Clients, Colleagues and Conscience: Affective Taxonomy in the Live Client Clinic

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In a live client clinical course at Widener University School of Law in Wilmington, Delaware, U.S.A., students are taught to use affective skills when representing indigent clients in family law, landlord/tenant, and consumer bankruptcy cases before the state and the federal bankruptcy court. This article demonstrates the utility of affective learning in legal education. Also included are methods for helping students evaluate the effects of emotional bias, attitudes, interests, and values in client interviews, client counselling, group decision making, and oral communication.

‘Feelings that are common traits of mankind are called human nature. Without feelings, human nature cannot be observed . . . ’ (Hung Tzu-ch’eng)

Mere legal analysis never requires an investigation of the law’s impact upon people, nor does it require consideration of the feelings of the litigants. But as lawyers, we must remember that the practice of law is not just a cerebral endeavour; it is the adjustment of human relations. (Himmelstein 1978:514, 522). It is the mechanism through which society’s conflicting values and interests are regulated. (Brennan 1987) Attitudes, interests, and values form an integral part of human interaction and ultimately of the legal process itself.

Lawyers miss the opportunity for interpersonal contact with others, reflection about our professional and personal relationships with others, and introspection about who we are as professionals and as people, when we address legal problems with little or no regard for the emotions, attitudes, interests, and values of others. We need to remember that most of our professional time is devoted to the adjustment of human relationships. We spend more of our time with clients and colleagues than we spend arguing a point of law before an appellate court (Griswold 1955:217, 223.

Most practising attorneys intuitively or consciously have a ‘savvy’ about the importance of human behaviour in the legal problem solving process (Griswold 1955: 217, 223). For example, when negotiating, a practitioner understands that knowing the negotiating attitude (cooperative or competitive) of the opponent is an essential component of negotiating strategy (Bastress and Harbaugh 1990:390). Most trial counsel understand that jurors often make decisions based on emotions or on impulses, and not solely on the facts (Vinson 1986:105). Counsel in divorce matters realize that deep seated emotions usually fuel that legal controversy.

Although practitioners recognize the importance of these humanistic aspects in daily practice,¹ formal legal education rarely teaches the importance of learning these aspects of lawyering (Bok 1986:92). Instead, law school teaches students to view lawyering as an unemotional dissection of problems, with little or no concern for the broader human implications attendant to every legal problem (Himmelstein 1978:221). Much of the educational process of law school culls out the
interpersonal aspects of the practice of law, requiring little, if any, concern for what legal solutions do to people (Shaffer and Redmount 1977:3). The sharpening of only legal skills often dulls interpersonal skills; these interpersonal skills can and should be part of what is good lawyering (Berger 1986).

During the first two years of ‘garden variety’ courses, students pursue skills such as issue-spotting, problem solving, reasoning, judgment, and synthesis (Josephson 1984:57). These skills are taught in the cognitive domain of learning.

In the seminal text of learning, Benjamin Bloom divided learning into three discrete domains: cognitive, psychomotor, and affective (Englehart and Ors 1956:7). Bloom described the cognitive domain’s objectives as those which deal with recall or recognition of knowledge and the development of intellectual abilities and skills. He described the psychomotor domain as that which deals with the manipulative or motor skill area. He described the affective domain as that which emphasizes interests, attitudes, values, and emotional sets or biases. Learning in the affective domain is an internalization of these dispositions along a hierarchical continuum. The development of the humanistic aspects of lawyering occurs in the affective domain.

Live client clinical courses have been teaching the humanistic aspects of learning for some time and are uniquely appropriate for achieving affective learning objectives (Petter 1977:95). Live client representation allows students to experience and observe how their own attitudes, interests, and values fit within the matrix of dispositions of clients, courts, and colleagues. Students enrolling in the live client clinic that I teach come adequately prepared to learn cognitive skills, but rarely are prepared to learn about the wide ranging dispositions they find in the clinic.

Unlike the traditional classroom where grades or achievement may be the student’s focus, the live client clinical experience encourages an exploration and study of matters that do not readily lend themselves to coldly logical assessment or appraisal. Consequently, inquiry is not driven by achievement. Students are free to explore their own dispositions and the dispositions of others. This is not to suggest that affective learning merely socializes students to a predetermined set of dispositions (Josephson 1984:100); affective learning recognizes that students have developed these dispositions over a lifetime of personal experience and formal education (Krathwohl 1956:19). Accordingly, clinical affective learning must approach live client representation as an opportunity to expose students to new dispositions. This exposure can happen through the utilization of diverse teaching methodologies (Patterson 1977:169).

This article presents examples of several teaching methodologies for affective learning objectives in three of the most important relationships attorneys develop during their professional lives - the relationships with clients, with colleagues, and with their own conscience.

I. CLIENTS

Psycho-social Dynamics In The Interview And Counseling Process

One of the most important relationships an attorney will have during professional life is the relationship with clients.
Significant psycho-social dynamics come into play while interviewing and counseling a client. These dynamics have a profound impact on the lawyer/client relationship and ultimately upon the case itself. Left unsensitized to these dynamics students may not perceive a client's real problems and, ultimately, a client's real objectives.

The formulation of the affective learning objectives which I utilize for this subject matter is based upon the affective taxonomy developed in Krathwohl's *Handbook II: Affective Domain* (1956). In it, Krathwohl classifies a scheme for internalization of affective learning objectives which proceed along a continuum of internalization. The continuum is classified as follows:

<table>
<thead>
<tr>
<th>Level</th>
<th>Objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>Receiving</td>
</tr>
<tr>
<td>1.1</td>
<td>Awareness</td>
</tr>
<tr>
<td>1.2</td>
<td>Willingness to receive</td>
</tr>
<tr>
<td>1.3</td>
<td>Controlled or selected attention</td>
</tr>
<tr>
<td>2.0</td>
<td>Responding</td>
</tr>
<tr>
<td>2.1</td>
<td>Acquiescence in responding</td>
</tr>
<tr>
<td>2.2</td>
<td>Willingness to respond</td>
</tr>
<tr>
<td>2.3</td>
<td>Satisfaction in response</td>
</tr>
<tr>
<td>3.0</td>
<td>Valuing</td>
</tr>
<tr>
<td>3.1</td>
<td>Acceptance of a value</td>
</tr>
<tr>
<td>3.2</td>
<td>Preference for a value</td>
</tr>
<tr>
<td>3.3</td>
<td>Commitment</td>
</tr>
<tr>
<td>4.0</td>
<td>Organization</td>
</tr>
<tr>
<td>4.1</td>
<td>Conceptualization of a value</td>
</tr>
<tr>
<td>4.2</td>
<td>Organization of a value system</td>
</tr>
<tr>
<td>5.0</td>
<td>Characterization by a value or value complex</td>
</tr>
<tr>
<td>5.1</td>
<td>Generalized set</td>
</tr>
<tr>
<td>5.1</td>
<td>Characterization (Krathwohl 1956:95)</td>
</tr>
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</table>

I teach the first level of internalization (Receiving) through presentation of excerpts from four authors who write about various aspects of the psycho-social dynamics present in an interview with a client.


After reading the excerpts, students discuss and analyze them during small group meetings. I make no effort to force the authors' views upon students during these discussions, instead, an awareness of psycho-social dynamics of the interview process is all that is expected. At the end of the small group meeting, students are asked to note any possible psycho-social dynamics during their own initial interviews with clients. Students report on their observations about these phenomena during small group meetings or during individual meetings with me. Initially, students may be a bit reticent in talking about any observable dynamics, but the reticence soon dissolves as students learn that the dynamics they have
observed are also observed by other students. By reporting on their observations of these dynamics, students internalize the two remaining subsets in the first level of internalization willingness to receive and a controlled or selected attention to the phenomena.

Different excerpts from the same articles are then assigned. These excerpts discuss each author's procedure for dealing with psycho-social dynamics in the interview process. Students discover various ways to address the psycho-social dynamics presented during the interview process. Students are encouraged to try any one or a combination of the approaches suggested by the authors in the second readings. By utilizing the suggested techniques from the second excerpts, students reach the second tier of internalization - Responding. As students succeed in utilizing these techniques, they begin to demonstrate an acquiescence in responding and a satisfaction in responding.

At the third level of internalization (Valuing), students demonstrate that dealing with the subject has worth to them by their continuing to observe and positively respond to the psycho-social dynamics present in their relationship with clients. Often, this valuing is reflected in memoranda to the file or in case planning memoranda. For example, students note how psycho-social dynamics affect communication with the client, or how they affect the client’s decisions in the case.

I do not make the fourth or the fifth tiers of Krathwohl’s taxonomy part of the affective learning objective for this subject matter for several reasons. First, learning at levels four and five occurs at a much slower pace and over a longer period of time, more time than students have available in my one semester clinic (Krathwohl 1956:154, 165). Secondly, even if the course were for an entire school year, it is doubtful that students would be exposed to a sufficient variety of experiences to make internalization of levels four and five possible.

Another important aspect of the psycho-social dynamic found in the client interview process is the way in which an attorney’s attitude about a client may affect the advice given. Model Rule 2.1 requires that an attorney take into consideration moral, social, economic, and political factors in advising a client. The rule states that an attorney need not endorse a client's moral, social, political or economic views, but the rule does not anticipate or address the impact of the attorney’s own attitudes on the advice given to a client (A.B.A. 1983).

In order for students to develop an awareness of the effect their own attitudes might have on the advice given to the client, students are assigned an article from clinical social work studies conducted by Professor Donna Franklin of the University of Chicago. The article analyzes studies done in clinical social work. The studies reveal that a client’s social status and race affect clinical assessment or judgment. The study finds that the change in the race of a client from black to white or to working from middle class generates differential judgments based on factors extraneous to the client's behaviour. Professor Franklin stresses that the results do not reflect a simple cause and effect answer, but suggests that these results warrant further study.

After students have read this article they participate in a round table discussion of what might account for the results revealed by the study. As with the methodology used for the articles on psycho-social dynamics, there is no initial effort to direct students to a particular point of view. Instead, the purpose of the discussion is to
heighten awareness of the impact of our own attitudes and ethnocentricities on the interview and counseling process.\textsuperscript{8}

II. COLLEAGUES

A. Group Decision Making

For the major part of their law school education, students approach legal study and legal problem solving like the proverbial ‘lone wolf’. Students brief cases and prepare for class in solitude, and with the exception of a study group for final examinations or a partner for moot court, a student’s legal education is pretty much a solitary endeavour. However, in practice, legal problems are seldom solved without input from or consultation with colleagues (Himmelstein 1978:528).

In order to sensitize students to the group-decision making process and the factors that facilitate or hinder this process, students participate in an exercise entitled ‘Decision by Consensus’. This exercise was developed by NASA (Miller 1976:116). This learning objective is presented through the T-group affective methodology which was first developed in the 1950s at the National Training Laboratory in Bethel, Maine (Miller 1976:115).

The objectives of this exercise are to develop the following:

1. A spirit of and willingness to experiment with one’s role in the world;
2. An increased sensitivity to the behaviour of others;
3. Increased awareness of factors that facilitate or hinder group functioning;
4. The ability to intervene in a group situation to improve group functioning;
5. The ability to resolve conflict situations through problem solving rather than through coercion or manipulation (Miller 1976:117).

The exercise calls for students to play members of a space crew originally scheduled to rendezvous with another ship on the lighted surface of the moon. Due to mechanical difficulties, the students’ ship is forced to land at a spot 200 miles from the rendezvous point. Students must embark on a trek to the rendezvous point. They must travel light and therefore may only take 15 items critical to their survival on the trek.\textsuperscript{9} Students are asked to rank in order the fifteen survival items individually first and then as a group. The prediction is that the group will be more accurate than the average individual in accurately rank ordering the items needed for survival. I act as an observer during the exercise and as the discussion leader after the exercise. After the exercise we discuss how each individual facilitated or hindered the group decision process.

Students assess group functions and the role of individuals in the problem solving process. This exercise facilitates sensitivity to others, group interaction skills, and skills for coping with change and ambiguity.\textsuperscript{10}
B. Unstated Assumptions in Oral Communication

Effective and clear oral communication among colleagues is also an important lawyering skill. Often, ideas or information are misinterpreted. One root cause of this misinterpretation is the unstated assumption contained in the message. Misinterpretation is often rooted in one’s own interest, attitudes, or values.

In order for students to develop an awareness of how their own interests, attitudes, and values cause them to make unstated assumptions in oral communication, students participate in an exercise which is designed to make them aware of these unstated assumptions. This exercise is adapted from Pfeifer’s *A Handbook of Structured Experiences for Human Relations Training Volume X* (1985).

Pfeifer’s methodology involves a five step inductive process through which students receive direct learning followed by self-discovery and self-validation of the experience. The five steps are as follows:

1. Experiencing
2. Publishing
3. Processing
4. Generalizing
5. Applying

The exercise calls for students to read sample statements, find the underlying assumption in the statement and then rewrite each statement so that the statement accurately reflects the underlying assumption and takes responsibility for that assumption (Pfeifer 1985:62). The instructions give students some suggestions on ways to take responsibility for the underlying assumption when communicating with others (Pfeiffer 1985:65).

Sample statements from the exercise are: ‘You’re not listening to me; can’t you work under pressure.’ I supplemented these statements with additional ones which more readily reflected the typical unstated assumptions in the law office, for example: ‘Why were you late turning in your billable hours, your memorandum of law was not on point, I can’t seem to get started on this case, I don’t think my client wants my help.’

I discovered that the process of Experiencing (rewriting) and Publishing (reading aloud the unstated assumption that each student found in the statement) triggered levels four and five of Pfeifer’s methodology (Generalizing and Applying). Students were quick to recognize situations with their own clients where unstated assumptions existed. Students spontaneously shared these assumptions with one another and suggested ways to communicate those unstated assumptions.

III. CONSCIENCE

Perhaps the most important affective learning objective offered by the live client clinic is the opportunity to explore and to begin to establish a professional conscience. Professional conscience means, among other things, a sense of responsibility for one’s conduct and a well-defined perception of one’s obligations and responsibilities. Professional conscience develops as one establishes one’s own professional values and value hierarchy. Development of a professional value system does not occur overnight; a lifetime of practice forges that value system,
beginning with matriculation through law school. The live client clinic experience 
serves as an appropriate crucible for the initial forging of these professional 
values.\textsuperscript{12}

Clinical faculty members are active participants in the development of the 
professional conscience. First and foremost, faculty serve as role models which 
students may learn to emulate as they seek their own professional identity. 
Secondly, faculty serve as facilitators who encourage students to reflect upon their 
own performance in a critical, but nonjudgmental manner. When students come 
face to face with real clients, real problems, real success, and real failure, they must 
often confront their own feelings about their roles as counsellor, advocate, or 
advisor. Faculty can reassure students that this ambivalence is a natural part of the 
practice of law and that reflection upon those experiences serves as a basis for 
development of their own professional identity (Block 1982 \textsuperscript{13}).

As students confront real clients, real problems, and real adversaries, they are 
forced to conceptualize value through introspection and reflection on their own 
professional role and on the values contained in that role. This introspection and 
reflection process involves abstraction and generalization. Through abstraction, the 
student isolates those properties which are characteristic of a particular concept 
(Krathwohl 1956:155). For example, a student may begin to identify those actions 
or habits which are characteristic of zealous 'advocacy' or 'diligent' representation. 
Through generalization a student recognizes the application of phenomena to a 
wider set than that which he/she originally derives and begins to understand the 
need for every person, regardless of income, to have access to legal representation.

From conceptualization of values students proceed to organize a value system. This 
organization is necessitated by the disparate or conflicting values they discover 
through the live client clinical experience. Students are forced to place values in 
some form of hierarchy and may find themselves discovering new values as they 
develop this hierarchy. For example, a student may discover that the value she 
places on her role as a zealous advocate for a parent in a custody case may conflict 
with the value she places on her role as an officer of the court who seeks the 'best 
interest of the child'.

As one might expect, it is not easy to develop a curriculum or a set of subject matter 
objectives which foster the organization of a value system. Each student develops 
his/her own unique value system.\textsuperscript{14} One method that may be used to nourish the 
development of this value system is to have students keep a journal of the 
experiences over the course of the semester or to write about specific clinical 
experiences. Students are asked to write about specific experiences in a reflective 
way or are asked to analogize the clinical experience to some other experience in 
life.\textsuperscript{15} The process of writing about clinical experiences offers students the 
opportunity to think about who they are as professionals and as people.

IV. CONCLUSION

Through this article I have tried to show applications of affective learning objectives 
in the live client clinic. Affective learning is still in its infancy at the graduate and 
professional level. This article only scratches the surface of affective learning in 
legal-education. But the need to explore feelings, interests, and attitudes, as they 
affect the practice of law is no less important. The environs of legal education must 
become more conducive to human development and personal growth. Development
of affective learning objectives in the live client clinic ensures a scrutiny of how professional norms are transmitted, fosters a willingness to explore values and interpersonal relationships, and makes attorneys accountable for the legal system of justice (Meltsner, 1985).

The domain of affective learning in legal education will require much more investigation and study. Development of affective learning objectives, instructional objectives, and methodologies is not a simple task (Stuart and Wallace 1988). Testing for validation of learning objectives will have to occur.

One study states that approximately 40,000 lawyers stop practicing law each year (Fowler 1990). Perhaps this is due in large part to legal education's emphasis on skills instead of emphasis on human nature. Knowledge of ourselves and those we serve is essential if we are to serve humankind's diverse interests, attitudes, and values.

NOTES

1 Humanistic is used to indicate a concern with the learner as a human being (rather than an organism) and as a whole person rather than simply a disembodied intellect or repository of cognitive process. See Patterson 1977:146.

2 Josephson uses Bloom's cognitive taxonomy, as a basis for identifying and describing the process involved in learning in law school which he modifies to more accurately describe the cognitive process of law school.

3 For purposes of this article, the author has chosen the definition and application of affective learning contained in Krathwohl (1956).

Other definitions of affective learning are: '[a] growth of attitudes and behaviours that deal with feelings, values, and in general, the personal concerns of students' (Alpern 1973); 'The evaluative component of attitudes associated with a feeling core of liking or disliking for social and psychological objects' (Khan and Weiss 1973); 'Having to do with emotional or feeling responses to an object of experience and all the complex perceptions, attitudes, characteristics, and behaviours associated with seeking, accepting, and incorporating or avoiding and rejecting the object.' (Wight 1971).

4 I teach a pass/fail clinical course where students represent clients in matters such as consumer bankruptcy, custody, child support, divorce, and landlord/tenant. Students must submit a written statement in support of their application for enrollment. Typically, students state that they want to enrol so that they may apply the skills learned during their first two years of law school. While students do not define or describe these skills, one may assume that the skills they refer to are those they have learned in the cognitive domain.

5 At the receiving tier, the objective is to simply make the student aware of certain stimuli or phenomena, receive that stimuli and then develop a willingness to receive the stimuli. (Krathwohl 1956:95). This awareness typically does not manifest itself by an acceptance of the psycho-dynamic
phenomenon. Often, students express skepticism about the extent and/or importance of the dynamic. This reaction is not unexpected; it is a strange new experience for students to realize that ‘legal’ problems are ‘people’ problems.

Binder & Price (1977:14) discuss 5 principal facilitators which can be used to motivate full client participation in the interview, namely empathetic understanding, fulfilling expectations, recognition, altruistic appeals, and extrinsic rewards.

Clawar (1988:19) encourages attorneys to do everything within their power to avoid communication breakdown due to barriers. He suggests setting the right tone, asking for feedback, minimizing interruptions, using everyday language, acknowledgment of client's fears, and providing appropriate closure.

Mulhare (1976:18) states that, like it or not, lawyers perform the role of a psychiatrist, psychologist and caseworker. Dr. Mulhare suggests that an attorney needs to know the effect she has on the client (transference) and the effect the client has on the attorney (counter-transference). He also stresses the need to understand the client's cultural background and the emotional context within which client interaction takes place.

Watson (1976:43) discusses some interview tactics for dealing with biases, utilization of verbal tactics for dealing with biases, utilization of verbal information in the interview, nonverbal language utilization, decoding nonverbal language, affect display locations, and deception and leakage reflected in body language.

Studies in clinical social work have revealed that a client's race or social status affects intervention in social work (Franklin 1985:44 and 1986:424). Franklin studied the results of a survey of 209 clinical social work staff from a large metropolitan mental health department and other family and mental health service agencies in the metropolitan area. Of the social workers responding, approximately 50% were white, 25% were black, and 12% belonged to other racial and ethnic minorities. The study used one case analogue which systematically varied the race and social class of the client, resulting in four versions of the same case: middle class white, middle class black, working class black, and working class white. All other facts in the case were identical.

I again utilize Krathwohl's classification scheme for the internalization of this phenomena. Receiving is accomplished by reading Model Rule 2.1 and by discussion of its lack of attention to the attorney's disposition on advice given to a client. Responding is accomplished by having students read and discuss the studies of Professor Franklin. Valuing is accomplished as students openly discuss their dispositions about a client and how that disposition may affect the representation or advocacy on behalf of that client.

The instructions for the problem call for students to engage in behaviour that enhances a group decision. Specifically, the exercise asks students to avoid arguing for their own individual judgments and to approach the task on the
basis of logic. They are also to avoid conflict reducing techniques such as majority vote, averaging or trading in order to teach consensus.

10 During the exercise, I noted how students initially sought to have a vote in order to reach a decision. The idea of group consensus seemed to be ignored. I attribute this behaviour to the 'lone wolf' mentality students have developed. However there were several students who helped to keep the group focused on those activities which would enhance the process (for example periodically checking for consensus, eliciting opinions or information, and why a person disagreed).

11 The instructions suggest the following:

(1) specify the behaviour on which your assumption is based;
(2) if the assumption compares the listener's behaviour to that of other members of a group, state what that group is and how the behaviour compares;
(3) if the assumption is based on one's own expectation of the listener's behaviour, state specifically that expectation;
(4) elicit feedback about your stated assumption.

12 One must remember that at this stage of their professional lives most law students have acquired and solidified their own value system, some of which address their perception and recognition of professional values.

13 In this article the author cites Malcolm Knowles (1970:14) as the author of the seminal text on education of adults; Knowles calls for a mutuality between teachers and students as joint inquirers in the learning process.

14 By their very nature, affective goal statements can be vague and highly value oriented and at this level of development it is often difficult to set. See Stuart and Wallace (1988.)

15 I asked a clinic student to write about his feelings on appearing before a judge for the first time. The student had filed a motion for release of rental monies held in escrow in a landlord/tenant case. The student sought release of some of the monies so his client the tenant could pay for the cost of repairing the heater during January. The landlord had refused to do so, despite being cited for violation of city ordinances. I fully expected the student to write about his feelings on appearing before the court for the first time. To my surprise, the student wrote the following:

"[I] think that I may have a unique outlook in this type of matter. You see, my father is a landlord and up until a few years ago he was the "proud" owner of some less than desirable apartment houses. He has since sold most of them and now owns suburban single family homes and several farms, all of which he rents out. I have, since the age of 16 or so, been responsible for collecting rents, screening tenants and solving problems with respect to those properties. I have seen a lot of horrible situations in the course of my duties. I feel this introduction was important because it may help explain the feeling that I had..."

When I was faced with the problem of restoring [X's] heater, I found that I was able to put aside my biases and do everything that I possibly could
do to help her out. [I found] I did what I did because I felt that I owed it to [X] as my client...

Working with this case answered a question of mine that has been praying on my mind for some time. That question is, “Will I be able to represent a client adequately if I do not really feel that I agree with the client’s position?” In this case I could, and I feel that I did...

While one may not agree with the student’s attitudes or values, the fact that he felt comfortable enough to write honestly about his attitude is an important step to development of conscience (i.e. introspection and abstraction).

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