Teaching Relational Skills: The Evidence

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CHAPTER 6: TEACHING THE NEWLY ESSENTIAL KNOWLEDGE, SKILLS, AND VALUES IN A CHANGING WORLD

SECTION C: The Relational Skills of the Law

Best Practices for Legal Education \(^1\) made the case for greater emphasis and intentionality connected to the teaching of “affective skills.” \(^2\) These skills included values, attitudes, and beliefs such as how students relate to clients, how they respond to ethical concerns, and how their values inform their role. \(^3\) Best Practices did not elaborate much further on the topic other than to state that experiential courses are a natural place for the teaching of these skills. At least a handful of law teachers and scholars have been researching the relationship of these skills to success in the profession, and developing approaches and teaching techniques to help students cultivate these skills, which can also be thought of as relational skills. It is now a best practice for all law schools to take seriously the duty to educate law students both on the need for lawyers to develop competency in this area and how to enhance their relational skills.

The following two subsections describe, in greater detail than Best Practices did, the need for this education and the approaches that seem most effective so far. They set forth the relevant empirical data on the profession that demonstrates the fundamental nature of the skills, describe one approach to teaching these skills, called Relationship-Centered Lawyering, and then discuss three vehicles for integrating the teaching of relational skills into legal education: experiential courses, dedicated courses, and pervasive practices.

Subsection 1. Teaching Relational Skills: The Evidence

By Susan Daicoff \(^4\)

1. Introduction

Public opinion of lawyers has consistently suffered since the 1980s. \(^5\) A 1993 study found that the public appeared to have little confidence in lawyers’ ethics and perceived lawyers as money-

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\(^2\) Best Practices, text at notes 546-47, 553-54.

\(^3\) Id.

\(^4\) The reader for this section was Susan L. Brooks.

grubbing. 6 More recent studies report that an alarming number of people (up to 40% in one study; 75-80% in another) choose to handle their legal matters, in and out of court, without lawyers, because they cannot afford legal fees and believe that involving lawyers tends to make disputes more hostile and protracted. 7 A 2005 Wisconsin study reported that “divorces tended to take longer when litigants were represented by attorneys.” 8 This data documenting societal dissatisfaction with lawyers 9 suggests a need for attorneys to improve their intrapersonal and interpersonal skills – skills often overlooked in legal education and professional development. Specifically, better lawyering skills, such as client communications, empathy, the ability to problem solve and explain the legal process to clients, and negotiation might ameliorate these dismal statistics. Lawyers should employ “procedural justice:” social science research findings that litigants’ satisfaction with legal processes and their perceptions of fairness are higher when they are given “voice,” are treated with respect by those in authority, and have input into decisions (or, at least, are given explanations for the decisions). 10 Legal malpractice might even be avoided. Physicians have found that enhancing their abilities to explain medical matters to patients and apologizing when they make errors reduces the amounts paid out in medical malpractice damages claims and awards. 11 Lawyers who can sense (and adjust their approach) when their clients feel they are making the situation worse, are likely to be in demand.

Empirical research and survey data on lawyer effectiveness consistently find that certain skills are important to success as a practicing lawyer. Of these, many are skills outside the traditional competencies taught in law school: intra- and inter-personal abilities such as problem solving, communication skills, self-management competencies, relationship development, negotiation,

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8 McMullen & Oswald, Why? at 59.
stress management, and more. However, the dismal data on the public’s opinion of lawyers, as well as studies on the personality strengths of those attracted to the law, suggest that law students are not likely to excel in these areas. This section focuses on the need to explicitly train students in these “relational” skills in law school courses.

2. Definition of the “Relational” Skills of the Law

Certain lawyering skills are traditionally the focus of legal education: legal research and writing, legal analysis, oral and written advocacy, knowledge of substantive law and doctrine, as well as the ability to marshal and summarize facts, apply rules of law to facts, reach and articulate legal conclusions, brief cases, and distinguish cases. However, other skills important to lawyer effectiveness are often overlooked in legal education. These include intrapersonal and interpersonal competencies such as practical problem solving, stress management, self-confidence, initiative, optimism, interpersonal communication, the ability to convey empathy to another, the ability to see a situation from another’s perspective, teamwork, collaboration, client relations, business development, and the like.

Management consultants, coaches, and corporate trainers tend to refer to these skills as “soft skills” rather than “hard skills,” where soft skills include attitudes and habits and hard skills include knowledge and specific technical, legal skills (such as legal analysis and drafting). They argue that soft (not hard) skills are critical to employee retention and promotion and define soft skills as inclusive of concepts such as: leadership, executive image, strategic planning, interpersonal communication, listening, speaking, persuasion, diplomacy, flexibility, conflict management and resolution, time management, delegation, meeting management, team building, problem solving, and decision making. Lawyers and legal educators sometimes dislike the term, soft skills, because it may incorrectly suggest that these skills are less important than other skills. For this reason, the term “relational skills” is used here. However, it is important

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12 Susan Brooks refers to these skills as “relational skills,” acknowledging that they include intra- and inter-personal skills. Her subsection below explores how to train law students in these skills.

13 DAICOFF, KNOW THYSELF.

14 A bright spot may be American Bar Association Standard 302, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2014-2015, http://www.americanbar.org/groups/legal_education/resources/standards.html, archived at http://perma.cc/6WDT-S6ZF, [hereinafter ABA Standards], which now requires education in some of these “other” skills, such as “problem-solving, the exercise of proper professional and ethical responsibilities to clients and the legal system, and other professional skills needed for competent and ethical participation as a member of the legal profession.” Its Interpretation 302-1 states that these “other” skills may include “interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation.”

15 See David Sorin &Anne Weisbord, "Soft Skills," 29 PA. LAW. 17 (2007) (arguing that soft skills are important for lawyer success and including “[g]etting along with others, time management, delegation, communication, listening” in the set, yet these are often overlooked by employers; the authors explain that “Organizations typically hire for skills and knowledge. They then fire and promote on the basis of attitudes and habits.” Id. at 18-19).

16 Id.

17 The term, “soft” skills of the law, differentiates them from the more traditional and visible “hard” analytical, argumentative skills of the law and denotes that they include intra- and interpersonal competencies that are often associated with the social sciences. This term is not resonant for many in the law.

18 RELATIONSHIP-CENTERED LAWYERING: SOCIAL SCIENCE THEORY FOR TRANSFORMING LEGAL PRACTICE (Susan L. Brooks & Robert G. Madden, Eds., 2010).
to be clear that this term does not refer simply to social or interpersonal skills, as it includes intrapersonal competencies that are distinct from, although related to, one’s relationships with others. It is not synonymous with “emotional intelligence” (“EQ”)\(^19\) (although EQ is included), because it reaches farther than EQ and is more specific to the legal profession. It is not simply synonymous with client relations skills.

3. **Empirical Support for the Importance of the Relational Skills of the Law**

From 1988 to 2009, there were at least nine empirical studies and surveys published investigating what skills and competencies are needed to be an effective lawyer.\(^20\) Five of these studies surveyed lawyers and nonlawyers about what competencies are most important to the practice of law.\(^21\) Their findings are very consistent with each other. Of these, the most recent and most exhaustive study was performed by Shultz & Zedeck; they interviewed hundreds of attorneys, judges, law teachers, law students, and clients.\(^22\) Echoing the earlier studies’ findings, their results were empirically grouped into 26 characteristics in eight categories, as follows.\(^23\) This list is: \(^24\)

<table>
<thead>
<tr>
<th>1: Intellectual &amp; Cognitive</th>
<th>5: Conflict Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>analysis and reasoning*</td>
<td>negotiation skills</td>
</tr>
<tr>
<td>creativity/innovation</td>
<td>able to see the world through eyes of others</td>
</tr>
</tbody>
</table>

\(^{19}\) Emotional intelligence, or “EQ” as it is commonly known, is a concept developed by psychologist and researcher Daniel Goleman, in contrast to intellectual intelligence or intelligence quotient (“IQ”). It includes five categories of traits that have been found to correlate to lifelong success in a variety of areas. EQ also predicts a well-rounded type of success better than one’s IQ alone. SILVER, AFFECTIVE ASSISTANCE at 9-12 citing DANIEL GOLEMAN, WORKING WITH EMOTIONAL INTELLIGENCE 14–27 (1997).


\(^{22}\) Shultz & Zedeck, *Final Report*.

\(^{23}\) *Id*.

\(^{24}\) *Id*. at 26–27.
problem solving
practical judgment

6: Client & Business Relations
entrepreneurship
networking & business development
providing advice & counsel
building relationships with clients

Research & Information Gathering
researching the law*
fact finding*
questioning & interviewing

7: Working with Others
developing relationships within profession
evaluation, development, & mentoring

Communications
influencing & advocating*
writing*
speaking*
listening

8: Character
passion & engagement
diligence
integrity & honesty
stress management
community involvement & service
self-development

Planning & Organizing
strategic planning
organizing & managing one’s own work
organizing & managing others’ work
(staff/colleagues)

Of these 26 competencies, perhaps six (27%) are traditionally and uniformly taught in law school (marked *). Twelve to 18 more (69%) may appear in elective clinical courses, but students who opt out of clinics and externships may miss opportunities in law school to develop 73% of these critical competencies.25 Even if students do enroll in clinics and externships, the programs may not explicitly train students in these competencies. In response, many law schools26 appear to be revising curricula to correct this “imbalance between legal education”27 and the abilities those in the legal profession say are important for the practice of law; it is a best practice to do so.

Four Canadian studies actually assessed the skill level of various attorneys and performed a comparative analysis of lawyer groups, using emotional intelligence (“EQ”)28 as the measure.29 They first compared lawyers to the general population and then explored what characteristics and traits differentiate “top” lawyers from the rest of the lawyers in the field.30 In these studies, lawyers’ intrapersonal EQ (specifically, their adaptability, assertiveness, problem solving, stress

25 Law clinics and externships may indeed provide opportunities for law students to acquire many, if not most, of the 26 skills, such as: listening, problem solving, practical judgment, negotiation skills, seeing the world through another’s eyes, counseling clients, organizing and managing one’s own work, organizing and managing others (staff/colleagues), passion and engagement, diligence, integrity/honesty, stress management, self-development, creativity/innovation, strategic planning, building relationships with clients, developing relationships within the legal profession, and community involvement and service. Some of the 26 skills may be entirely missing from legal education, such as: evaluation, development, and mentoring of others; networking; and business development. Certainly, the BEST PRACTICES efforts to reform legal education have vastly improved and should continue to improve law students’ ability to acquire these skills.
26 For example, Arizona Summit Law School has recently integrated a variety of practical skills training into its first-year curriculum.
29 Taylor, Dealmakers; Taylor, Litigators; Taylor, Top 40; and Taylor, Women Lawyers.
tolerance, optimism, and reality testing) and total EQ scores were higher than the norm, while their interpersonal EQ, empathy, and social responsibility scores fell below the norm. “Top” lawyers scored higher than other lawyers on *optimism, assertiveness, independence, and stress tolerance*, suggesting that these characteristics are helpful to success in the law.\(^{31}\)

The findings are relatively consistent. They provide some empirical foundation for, and are likely to be helpful in, efforts to revise law school curricula. To summarize and organize the results, the lawyering skills studies demonstrate the importance of the relational skills and competencies, listed below. These skills and abilities are divided into four categories, loosely based on emotional intelligence theory: \(^{32}\) (1) intrapersonal competencies (self-oriented) and (2) interpersonal competencies (other-oriented). Each is further broken down into two subcategories: (a) awareness, values, or abilities; and (b) management (ability to display behavior consistent with one’s abilities).\(^{33}\)

**Intrapersonal (Self) Awareness, Values, & Abilities:**\(^{34}\) Practical judgment,\(^{35}\) maturity,\(^{36}\) passion and engagement,\(^{37}\) motivation,\(^{38}\) diligence,\(^{39}\) drive for achievement and success and a need to compete and win,\(^{40}\) intense detailed focus and concentration,\(^{41}\) optimism,\(^{42}\) self-confidence,\(^{43}\) strong sense of self and self-knowledge,\(^{44}\) integrity,\(^{45}\) honesty,\(^{46}\) and ethics,\(^{47}\) reliability,\(^{48}\) independence,\(^{49}\) adaptability,\(^{49}\) creativity/innovation\(^{50}\) (in a practical sense\(^{51}\)).

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\(^{31}\) There were also some differences between the top lawyer groups based on age, gender, and practice area; Taylor, *Dealmakers*: Taylor, *Litigators*: Taylor, *Top 40*: and Taylor, *Women Lawyers*.

\(^{32}\) These four quadrants come from the literature on emotional intelligence. See SILVER, AFFECTIVE ASSISTANCE, at 9-12 citing GOLEMAN, at 14-27.

\(^{33}\) Note that Goleman had five categories; the fifth was “motivation,” which is included in this Table 1 under self-awareness skills. See SILVER, AFFECTIVE ASSISTANCE.


\(^{36}\) Mudd & LaTrielle, *Professional Competence*.


\(^{38}\) Mudd & LaTrielle, *Professional Competence*.

\(^{39}\) Shultz & Zedeck, *Final Report*.


\(^{43}\) Mudd & LaTrielle, *Professional Competence*.


\(^{47}\) Mudd & LaTrielle, *Professional Competence*.


\(^{49}\) Id.

\(^{50}\) Shultz & Zedeck, *Final Report*.

Intrapersonal Management Competencies: Organizing and managing one’s own work, self-development, continued professional development, stress management, general mood.

Interpersonal (Other) Awareness: Understanding human behavior, an intuitive sense of others by which one can “read” what is implicit or understand subtle body language and gestures, ability to see the world through the eyes of others, tolerance and patience, ability to read others and their emotions.

Interpersonal Management Competencies: Dealing effectively with others, questioning and interviewing, influencing and advocating, instilling others’ confidence in you, assertiveness, speaking, listening, providing advice and counsel to clients, obtaining, building relationships with, and keeping clients, developing business, working cooperatively with others as part of a team, organizing and managing others (staff/colleagues), evaluation, development, and mentoring, negotiation skills, mediation, developing relationships within the legal profession.

53 Id.
54 Mudd & LaTrielle, Professional Competence.
55 Shultz & Zedeck, Final Report; Taylor, Dealmakers; Taylor, Litigators; Taylor, Top 40; Taylor, Women Lawyers.
56 Taylor, Dealmakers; Taylor, Litigators; Taylor, Top 40; Taylor, Women Lawyers.
57 Mudd & LaTrielle, Professional Competence.
58 Taylor, Dealmakers; Taylor, Litigators; Taylor, Top 40; Taylor, Women Lawyers.
60 Mudd & LaTrielle, Professional Competence.
61 Taylor, Dealmakers; Taylor, Litigators; Taylor, Top 40; Taylor, Women Lawyers.
62 Mudd & LaTrielle, Professional Competence.
63 Shultz & Zedeck, Predicting.
64 Id.
65 Garth & Martin, Law Schools; Sonsteng & Camarotto, Minnesota Lawyers.
66 Taylor, Dealmaker; Taylor, Litigators; Taylor, Top 40; Taylor, Women Lawyers.
67 Shultz & Zedeck, Predicting.
68 Id.; Gerst & Hess, GPS Model.
69 Garth & Martin, Law Schools; Gerst & Hess, GPS Mode.; Shultz & Zedeck, Predicting; Sonsteng & Camarotto, Minnesota Lawyers.
70 Garth & Martin, Law Schools; Gerst & Hess, GPS Models; Shultz & Zedeck, Predicting; Sonsteng & Camarotto, Minnesota Lawyers.
71 Shultz & Zedeck, Predicting.
72 Gerst & Hess, GPS Model.
73 Shultz & Zedeck, Predicting.
74 Id.
75 Garth & Martin, Law Schools; Sonsteng & Camarotto, Minnesota Lawyers; Gerst & Hess, GPS Models; Shultz & Zedeck, Predicting.
76 Gerst & Hess, GPS Model.
Two observations may be worth noting. First, several of the nine studies mention nine qualities that may be particularly important in the legal profession: drive, honesty, integrity, understanding others, obtaining and keeping clients, counseling clients, negotiating, problem solving, and strategic planning. Second, there are some inconsistencies regarding lawyers’ interpersonal competency. In surveys, those interviewed mentioned certain interpersonal skills as important for lawyers, but the Canadian studies found that neither lawyers as a whole nor “top” lawyers had high interpersonal EQ (as compared to the norm). In fact, some top lawyers intimated in their personal interviews that interacting gracefully with others was an area of challenge for them. To break this down further, the Canadian lawyers in general scored below the norm on “empathy,” but the top Canadian lawyers generally had a high ability to “read” people. This is consistent with lawyer personality research that indicates that empathy is often an area of challenge for those drawn to the law. It is possible that lawyers are attuned to reading other people but not particularly skilled at empathizing with others’ emotions. Two researchers have made an exhaustive review of the empirical research on lawyering effectiveness, which they then link to professional identity development; they conclude from their review that interpersonal acumen is indeed important for lawyering effectiveness.

The ability to communicate empathy for another may be an improvement area, then, for lawyers. Although legal education has traditionally ignored explicit training in the relational skills of the law, it is a best practice to do so, in light of the strong evidence of the importance of the skills to effectiveness.

4. Can the Relational Skills of the Law Be Taught?

Relational skills training is routinely done in graduate schools of clinical psychology, counseling psychology, and social work. For example, graduate students are videoed conducting mock interviews with simulated mental health clients and the videos are debriefed with the teacher. In these debriefs, the teacher may comment on the student’s use of eye contact, open- and closed-ended questions, empathy (and the accuracy of that empathy), body posture, silence, and the like; make suggestions for improvement; and indicate how to improve. Perhaps due to robust malpractice liability reductions for physicians with good “bedside manner” and the ability to

77 Gerst & Hess, GPS Model; Shultz & Zedeck, Predicting.
78 Shultz & Zedeck, Predicting.
79 Gerst & Hess, GPS Model; Shultz & Zedeck, Final Report; Taylor, Dealmakers; Taylor, Litigators; Taylor, Top 40; Taylor, Women Lawyers.
80 Gerst & Hess, GPS Model; Shultz & Zedeck, Final Report; Taylor, Litigators; Taylor, Dealmakers; Taylor, Top 40; Taylor.
81 Taylor, Litigators; Taylor, Dealmakers; Taylor, Top 40; Taylor, Women Lawyers. Even “top” lawyers did not score high on empathy, however. Taylor, Women Lawyers.
82 DAIKOFF, KNOW THYSELF, at 64-69, 74-76, & 108-09.
apologize for or explain errors, and patients’ perception of physicians as distant and cold, medical school now often incorporates specific training on relational skills for medical students.

Similar granular-level education can be done in law schools, particularly in simulation-based or clinical classes. Optimally, the training should explicitly identify for students what skills are being acquired during the training, particularly as law students may not be attuned to these skills. Law faculty might use labels for each of the “relational skills” of the law, demystify them, demonstrate how to apply them in cases or case studies, and model how to intentionally develop those that are personal areas of challenge.

Finally, it is not true that these competencies are: (1) only developed in one’s family of origin or through life experiences before law school; (2) inherent, unacquirable qualities (e.g., one either has them or they do not); or (3) skills that law teachers are unable to teach and assess. There is no reason why the teaching methods used so successfully in other professions cannot be imported into legal education.

5. Conclusion

Strong empirical evidence exists to suggest that lawyers who use, acquire, and hone their “relational” skills, meaning those intrapersonal and interpersonal skills relevant to the law are likely to be more successful professionally. While some of these skills may not be areas of greatest strength for those drawn to the law, lawyers and law students need not be concerned that these are innate, immutable characteristics. Relational skills are acquirable, in law school or thereafter. Unfortunately, these are the very skills often overlooked in legal education. The need for change has now been demonstrated empirically. It is, therefore, a best practice to require and regularly teach these skills in law school courses, if our graduates are to serve society well, and resurrect respect for the profession.