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Modeling Professionalism: The Process From a Clinical Perspective

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MODELING PROFESSIONALISM: THE PROCESS FROM A CLINICAL PERSPECTIVE

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When I was asked to speak on professionalism in the clinic, I reflected on not merely what is taught when we teach professionalism, but how it is taught. In other words, what is the process or vehicle through which learning professionalism will occur? Most courses in the law school curriculum emphasize the utilization of cognitive learning skills in order to master the curriculum.¹

Learning professionalism requires learning skills from a different domain. The process of learning can be divided into three distinct domains: 1) cognitive, 2) affective, and 3) psychomotor.² Cognitive learning involves objectives that call for the acquisition of intellectual skills such as: knowledge, comprehension, application, analysis, synthesis, and evaluation.³ It has been said that day-to-day law school learning in the cognitive domain is a hierarchical pyramid of the following mental processes: knowledge, understanding, issue-spotting, problem-solving,

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¹ See *infra* text accompanying note 4.

² DAVID R. KRATHWOHL ET AL., TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS 6-7 (1956). Psychomotor learning objectives are those emphasizing muscular or motor skills, manipulation of objects, and actions requiring a degree of neuromuscular coordination. *Id.* at 7.

³ MICHAEL JOSEPHSON, 1 LEARNING AND EVALUATION IN LAW SCHOOL: PRINCIPLES OF TESTING AND GRADING LEARNING THEORY INSTRUCTIONAL OBJECTIVES 53-57 (1984); see also CTR. FOR STUDIES IN CANADIAN LEGAL EDUC., *A Closet Within a House: Learning Objectives and the Law School Curriculum*, in *ESSAYS ON LEGAL EDUCATION* (Neil Gold ed., 1983) [hereinafter *A Closet Within a House*] (giving examples of how the cognitive learning objectives are applied in Canadian legal education).

judgment, and synthesis.⁴ While cognitive learning often requires the employment of problem solving skills, deductive reasoning skills, or inductive reasoning skills, it rarely calls for any altering of an individual's attitude or disposition. Stated more bluntly, cognitive learning is a cerebral, nondispositional activity.

Unlike cognitive learning, affective learning calls for the internalization of the learning objectives, such as: interests, attitudes, and values.⁵ These learning objectives are displayed not only in discrete problem sets, but rather along a continuum of behavioral choices. It is in the affective domain where students can begin to learn professionalism in law school.⁶

Affective learning objectives related to professionalism can be seen in the American Bar Association's 1992 report on legal education and professional development.⁷ The MacCrate Report contains an emphasis on the development of fundamental values of professionalism, revealing affective learning as a core objective.⁸ The MacCrate Report calls for the development of four fundamental values of the profession.⁹ They are: 1) providing competent representation, 2) striving to promote justice, fairness, and morality, 3) striving to improve the profession, and 4) professional self-development.¹⁰ The very tone of these goals resonates a need for an affective learning approach when teaching the values of professionalism. Two of the four core values state that one must engage in "striving" in order to attain that value. Even the Comment to the first value calls for the attorney to

⁴ JOSEPHSON, *supra* note 3, at 57-58.

⁵ KRATHWOHL ET AL., *supra* note 2, at 24-33.

⁶ I intentionally say "begin" because learning is a lifelong process.

⁷ LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (Robert MacCrate ed., Student ed. 1992) [hereinafter MacCrate Report]. The MacCrate Report was prepared against a backdrop of a supposed "gap" between the legal education students receive, and the skills and values needed for the daily practice of law. The report determined, among other things, that there was no "gap," only an "arduous" road of professional development. *Id.* at 3-8; *see also* JOSEPHSON, *supra* note 3, at 52-53.

⁸ MacCrate Report, *supra* note 7, at 3-8.

⁹ *Id.*

¹⁰ *Id.*

"strive" to attain professional competency.¹¹ The process of striving by its very nature requires one to apply affect or disposition.¹²

The internalization of affect occurs along a continuum with subsets to each learning objective as follows:¹³

1. *Receiving*
Awareness
Willingness to receive
Controlled or selected attention
2. *Responding*
Acquiescence in responding
Willingness to respond
Satisfaction in response
3. *Valuing*
Acceptance of a value
Preference for a value
Commitment
4. *Organization*
Conceptualization of a value
Organization of a value
5. *Characterization* by a value or value complex
Generalized set
Characterization

Internalization of values occurs much more slowly at the higher levels along this continuum. Another layer of complexity is added to internalization of affective learning objectives when adults are taught affective lessons because adults have more firmly entrenched values that they have developed over their lifetime.¹⁴

¹¹ *Id.* at 211-12.

¹² The word to strive includes in its definition devotion to serious effort. Clearly, devotion is a term of affect and not merely intellect.

¹³ KRATHWOHL ET AL., *supra* note 2, at 35.

¹⁴ *Id.* at 154.

Altering or adding to those values presents unique challenges. The study of adult learning, andragogy, recognizes that adults have their own distinct way of learning which differs substantially from the learning done by children and younger adolescents.¹⁵ Unlike children, adults come to learning with their own core and related values firmly ensconced. Furthermore, the adult learner will be more self-directed in the learning process, will be prepared to more readily inculcate past experiences into a resource for future learning, and will be more prepared to apply what has been learned through a developmental model.¹⁶ Therefore, adults may look for educational experiences that fulfill their immediate needs.¹⁷

DEVELOPING A CULTURE OF PROFESSIONALISM IN THE LIVE CLIENT CLINIC

The law school clinic has been described as a model ethical law office.¹⁸ But modeling in the assumed sense, of having students observe how law professors or staff attorneys handle cases, is not how professionalism is typically learned.¹⁹ Instead, students are immersed in a culture of professionalism. The clinic's internal structure and management are designed to have students' daily experiences teach and reinforce what professionalism is.²⁰ The process of acculturation can utilize specific affective learning objectives to teach professionalism. The following activities and

¹⁵ Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 328-30 (1982).

¹⁶ *Id.* A clear example of how adults have inculcated past experiences and are prepared to apply what has been learned from those past experiences can be seen in student clinic applications. A typical clinic application is accompanied by a personal statement containing reasons the student wishes to enroll in the clinic and apply, in a law practice setting, what she has learned in the first two years of law school. Students also express in their personal statements that they want to have "practical" experiences that the first two years of law school did not allow them to have.

¹⁷ PATRICIA A. LAWLER, *THE KEYS TO ADULT LEARNING: THEORY AND PRACTICAL STRATEGIES* 11-13 (1981).

¹⁸ See generally Peter A. Joy, *The Law School Clinic as a Model Ethical Office*, 30 WM. MITCHELL L. REV. 35 (2003).

¹⁹ *Id.* at 37.

²⁰ *Id.* at 40-41.

assignments demonstrate how affective learning objectives can be used to teach professionalism:

1. Office Procedures

Students are given a clinic procedures manual that explains how the clinic is organized and setup.²¹ The importance of the manual is stressed through an open book quiz on several sections of the manual. Students are also asked to set-up a dummy file based upon a mock client interview. The procedures for opening that file are explained in the office manual. Through these two activities, students accomplish "*receiving*," or an awareness of the importance of the office procedures and a willingness to devote controlled attention to the procedures as the semester progresses.²²

2. Case Rounds

Case rounds involve students discussing their cases and issues with each case in a round-table fashion. Students are encouraged to present problems for group discussion, to ask questions of one another concerning issues that may not be readily apparent to the team assigned to the case, and to give feedback to one another. Through case rounds, students begin "*responding*"²³ to professionalism issues that are raised in the cases. Clearly, students may not see as many issues as an experienced practitioner. But by the second time case rounds are done, students begin to see more issues and demonstrate an appropriate willingness to discuss them and/or recommend ways to address them.²⁴

²¹ FRANCIS J. CATANIA & NATHANIEL NICHOLS, JUSTICE FOR ALL: WIDENER UNIVERSITY SCHOOL OF LAW PENNSYLVANIA CIVIL LAW CLINIC OFFICE PROCEDURE MANUAL 2003-2004 (2004) (on file with author).

²² See *supra* note 13 and accompanying text.

²³ *Id.*

²⁴ *Id.*

3. *Court Observations*

Students are given the assignment to watch at least one regular hearing and one extended hearing with custody masters.²⁵ After observing the masters' hearings, students are to write in their journals personal observations and critiques of the lawyers involved in the cases. Students are given an excerpt of volume twenty-two of American Jurisprudence *Trials*,²⁶ as a measuring guide for the lawyers' presentations they observe. Specifically, students are asked to comment on what they would have done differently had they been representing one of the parties—and why. They are also asked to comment on the masters' reactions to the presentations of the lawyers. By observing and journaling what they observed, students are learning at the "receiving" level of the affective domain by demonstrating an awareness of those lawyers' behaviors and their role in the matter before the court. This experience helps to develop an awareness of not only the importance of the lawyers' behavior, but also the behavior of the parties involved in the litigation. The journal entries show a clear attention to the phenomenon of lawyer behavior that the student finds to be professional or less than professional.

4. *Individual Case Experiences*

Direct client representation presents students with a wealth of experiences through which students learn at the higher levels of the affective domain. The Pennsylvania Civil Law Clinic represents indigent clients in bankruptcy cases. Over the past ten years, the clinic has seen an increase in the number of elderly persons seeking bankruptcy relief. The average age of bankruptcy clients is now late 60s to early 70s. Quite often, it is the adult child of the person requesting the legal services of the clinic who will initially call. Or, the client will say that she wants the adult child to be the intermediary or contact person. Issues of client confidentiality are

²⁵ Custody masters are hearing officers in custody cases who have the authority pursuant to the Pennsylvania Rules of Civil Procedure, to hear custody matters involving visitation and partial custody. *See* PA. R. CIV. P. 1915.4-2.

²⁶ *See* 22 AM. JUR. *Trials* § 115 (1975).

raised when another person, without express authorization from the client, sits in on an interview.²⁷

In one case, the client's adult daughter called and said that our client was hard of hearing and did not have a full understanding of her own financial situation. So, the daughter planned to sit in on an interview with the client. Initially, the student representing the client did not see the professional responsibility issue created when a third person was present during an interview with a client. The student saw the daughter's presence as a possible aide during the interview. The learning objective became not merely to have the student become aware of the professional responsibility issue through this experience, but to have the student determine how to address the issue with the client and the daughter without unnecessarily alienating one or both of them. Being overly directive with the student would have taught the student something only in the cognitive domain.²⁸ Several days prior to the interview, I asked the student to preview with me how she planned to conduct the interview. As the student unfolded the interview, I asked only one pointed question, "What does the presence of the daughter do to the interview itself?" The student drew upon her past cognitive knowledge of the rules of professional responsibility and quickly realized that confidentiality would be gone with the presence of the daughter. I then asked the student to think about how she would handle telling the daughter she could not be present and what was the source of law for that. The process of researching and doing a memorandum of law on the issue did much more for the student's acquisition of proper professional conduct than did a directive from me that the daughter could not be present without the client's permission. The interview was handled appropriately, and more importantly, the student felt that *she* had learned the appropriate professional actions to take and how to take them. The student had begun to learn at the highest level of the affective learning domain—*characterization by value or value complex*. She learned to approach a situation in a professionally appropriate manner, but

²⁷ PA. RULES OF PROF'L CONDUCT R. 1.6 (2004).

²⁸ Merely telling the student what the applicable rule was and what she should do would have only given the student knowledge in the cognitive domain, but a wonderful opportunity for learning professionalism in the affective domain would have been lost.

not without an awareness of and respect for her client's needs and interests.²⁹

CONCLUSION

This essay has not argued that cognitive and affective learning represent a polarity or discrete dualism of learning in legal education. Rather, this essay presents affective and cognitive learning as part of a continuum of learning in law school and argues that certain courses, such as professionalism, are more readily learned in the affective portion of that continuum.

The clinic experience presents a unique way to model professionalism because the student often serves as her own model through a myriad of clinic experiences ranging from office procedures to handling cases as lead counsel. What is perhaps most unique about modeling professionalism in the clinic is that the student comes away from the clinical course with her own personal experiences that she will not only value but will place into a value context or characterization. This most complex characterization of values from affective learning objectives will hopefully stay with the student through a long and rewarding legal career.

²⁹ *A Closet Within a House*, *supra* note 3, at 92-93.