn artfully opined, “Compassion without technique is a mess; and technique without compassion is a menace.”⁸¹ Clearly, both intellectual and technical skill and human and humane compassion are necessary for effective lawyering.

III. A PROFESSION FOR THE HEART AND THE HEAD: EMPATHY AND COMPASSION IN LEGAL PRACTICE

The opinions of legal scholars echo the statistics: empathy and compassion must go hand in hand with “thinking like a lawyer” and in fact, caring actually makes analysis stronger. If we accept the premise that understanding clients and demonstrating empathy and compassion are essential to the successful practice of law, then it becomes important to understand how they function in practice.

Laura Biering and Debby Stone, professional coaches and consultants who specialize in working with lawyers, describe a hypothetical lawyer whom they call Catherine. Catherine is the typical law professor’s “dream graduate”: top of her class, Order of the Coif, highly recruited out of law school, and ultimately settling on a prestigious law firm.⁸² Members of the firm are impressed by the work she does, by her intellect and work ethic, and the overwhelming opinion is that she is on a fast-track to the top: certainly partner, if not ultimately running the firm.⁸³ The only problem is that as she begins working closely with clients they find that while she is certainly intelligent and competent, clients don’t feel she cares about them:

78. *Id.*

79. *Id.*

80. Mathis, *supra* note 2.

81. *Quoted in* Roger C. Crampton, *Beyond the Ordinary Religion*, 37 J. LEGAL EDUC. 509, 510 (1987).

82. Laura Biering & Debby Stone, *Coaching Tools for Better Client Communication*, 2 COMPLETE LAW. NO. 2 (2006), available at <http://www.thecompletelawyer.com/volume2/issue2/article.php?ppaid=61>.

83. *Id.*

They felt she didn't hear them. There was no connection. It was as though she knew what they would say before they even met. She would ask elaborate questions, leading the clients to the answers she presupposed. And when the clients offered new information that didn't fit with her agenda, she glossed right over it.⁸⁴

While Catherine may possess a great level of legal knowledge, she lacks the greater intelligence necessary to see the value in what her client is saying, the value in really listening. What she wrongly assumes is that her great "intelligence" leads her to the arrogant and ignorant position of believing that she knows the answers before all of the information is on the table.

The hypothetical story of Catherine underscores the truth that "success in law (as in other fields) correlates significantly *more* with relationship skills than it does with intelligence, writing ability, or any other known factor."⁸⁵ Professor Joshua Rosenberg rightly explains the interplay between the heart and the head:

Basically, most lawyers and academics vastly overestimate the importance of reason and logic. We tend to view them as both the primary motivator of our behavior and the primary tool to change the thinking and behavior of others. Although they are important, they are only one part of the puzzle. There are important differences between the kind of dispassionate reasoning and analysis in which lawyers and law students engage while sitting at desks at home, in the office, or in the library, and the kind of activities in which we engage when we are dealing in real time with real people. Real time, real life interactions implicate emotions, learned patterns of behavior, habituated perspectives and frames of reference, and other human, but not reasoned, responses.⁸⁶

In other words, while analyzing the law and using one's intellectual skills is the key to preparation, learning the law, conducting legal research, and analyzing problems, once the lawyer steps into the room with the client, her understanding, empathy, and compassion (which are often expressly manifest in her ability to actually listen to the client) become equally important. As other scholars have noted,

Many lawyers believe that the practice of law demands concentration on the facts of a case and leaves no room for concern about the emotional state of a client. These lawyers seem to approach each case simply as a factual matter, giving at most minimal, and more frequently no attention to the emotions of

84. *Id.*

85. Joshua D. Rosenberg, *Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance, of Human Relationships in the Practice of Law*, 58 U. MIAMI L. REV. 1225, 1229 (2004) (citing DANIEL GOLEMAN, EMOTIONAL INTELLIGENCE 27–29, 35–39 (Bantam Books 1995)). See HOWARD GARDNER, MULTIPLE INTELLIGENCES: THE THEORY IN PRACTICE 9 (1993) (explaining "personal" intelligence); Peter Salovey & John D. Mayer, *Emotional Intelligence*, 9 IMAGINATION, COGNITION AND PERSONALITY 185 (1989–90); Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 PSYCHOL. PUB. POL'Y & L. 1173, 1174 (1999) (defining and explaining the basis for emotional intelligence and arguing that "[l]egal education should prepare students for the emotional dimensions of lawyering . . . [and] should cultivate emotional intelligence").

86. Rosenberg, *supra* note 85, at 1229.

their client. Most lawyers view the practice of law as a set of legal problems that must be solved like a puzzle, rather than as a vocation which assists people who have problems involving both factual and emotional dimensions. Their primary orientation is the problem; the person seems incidental.⁸⁷

Not only does the involvement of empathy and compassion in practice make clients happier, it also makes lawyers happier. According to Professor Rosenberg:

When asked what they like best about their work, lawyers who *like* their work typically respond with statements about relationships: "I like to help people;" or "Last week, a client told me that what I did for her made a big difference in her life;" or "I like being part of a team." Like other humans, lawyers get satisfaction from helping others and from good relationships. . . . Not only do relationship skills allow one to *enjoy* her success, but, perhaps more importantly, they are essential tools to *achieve* that success.⁸⁸

A. Empathy: The Cornerstone of Interpersonal Relations

Empathy, or "the power of projecting one's personality into (and so fully comprehending) the object of contemplation,"⁸⁹ is a vital lawyering skill.⁹⁰ Professor Carrie Menkel-Meadow describes empathy as "learn[ing] how to 'feel with' others," and asserts that empathy "is an essential part of the client-lawyer relationship."⁹¹ Empathy is central to human relations and has been referred to as "the cornerstone of not only professional interpersonal relations, but also any meaningful human relationship."⁹² Leading legal counseling scholars have said that empathy "is the real mortar of an attorney-client (indeed, *any*) relationship."⁹³

While encouraging empathy training for lawyers, Professor Menkel-Meadow emphasizes that "lawyers need to learn to experience 'the other' from the values that the other holds, not those of the lawyer—this is the challenge of most lawyer-client relations and lawyer-opposing side relations."⁹⁴ In her definition, a lawyer who is truly empathic comprehends

87. Barkai & Fine, *supra* note 9, at 505.

88. Rosenberg, *supra* note 85, at 1228.

89. OXFORD ENGLISH DICTIONARY (2d ed. 1989), available at <http://dictionary.oed.com>.

90. For a general discussion of empathy for lawyers, see DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (West 1991).

91. Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593, 620 (1994).

92. Philip M. Genty, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic and the Teaching of Empathy*, 7 CLINICAL L. REV. 273, 275 (2000) (quoting ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, *INTERVIEWING, COUNSELING, AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION* 117 (1990)).

93. Ellmann, *supra* note 58, at 991 (quoting DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 49 (2d ed. 1991) (emphasis in original)).

94. Menkel-Meadow, *supra* note 91, at 620.

the reality of the other (be it client or administrative bureaucrat or opposing counsel); not just to understand instrumentally how to move, persuade or affect that person, but to understand what meaning the interaction has for that person in a caring and existential sense. The lawyer who hopes to effectuate a successful transaction or settle a lawsuit or amend an administrative regulation needs to understand what the goals and feelings of the other are, if only to effectuate the needs and goals of the client (the "instrumental" justification for affective learning). I prefer to take this a step beyond the instrumental to suggest that the good lawyer needs to understand, from a human point of view, what the other wants to happen in the world. . . .⁹⁵

To "understand, from a human point of view, what the other wants to happen in the world" requires the lawyer to think, feel, and understand what that person would think, feel, and understand; to be what Professor Martha Nussbaum terms "an intelligent reader of that person's story."⁹⁶ Simply put, when a person experiences empathy she is able to "stand in the shoes" of the other person. As Atticus Finch explained so clearly to his daughter, Scout, in Harper Lee's classic novel *To Kill a Mockingbird*, "You never really understand a person until you consider things from his point of view . . . until you climb into his skin and walk around in it."⁹⁷ Young Scout finally understood her father's lesson much later after Boo Radley, the object of earlier mocking, saved her life and that of her brother. After walking Mr. Radley home, Scout reflects, "Atticus was right. One time he said you never really know a man until you stand in his shoes and walk around in them. Just standing on the Radley porch was enough."⁹⁸

To experience empathy means to share or at least understand a client's feelings, to imagine and thereby nonjudgmentally understand what it would be like to be in the client's position.⁹⁹ And once the lawyer has developed empathy for the client, she can more effectively exercise her other skills on the client's behalf.¹⁰⁰

To be truly effective in the use of empathy, the "intelligent reader" of the other's story must become the "accurate translator" of that story to others. A lawyer fundamentally is a "translator."¹⁰¹ As such, she needs to be able to empathize with the other side in order to translate that point of view for her client during settlement negotiations. She also needs to empathize with what opposing counsel is experiencing in order to relate effectively with her. She needs to empathize with the judge or the jury in order to know their concerns and address them as

95. *Id.*

96. Martha C. Nussbaum, *Cultivating Humanity in Legal Education*, 70 U. CHI. L. REV. 265, 270 (2003).

97. HARPER LEE, *TO KILL A MOCKINGBIRD* 30 (Warner Books Edition 1960).

98. *Id.* at 279.

99. Robert Dinerstein et al., *Connection, Capacity and Morality in Lawyer-Client Relationships: Dialogues and Commentary*, 10 CLINICAL L. REV. 755, 758 (2004).

100. Genty, *supra* note 92, at 275.

101. Thanks to Professor Linda Edwards both for this phrase and for her insights on this point.

she conveys information to her client and as she makes her own strategic judgments. In other words, empathy is fundamental to the hard core lawyering skills that affect results.

Despite some lawyers' contentions that developing empathy for the client is at best uncomfortable and inefficient and at worst inappropriate and manipulative, empathy does play an important role in law practice.¹⁰² Every interaction a lawyer has with a client involves an emotional component, and facilitating the client's discussion of her emotions through expressions of empathy is not only appropriate but beneficial to the lawyer-client relationship and ultimately to the legal case itself.¹⁰³

Developing empathy is key to all types of law practice—it isn't just a trait for the litigator:

[T]he imagination of human distress, fear, anger, and overwhelming grief is an important attribute in the law. Lawyers need it to understand and depict effectively the plight of their clients. Judges need it to sort out the claims in the cases before them. Lawyers advising corporations need it in order to develop a complete picture of the likely consequences of various policy choices for the lives of consumers, workers, and the public at large, including the public in distant countries where corporations do business. Factual knowledge is crucial, and in its absence the imagination can often steer us wrong. But knowledge is inert without the ability to make situations real inside oneself, to understand their human meaning.¹⁰⁴

Further, Professor Lynne Henderson, author of a leading article on empathy and the law, opined:

It may seem intuitively "obvious" that empathy can take place at the "lower" levels of the legal system—say, in the attorney/client relationship or in trials. But empathy, by nature of its very concreteness, seems out of place in the appellate court world. The connection to persons and concrete situations that leads to empathic response does grow more attenuated at the appellate level. But this does not mean that appellate courts and even the Supreme Court do not occasionally show evidence in their opinions that empathy has been operative in their decisions: The language of empathic understanding, of feeling the feelings of the people affected by a case, occasionally surfaces. Whether empathic responses helped an appellate judge reach a decision that is then justified in terms of legal discourse is often difficult to know: Of all the powerful decisionmaking agents in American political life, a judge's decisionmaking process is the least understood. But there may be some truth in Edmond Cahn's observation that "if you wish a judge to overturn a settled and established rule of law, you must convince both his mind and his emotions, which together in indissociable blend constitute his sense of injustice."¹⁰⁵

Thus, every lawyer must develop the capacity to empathize with others and, in so doing, increase her effectiveness. Specifically, empathy can aid the lawyer in building rapport with her client and thus

102. Barkai & Fine, *supra* note 9, at 516.

103. *Id.*

104. Nussbaum, *supra* note 96, at 277–78.

105. Lynne N. Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574, 1592 (1987) (quoting EDMOND CAHN, *THE PREDICAMENT OF DEMOCRATIC MAN* 129 (1961)).

foster a more beneficial relationship; foster open and complete communication; lead to more thorough legal analysis; improve the image of the legal profession; and satisfy client expectations.

First, instilling empathy in the relationship can improve rapport between lawyer and client and thereby improve the relationship. While there is a lively scholarly debate about the ideal relationship between lawyers and their clients and the roles that each should play to maximize success,¹⁰⁶ the unfortunate reality is that too many lawyers treat their clients like they are children who must be supervised, watched over, and occasionally even disciplined. These lawyers believe that they "know what is right" for the client and are willing to impose their views even when the client objects.¹⁰⁷

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106. In Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, 506, 555 (1990), Dinerstein makes the following statements:

Traditional legal counseling reflects an absence of meaningful interchange between lawyer and client. The client comes to the lawyer with some idea about his problem. The lawyer asks questions designed to adduce the information necessary to place the client's problem within the appropriate conceptual box. At the proper time, he counsels the client by essentially conducting a monologue: the lawyer tells the client something of the nature of his actions on the client's behalf and then advises the client about the course of action he recommends. . . . The lawyer is concerned with the client's reaction to his advice but tends not to value client input, for he believes that the client has little of value to contribute to the resolution of his legal problem. . . . In contrast . . . lawyers and clients in a client-centered relationship have the potential to conduct a true dialogue in which each person contributes to the discussion and is genuinely interested in the other's perspective. The insightful client-centered lawyer attempts not merely to make a bare presentation of alternatives to the client but tries to engage in the imaginative understanding of the client's situation. Clients and lawyers must talk to each other in a kind of structured conversation in which the lawyer's role is to assure that certain concerns are addressed and the client's role is to assess her situation as honestly and fully as possible.

See John M. A. Dipippa, *How Prospect Theory Can Improve Legal Counseling*, 24 U. ARK. LITTLE ROCK L. REV. 81, 108 (2001) (discussing client-centered lawyering wherein "lawyers are largely conduits of information. They serve their clients well when they allow them to make fully informed and rational decisions. They serve their clients poorly when they usurp their clients' autonomy."); Alex J. Hurder, *Negotiating the Lawyer-Client Relationship: A Search for Equality and Collaboration*, 44 BUFF. L. REV. 71, 77 (1996), where Hurder notes:

In the traditional approach to lawyering, the client identifies a problem, and virtually all other decisions remain the professional domain of the lawyer. The client-centered approach developed in reaction to the dominance of the lawyer in traditional methods of lawyering. The client-centered approach requires the lawyer to let her client make autonomous decisions about a case to the maximum extent possible. To protect the client's autonomy, the lawyer identifies all decisions that have a significant impact, legal or nonlegal, on the client and helps the client make them through the process of counseling. Decisions about the skill and craft of lawyering remain the domain of the lawyer.

107. See Menkel-Meadow, *supra* note 8, at 389.

Relationships with clients are central, even critical, to the “helping professions,” which include counseling, teaching, social work, ministry, and law.¹⁰⁸ Positive relationships between the professional and the client are conditioned upon “empathy, respect and genuineness,” which are primarily in the control of the professional rather than the client.¹⁰⁹ Additionally, “[r]apport, or mutual trust, is . . . central to a good client-professional relationship.”¹¹⁰ Empathy is the key ingredient in the development of rapport.¹¹¹ In therapeutic contexts, research shows that a therapist’s empathy is the “key behavioural element in professional-patient interactions which builds the therapeutic alliance, increases patient motivation to participate actively in treatment and is a predictor of successful outcomes.”¹¹² The same is true with the attorney-client relationship. When clients feel understood and believe that the lawyer is truly interested in a successful solution to their problems and concerns, the client becomes less anxious and more at ease.¹¹³ And when a lawyer truly empathizes with what a client is feeling and experiencing, “decisions might be made differently and the process of arriving at decisions might be made with more consideration for the client’s actual needs.”¹¹⁴

Second, instilling empathy can improve communication between lawyer and client. Clients who feel that their lawyer understands them are more willing to provide information,¹¹⁵ including information that might be potentially embarrassing, yet important to their case. “Active listening,” which is a technique used to demonstrate empathy, has long been heralded as the key to effective legal interviewing and counseling.¹¹⁶ Through active listening, empathic lawyers can bolster their clients’ trust and more effectively open lines of communication.¹¹⁷ Empathetic expressions assist in the development of a circular process which begins with the reduction of a client’s anxiety, can help increase the client’s communication accuracy and relevancy, while also helping to prevent, or at least diminish, a client’s hostility toward the lawyer.¹¹⁸

108. Barkai & Fine, *supra* note 9, at 511 (citations omitted).

109. *Id.*

110. *Id.*

111. *Id.*

112. Helen R. Winefield & Anna Chur-Hansen, *Evaluating the Outcome of Communication Skill Teaching for Entry-Level Medical Students: Does Knowledge of Empathy Increase?* 34 MED. EDUC. 90, 90 (2000) (Austl.).

113. Smith & Nestor, *supra* note 68, at 295.

114. Menkel-Meadow, *supra* note 8, at 411.

115. Barkai & Fine, *supra* note 9, at 513.

116. Ellmann, *supra* note 58, at 991 (citing ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, INTERVIEWING, COUNSELING, AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION 116 (1991)).

117. *Id.*

118. Smith & Nestor, *supra* note 68, at 295.

Third, instilling empathy can enhance a lawyer's legal analysis. According to Professor Lynne Henderson, empathy not only plays a role in the lawyer's analysis but also in the decisions that are ultimately made by judges and others. Empathy "aids both . . . the procedure by which a judge . . . reaches a conclusion . . . [and the] justification[ation for] the conclusion . . . in a way that disembodied reason simply cannot."¹¹⁹

Fourth, instilling empathy in individual lawyers' client interaction may ultimately improve the public's perception of lawyers and the legal profession. If, as described above, many Americans feel that lawyers are uncaring and even manipulative, an increase of empathy among individual lawyers may benefit the overall image of the profession.¹²⁰

Finally, instilling empathy satisfies client expectations. Clients expect at least some degree of empathy from their lawyers. In fact, empathy is specifically mentioned by *Consumer Reports* editors in their article advising people about what to do when they need a lawyer:

Communication with your attorney is crucial. Before you hire anyone, make sure you'll feel comfortable speaking honestly and openly with him or her. Take note, too, of whether the lawyer can explain things clearly. Make it known that you want to be kept informed of what happens in the case, and agree on some ground rules—perhaps that you'll be sent copies of documents or given periodic reports over the phone. That doesn't mean that your lawyer has to be your best friend. But you might expect him or her to be empathetic and supportive if you're going through a crisis.¹²¹

While empathy is certainly beneficial to the lawyer's practice and her relationship with clients, lawyers should be cautioned that too much empathy—in other words "too complete identification with the client"—may be harmful. Effective lawyers must be able to "step back from the client's situation, in ways that the client often cannot, in order to provide the critical eye and assessments that are part of [the lawyer's] obligation to him."¹²² Although too much empathy may cause problems, lack of empathy certainly will. Lawyers have to be objective, but not robotic. They must hone their empathic skills, and that takes training and practice.

Unlike learning how to analyze a case or write a persuasive argument, learning to empathize requires the lawyer to engage her ability to empathize with and care for her client in addition to her ability to analyze, strategize, and advocate. Developing empathy requires the lawyer to set aside her analytical tendencies and simply learn to feel. Professor Joshua Rosenberg explains that "[e]mpathy is not entirely,

119. Henderson, *supra* note 105, at 1576.

120. See Barkai & Fine, *supra* note 9, at 512-13.

121. *When You Need a Lawyer*, *supra* note 31, at 36.

122. Dinerstein, *supra* note 99, at 767.

or even primarily, a cognitive experience. Indeed, it involves the momentary *suspension* of most of the key cognitive functions”¹²³ Such intellectual functions as judgment, evaluation, analysis, and problem solving must be set aside to allow the person to empathize with another.¹²⁴ Doing this requires the person to do more than read or think, but requires her to actually place herself in positions to experience what the other person would be feeling.

To fully empathize with a client, a lawyer must actually experience the legal world from the client’s point of view; the lawyer must try to figuratively “walk in the skin” of her client. Occasionally lawyers have the opportunity (if they can call it that) to actually be a client—to be involved as a party to a lawsuit. That experience can be a tremendous opportunity to learn empathy. Gail Leverett Parenti, former President of the Florida Defense Lawyers Association, tells of her experience as a defendant in numerous cases including a malpractice action that lasted fifteen years and how these experiences taught her things and gave her “insights [she] couldn’t have learned in any other way” about what it means to be a client.¹²⁵ For example, she relates that lawyers “can’t have a true appreciation of the anguish, the sleepless nights, the self-doubt, the depression, the impotent rage, the frustration with the legal system, the delays and the endless nonsense that a litigant experiences until [they] have experienced it first-hand.”¹²⁶

But lawyers need not actually be involved as clients in litigation to have at least limited personal experience with what their clients are feeling. Lawyers can gain a level of understanding and empathy by meeting their clients in “their environment” rather than in the sterile law office. Being in the client’s environment helps the lawyer see first-hand what the client experiences. For example, a domestic relations lawyer could interview her clients in a battered women’s shelter—or at the very least she could spend a few hours volunteering there to better understand and appreciate the plight of the women who come there for solace.¹²⁷

Lawyers can also develop their empathic skills by participating in role-play and other simulation scenarios with their colleagues. Such hands-on, participative experience is essential to gaining true empathy because “studies indicate that learning to care must be situated in

123. Joshua D. Rosenberg, *Teaching Empathy in Law School*, 36 U.S.F. L. REV. 621, 632 (2002).

124. *Id.*

125. Gail Leverett Parenti, *Things I Learned from Being a Defendant*, 25 TRIAL ADVOC. Q., Summer 2006, at 2.

126. *Id.*

127. See Genty, *supra* note 92, at 281–82 (describing a similar exercise with law students in a domestic violence clinic).

concrete learning rather than in general, abstracted learning.”¹²⁸ Such experiential learning must be repeated throughout a lawyer’s career, because empathy or “the imagination of human predicaments is like a muscle: It atrophies unless it is continually used.”¹²⁹

In addition to being aware that they need to find concrete experiences in which to come in contact with the feelings and experiences of their clients, lawyers wishing to develop greater empathy must be aware of behaviors and character traits that detract from empathy. Smith and Nestor summarized empathy detracting behaviors including:

saying nothing, failing to accurately respond to the client, using clichés, distorting what the client says, ignoring his feelings, putting the client’s problem in a bigger picture too soon, ignoring client clues about the inaccuracy of the lawyer’s responses to him, feigning understanding, parroting the client’s words back to him, allowing the client to ramble too much, doing nothing else but communicating empathy, seeming overeager, using inappropriate language, using legal jargon or stilted phrases, being longwinded, making wrong choices about whether to respond to the client’s feelings or the content of his speech, responding to the feelings of the client too quickly, responding defensively or negatively to client questions, asking too many questions, asking only leading questions, and asking questions whose answers do not help the lawyer in counseling the client.¹³⁰

Thus, developing and exercising empathy is key to successful lawyering.

B. Compassion: The Lawyer’s Desire to Succour and Aid

In addition to showing empathy—feeling with the client—a successful, effective lawyer also shows compassion and feels “for” her client—she feels that desire to relieve her client’s distress and provide aid and succour. Dean Kevin J. Worthen acknowledged this reality to a group of law students on their first day of law school:

Because of the ubiquity and complex nature of law in our society, people are required to trust lawyers with their hopes, their dreams, their fortunes, their rights, and sometimes even their lives. How lawyers deal with those precious commodities is of extreme importance to those people. . . . [H]ow important it is that [lawyers] learn to really care enough about the human condition that they will refine and use those skills to improve others’ lives.¹³¹

The lawyer’s ability to care for others has been lauded by multiple leaders in the legal community. For example, Paul L. Stevens, then President of the Pennsylvania Bar Association, wrote that lawyers “need to become more compassionate about [their] clients. [Lawyers]

128. Menkel-Meadow, *supra* note 8, at 416.

129. Nussbaum, *supra* note 96, at 277.

130. Smith & Nestor, *supra* note 68, at 282.

131. Kevin J. Worthen, *The Essence of Lawyering in an Atmosphere of Faith*, CLARK MEMORANDUM (J. Reuben Clark Law School Brigham Young University), Fall 2004, at 32, 36, available at http://www.jrcls.org/publications/clark_memo/.

need to show [their clients that they] care for them, and [lawyers] need to communicate with [their clients] as people, not treat them as just another case. [Lawyers] need to let [their clients] feel they are helping 'run the store.'¹³² Similarly, Maryland Lieutenant Governor Michael Steele, speaking at the Catholic University Law School, exhorted students: "Be a lawyer yes, be a good lawyer, absolutely, but be a man or woman . . . whose words and deeds are touched by . . . compassion and abundant love."¹³³ While Lt. Gov. Steele was speaking to students at a religious law school in a context of faith, his admonition applies equally well to lawyers applying the more secular definition of compassion.

Compassion deeply engrained in a lawyer can provide the reason and the motivation for the hard work, long hours, and personal dedication necessary to succeed in law practice. As Sharon Salzberg stated:

Compassion is not at all weak. It is the strength that arises out of seeing the true nature of suffering in the world. Compassion allows us to bear witness to that suffering, whether it is in ourselves or others, without fear; it allows us to name injustice without hesitation, and to act strongly, with all the skill at our disposal.¹³⁴

Some lawyers may mistakenly believe that compassion detracts from their ability to practice law or even makes it impossible for them to do some of the things that lawyers frequently find that they must do in practice.¹³⁵ For example, some lawyers may believe that if they develop compassion in their practice they might have difficulty impeaching a hostile witness at trial, painting the facts in the light most advantageous for their client, or in other ways zealously advocating for their clients.¹³⁶ While this may be true to a small extent for some lawyers, it is a small price to pay for the other benefits of compassion.

In her piece about enlightened advocacy and a more humanistic and holistic approach to lawyering, Ingrid Tollefson made the following key observation:

The lawyer as nurturer implies a focus on the client's needs encompassing humanistic, analytical and technical approaches to conflict resolution. The metaphor, however, does not imply a "new-age," "feel-good," "touchy-feely," or "warm-fuzzy" approach to lawyering. Proficiency in the intellectual and tech-

132. Paul L. Stevens, *Good Client Relations are Essential to Restoring Public Confidence in Lawyers*, 16 PA. LAW., July 1994, at 4, 4.

133. Michael S. Steele, Maryland Lieutenant Governor, Pope John XXIII Lecture at CUA Columbus School of Law (August 29, 2005), available at <http://publicaffairs.cua.edu/speeches/06SteeleLecture.htm> (last visited January 4, 2007).

134. Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients*, 7 HARV. NEGOT. L. REV. 1, 64-65 (2002) (quoting SHARON SALZBERG, *LOVINGKINDNESS: THE REVOLUTIONARY ART OF HAPPINESS* 103 (1997)).

135. *Id.*

136. *Id.* (pointing out, but strongly disagreeing with these assertions).

nical rigors of legal analysis, or “thinking like a lawyer” is fundamental to capable and accomplished lawyering. However, compassion is equally pragmatic. It functions as an essential and practical component of the nurturing practice. Thus, for the nurturing lawyer, ambition to master critical reading, writing, argument, and reasoning skills met with the ambition to cultivate compassion creates the ideal for what it means to be “successful” in the art of legal advocacy and counseling.¹³⁷

Despite its possible misuse, compassion plays an important role in the effective practice of law. In fact, lawyers need to develop and express compassion to best serve their clients because “the quality that elevates us from being a great lawyer and moves us into the next level is *simply caring*.”¹³⁸

Compassion plays a role in nearly all interactions with clients, but is essential in those where emotions are strong and pain very real.¹³⁹ Philip Weinstein of the Rhode Island Bar Association reminds lawyers that family law is ripe with the need for compassion: “It behooves us to work to better understand and appreciate the pain and grief that people go through with a failed marriage, the pain their children endure, and the anger that people feel in a divorce.”¹⁴⁰ But compassion and care is not limited to the personal emotions of family law, it is key in other litigation contexts as well. For example, lawyers can show compassion for plaintiffs injured because of another’s negligence or for a patient whose life is forever changed because of medical malpractice.¹⁴¹

Truly compassionate lawyers also find opportunities to extend care to those accused of negligent behavior or even “for a physician who is being sued for producing an injury despite his Hippocratic Oath to do no harm.”¹⁴² And compassion even comes into play in purely transactional practice as lawyers extend care to aging parents who seek to create an estate plan to best protect their children or structure business arrangements between partners who ultimately may have differences that lead to the dissolution of the partnership.

Finally, lawyers should develop compassion because their clients often value it. When a client feels that a lawyer truly cares about her

137. Ingrid N. Tollefson, Comment, *Enlightened Advocacy: A Philosophical Shift with a Public Policy Impact*, 25 *HAMLIN J. PUB. L. & POL’Y* 481, 501 (2004).

138. Robert F. Blomquist, *Ten Vital Virtues for American Public Lawyers*, 39 *IND. L. REV.* 493, 508 (2006) (quoting Michael N. Dolich, *Finding Joy in the Practice of Law*, 25 *PA. LAW.*, Jan.–Feb. 2003, at 34, 38).

139. Some scholars argue that lawyers (and law students) who work with clients who have gone through traumatic experiences have particular need of compassion and for special training. See, e.g., Lynette M. Parker, *Increasing Law Students’ Effectiveness when Representing Traumatized Clients: A Case Study of the Katherine & George Alexander Community Law Center*, 21 *GEO. IMMIGR. L.J.* 163 (2007).

140. Philip M. Weinstein, *Legal Representation: A Place for Compassion*, 54 *R.I. B.J.*, Jan.–Feb. 2006, at 3, 3.

141. *Id.*

142. *Id.*

and is compassionate, she feels that the lawyer is loyal to her cause and “can be a source of emotional sustenance, particularly for those clients whose legal problems are as painful as they are complex.”¹⁴³ With the emotional support of a compassionate lawyer, the client may be better equipped to face a long, difficult legal battle.¹⁴⁴ A client who feels compassion from her lawyer “may be more responsive to the lawyer’s advice, and while this possibility opens the door to manipulation, it also offers the hope that good advice, which would have been discounted by a more reserved client, will now be taken seriously.”¹⁴⁵

Attorney Steven Keeva asserts that lawyers who lack compassion for clients encounter obstacles to giving good legal advice and care. He wrote:

My impression, born out in interviews with clients over the years, is that what troubles so many of them is a sense that certain mindsets and attitudes stand between them and the lawyers they hire. Several implied questions are clear including: *why can't they (i.e. lawyers) just talk to me like normal human beings? What is it about practicing law that makes people so unreal, so detached from the rhythms and concerns of everyday life?* I believe the research suggesting that non-lawyers see lawyers “as dominant and aggressive professionals who are lacking in caring and compassion,” supports my impression, since “real” people let their guards down now and then and do not frame every situation in dry, legalistic terms. *They understand that people who come to them in need, often at moments of great suffering, can use a strong, but also caring hand.*¹⁴⁶

The lawyer who seeks to demonstrate compassion may find that while its seeds are arguably innate, fully developing it and ultimately harvesting its fruits takes effort and conscious determination.

Compassionate lawyers bear the burdens of others, namely, their clients. Lawyer F. Burton Howard once said that it “is the principal business of a lawyer, to bear the burdens of another.”¹⁴⁷ Speaking to a group of alumni from the BYU law school, James E. Faust,¹⁴⁸ a former attorney, encouraged them to “[l]ook upon [their] learning and license to practice law as a way to do great things for little people and

143. Ellmann, *supra* note 58, at 1000.

144. *Id.*

145. *Id.*

146. Blomquist, *supra* note 138, at 509 (quoting Steven W. Keeva, *Practicing from the Inside out*, 7 HARV. NEGOT. L. REV. 97, 101–02 (2002)).

147. F. Burton Howard, *Keepers of the Flame*, CLARK MEMORANDUM (J. Reuben Clark Law School Brigham Young University), Fall 1994, at 22, 25, available at http://www.jrcls.org/publications/clark_memo/.

148. While I was finishing this article, President James E. Faust, who served as the Second Counselor in the First Presidency of The Church of Jesus Christ of Latter-day Saints, passed away on August 10, 2007. I would be remiss if I failed to publicly acknowledge his example of compassion and empathy both as a lawyer and as a Church leader. His example is one that attorneys of all faiths would be wise to emulate. He will be missed.

little things for everyone.”¹⁴⁹ The ways that lawyers can serve others differ from the more tangible services provided by those in other professions like engineering or medicine, but, as John W. Davis once remarked, that service is equally valued and necessary. He said,

True, we build no bridges. We raise no towers. We construct no engines. We paint no pictures—unless as amateurs for our own amusement. There is little of all that we do which the eye of man can see. But we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men’s burdens and by our efforts we make possible the peaceful life of men in a peaceful state.¹⁵⁰

Compassionate lawyers can hardly be restrained from trying to render assistance and to bring healing when they witness suffering, pain, and other injustice. A moving example of the desire to bear another’s burden is found in the following story, shared by an extraordinary lawyer:

[A] few weeks ago, I went to see one of the children who is a named plaintiff in a mental health class action I am litigating in Massachusetts. He lives with his grandmother in a tiny, one bedroom apartment also shared by his aunt, her husband, and their two infant children. He has profound behavioral and language challenges, strikes out frequently and hugs, a bit roughly, almost as frequently. He has much to say but can barely speak. He loves to play but has no one to play with. He is loved by his grandmother but almost no one else. As a result of his behavioral challenges, complex needs, and poverty, he is isolated, segregated, and abandoned by most educational and mental health providers. I had been spending long hours on this complex case on behalf of the class of children and had little time left over for individual advocacy. But when I left his tiny apartment, got in my car and closed my eyes, I made a decision that I would do everything in my power to alter this desperate situation. I vowed to represent him in whatever forums, for however long, in whatever ways necessary to remedy this neglect.¹⁵¹

Truly this lawyer has developed compassion, and all lawyers can help to bear the burdens of others as they focus on the people they serve and seek solutions for the problems they face.

Further, compassionate lawyers comfort those who stand in need of comfort. Often this comfort is given by small acts of compassion that may or may not be directly related to the legal proceedings in which the lawyer is involved. Sometimes this compassion is shown simply by the way the lawyer interacts with the client and in the relationship that develops between the two. The lawyer who could not be

149. James E. Faust, *Become Deliverers*, CLARK MEMORANDUM (J. Reuben Clark Law School Brigham Young University), Fall 2002, at 24, 29, available at http://www.jrcls.org/publications/clark_memo/.

150. James E. Faust, *Be Healers*, CLARK MEMORANDUM (J. Reuben Clark Law School Brigham Young University), Spring 2003, at 3, 7, available at http://www.jrcls.org/publications/clark_memo/ (quoting John W. Davis, Address at 75th Anniversary Proceedings of the Association of the Bar of the City of New York (March 16, 1946)).

151. Steven J. Schwartz, *Maintaining Integrity and Cultivating Compassion*, Address at the NARPA Annual Conference (2003), available at <http://narpa.org/integrity.htm> (last visited January 4, 2007).

restrained from aiding the struggling boy in Massachusetts shared this example of compassionate comforting:

Laurie was a client of mine at the Northampton State Hospital. She was a twenty-five year old woman who had been institutionalized for eight years. She was afraid to talk to anyone. I spent almost a year, visiting with her at least once a week. For months we only sat quietly together. After a while we held hands, and gradually she began to respond to my questions, albeit with only a nod of her head. Eventually we started having conversations. A year later she initiated these conversations, eagerly and with a smile on her face. She told me of her abuse, and witnessing the abuse of her siblings. Eventually, as her confidant and dedicated advocate, I helped her leave the hospital and move to a community home. When she died a few years later . . . I cried because I had lost a dear friend. But her presence and friendship was an enormous teaching in patience and compassion.¹⁵²

While this lawyer did offer traditional “legal services” to Laurie, perhaps the most important service he rendered was being a comforter and a friend. Lawyers can employ that same compassion in their interactions with opposing counsel and others by seeking to transcend the adversarial nature of the proceedings. The following story about an otherwise typical lawyer illustrates such integration:

Litigation is often contentious; sometimes overly so. On one occasion, this lawyer found himself in a deposition involving several attorneys, one of whom repeatedly verbally abused one of the other lawyers, engaging in personal attacks and tirades. [The lawyer], somewhat stunned, did little to intervene on behalf of the victim, in part because the issues which sparked the outbursts had nothing to do with his client. That evening, however, he felt horrible. He resolved that he would never again allow that to happen to another attorney or witness when he was present He has kept that resolve to this day.¹⁵³

By bearing burdens, giving comfort, and showing care in their interactions with others, lawyers can demonstrate compassion in their professional practice.

IV. THE MISSING PIECE IN MODERN LEGAL EDUCATION

Because understanding client needs and expectations and learning to relate with empathy and compassion to clients, opposing counsel, and decision-makers are such central skills to successful lawyering, helping students to understand and acquire these skills and attributes also should be central to legal education. Unfortunately, modern legal education often fails in this area. Both the recent Carnegie Foundation report on the education of lawyers and the anecdotal experiences of students point to this “missing piece” in the modern legal curriculum.

152. *Id.*

153. Kevin J Worthen, Remarks to the First Year Law Students at the J. Reuben Clark Law School (August 23, 2006) (on file with author).

A. Better Preparing Students for the Practice of Law: Criticisms of Modern Legal Education

Among the major criticisms of legal education is the lack of context for the substantive law students are taught.¹⁵⁴ Too often students are taught legal analysis in a near vacuum—with little or no discussion of how the legal concepts they are learning actually impact the lives and emotions of real people. The recent report on legal education sponsored by the Carnegie Foundation, described the evolution of legal education over the course of the twentieth century: “In its quest for academic respectability, legal education [has] come to emphasize legal knowledge and reasoning at the expense of attention to practice skills, while the relations of legal activity to morality and public responsibility receive[] even less direct attention in the curriculum.”¹⁵⁵ Of course it is critical that students learn to “think like a lawyer” and thereby “accurately ascertain the relevant facts, and [] apply disciplined logic and reason to those facts in order to arrive at a solution to whatever problem it is they are addressing.”¹⁵⁶ But analysis without human context can be dangerous, and “[u]nfortunately, . . . we do not teach people how to use these skills in the contexts where they are most needed—in interactions and relationships with colleagues, opposing counsel, clients and decision-makers.”¹⁵⁷ Legal analysis is only the first step in the process; applying that analysis to realistic situations (learning the “skills” of lawyering) is critical.¹⁵⁸

A more serious criticism of modern legal education focuses not only on the lack of context but on the isolation of logic and “critical thinking” to the exclusion of the emotional and “human” aspects of legal analysis, often giving “the covert message that dealing with human emotions and personality is inconsistent with legal thinking.”¹⁵⁹ Students need to understand that a successful lawyer is a “professional with a wide range of particular skills but also a human being who exercises judgment, [who] cares for her fellow human beings, both clients and the larger society and who has a vision of what professional

154. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 7 (The Carnegie Found. for the Advancement of Teaching, Jossey-Bass 2007).

155. *Id.*

156. Rosenberg, *supra* note 85, at 1226.

157. *Id.*

158. See SULLIVAN ET AL., *supra* note 154, at 13.

159. Wilcox, *supra* note 12, at 234; see Menkel-Meadow, *supra* note 91, at 595, with Menkel-Meadow stating that:

[A]ny conception of legal education and law that focuses on a particular kind of rigor or ‘scientific’ notion of lawyering is missing what is most important—call it the ‘art’ of lawyering, the ‘prudence’ of judgment or simply the necessity of being a caring human being who uses professional work to make the world a better, not worse, place when she leaves it than when she found it.

work should be that goes beyond litigation.”¹⁶⁰ Proponents of this viewpoint assert that legal education would be more effective if students were exposed to the more “human” facets of being a lawyer.¹⁶¹ These “human aspects of lawyering” include empathy, altruism, service, and understanding the emotions at play in the law.¹⁶²

According to Professor Carrie Menkel-Meadow, a chief advocate of this view,

What is most missing for me . . . in legal education is any systematic teaching and learning about what has been called “the human arts of lawyering.” To the extent that most lawyers spend most of their time with people there is insufficient attention given to the arts (and science) of interacting with others. Kronman points out that the ability to be “sympathetic” to the client is an essential part of lawyering. Unlike others who write about lawyering and the legal profession, he believes it can be, unlike intuition, “discursively explicated.” He suggests that the good lawyer must develop an “imagination” for considering the world view and values and choices of the person whom one is trying to help (the client).¹⁶³

Further, critics point to the lack of training in “professional identity” that occurs when too much focus is put on the analytical aspects of legal education. Such professional identity “draws to the foreground the purposes of the profession and the formation of the identity of lawyers guided by those purposes.”¹⁶⁴ According to the authors of the Carnegie Foundation report, “if legal education had as its focus forming legal professionals who are both competent and responsible to clients and the public, learning legal analysis and practical skills would be more fully significant to both the students and faculty.”¹⁶⁵ The formation of such identity is critical:

A surgeon wielding a scalpel and a lawyer equipped with potent arguments are positive figures, not simply through what they can do but because of who they have *become*. It is because of their sense of who they are and how they understand themselves in the world that these professionals’ skills become positive assets for everyone rather than threats to well-being. . . . The moral development of professionals requires a holistic approach to the educational experience that can grasp its formative effects as a whole.¹⁶⁶

Perhaps the most stinging critique of modern legal education is that it teaches students to disregard, if not ignore, the client whom the lawyer is called to serve. The authors of the Carnegie Foundation re-

160. Menkel-Meadow, *supra* note 91, at 595.

161. *See id.* at 595–96; *see also* Wilcox, *supra* note 12, at 235 (focusing on the need for law students to apply the skills they have learned in a real-world setting, and the impact that lawyer stories can have on law students by illuminating the “human side of law practice”).

162. Menkel-Meadow, *supra* note 91, at 595.

163. *Id.* at 619 (citing ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 66 (1993)).

164. SULLIVAN ET AL., *supra* note 154, at 14.

165. *Id.*

166. *Id.* at 31 (emphasis added).

port noted that the most significant missing element in modern legal education is experience with clients.¹⁶⁷ Noting that the focus of legal education is on cases rather than clients, the Carnegie authors rebuked the placement of clients as seeming “afterthoughts” in legal education by noting that the role of clients in the legal classroom is deemphasized, while “the typical form in which the case books present cases may even suggest something misleading about the roles lawyers play, more often casting them as distanced planners or observers than as interacting participants in legal actions.”¹⁶⁸ Thus, through the heavy emphasis on legal rules, students are given “the illusion that every client problem can be addressed through comprehensive and extensive knowledge of the relevant law and procedure, which is learned through lecture and reading.”¹⁶⁹

Because of their text-based rather than client-based orientation, the majority of law school class discussions focus on legal analysis—the contours of the legal rules and their application to various hypothetical situations. The focus on appellate decisions, which presents excellent opportunities to discuss legal rules, is largely inconsistent with a focus on the people involved.¹⁷⁰ The opinions themselves draw students away from the clients: facts are usually edited down to their “bare essentials” (only those key facts necessary to apply the legal rules are retained), parties are often unnamed and simply referred to by their procedural titles (plaintiff, defendant, appellant, appellee), and so forth.¹⁷¹ Thus it is to be expected that the classroom discussions rarely turn to the actual people involved in the cases—the clients whose lives and livelihoods are deeply affected by the legal rules.¹⁷² This exclusion is so ubiquitous that “students are not even troubled by it. While a class without rules or policies, courts or lawyers, would make most students nervous, maybe even angry, the same students would not even notice a class without clients.”¹⁷³

This emphasis away from clients in the majority of their education leads many students to believe that their professional practice and its attendant analysis will focus on research (which is not completely untrue), but also that such analysis and learning “will occur apart from their clients and their experiences in legal settings. Therefore, the

167. *Id.* at 56–57.

168. *Id.*

169. V. Pualani Enos & Lois H. Kanter, *Who's Listening? Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9 *CLINICAL L. REV.* 83, 86–87 (2002).

170. See Jane Harris Aiken, *Clients as Teachers*, 16 *WASH. U. J.L. & POL'Y* 81, 84 (2004).

171. See *id.*

172. See Ann Shalleck, *Constructions of the Client within Legal Education*, 45 *STAN. L. REV.* 1731, 1732 (1993).

173. *Id.*

idea of continuous learning through many cycles of experience, reflection, analysis and implementation centered on each client's input, reaction, and experience is unsettling for students and difficult for them to accept."¹⁷⁴ Ultimately, many students leave their legal education with the mistaken belief that "an in-depth relationship with the client is unnecessary."¹⁷⁵ In contrast to their understanding of how to deal with court procedure, how to argue before the court (especially the appellate court), and even how to negotiate with opposing counsel, students lack an understanding of how to relate to clients—often seeing the relationship only in the abstract.¹⁷⁶ Not only do many students fail to see the importance of learning to relate to their clients, they also fail to understand the role of the client in "building and executing a litigation strategy that will constitute success in the client's eyes" or the importance of the client's opinions and goals in effectuating a successful business transaction.¹⁷⁷ And because their legal education reinforces these ideas, students often resist or resent spending the time and energy necessary to develop effective client relations later in their practice.¹⁷⁸

Unfortunately, some students believe that their legal education discourages them from developing compassion and empathy and encourages them to be "cold" and "uncaring":¹⁷⁹

[Student 1]: I feel that [compassion] is something that is eradicated in law school. This notion that we can present things as though, like the law, it's a self-contained unit, it's a sphere that we can look down upon as though we were astronauts that can look down on the earth. The whole idea that these things are neutral and that a neutral outcome results just eliminates any notion of compassion because professors sort of play on that, "Oh, you feel sorry for these people. Oh, well that's too bad. Oh, well the law says, X." We are really taught that compassion is a bad thing.

...

[Student 2] The one thing bad about the way I argue now is that I think it's a little bit less passionately. I've been taught [here] that emotion in an argument is a minus and in my culture emotion in an argument is a plus. And here whenever you present an emotional side of an argument—which I think is just as valid as many other arguments—you know, about the abortion issue. You know, how a woman feels about having to have a baby—and I mean why isn't that any more legitimate than endless arguments about the constitutional right to privacy? I don't think one really should take precedence over the other. And I think it's instilled in you that if you make an emotional argument then it's wrong.¹⁸⁰

174. Enos & Kanter, *supra* note 169, at 86–87.

175. *Id.* at 87.

176. *Id.* at 86.

177. *Id.*

178. *Id.*

179. See LANI GUINIER ET AL., BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE 52–53 (1997).

180. *Id.*

In light of these concerns, it is critical that law professors develop methods for teaching law students about client needs and expectations along with client relations skills, primarily empathy and compassion. As the ABA report on Public Perception of Lawyers aptly noted, lawyers “must be taught the importance of lawyer-client relationships in law school”¹⁸¹

B. The Current Place of Clients, Empathy, and Compassion in the Law School Curriculum

The traditional law school class, which is heavily dominated by Socratic dialogue, arguably is not the most natural place to teach about client needs, empathy, and compassion. Such things are not easily taught nor learned through lecture or through sequential questioning with hypotheticals. At best, such methods could simply teach students the theoretical side of client relations, empathy, and compassion. Students would come away with such things as a textbook definition of empathy and compassion, a list of “common concerns” that clients bring with them, and perhaps some students would be convinced that such things as empathy and compassion may be important in the law.¹⁸² But with a bit of innovation, even the most “traditional” course could include at least a taste of what students will encounter when they interact with clients and could touch on elements of empathy and compassion as they interact with the subject matter of the course. Such teaching happens naturally in law school clinics where students come face to face with real clients. Discussions of these topics also occur regularly in simulation courses such as Interviewing and Counseling, Mediation, and Negotiations.¹⁸³ But must these important topics be relegated to the “skills” curriculum?

In order to determine whether our students are receiving instruction in these important areas, we decided to ask them what they thought. As part of a survey given before graduation, third-year law students were asked to what extent they felt their legal education prepared them to understand, appreciate, and experience clients’ needs and expectations, relating with clients, empathy and compassion, and the public’s perception of lawyers and the legal profession. The results of that survey are represented in Table 1.¹⁸⁴

181. Robert A. Clifford, *Foreword to Public Perceptions of Lawyers*, *supra* note 16, at 2.

182. See Rosenberg, *supra* note 123, at 636–37.

183. For discussions of the role of empathy in these courses see *e.g.*, Barkai & Fine, *supra* note 9; Laurel E. Fletcher & Harvey M. Weinstein, *When Students Lose Perspective: Clinical Supervision and the Management of Empathy*, 9 *CLINICAL L. REV.* 135 (2002); Bruce J. Winick, *Using Therapeutic Jurisprudence in Teaching Lawyering Skills: Meeting the Challenge of the New ABA Standards*, 17 *ST. THOMAS L. REV.* 429 (2005).

184. Informal survey conducted April 2007. All survey instruments and results are on file with the author [hereinafter Informal Survey].

Table 1

To what extent do you feel that your legal education has helped you to understand, appreciate, and experience the importance of the following in law practice?	Not at all	Somewhat	Moderately	Significantly
Clients needs and expectations	9	19	10	7
Interpersonal dynamics and relating with clients	10	15	14	6
The importance of compassion and empathy	10	21	9	5
The public's perception of lawyers and the law	15	13	14	3

Of the forty-five students who answered the question, the majority of the student respondents felt that they had little or no meaningful education about clients, their needs and expectations, how to relate with clients and others, the importance of compassion and empathy, and the public's perception of lawyers and the law. If the students answered "somewhat," "moderately," or "significantly" to any of the specific areas, they were asked to report in what setting they believe they gained this understanding, appreciation, or experience. Their responses, while not necessarily surprising, are instructive.

Students reported that they learned the most about clients' needs, the importance of interpersonal relations, and about empathy and compassion specifically through their work and externship experiences.¹⁸⁵ Some students reported that they learned about clients' needs by observing the attorneys with whom they worked, primarily in externships. Sometimes the examples were not positive, but they were still instructive: "I learned [about client needs and expectations] from a summer job. The attorney seemed to not listen to his clients, a lot of which were low income minorities. They had better knowledge of the facts than the attorney, but he rarely listened. They were often dissatisfied. As a result, the office got a lot of replacement of counsel forms."¹⁸⁶ With regard to her own experiences in an externship, one student commented, "I volunteered at a community lawyering center . . . I realized that the knowledge that I gained in class was not easily

185. It should be noted that there are no clinics at our law school, so none of the students would have participated in such programs; however 99% of our students do participate in externships during the course of their legal education.

186. Informal Survey, *supra* note 184.

translated to the practice of law. It helped me learn how to take information from class and translate it into actual practice.”¹⁸⁷

The formal courses that students felt helped them most with regard to understanding clients and learning interpersonal relations, empathy, and compassion were classes like Legal Interviewing & Counseling, Elder Law, Professional Responsibility, Child Advocacy, Mediation, and Law Practice Management.¹⁸⁸ Unfortunately, of those courses mentioned by the students, only Professional Responsibility is a required course. Interestingly, the majority of the courses respondents listed were taught by adjunct professors, perhaps signaling that members of the practicing bar who are actually working with clients may instinctively bring them into the classroom and may be more likely to focus on these points than are legal academics.

Finally, students noted informal sources of education including their professors, friends, and total strangers.¹⁸⁹ One respondent pointed directly to “the example of professors who took time to show compassion and empathy to me personally.”¹⁹⁰ Finally, several students noted that simply being in law school had exposed them to comments and discussions with those around them regarding lawyers and how others feel about them.

The critiques of legal education from the Carnegie Foundation and others and the students’ assessment of their own education, begs the question whether such things as understanding clients, sharing empathy, and offering compassion can be taught or if they are innate characteristics that at best can be facilitated.

C. Can Client Needs, Empathy, and Compassion be Taught?

Before analyzing when and how understanding clients, empathy, and compassion might be taught, law professors will likely ask whether these skills and attributes are actually “teachable.” In other words, is it possible to teach students to be more compassionate and empathetic, or is raising awareness the most that can be hoped for?

Many professional educators question whether skills like empathy and compassion can actually be taught, and critics argue that understanding clients and others and interacting with empathy and compassion elude teaching.¹⁹¹ Others maintain that empathy and

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. See, e.g. Jeffrey H. Burack et al., *Teaching Compassion and Respect: Attending Physicians’ Responses to Problematic Behaviors*, 14 J. GEN. INTERNAL MED. 49, 49 (1999) (“Commentators agree that desirable professional characteristics include positive patient-directed attitudes such as compassion and respect. But even medical educators deeply committed to fostering these attitudes question

compassion can be facilitated but cannot be “directly taught as [] skill[s].”¹⁹² A large body of literature focusing mainly on the teaching of empathy and compassion in professional medical schools, however, maintains that empathy and compassion can and should be taught—and that teaching should begin early in the educational process.¹⁹³

Exposing students to the feelings of those they serve and to ways to increase their empathy and compassion early in their education is natural because many students come to the start of their professional education already possessing “much empathy and genuine love—a real desire to help other people.”¹⁹⁴ Unfortunately, throughout the course of their professional education, many students “learn to mask their feelings, or worse, to deny them. They learn detachment and equanimity.”¹⁹⁵ They come to “focus not on patients [or clients], but on diseases [and causes of action].”¹⁹⁶ Over the course of time, these budding professionals learn to suppress the empathy and compassion that once was natural and that may have even been their reason for choosing their profession in the first place.¹⁹⁷

Like legal education,¹⁹⁸ medical education has struggled with the questions of if, when, and how empathy and compassion should be

whether they can be taught systematically.”); Carol M. Davis, *What is Empathy, and Can Empathy Be Taught?* 70 *PHYSICAL THERAPY* 707 (1990).

192. Davis, *supra* note 191, at 711. Even if empathy and compassion cannot be taught directly (although I believe they can), just having students recognize that clients, colleagues, judges, and juries likely will be judging them on their ability to relate with others may be enough to have them examine their behavior—even if just to “fake it” better than many do now.

193. Linda A. Deloney & C. James Graham, *Wit: Using Drama to Teach First-Year Medical Students About Empathy and Compassion*, 15 *TEACHING & LEARNING IN MED.* 247, 247 (2003).

194. Howard Spiro, *What is Empathy and Can it be Taught?* 116 *ANNALS OF INTERNAL MED.* 843, 843 (1992).

195. *Id.*

196. *Id.*; Branch, *supra* note 3, at 128, with Branch indicating that:

I believe that students arrive at medical school already receptive (in fact, many of their ethical difficulties arise from their intense empathy for patients). The students then learn to translate that empathy into action by taking responsibility for their patients. Unfortunately, we find that medical education sometimes beats students’ ability or willingness to care right out of them.

197. Branch, *supra* note 3, at 128, with Branch noting that:

Many have observed, however, that doctors lose this intense receptivity to patients later in their training. This suggests that medical education fails to maintain and may even suppress students’ orientation toward caring. Young doctors suppress feelings and put aside values (temporarily?) in order to get on with their training and work. This suppression of empathy not only prevents moral development but may even erode existing moral values. In addition to their own suppression, young doctors are assimilated into a ward culture that does not value empathy.

198. For discussions of teaching empathy in law school, particularly in legal clinics, see Genty, *supra* note 92, at 275 (arguing that “empathy skills can be taught only

taught. Criticisms of traditional medical education often center on the strict scientific focus of the curriculum:

Too often, our medical curriculum focuses on disease processes and the learning of skills (of diagnosis, assessment and management), and fails to focus on the patients themselves. Through no fault of the medical students, the patient assumes the status of his or her diseased organ system ("the clear-cell carcinoma in bed 412A") rather than a human being with an illness.¹⁹⁹

In a stinging commentary on the arguable hypocrisy of medical education, Johanna Shapiro and her colleagues observed: "Indeed, we were guilty of continually exhorting students to maintain compassion and composure while providing little actual training and practice in how to do so."²⁰⁰

Like legal education, medical education often focuses on "cases" rather than on people, much of the writing students do is "objective and impersonal," and "often the individual patient [or client] is seen as only a model, a body to be treated, or a good 'teaching case' that illustrates a point."²⁰¹ Because of this historic focus away from the patient, many medical educators have examined the best way to teach students patient skills, specifically empathy and compassion. A survey of medical educators found agreement that these skills and attributes should be taught, but several believed that they should be part of the "informal curriculum," taught in an "intuitive" if not "haphazard" fashion, because their teaching was unduly "difficult to structure or formalize."²⁰² Others, however, strongly believe that empathy and compassion can be taught through "an explicit, well-developed teaching schema."²⁰³

Among the most effective ways to teach empathy and compassion and to help students to strengthen their empathic and compassionate

with actual clients and only in an in-house model in which we are working directly with the students and clients"); Peter Margulies, *Re-framing Empathy in Clinical Legal Education*, 5 CLINICAL L. REV. 605 (1999) (arguing that clinics can help bridge the gap between empathy at the interpersonal level and empathy at the political level though the engagement of law students with the issues in their clients' lives); Rosenberg, *supra* note 123, at 637 (discussing the importance of teaching empathy and comparing teaching it to other behavioral skills that must be taught through experience); Winick, *supra* note 183, at 429-30 (discussing assignments and examples in teaching client relation skills including empathy).

199. Michael Wilkes et al., *Towards More Empathic Medical Students: A Medical Student Hospitalization Experience*, 36 MED. EDUC. 528, 528 (2002).

200. Johanna Shapiro et al., *Teaching the Art of Doctoring: An Innovative Medical Student Elective*, 28 MED. TEACHER 30, 30 (2006).

201. Spiro, *supra* note 194, at 844.

202. Johanna Shapiro, *How Do Physicians Teach Empathy in the Primary Care Setting?* 77 ACAD. MED. 323, 325 (2002).

203. *Id.*

natures are through the use of humanities,²⁰⁴ patient/client stories,²⁰⁵ personal reflections,²⁰⁶ and experiences that serve to “increase student interest and involvement and help them connect abstract ideas with concrete knowledge.”²⁰⁷ The humanities (literature and theater) and such real-life stories are effective in teaching empathy and compassion because they “engage the emotions as well as the intellect, thereby achieving deep understanding of and insight into the experience of another.”²⁰⁸

Students already have developed some level of empathy and compassion by virtue of their life experiences and relationships with other people, but each can enhance the ability to understand and care about others. In order to do so, students need to understand what empathy and compassion are and see examples of empathic and compassionate behavior, particularly in the lawyering context.²⁰⁹ But simply understanding and observing is not sufficient to cause real development; students must also practice the behavior they wish to develop and receive feedback from their teacher.²¹⁰

Even if empathy and compassion themselves cannot be directly taught, teachers can help students develop their empathic and compassionate abilities by providing opportunities for their students to exercise their pre-existing abilities. Experiences that allow students to practice “self-awareness, listening skills, awareness of the commonalities of all human beings, and respect and tolerance for the differences” can facilitate student empathy.²¹¹

Empathy and compassion can also be enhanced as faculty act as role models and allow opportunities for students to reflect on what they observe.²¹² Giving students “professional-socialization experiences and . . . modeling compassion and allowing empathy can facili-

204. Johanna Shapiro et al., *Teaching Empathy to First Year Medical Students: Evaluation of an Elective Literature and Medicine Course*, 17 *EDUC. FOR HEALTH* 73, 74 (2004).

205. See Deloney & Graham, *supra* note 193, at 247; Spiro, *supra* note 194, at 845.

206. Deloney & Graham, *supra* note 193, at 247.

207. *Id.* at 249.

208. Shapiro, *supra* note 204.

209. See Rosenberg, *supra* note 123, at 636–37.

210. *Id.* Professor Rosenberg adds:

Obviously, this is not the kind of activity that takes place in most law classes. The only behaviors that get modeled for the students in the typical law class are lecturing, question asking, and note taking; no behaviors (only ideas and legal concepts) get explained; the only behaviors the students get to practice are note taking and answering and asking questions about the law; and the only feedback students get is an occasional remark from the teacher about the value (or lack thereof) of his or her contribution to the classroom discussion.

Id. at 637.

211. Davis, *supra* note 191, at 711.

212. *Id.*; see also Shapiro, *supra* note 202, at 325–26, with Shapiro postulating that:

tate empathy to occur.”²¹³ The opposite is also true, giving students opportunities to “identify any negative, fragmenting behaviors such as prejudice, self-preoccupation, excessive nervous talking, poor listening and poor assertiveness skills, and low self-esteem will assist students in taking responsibility to change these behaviors that block empathy”²¹⁴

Despite the feeling that some medical educators have that empathy and compassion cannot be taught, or at best can only be taught by informal assimilation, the overriding opinion is that not only can these skills be taught, but they are essential for a complete medical education. The Association of American Medical Colleges’s, *Learning Objectives for Medical Student Education: Guidelines for Medical Schools*, directly addresses empathy and compassion and requires that graduates demonstrate competency in these areas. The guidelines read:

Physicians must be compassionate and empathetic in caring for patients, and must be trustworthy and truthful in all of their professional dealings. They must bring to the study and practice of medicine those character traits, attitudes, and values that underpin ethical and beneficent medical care. . . . At all times they must act with integrity, honesty, respect for patients’ privacy, and respect for the dignity of patients as persons. In all of their interactions with patients they must seek to understand the meaning of the patients’ stories in the context of the patients’ beliefs, and family and cultural values. They must avoid being judgmental when the patients’ beliefs and values conflict with their own. . . .

For its part the medical school must ensure that before graduation a student will have demonstrated, to the satisfaction of the faculty, the following: . . .

Compassionate treatment of patients, and respect for their privacy and dignity

Honesty and integrity in all interactions with patients’ families, colleagues, and others with whom physicians must interact in their professional lives

An understanding of, and respect for, the roles of other health care professionals, and of the need to collaborate with others in caring for individual patients and in promoting the health of defined populations

A commitment to advocate at all times the interests of one’s patients over one’s own interests²¹⁵

Role modeling: the core of teaching empathy. Almost all faculty endorsed role modeling as the most effective way of teaching empathy, although attitudinal teachers stressed the importance of whole-person, global modeling, while behavioral or skill-based teachers paid more attention to the more reductive modeling of specific language patterns and behaviors. For example, attitudinal respondents talked about showing learners how to “step into the patient’s world,” while skill-based respondents focused on “eye contact” and “reflective listening skills.”

213. Davis, *supra* note 191, at 711.

214. *Id.*

215. Ass’n of American Medical Colleges, *Learning Objectives for Medical Student Education: Guidelines for Medical Schools* (Medical School Objectives Project), Jan. 1998, at 1, 4, available at <http://www.aamc.org/meded/msop/msop1.pdf> (last visited May 14, 2007).

Thus, medical educators have concluded that they can and must teach their students to understand patients and their needs and to act with empathy and compassion. The following section illustrates some of the techniques medical school professors have used to help their students develop these critical skills and attributes. Law professors can learn from our medical school colleagues and borrow from their experiences as we devise ways to help law students improve these aspects of their professionalism.

V. COMPASSION AND EMPATHY IN MEDICAL EDUCATION: TECHNIQUES FOR TEACHING EFFECTIVE “BEDSIDE MANNER”

Since the 1990s many medical schools have incorporated instruction in empathy and compassion into their curricula. During that time more than a dozen research studies have examined the success of teaching empathy to medical students. Many of these studies focused on empathy as a communication skill and included instruction through “lectures, small group workshops, audiotapes, [and] videotapes.”²¹⁶ All of the studies found that the empathy of the students involved increased during the course of the instruction, and those studies that used control groups “showed significantly higher scores favoring the intervention group.”²¹⁷

Medical schools have chosen various ways to help their students learn to value their patients’ needs and to develop empathy and compassion. For example, at the University of Texas Medical Branch, the Gold-Headed Cane Award is given to graduates who best represent the highest level of “interest in the welfare of patients.”²¹⁸ The Pennsylvania State University College of Medicine offers an elective course focusing on patient spirituality that requires students to keep a daily spiritual log, complete a personal spiritual profile, and a compile a case report of a patient’s use of religion to face a medical problem.²¹⁹ And at Harvard Medical School, first-year students develop relationships with patients with life-threatening illnesses and their families.²²⁰ Although these medical schools have chosen different methods of teaching empathy and compassion, the theory underlying them all is “that by immersing themselves in emotional accounts of illness, students will expand their capacity to adopt the patient’s perspective during clinical work.”²²¹

216. Stepien & Baernstein, *supra* note 69, at 527.

217. *Id.*

218. Langone, *supra* note 70, at F7.

219. *Id.*

220. *Id.*

221. Stepien & Baernstein, *supra* note 69, at 528.

The means of teaching client perspective, empathy, and compassion are as varied as the professors who employ them and the students who learn from them. The remainder of this section describes some of these teaching innovations.²²²

A. Symbolic Entry into the Profession: “White Coat Ceremonies”

One largely symbolic attempt to teach compassion to medical students is the White Coat Ceremony. The modern incarnation of these ceremonies originated in 1998 when entering students at 93 U.S. medical schools were presented with white coats to emphasize the human side of medicine and as a symbol of the importance of compassion and humility in medical practice.²²³ Students and faculty generally see these ceremonies as “uplifting and meaningful.”²²⁴ Critics, however, question whether such ceremonies are “the best vehicle through which to encourage compassionate and humble caregiving,”²²⁵ and instead suggest that medical students be encouraged to participate in community service such as working at free clinics, domestic violence shelters, drug treatment programs, and other such programs where they can aid underserved populations.²²⁶

222. There are a few medical schools with the foresight and resources to develop full courses aimed at helping students develop these important skills. For an example of such a course, see Shapiro, *supra* note 194, at 31. The objectives of the Art of Doctoring course include:

[students will u]nderstand the usefulness of reflection and imaginative perspective in developing insight into how best to convey compassion, caring and empathy to patients, patients’ family members, peers, self and others

[students will b]e able to identify and assimilate compassionate, caring, empathic and respectful attitudes and behaviors modeled by positive physician and peer role-models

. . .

[students will k]now how to use reflective writing, reading and other humanities-based techniques to develop and maintain compassion and empathy. . . .

Id.

223. William T. Branch, Jr., *Deconstructing the White Coat*, 129 ANNALS OF INTERNAL MEDICINE 740 (1998). *But see* Delese Wear, *On White Coats and Professional Development: The Formal and the Hidden Curricula*, 129 ANNALS OF INTERNAL MEDICINE 734, 736–37 (1998) (arguing the white coat ceremony may actually harm medical students by hindering the development of their self-reflective skills, and encouraging medical school faculty to create “new rituals” involving “community-based sites” where students can observe and participate in patient care that demonstrates the virtues in medicine).

224. Branch, *supra* note 223, at 740.

225. Wear, *supra* note 223, at 735.

226. *Id.* at 734.

B. Using the Humanities to Teach Empathy and Compassion

Other means of teaching empathy and compassion focus on the use of the humanities to expose students to patients' feelings and perspectives. One such method medical educators have effectively used to teach empathy and compassion is drama—theatrical performance followed by discussion. Advocates of this teaching method argue that “drama provides opportunities for self-exploration and personal reflection. Participation . . . can foster empathy by putting students in touch with their feelings By involving students in active participation through identification with imagined roles and situations, drama becomes an effective tool for attitude change.”²²⁷ Viewing a dramatic performance allows students to experience their own emotions in a safe learning environment, and because of that safe environment they are “more likely to allow themselves to experience the full range of emotions.”²²⁸ Many medical schools use the play *Wit* to help students learn about empathy and compassion.²²⁹ The play is the story of a woman dying of cancer and her experiences with the medical profession, highlighting the “importance of communication and compassion in the doctor-patient relationship.”²³⁰

After they watch the performance together, students participate in “talk-back discussions” with cast members and faculty. During these sessions students reflect on their future roles as doctors and also share their emotions.²³¹ The discussions give faculty the perfect opportunity to talk directly about empathy and compassion—both based on what was shown (and not shown) by the characters in the play and based on what the students themselves feel at the time and what they would want to do if they were in the characters' positions. Using these real feelings (albeit based on a theatrical rather than “real” experience), makes the discussion concrete and meaningful for students.

Similarly, some have used literature to help their pre-clinical students have experiences with empathy and increase their capacity for

227. Deloney & Graham, *supra* note 193, at 250.

228. *Id.*

229. Deloney & Graham, describe *Wit* in the following manner:

Wit is the story of Vivian Bearing, a 50-year-old scholar of John Donne's 17th century Holy Sonnets, who [] has been diagnosed with Stage 4 ovarian cancer and is undergoing experimental treatment at a major teaching hospital. Throughout the play, Dr. Bearing presents a primer on medical professionalism, including lessons about a patient's illness experience, doctor-patient communication, palliative care, spiritual growth, and medical ethics. While dying, she reassesses her life and work with passion and humor and, in the process, demonstrates the importance of communication and compassion in the doctor-patient relationship.

Id. at 247–48.

230. *Id.* at 248.

231. *Id.* at 250.

compassion and appreciation of their patients' conditions. Students read poetry and short stories dealing with such topics as "the doctor-patient relationship, physical examination, listening to patients, pain, sexuality, cross-cultural issues, lifestyle modification/noncompliance and geriatrics."²³² To assist students in developing empathy, faculty can emphasize "understanding of, and identifying with, different points of view in the texts, including those of physicians, patients, and family members, as well as their own."²³³

Students who read literature as part of their medical education recognize that it helps them to better understand their patients and that helps to make them better doctors. The following are representative comments from students expressing their feelings about the exercise:

The poems and stuff helped me see how disease affects patients' daily lives. After this course, I realize patients can be afraid, belligerent, and vulnerable. I've learned about how to change my perspective from myself to looking at a situation from the patient's point of view.

By reading, I've learned to listen for what the patient needs and hopes for.²³⁴

In addition to the student comments, the "study found significant improvements in medical student empathy . . . after participation in a literature-based intervention."²³⁵

C. Reflection Techniques

In addition to those employing the humanities, several means of teaching empathy and compassion employ reflection techniques. Technically speaking, "[r]eflection is a 'process of internally examining and exploring an issue of concern, triggered by an experience, which creates and clarifies meaning in terms of self, and which results in a changed conceptual perspective.'"²³⁶ Reflection benefits the persons trying to increase their empathy and compassion because reflecting on their own lives and the lives of others allows the persons to "inspect the memories and associations triggered" by their own experience, and in so doing "they become all the more available and use to their patients [and clients.]"²³⁷ The simple awareness of one's "own feelings and experiences deepens [her] capacity to respond empathically to patients"²³⁸

232. Shapiro, *supra* note 204, at 76.

233. *Id.*

234. *Id.* at 80.

235. *Id.* at 81.

236. Sayantani DasGupta & Rita Charon, *Personal Illness Narratives: Using Reflective Writing to Teach Empathy*, 79 *ACAD. MED.* 351, 351-52 (2004) (quoting Sue Atkins & Kathy Murphy, *Reflection: A Review of the Literature*, *J. ADVANCED NURSING* 1188, 1189 (1993)).

237. *Id.*

238. *Id.*

One means of using reflection to teach empathy is small group discussion. Letting small groups of students meet together with a faculty member to reflect upon what they are learning and the experiences they are having can be an effective means of teaching about client needs, empathy, and compassion. In these small groups, students have the “opportunit[y] to reflect on the meaning and purpose of their work . . . [and to] share feelings and support each other.”²³⁹ Providing these regularly scheduled opportunities can help students balance the intensity of their substantive learning with the more personal “caring orientation” of their work.²⁴⁰

An in-class exercise that calls on students to reflect on their personalities and their ability to relate to others involves asking the students to list “the qualities that make a good physician”²⁴¹ or to ask students to list the qualities they think that a patient values in a physician. Students are then asked to think about themselves and give themselves a score “either better, worse or the same compared to when they entered medical school.”²⁴² Through this exercise students are able to reflect on how their education is affecting them and they are able to “identify within themselves the problems of emerging cynicism and disillusionment.”²⁴³ Students can also be encouraged to target particular areas they want to work on in their own personalities.

In addition to in-class discussions, several different types of writing assignments have been used successfully to help students reflect upon their capacity for empathy and compassion and to better understand their patients’ views and needs. Several medical educators have employed writing assignments to cause students to reflect on their experiences and the experiences of others in the hope that it might enhance their empathy and compassion. There is evidence to suggest that reflective writing can increase students’ “self-perceived empathy and professionalism.”²⁴⁴ Such assignments typically fall into three categories: critical incident reports, personal narratives, and point-of-view writing.

239. Branch, *supra* note 3, at 128–29.

240. *Id.*

241. Shapiro, *supra* note 200, at 31.

242. *Id.*

243. *Id.*

244. Johanna Shapiro et al., *Point-of-View Writing: A Method for Increasing Medical Students’ Empathy, Identification, and Expression of Emotion, and Insight*, 19 *EDUC. FOR HEALTH* 96, 97 (2006) (citing David Hatem & Emily Ferrara, *Becoming a Doctor: Fostering Humane Caregivers Through Creative Writing*, 45 *PATIENT EDUC. & COUSLING* 13 (2001)); Schuyler W. Henderson, *Medical Student Elegies: The Poetics of Caring*, 23 *J. OF MED. HUMAN.* 119 (2002); Lloyd Rucker & Johanna Shapiro, *Becoming a Physician: Students’ Creative Projects in a Third-Year IM Clerkship*, 78 *ACAD. MED.* 391 (2003)).

Critical incident reports, which are also referred to as clinical journals, require the student to write about clinical scenarios she has participated in as a doctor-in-training.²⁴⁵ While such assignments don't require the student to stand in the shoes on the patient, they do require her to assess her own interactions with patients and to reflect upon her own effectiveness. In so doing, the student will likely identify both incidents where she acted with empathy and compassion and incidents where, in looking back on them, she wished she had been more caring or tried harder to understand the patient's needs and desires.

Personal narratives require students to reflect upon and write about either their own personal experience or that of a close family member or friend. In a medical context, these personal narratives often focus on the students' own experiences with illness and require them to reflect on how that illness affected their own lives and the lives of those close to them.

Some programs, like an elective seminar on narrative medicine at the Columbia University College of Physicians and Surgeons, use personal illness narratives as a vehicle for examining multiple aspects of empathy and patient understanding.²⁴⁶ During the first week of the course the students begin writing their personal illness narratives in class.²⁴⁷ The next week they revise their narrative to tell the story from the "point of view of the ill person's body."²⁴⁸ During the third week the students revise the narrative again, this time changing the genre from a narrative essay to a different form like poetry or dramatic dialogue.²⁴⁹ The following week they expand the narrative to include the "familial, cultural, or ethnic context."²⁵⁰ Finally, the students revise the narrative to describe how the ill person was "perceived or represented by others" including the physician.²⁵¹

Personal narratives complement critical incident reports because they allow students to adopt a different point of view—they write from the viewpoint of the patient rather than that of the physician. The impact of these reflections can be profound:

Such experiences may critically inform the nature of students' professional caregiving. These illness experiences may be central motivations behind a student's decision to become a doctor; they may limit a student's openness to hearing particular kinds of clinical stories; or they may render some patients' stories difficult to hear because they get "confuse[d] with their own." In addi-

245. DasGupta & Charon, *supra* note 236, at 352; *see also* Shapiro, *supra* note 200, at 31 (describing reflective writing assignments in an Art of Doctoring course).

246. DasGupta & Charon, *supra* note 236, at 353.

247. *Id.*

248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.*

tion, the process of writing and sharing personal stories may clarify hitherto unexplored challenges or biases—vulnerabilities each physician carries with him or her throughout professional life.²⁵²

Students who have experiences writing personal narratives during the course of their medical education have reported that the experience “positively influenced their understanding of or ability to care for patients.”²⁵³ Some noted that they felt “an increased sense of regard and empathy for patients.”²⁵⁴ Students also urged that other medical students be given the opportunity to write personal narratives.²⁵⁵ Two specific student comments to the Columbia assignments reveal both the specific and the widespread importance of such personal reflections. Speaking of the assignment specifically, one student commented, “[The assignment] makes you explore your own perspectives and biases as well as learn from other people’s perspectives.”²⁵⁶ Of the role of personal narratives and other reflective exercises, another noted, “Medical school desensitizes you to the point of numbness and we need this mode of expression to soften the edges created by our curriculum.”²⁵⁷

Similar to the personal illness narratives are assignments that require students to reflect on their own interactions with others. For example, in the Art of Doctoring class, students are assigned to write daily about “one situation in which they behaved consistent with their values and sense of professionalism, thereby making a positive difference in someone else’s life; and one situation that, on reflection, they think they could have handled differently and more compassionately.”²⁵⁸ Students then bring their reflections to class and discuss them together. Actually putting their thoughts into writing helps the students see more clearly how they were, or were not coming to embody the principles of empathy and compassion they had discussed in class.²⁵⁹ An alternative to daily reflections is to have each student identify a particular observable and measurable behavior related to empathy, compassion, or other human relations skills, and ask them to track their behavior over a set period of time and then set goals to improve their behavior.²⁶⁰ Students can then report on their project in a reflective essay assessing their experience and sharing observations about the importance of the behavior in their life, the ease or difficulty in changing their behavior, and so forth.

252. *Id.* at 354.

253. *Id.* at 355.

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.*

258. Shapiro, *supra* note 200, at 32.

259. *Id.*

260. *Id.* at 33.

A third type of reflective writing assignment employs point-of-view writing. These assignments require students to write from the patient's "emotional and social perspective about his or her illness and its consequences."²⁶¹ These exercises require the student to "make an empathetic shift in perspective" and to reflect upon experiences from the perspective of another.²⁶² They help the student reduce the "emotional distance" between themselves and their patients and to appreciate and understand better the patient's cultural and moral view of the world.²⁶³ For example, some programs ask students to write letters to patients or to write autobiographical sketches of the cadavers used in their anatomy classes. Such assignments "rely upon the students' ability to step beyond the solely medical perspective."²⁶⁴

A clinical experiment that tracked the empathy and insight ratings of two groups of students, one who wrote assignments from the patient's point of view and the other who wrote their assignments to simply describe the clinical processes involved, found that those who wrote from the patient's point of view were "significantly more likely . . . [to] show empathy for the doctor, and receive[d] a higher overall empathy and insight rating."²⁶⁵ The students who only reported on the clinical processes were more likely to "blame the patient for his condition."²⁶⁶

Effective use of reflective writing in a class presents challenges for the professor and requires a setting of safety and trust.²⁶⁷ Professors should establish policies to ensure strict confidentiality outside of the class, and should foster an atmosphere of respect for others' experiences.²⁶⁸ Finally, professors should make sure that students feel supported and cared about. As is often the case, small class size typically makes this easier.²⁶⁹

D. Experiential Learning

In addition to reflection, empathy and compassion can be taught by offering students actual experiences that either help them experience the feelings of those for whom they will care or help them experience the need to give empathy and compassion to others. Students need to practice expressing compassion and exercising empathy to fully internalize the concepts; they cannot simply learn them by observation or

261. Shapiro, *supra* note 244, at 97 (citing Rita Charon, *Reading, Writing, and Doctoring: Literature and Medicine*, 319 AM. J. OF MED. SCI. 285 (2000)).

262. DasGupta & Charon, *supra* note 236, at 352.

263. *Id.*

264. *Id.*

265. Shapiro, *supra* note 244, at 100.

266. *Id.*

267. DasGupta & Charon, *supra* note 236, at 355.

268. *Id.*

269. *Id.*

by reading about them in books. "Just as students practice suturing to perfect a surgical skill or practice scales to learn how to play the piano, they should also . . . practice compassion and caring in order to improve the expression of these qualities towards patients and others."²⁷⁰ Students can first gain experience secondhand by observing and interacting with role models and then firsthand by participating in role play scenarios and actual experience.

Professors can help their students "borrow" the experience of others through the use of role-modeling, both with "live" role models and through the use of personal narratives written by such role models. Observing role models is a powerful learning experience for most students. In fact, some experts suggest that students learn more about professional behavior from watching others than from any other source.²⁷¹ Having positive professional role models speak to students in class about their practice, and particularly about how they relate with patients, develop and express empathy, show compassion, and even avoid "compassion fatigue," can be highly beneficial.²⁷² In addition to, or even instead of, having in-class guest speaker role models, students could be required to write about a positive professional role model, focusing on the characteristics and skills that enable that person to relate with patients and others in a positive manner.²⁷³ Finally, students can benefit from role models they never meet "in person" by reading about the experiences of other medical students and doctors that talk about how they gain, maintain, and express empathy and compassion.²⁷⁴

Allowing students to participate in role play exercises wherein they interact with "patients" can be a very effective means of teaching empathy and compassion outside of the actual clinical experience. These role play activities help students not only to experience what it is like to relate to a patient but also allow them the opportunity to examine their own skills at relating with that patient.

In one example role play, medical students examine a "patient" who is homeless and diabetic and suffering from a gangrenous leg that most likely must be amputated.²⁷⁵ The students are told that during the course of his earlier treatment the "patient" maintained that he did not want his leg amputated and expressed a preference to die from the infection because "everyone eventually dies."²⁷⁶ The "patient" was

270. Shapiro, *supra* note 200, at 31.

271. *Id.* at 33 (citing A. Keith W. Brownell & Luc Cote, *Senior Residents' Views on the Meaning of Professionalism and How They Learn About It*, 76 *ACAD. MED.* 734 (2001)).

272. *Id.*

273. *Id.* at 32.

274. *Id.* at 31.

275. Branch, *supra* note 3, at 129.

276. *Id.*

judged incompetent by a psychiatrist, but no guardian was appointed because the "patient" understood the implications of his refusal.²⁷⁷ Finally, the "patient" has demanded a wheelchair in order to leave the hospital.²⁷⁸ With this background the students are instructed to talk to the "patient" about his decision and its consequences.²⁷⁹ This exercise provides a good opportunity for students to reflect on their capacity for empathy and compassion. Most of the students who participated in this role play scenario simply explained to the "patient" why the amputation was medically necessary. As expected the "patient" adamantly refused and the meeting spiraled downward into an argument.²⁸⁰ Surprisingly, none of the students began their interaction with this "patient" by getting to know him or by expressing empathy to show that they understood the difficulty or pain of his situation.²⁸¹ Even when they had the opportunity to discuss the case with other students and a professor later on, many students failed to see that their lack of rapport or empathy may have negatively effected their ability to help the "patient" see the need for the medical procedure; instead they wanted to debate the academic "conflict between beneficence and the patient's autonomy . . . finding no solution for the conflict."²⁸² Such a role play presents an ideal opportunity for the professor to discuss the importance of rapport, compassion, and empathy in difficult situations. Once students have actually had the experience where they did not convey empathy and faced obstacles in patient relations, they will be open to instruction and will likely want to build on their capacity for empathy and compassion to avoid such "failures" in real practice.

Students can also be asked to role play from the patient's point of view, but even better than the role plays are assignments that actually place the student in the patient's shoes—if only for a short while. In one particularly noteworthy exercise, nine medical students (from a class of 144) were given the opportunity to actually experience what patients go through when admitted to the hospital.²⁸³ While their experiences certainly could not replicate the physical pain or the anxiety that "real" patients experience, the simple experience of being a "patient" in a hospital was enough to raise these students' sensitivity to what "real" patients actually go through.²⁸⁴

The lucky nine were randomly selected from all students who wanted to participate and who had no previous personal experience

277. *Id.*

278. *Id.*

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.*

283. Wilkes, *supra* note 199, at 529.

284. *Id.* at 532.

being hospitalized.²⁸⁵ Before they were admitted, the students were given false names and diagnoses and were coached on how to accurately portray the symptoms of their diagnosis.²⁸⁶ In preparation for admission, they were given an overview of what they could expect during their stay at the hospital, but the details of the care they would receive were not shared with them.²⁸⁷ Finally, the students were told that they had the right to “decline any procedure or treatment that was more aggressive than the placement and maintenance of an intravenous line and phlebotomy for basic laboratory studies.”²⁸⁸

The students were admitted three at a time on three consecutive Saturday mornings and were discharged twenty-four to thirty hours later.²⁸⁹ To make the experience as realistic as possible, the students’ actual status (as medical students rather than actual patients) was kept confidential—“only the Director of Hospital Admissions, the Director of Nursing, and the attending physician for each participating service knew the students’ actual non-patient status.”²⁹⁰ During their hospitalization, students were treated like “regular patients”: they had their medical histories taken and were examined by medical personnel who ordered whatever tests they felt appropriate under the circumstances; they wore standard hospital gowns, slept in regular hospital beds, ate only hospital food, and were “encouraged to comply with admitting orders such as ‘strict bed rest’ or ‘nothing by mouth.’”²⁹¹ Finally, even though they didn’t actually have to pay them, each student received a bill for the services provided during their hospital stay.²⁹²

After their discharge the students met with two faculty members to talk about their experiences and evaluate the exercise.²⁹³ Many of these student patients were surprised by the difficulty of the experience; some even felt “sick” after being in the hospital.²⁹⁴ They also expressed discomfort from not knowing what was going to happen to them and because of the slow rate with which things were accomplished.²⁹⁵

These student patients, all future doctors, were most complimentary of the nursing staff, “whom the students found to be caring, at-

285. *Id.* at 529.

286. *Id.* at 529–30.

287. *Id.* at 530.

288. *Id.*

289. *Id.* at 529.

290. *Id.*

291. *Id.* at 530.

292. *Id.*

293. *Id.*

294. *Id.*

295. *Id.* at 530–31.

tentive and professional.”²⁹⁶ And they learned first-hand the types of behaviors they would want to avoid when they become the residents on duty. With regard to the residents and doctors, their comments included: “The residents tended to stand far away from me, at the foot of the bed, talk rapidly and walk toward the door even before they finished speaking”; “I was ignored by the residents”; “I was ignored by the doctors while the nurses seemed to really care”; and “No doctor ever asked me how I felt, rather they asked me about this body part or that.”²⁹⁷

Because the entire exercise was intended to help the student patients learn about empathy and compassion and how best to relate to their future patients, the most important feedback dealt with how their hospitalization experience might impact their future practice. Here the students’ comments “generally reflected a primary concern with improving the human aspects of the patient experience.”²⁹⁸ The students reported that the hospitalization experience changed them—it changed their attitudes and it helped them want to be “far more empathetic to patients than they might otherwise have been.”²⁹⁹

VI. TAKING THE CLIENT INTO THE CLASSROOM: GIVING FIRST-YEAR LAW STUDENTS EXPERIENCE WITH CLIENTS, EMPATHY, AND COMPASSION

Like the medical educators who developed these methods of teaching their students to better understand their future patients and to relate to them with increased empathy and compassion, law professors can and should develop techniques for introducing our students to the people they will serve throughout their careers and assist them in developing patterns of empathy and compassion that will allow them to better aid these future clients. The remainder of this article offers a few ideas for how this might be done. It is by its very nature incomplete, but if successful will be the impetus for further thinking and development.³⁰⁰

A. Symbolic Entry into the Profession: The Lawyer’s “Briefcase”

Like the “white coat ceremonies” that symbolically induct new medical students into the profession and stress to them the importance of compassion, humility, and patient care from the outset of

296. *Id.* at 531.

297. *Id.*

298. *Id.*

299. *Id.* at 533.

300. I would love to hear from colleagues who come up with additional ideas and exercises for teaching the heart of lawyering in their courses. Please feel free to email me at gerdyk@law.byu.edu.

their education, law schools could devise a symbolic ceremony to introduce students to the heart of the legal profession. Perhaps the lawyer's briefcase is the closest to the physician's white coat and could be used to carry the appropriate symbolism. While it would likely be cost-prohibitive for the law school to actually present each entering law student with an actual briefcase, the lesson may be able to be conveyed symbolically—perhaps by emphasizing the items that could and should stock the students' new briefcases.³⁰¹ Students could be encouraged to place items in their briefcases that symbolize their future clients, their dedication to humanity and service, and their acceptance of and dedication to the highest values of the profession. Students could be encouraged to think about their future clients often as they move through their legal education—to think about their needs, expectations, and feelings—and to do all within their power to develop their abilities to serve and to understand them. They could also be introduced to the importance of empathy and compassion in the practice of law and encouraged to proactively develop these qualities.

Because briefcases would likely need to be provided by the students themselves, the law school might purchase one of these symbolic items (perhaps a pen to signify the service they will render through the written word; a copy of *To Kill a Mockingbird* or some other book that symbolizes the service and care they will give their clients; or some other tangible reminder that can represent their future clients or their dedication to developing empathy and compassion) to present to each student.³⁰² Most law students remember their first day of law school for years to come, and beginning their legal journey with such a symbolic induction could be a powerful affirmation of their decision to devote their lives to the law and also a meaningful encouragement for the road ahead.

301. See Deanell Reece Tacha, Judge, Tenth Circuit Court of Appeals, Graduation Address at J. Reuben Clark Law School Convocation: Packing Your Briefcase (April 27, 2007), available at http://www.jrcls.org/publications/clark_memo/SubSections/Fall2007/cmF07_Packing.pdf. Although this isn't a particularly novel idea and is probably one that some law schools actually use during their new-student orientations, placing the emphasis on future clients and on developing the ability to care for and relate to these clients and others with empathy and compassion probably is new or at least unusual.

302. The J. Reuben Clark Law School at Brigham Young University recently produced a film about the life and legacy of former U.S. State Department Solicitor and Ambassador to Mexico, J. Reuben Clark, Jr. This film was an integral part of the first-day of law school for the class of 2010 as they were encouraged to develop the attributes that Ambassador Clark came to personify: faith, service, loyalty, and patriotism. A copy of the film on DVD would be an ideal gift for such students.

B. Using the Humanities to Teach Empathy and Compassion

Like their use in medical education, literature and theater can help law students understand the importance of clients, empathy, and compassion in their future careers. While the purpose and role of formal Law and Literature courses is beyond the scope of this article, literature and drama can play a role in core courses in the curriculum and can be a particularly effective means of teaching empathy and compassion.

Because most law faculty are not experts in the humanities, law professors who wish to incorporate literature or drama into their courses may wish to consult the resident Law and Literature specialist or even visit with members of their university's English department to gain ideas for specific titles that could be used.³⁰³ Here are a few suggestions.

Such plays as *Trifles* by Susan Glaspell,³⁰⁴ Shakespeare's *The Merchant of Venice*, and Sophocles's *Antigone* can expose students not only to legal themes but also to the feelings and perspectives of those people involved. Having students read or view a play and then giving them the opportunity to talk about what they learned, what they felt, and how they see it affecting their future practice as lawyers, can be a powerful experience.

Novels can also help students have concrete experiences with empathy and can be powerful teaching tools. In addition to the popular legal novels that are sometimes used in law school classes, such as *To Kill a Mockingbird* and *Bleak House*, faculty members can use novels that have legal dimensions but that focus more deeply on the people involved and on their feelings to teach students about empathy. Two such novels include *Tea and Green Ribbons: A Memoir* by Evelyn Doyle³⁰⁵ and *The Kite Runner* by Khaled Hosseini.³⁰⁶

Tea and Green Ribbons, which was made into the independent film *Evelyn*, is the true story of a father's two-year struggle to regain custody of his children after putting them in a church-run school in Ireland after his wife leaves them. This at times heart-wrenching novel, which is written by the daughter, not only shows students how courts can change the law (here, awarding custody to a father after taking into account the children's wishes—something to that point unprecedented in Irish law), but more importantly shows the very real, very

303. Faculty could also consult an anthology of legal drama such as *LAW IN LITERATURE: LEGAL THEMES IN DRAMA* (Elizabeth Villiers Gemmette ed., The Whitston Publ'g Co. 1995).

304. See discussion of the short-story version of *Trifles*, titled *A Jury of Her Peers* *infra* note 308.

305. (The Free Press 2003) (2002).

306. (Riverhead Books 2003).

powerful, and at times poignant emotions involved on all sides of the situation (the children, their father, the nuns at the school, and so forth). Through the story students can experience the frustration Mr. Doyle encounters time after time as he tries to regain custody of his children and the loneliness and anxiety young Evelyn feels as the months and years go by and she is unable to rejoin her family.

The Kite Runner is the story of two Afghan boys—one the son of a wealthy man and the other the son of his servant. The novel is not directly about the law (although there are some legal issues that surface in the plot), but its commentary on loyalty, betrayal, and sacrifice expressed through endearing characters, can give students a first-hand experience with empathy and compassion.

In addition to full-length novels, which may be too long for use in many classes, faculty can use short stories to teach students about understanding clients and increasing their abilities to empathize and show compassion to others. There are many short stories with legal themes that could be incorporated into a class syllabus. Faculty members may want to consult an anthology to select one that is appropriate.³⁰⁷ One short story that is particularly well suited for teaching empathy is Susan Glaspell's *A Jury of Her Peers*.³⁰⁸ The story, which is based on a murder case the author covered while reporting for a newspaper in Iowa, is about the murder of an abusive Iowa farmer by his wife. The story can help students learn about empathy—both by examining the empathy (or lack thereof) demonstrated by the different characters and also by allowing them to “expand [their] perspectives and awaken empathy for those whose lives may be different from their own.”³⁰⁹

But law professors need not even venture into the humanities to find stories that could be used effectively to humanize clients and lead their students to feelings of empathy and compassion; they need simply use the very cases they already employ. By taking the time to give students the “story” behind the stripped down version of the facts in the opinion, and by allowing students the opportunity to discuss the facts in more depth before turning to the legal doctrine, students not only understand the legal analysis better but can learn important lessons about the human side of lawyering.³¹⁰

307. Such anthologies include *LAW IN LITERATURE: LEGAL THEMES IN SHORT STORIES* (Elizabeth Villiers Gemmette ed., Praeger Publishers 1992) and *TRIAL AND ERROR: AN OXFORD ANTHOLOGY OF LEGAL STORIES* (Fred R. Shapiro & Jane Garry eds., Oxford Univ. Press 1998).

308. For a discussion of the use of this short story, including how it relates to empathy, see Marina Angel, *Teaching Susan Glaspell's A Jury of Her Peers and Trifles*, 53 J. LEGAL EDUC. 548 (2003).

309. *Id.* at 562–63.

310. For an example of such an approach, see Muriel Morisey Spence, *Teaching Williams v. Walker-Thomas Furniture Co.*, 3 TEMP. POL. & CIV. RTS. L. REV. 89,

C. Reflection Techniques

Reflection naturally lends itself to clinical education. However, it can be easily incorporated into the traditional curriculum and can provide a powerful tool for students to look at their own feelings and experience. In so doing, students would deepen their ability to understand people, including their future clients, and to show empathy and compassion toward others.

One simple reflection exercise is to ask students to list qualities of a good attorney. As the students talk, the professor can record their list on the board. Then the professor can ask students to describe what they think clients need, want, and feel when they come to see a lawyer (for the first time or during an ongoing relationship). The professor can record this list next to the first list of "lawyer qualities." When both lists are complete, the professor can ask the students if they see any relationship between the two lists—or put another way, if there is anything on the list of qualities that might help the lawyer address the feelings on the client list. For example, if students said that clients "need help solving a problem," that could match up with a desired lawyer quality of "substantive knowledge" or "ability to think creatively and solve problems." It's very likely that students will include feelings of anxiety, fear, or frustration on the client list, but rather unlikely that unprompted students will have included empathy, compassion, and care on the lawyer list. This provides the professor with the opportunity to affirmatively discuss the role of these essential human skills in law practice. The faculty member can then encourage the students to reflect upon their own personality and the traits they are developing as young lawyers and to continue to develop those qualities that they see, especially in relation to client needs, as essential for success in law practice.

A second easy way to incorporate empathy and compassion in the classroom is through short in-class discussions that cause students to reflect upon what the people involved in the cases they are reading are actually feeling, wanting, needing, and so forth. For example, when discussing a tort case the professor could ask the students to think about what the injured person would feel, but the harder lesson may actually involve asking students to think about what the tortfeasor would feel. To mix things up a bit, the professor could divide the class into groups representing the different points of view and hold a short discussion before delving into the legal principles involved in the case.

In addition to class discussions, professors can assign writing exercises to help students reflect on clients, compassion, and empathy. Like the Critical Incident Reports used in medical education, law stu-

92-98 (1993-94) (using the real facts of the case and a fictionalized set of facts to examine the relationship between facts, assumptions and stereotypes).

dents can record their own experiences and reflect upon what they have learned and how they feel. Such reflection is already used extensively in externship and clinical journals,³¹¹ but a version could be incorporated into a traditional class on an occasional basis. One natural place for such an exercise is in the legal writing class where students represent fictional clients and write memos and briefs on their behalf. Legal Writing professors could ask their students to write short, reflective journal entries expressing their feelings about the case they are working on, the people involved (even if they are fictitious), and what they are learning about the practice of law.

Students could also be assigned to write personal narratives about their own experiences with the law or similar situations. For example, students in a torts class could be assigned to write about an experience where they were hurt—focusing on their feelings (pain, frustration, helplessness, etc.) and what steps they took to remedy the situation. Or, students in a contracts class could be assigned to write about an experience with a contract—perhaps a contract they signed without reading, or some situation where they felt coerced into signing. Or, in a property class students could be assigned to write about a landlord/tenant situation they've experienced—perhaps focusing on their frustration in having repairs made in a timely manner. Students could be asked to share their experiences with class members, and the professor could then lead a discussion about the common points of their narratives (focusing on their common feelings, frustrations, etc.). Not only would these personal narratives help students increase their empathy, but it would help them to realize that they have actual experience with the law in practice.

Finally, faculty can use point-of-view writing assignments to help expand their students' empathy and compassion. Students could be assigned to write the facts of a case from one party's point of view. Classes could be divided so that some students are writing for each party and a third group writes from the court's point of view.

Few, if any, of these writing assignments need to be graded, but faculty could help enhance their students' learning from them by offering written feedback that validates the students' feelings and offers

311. See, e.g., Harriet N. Katz, *Personal Journals in Law School Externship Programs: Improving Pedagogy*, 1 T.M. COOLEY J. PRAC. & CLINICAL L. 7, 8 (1997) (discussing how journals are "intended to promote focused reflection on the fieldwork experience"); J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLINICAL L. REV. 55 (1996) (discussing the use of journals and linking them to learning theory); Roy Stuckey, *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 CLINICAL L. REV. 807, 824 (2007) (discussing reflective journals as a method for student self-evaluation and to allow students to "reflect on and understand better what they are learning from experience").

constructive suggestions for further understanding the people involved and their experiences.

D. Experiential Learning

Like all of us, students learn best from their actual experiences, but when they have not or reasonably cannot be made to actually experience something, they can learn from the stories of others who have. Role models provide students with a powerful introduction to the behavior they will need and want to develop themselves.

Probably the greatest role models for students are faculty members themselves. By exercising compassion and showing empathy toward our students, faculty members model the very behaviors we want them to emulate—but when faculty members treat students with indifference and even disdain, they cannot blame anyone but themselves when students are uncaring and cold with others. Another means of supplying positive attorney role models for students is through mentoring programs. Many law schools pair their students up with alumni and other local attorneys and encourage them to create personal relationships wherein the student can learn about what it means to be a lawyer.³¹² Because these one-on-one relationships are among the most powerful teaching tools, law schools should be selective when they invite people to be mentors—choosing only those that possess all of the attributes students should emulate. Finally, students can gain role models by listening to guest speakers—lawyers who are invited to the law school to speak to students and to demonstrate the type of lawyers the students should aspire to be.

Another way to expose students to lawyers' interactions with clients, opposing counsel, and the judiciary, and to illustrate lawyerly compassion and empathy without having to bring guests physically into the classroom is through the use of "lawyer stories." This phrase, as explained by Professor Jamison Wilcox, refers to "books written for the intelligent nonprofessional reader that recount and reflect upon stories of attorneys' work."³¹³ Such "lawyer stories" can not only help students to better see the application of the legal doctrine they are learning in actual context, but also help them to gain a "practical and sympathetic understanding of lawyers' work and lawyers' lives."³¹⁴ While having their own experiences with clients is certainly the most effective way for students to learn empathy and compassion, reading such "lawyer stories" enables students to "borrow" the experience of other lawyers³¹⁵ until they are able to have their own concrete exper-

312. Of course the programs are only as good as the mentors and as successful as the relationships created.

313. Wilcox, *supra* note 12, at 213.

314. *Id.*

315. *Id.*

iences.³¹⁶ “Lawyer stories” help students to see the thoughts and feelings that lawyers experience and gives them exposure to the thoughts and feelings of clients.³¹⁷ Such stories “show the human side of law practice little dealt with in traditional courses: how attorneys counsel clients, work with fellow attorneys, negotiate with others (both lawyers and nonlawyers), gain the cooperation of witnesses, and deal with judges, court clerks, and others.”³¹⁸ For example, having students read all or part of Barry Werth’s *Damages: One Family’s Legal Struggles in the World of Medicine*,³¹⁹ which tells the story of a family’s legal battles after the death of one child and the severe disabilities of another that they attribute to medical malpractice, can help students understand client emotions and needs (and how those needs can and cannot actually be met by the law), the importance of empathy and compassion for the client, and the importance of interpersonal skills in working with others including opposing counsel, experts, and the court. Such an exercise could fit into classes on torts, professional responsibility, medical malpractice, or even law practice management.

The opposite of “lawyer stories” are “client stories.” Perhaps the best way for students to learn what clients expect, need, and want from their lawyers and what they feel while in the midst of a legal conflict is to hear from the clients themselves. There are at least two effective ways to give students the opportunity to hear “client stories.” First, the professor could ascertain if any students in her class had actual experience as a client in a lawsuit and ask that student if he would be comfortable sharing his experiences with his classmates. Ideally the professor would assemble a group of four or five student clients (or students with close family members who have been clients and may be able to share their stories) with different experiences (some in litigation, some in transactional contexts, some as plaintiffs, others as defendants, and so forth). Since exposure is the objective, the professor would need to do little more than let these student clients tell their stories, but she could prepare some questions for the student clients to consider in advance, such as: “How did you feel before you met with your lawyer for the first time?”, “What was the

316. While not addressing the specific context of clients, empathy, and compassion, Professor Wilcox argues that exposing students to “lawyer stories” in all of their courses helps them to put their doctrinal knowledge in context helping them to better understand the appellate opinions that make up the bulk of their casebook reading, provides a realism to their studies that the reading of cases alone lacks, and provides “food for both the mind and the soul.” *Id.* at 218.

317. *Id.* at 224 (“Most of these books focus on the thoughts and feelings of at least one of the attorneys in the story. No less important, the stories show us clients too. (Legal education leaves too many students ignoring the fact that dealing with real people is part of law practice.)”).

318. *Id.* at 235.

319. (Simon & Schuster, 1998).

most rewarding part of the process?”, “What was the most frustrating part of the process?”, “Do you feel like your lawyer cared about you and your case?”, “What did the lawyer do to make you feel that way?”, etc. Because these clients are also the students’ classmates, they will be naturally receptive to their stories and eager to hear their experiences and thoughts. Because of their proximity (likely in age and also in experience), the students also will be naturally empathetic to their client classmates.

A second way to expose students to actual clients is by inviting a few representative clients to visit the class. Ideally the professor would assemble a diverse sample of speakers to share their own experiences. This is certainly easier to do in a class taught by an adjunct professor who may have her own clients to call upon, but all law professors have contacts both with friends and family members who have been clients and with lawyer friends who certainly do have clients that could be invited to speak. While reading the stories of lawyers and clients can be a powerful experience, little compares with sitting in a room listening to someone share her own story—with all of its emotion. In addition to allowing the clients to tell their stories, students could be invited to ask questions about the client’s feelings and experiences during their legal representation. Of course the professor may want to have a pre-class discussion with the students about the kinds of questions that would be appropriate, so as to avoid embarrassing the guests or placing them in awkward situations.

Like medical students that role play interactions with patients before entering their clinical rotations, law students should have the opportunity to role play with “clients.” Such role plays are the heart of simulation classes like Interviewing and Counseling and Negotiations, but they need not be limited to such courses. As early as their first semester, students should be given the opportunity to play the role of an attorney. One natural place for such a role play exercise is in the legal writing class. Because each student represents a client, he or she should be given at least some opportunity to “interact” with that client. There are several ways this could be accomplished. One scenario would involve bringing in an actor to play the client. The client could speak to the class as a group or, time permitting, with students individually. The actor would need to be well-versed in the “facts” of the writing assignment (so as not to change any material facts), but should be given leeway to add emotion and, if warranted by the students’ interplay, anger and frustration, to the portrayal of the client’s perspective. After the students interact with the client, their professor can lead them in a discussion of the experience and what they learned. Another scenario would have the students submit written questions to the “client” via email. The professor or her teaching assistant could respond to the questions in the way that a client

would—not focusing on the law, rambling a bit, inserting emotion, etc. The email “conversation” could continue as long as reasonable and then the class could discuss what they learned about their own communication and about understanding clients.

Finally, students should be given the opportunity to have actual “real” experiences that lead them to feel empathy and compassion for others. One way to provide this experience is to have students spend a day in court watching the proceedings and noting specifically what they see the parties are feeling—their frustration, confusion, anxiety, fear, elation, or distress. Students could then memorialize their experiences in a reflective essay. Among the things they might experience are “the hostility that is directed at clients, and often at the clients’ advocates as well, in the tribunals of poverty: the family courts that take away their children, the welfare hearings that take away their means of subsistence, the landlord-tenant courts that take away their homes and the criminal courts that take away their freedom.”³²⁰

Students can also gain actual experience by interacting with the sorts of people that will likely be their future clients: they can volunteer at homeless shelters or battered women’s shelters or they can provide service for programs like the Children’s Justice Center. By so doing, students “get a ‘window’ into their clients’ lives.”³²¹ And such a view can have profound effects. Law professors don’t need to incorporate every technique into every course in order to help students better understand their future clients or relate to them with empathy and compassion, but each professor should strive to add at least one such experience to her course. The more opportunities the students have to focus on empathy and compassion (and grow those skills), the more likely they are to carry them into practice. Ultimately, the more classes that incorporate some of these techniques, the more likely students will be to treat them seriously and the more likely they will lead to long-lasting results.

VII. CONCLUSION

Clients are central to law practice—without them, lawyers would not be necessary. Yet, modern legal education largely ignores and undervalues clients and the lawyer’s ability to relate to them with empathy and compassion. Like medical education where faculty have had to address how to best teach future doctors to relate to their patients and demonstrate empathy and compassion, law faculty must find ways to bring clients into the classroom and to give law students, as early as the first year, experiences with the “heart” of lawyering.

320. Genty, *supra* note 92, at 281.

321. *Id.*