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How Professionals (Including Legal Educators) "Treat" Their Clients

Edwin H. Greenebaum

The goals that professionals and clients join together to achieve are always concerned in some way with change.1 Clients are seeking help to effect a change, to avoid change being thrust upon them, or to anticipate and mediate change.

To lawyers and others who "serve," "advise," "counsel," "represent," and so forth, "treatment" may sound strange as a term for clinical work, but I have chosen the word to make a point: professional service always changes the client. Even when changing the client is not the central goal of the professional service contract, clinical work requires changes in cognition, in behavioral skills, and in roles and relationships, in order that clients may understand the service sufficiently to consent to and cooperate with it, and so obtain its benefits.

Whether changes in clients are the primary goals of treatment, as they are in education, training, and psychotherapy, or only instrumental goals to further the treatment of "external" matters, such as clients' legal rights or status, personal issues are always relevant, for example, developments in careers, family developments, or growing older. Because personal issues are involved, both professional and client will tend to approach "treatment" cautiously and to keep their distance. Even when changes in the client are explicitly the goal, the wish is that changes be superficial, predictable, and under control. Those aspects of contracts for clinical services which involve changes in clients are frequently implicit rather than openly acknowledged and examined.

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1. A clinic, as I use the term, is a situation in which an individual or group engages the services of professionals with specialized knowledge and skill in an organizational context in which professional and client come together in a helping relationship. Law schools are instances of "clinics." In this text "professionals" are those who are qualified to engage in clinical work and who, where applicable, are licensed by professional organizations and subject to their discipline.

When I confront these issues with law students, they protest that lawyers are not qualified as “therapists.” They are concerned, as well, with issues of paternalism and contamination (for example, not being able to leave clients’ problems at the office). Interaction with others, however, is not possible without mutual influence, and changes inevitably occur in professionals as well as in clients. The professional must digest the client’s situation and determine what the professional discipline teaches about it. Further, interactions with clients and others in clinical work are significant events through which the professional’s own roles and skills develop.

The following material examines how clinical treatments change the client and the professional through cognitive learning, skills training, and the adjustment of roles and relationships. We will also consider the ethical and political issues that can arise in clinical treatment when the influences that individuals have on each other are not examined and acknowledged.

I. Cognitive Learning

When dealing with a professional, clients enter a new world. They need to understand enough about the professional discipline to consent knowingly to recommendations made and to collaborate with the professional in achieving their goals. For law students, who are legal educators’ clients, this understanding has dual objectives: immediately, they must learn what is necessary to pass their courses and obtain their formal qualifications; for the future, they need to take with them the cognitive learning they will use to serve their clients in practice. In law schools, this fundamental instructional task is often referred to as “teaching legal analysis,” as though skills training, rather than acquisition of subtle and complex cognitive structures, were the goal.

Every professional discipline has its strange realities. “Proximate cause" and “cause of action” are not naturally occurring phenomena. But while laymen complain of professional “jargon,” the problem is not simply the use of signals by which professionals can identify each other and mystify the uninitiated, for professional education leads one to see events and circumstances in new ways. The concepts that guide clinical work are classifications imposed upon events, but such classifications are not unreal. They are a reality-in-the-mind, important because they aid understanding and are “realities” upon which others act as well.

While the client is confronting a new world of professional doctrine, the professional, seeking to understand the client’s “case,” must also enter a new world. For both client and professional, the problems and processes are fundamentally the same: recognizing the data of discrete acts and words is much easier than conceiving data as part of a complex system. When details (data) become a picture/concept (a gestalt), the learner changes. A change enabling one to perceive something new differs from the effect of behavioral skills training, in which practice gradually enables one to come closer to perfection.2 The process can be described, but not entirely

2. There are behaviors that can aid cognition, as I will discuss below. See infra at 563.
explained. It is something we all experience, but of which we are not entirely in charge. In spite of its familiarity and its extensive examination by scientists, it remains mysterious. Let me demonstrate, with the help of M. L. J. Abercrombie’s *Anatomy of Judgement*:³

Most people, when they first look at Fig. 1, see a patchwork of black and white of no particular form. There will be on each retina of their two eyes an image of the picture, a dappling of light and shade, faithfully focused on to it by the lens and other transparent parts of the eye. Of the myriads of receptors in the retina some will receive light, those corresponding to the bright patches; others will receive less, or virtually none. And accordingly the nerve fibers running from the receptors to the brain will carry impulses that are relayed through a complicated network of channels in the central nervous system. The result of it all is that we are aware of a patchwork. The messages have been sent in the form of variations of electric potential in the nervous system and ‘seeing’ is a result of decoding, translating or interpreting these messages. In this particular case the result is that we get the information that there is a meaningless patchwork of black and white blotches.

The messages from the patchwork on the retina can, however, be interpreted in another way, as the head and shoulders of a man. Some people think the picture resembles a medieaval representation of Christ. If you have not already seen the man he may appear if you look at the picture with the following description. His face is turned towards you, and occupies the middle third of the upper half of the picture. The top of the picture cuts across the brow so that the top of the head is not shown. The face is lit from the observer's right-hand side, so that the eyes are in shadow and the cheeks and chin brightly illuminated. His hair and beard are long, but the chin is clean shaven and is a white spot catching the light just above the middle of the picture. A white cloth covers the right shoulder and slopes across the breast; the left shoulder is turned a little away from you and the right upper sleeve is a black area in

![Figure 1. "The Hidden Man."](image)

3. Perceiving events and conceiving ideas are similar, if not identical processes. The experiences feel much the same, and using a visual illustration has the advantage of permitting writer and reader to share an experience of a concise existential phenomenon independent of the writer's descriptive interpretation of it. The following discussion relies heavily on M. L. J. Abercrombie, *The Anatomy of Judgement* (London, 1960). Abercrombie, like the present author, became interested in perceptual and conceptual matters by asking why her students (then in biology) had so much difficulty learning and transferring their knowledge to new contexts.

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the lower left part of the picture.

The face may appear as suddenly as when a light has been switched on. Some people cannot see it with the help of words only, but need someone to trace the outline of the features over the patchwork. The object has not changed, nor has its image on the retina, yet the information received from the object is different—no longer is it seen as a chaotic patchwork, but as the picture of a man, sharp and clear and characteristic. (For those who still cannot ‘see’ it an explanatory drawing is given in Fig. 2 [See page 575 below].

This demonstrates that what is perceived depends not only on what is being looked at but on the state of the perceiver. . . . The change of the observer. . . may be the result of his having looked at the picture for some time, or of his having been given a verbal description of the man, or a sketched outline of his face. A few people may see the man immediately. . . . (An artist, for example, asked ‘Why is it called the Hidden Man?’) A few others may never see him. . . .

Recognition, however suddenly it seems to occur, is not a phenomenon that simply happens to us. We actively search our minds for appropriate cognitive structures (schemata) to translate the available data into a coherent picture, and, when appropriate schemata are not available, we must try to modify old schemata or create new ones. Developing the schemata that make cognition possible is a laborious process, although, once developed, recognition is usually experienced as instantaneous and effortless.

Studies of adults congenitally blind because of cataract, who were able to see after operation, have shown that learning to see is for them an extraordinarily complex and laborious process. Schemata are built up slowly. It took at least a month for a patient to learn to distinguish even a small number of objects as other people do. After thirteen days of training, a patient could not say what was the difference between a square and a triangle without counting the corners.

Gestalts emerge, then, from perceived details (data), as triangles and squares emerge from lines and corners and the “Hidden Man” emerges from black and white blotches. When one first encounters confusing new worlds, however, one is likely to want to keep things simple and to limit learning goals to perceiving data rather than conceiving comparatively obscure concepts. Law students, for example, may focus on the particular indications, definable as data, that would determine when a lawyer should take a prescribed action, whereas faculty try to lead students to see models of the legal system that will enable them to exercise judgment as lawyers.

The readily discernable features of cases and other materials studied are the details out of which the new conceptions must emerge, but the severe anxiety some beginning law students experience does not make patient searching for obscure(d) conceptions easy. Professionals and clients, if each wishes the other to understand, must labor to lead each other to see the more “hidden” concepts, and, just as in the case of the “Hidden Man,” didactic demonstration and logic will go only so far.

5. Abercrombie, supra note 3, at 23–25. I am grateful to Century Hutchinson for permission to quote at length from the Anatomy of Judgement, and to The American Journal of Psychology for permission to reproduce Paul B. Porter’s “The Hidden Man.”


To apprehend abstractions one needs data from which larger, more complex conceptions will emerge. Professionals often underestimate (forget) the quantity of data required to develop the conceptions of the professional discipline, while clients may not use all the data available to them from their prior experience. Clients decide what elements of their experience they will include in their clinical work and can be hampered, especially at the outset, by their lack of sufficiently developed models of the professional discipline or of how the clinic operates to understand what is relevant or useful. Clients from atypical cultural backgrounds may be especially hard pressed. Not only may they be inexperienced in some matters, but some of their experience may be inconsistent with the culture that the majority of professionals and clients share.

Experience, context, and emotional needs affect the data individuals will perceive and use. Consider, for example, responses to the illusion of Ames's "distorted room," which is designed so that it appears an ordinary shape when viewed through a peephole placed at a special vantage point, although in fact the floor and ceiling are slanted and the shapes that would ordinarily be rectangles are actually trapezoids. In this room a marble appears to roll uphill, and objects and persons appear to be different sizes, depending on where they are in the room. Usually, individuals looking through the peephole first see the room as normal and events as distorted; only later do they learn to see people and events as normal and the room as abnormal in shape. They "choose" to see the room as normal even though evidence to the contrary is available. (For example, the occupants of the room visibly adjust their legs and feet in order to stand upright on a steeply sloping floor.) Abercrombie suggests that a need to see our environment as stable explains the failure to see the room as distorted:

10. At the Science Museum of London, England, my son, then nine years old, and I had the experience of seeing ourselves change in size as we walked through such a room in which the peephole was replaced by a closed-circuit television camera, and, when we positioned ourselves in the proper corners, my son had the pleasure of seeing himself larger than his father.

Another demonstration of the impact of experience and context is "The Three Triangles":

- PARIS IN THE SPRING
- ONCE IN A LIFETIME
- BIRD IN THE HAND

Read the statement in each triangle. (After R. Brooks, quoted in Abercrombie, supra note 3, at 28).

In the "The Three Triangles," what one reads is influenced by experience (one knows the phrases) and by the context of the triangle. If instructed to look more carefully, the reader may see the extra words.
We easily get upset and seasick if the world seems to move around us. Our ability to estimate distances correctly, by interpreting trapezoidal images as rectangles in perspective for instance, is of the greatest importance to us in moving safely about the world and getting what we need. When we are forced to admit incongruity we prefer to see it in movable objects like people rather than in static ones like rooms.\(^\text{11}\)

Individuals, thus, go beyond experienced information, drawing inferences and making predictions based on the schemata they associate with their perceptions. Replacing meaningless data with one clearly right conception, as in the “Hidden Man,” may simply be a challenge. Correcting stereotypes and other misconceptions, however, requires flexibility and receptivity in the individual and a learning context that can account for the variety of factors that influence cognition.

Problems of cognitive learning are complicated when those providing guidance base their work on multiple and inconsistent conceptions. Lawyers (including law professors) often have ambivalent feelings arising from the discrepancy between what the law is and what they unrealistically hoped it to be.\(^\text{12}\) It is not possible to identify jurisprudential conceptions on which practitioners, teachers, and judges of the “law” all agree or which an individual lawyer consistently maintains.\(^\text{13}\) Moreover, because the substance and processes of the law are subtle, complex, and uncertain, their reality will be resisted by clients (including law students) who seek clear-cut and certain solutions. The obsessive part of us seeks to remedy the discomfort of these uncertainties by developing concepts and putting them in order.\(^\text{14}\) Students come to law school with some ignorance and some misconceptions regarding the law, and a substantial portion of the effort of “learning to think like a lawyer” is to acquire apt schemata of “the law.” Students in the midst of courses they previously found confusing often say that things have suddenly come together for them or that they see the light, sounding very much as though they had just seen the “Hidden Man.”

Cognitive learning, especially in the early critical stages during which fundamental schemata of the professional discipline are being acquired, is facilitated in contexts in which clients feel accepted and able to participate are willing to expose confusions and express conceptions that may be in error, and in which the ethic is to make one’s own discoveries rather than to indulge the myth that new concepts can be learned merely by accepting

\(^{11}\) Abercrombie, \textit{supra} note 3, at 47. Abercrombie notes that newly married couples, in contrast, tended to see their spouses as normal and the room as distorted. “One might suppose that they were particularly anxious that their new spouses should remain as they knew them to be.” \textit{Id}.

\(^{12}\) An instance in which law students seek to learn from legal authorities who speak in inconsistent voices is described in Greenebaum (1984), \textit{supra} note 1.

\(^{13}\) Discrepancies in conceptions of the law result when individuals confuse those particular aspects of the legal system which they have perceived and experienced for the whole, and when individuals lack fully developed cognitive structures for those aspects of the law which they have experienced. Of course, conceptions of the law are strongly influenced by personality and by personal motives for being interested in the law. In my work, I attempt to be consistent in my explanations of legal phenomena, but my needs, purposes, and interests vary as I make explanations in different contexts, and I cannot guarantee consistency even in my own jurisprudential utterances.

\(^{14}\) See David Shapiro, \textit{Neurotic Styles} (New York, 1965), ch. 2.
descriptions and exercising logic.\textsuperscript{15}

The “Hidden Man” and the distorted room demonstrate that each of us lives in a world of our own, that cognition is an individual act of unique discovery no matter how many others may have made the same discovery. In making discoveries, we exercise selectivity in the schemata we use according to our interests and needs.\textsuperscript{16} We go beyond the data presented to supplement our immediate perception with other schemata that we associate, sometimes unconsciously, with the perception.

At first, when one cannot see a “hidden man” others say they can see, one may feel that something is wrong with one’s mind or that one is the victim of a joke. The danger, however, is not that conceptions of the professional discipline, or of clients’ cases, will never appear. “Blanks” seldom occur. The danger is rather that the schemata that do emerge will be incomplete and represent only distortions of reality, and that, once found, these partial, distorted images will be held tenaciously and continually undermine the quality of clinical work.

\textbf{II. Skills Training}

“Skill” is behavior that enables one to achieve chosen objectives. Through the skills training aspect of clinical “treatment,” professionals help clients behave in ways that will achieve the clients’ goals. For example, labor lawyers guide behavior relevant to better labor relations and to compliance with labor relations statutes. Because acquiring skills is a complex process, professional students need guidance to develop to the point where they have sufficient understanding and ability to permit them to improve their skills in practice. Skilled clinical instructors can provide useful models of professionals who enable clients to cooperate in clinical work and benefit from it in the future.

The process of learning behavior, as viewed in behavioral learning theory, may be described in a simple model. A behavior follows a stimulus and is in turn followed by experiences that reward or punish; these subsequent experiences either reinforce the behavior or, by failing to reinforce it, extinguish it. In this view, behavior is not “caused” by the stimulus because the stimulus may be followed by alternative responses,

\textsuperscript{15} The ideal of “Socratic” law school teaching might have just these possibilities, but, in practice, typical classes are too large, the discourse is too oriented to the instructor, the teaching atmosphere too disciplinary, error and confusion are too embarrassing, and attachments to the cultures of other groups and the cross-currents of intergroup relations are too strong to realize the possibilities. In such a context, students are unlikely to contribute as fully as they might from the diversity of their backgrounds. Written work, small group discussion, role enactments, and clinical experience can be useful parts of a participatory, active learning strategy.

\textsuperscript{16} “If my son and I go for half an hour’s walk together we will give on our return a different account of what was in the street, he of the make, horse-power and the date of the cars on the road, I of the range and prices of goods in shop windows. As a result of an apparently common experience, each of us will have added different information to his store, and as we have seen, those differences in the store of information will affect future receipts of information.” Abercrombie, \textit{supra} note 3, at 58. Cf. Richard Bandler and John Grinder, \textit{The Structure of Magic} (Palo Alto, Calif., 1975), ch. 1.
but by the "contingencies of reinforcement."\textsuperscript{17}

In this model, learning behavior involves discrimination, repetition, and consistent reinforcement. The behavior to be learned must be experienced as discriminated from other aspects of the context in which it occurs, including associated behaviors, if it is to be focused upon and experienced as rewarded (in swimming or in bowing a violin, for example, bending the wrist is discriminated from moving the arm). Practice is said to make perfect. Repeated behavior consistently rewarded establishes consistent skill practice. The importance of discrimination and repetition will be recognized by those who have developed skills in athletics or in playing a musical instrument. Delayed reinforcements that are not plainly connected with discriminated behaviors, such as grades at the end of courses, are not as effective as the immediate rewards of approval that follow specific events.

Reinforcements (rewards or, less effectively, punishments) may be external or internal. External reinforcements come from all who experience and react to the behavior in question—in the case of professional students, from instructors, fellow students, employers, and family. One internal reinforcement is the pleasure of accomplishment, which is among the strongest rewards. An individual’s conscience and defenses against anxiety, of course, will tend to reinforce or extinguish behavior. Behavior that persistently causes internal distress is unlikely to be learned no matter how consistently it is rewarded by others.

Both external and internal reinforcements have serious problems of consistency. The many people who, in different roles and contexts, respond to an individual's behavior may apply different measures of quality, and because many of these people themselves have internal inconsistencies, they may respond inconsistently. The reinforcement process is further jeopardized if the skill learner has not developed apt schemata for the behaviors involved. If discrete behaviors are not discriminated, for example, reinforcements may be experienced as inconsistent when in reality they are responses to different behaviors. Inconsistent internal reinforcements are the result of multiple images of good and bad which have become part of an individual’s conscience. The strength of reinforcements, internal and external, relates to the significance of its source, which in turn depends on the relative importance of the individual’s various attachments and group memberships. Unless desired behavior recurs consistently, it must be assumed that other, inconsistent behavior is also being reinforced and that the skill has not been learned. When the exercise of skill depends on making uncertain "clinical" judgments, however, it may be difficult to evaluate consistency.

Social interaction always influences behavior; that is, as individuals interact, they inevitably teach each other how to behave.\textsuperscript{18} The process may

\textsuperscript{17} B. F. Skinner, About Behaviorism (New York, 1974).
\textsuperscript{18} As professional and client interact each trains the other to be the professional and client he or she needs. This process can be viewed both as behavior modification, which is the subject of this section, and as the negotiation of a relationship, which will be the focus of the next.
or may not be intentional or conscious. In fact, the result may sometimes be inconsistent with the one consciously intended. From a base of biologically determined propensities, infants learn social skills from the beginning, and habits of dominance or submissiveness, helplessness or self-reliance, among many others, become persisting aspects of personality. Thus, effective behavior (skill) may be developed without the guidance of rules: children, for example, learn to manipulate their parents without awareness or understanding of the process. Much behavior is learned by imitation. Children mimic adults, and when the resulting behavior is reinforced, not only is that specific behavior learned but the general propensity to acquire behavior by modeling is reinforced.19

Clinical skills are learned through the experience of practice in the sense that they are acquired through these processes of social interaction and modeling. That is how law professors, for example, generally learn to teach. These learning processes occur whether or not they are deliberately planned, with no assurance of reflection, critical evaluation, or quality.20 When they are planned—thus creating a “therapeutic community”—the method and intent of the strategy may be developed cooperatively or unilaterally, and when developed unilaterally, the plan may be disclosed or concealed. When the objects of the treatment are mental patients or prisoners, even participation in the clinical relationship may not be voluntary, raising serious issues of ethics and politics.21

Conceptions about skillful behavior are required if a community is to communicate about and make “reasoned” decisions regarding desirable behavior. “Rules” to measure and evaluate skills may concern either desired results or desirable behavior, presumably because the specified behavior is thought to be effective for valued goals. For instance, in interviewing a new client, a professional’s goals may be to obtain information, establish trust, and reach agreement about future work, and his or her skill may be evaluated by the results obtained. Alternatively, behaviors useful to achieve these goals may include being nonjudgmental (in the value sense),22 for example, allowing clients to speak without excessive interruption, listening carefully, and explaining clearly what the professional is able and willing to do and the terms for doing it.23 Conceptions of such results and behaviors

20. With my focus in this section on the impact on skills of interaction between professionals and clients, I cannot explore here the development of skills through reflection in the course of practice. See Donald A. Schön, The Reflective Practitioner: How Professionals Think in Action (New York, 1983) for exposition of the nature and function of “reflection-in-action.”
22. When the authorities advocate that an interviewer should be nonjudgmental, they mean that the interviewer should accept the client without judging the client to be good or evil, that is, without condemning or condoning. In scientific work, in contrast, exercising judgment is the business of making predictions by comparing one’s perception of evidence to the models of systems in one’s mind.
23. Focus on results or on behavior rules of performance involves different structures of rewards and allocations of responsibility. A worker can be instructed to behave a certain way, given a specified indication, for example, to throw a switch if a dial gives a specified reading. In this instance, the worker’s reward will not depend on occurrence of the result
must be developed if the events are to be recognized and measured as they occur.

Deliberate skills training frequently begins with rule-governed behavior, progresses to behavior directly governed by the contingencies of results, and evolves from self-conscious attention to behavioral details to fluid use of behavior complexes uninhibited by consciousness of detail. In learning to drive an automobile, for example, the initiate can be taught "rules" about letting out the clutch, maintaining distances between vehicles, and slowing down and accelerating in curves, but as drivers become skillful, they behave effectively without conscious thought of those rules. They are guided only by the intention to get from here to there. Those who have learned a skill can sometimes act without any deliberation at all. A hazard of this process is that skills may become habits practiced without reflection or evaluation. Skills are sometimes taught without analysis or any rule other than "do as I do," but sophisticated skills instruction combines multiple approaches.

The desire and ambition to develop the requisite behavior, combined with patience and perseverance, are among the attitudes, character, and values critical to learning skills. One's values influence the goals chosen, affect what professionals and clients are willing and able to perceive, provide part of the motivation for expending the energy and enduring the discomforts required to conform to adopted measures, and determine whether a behavior will be internally reinforced. To a great extent, developing attitudes involves working through the implications of making choices. In work situations, values and goals frequently come into conflict (for example, achieving results sometimes conflicts with honesty). How inconsistencies and ambivalence are confronted will have profound effects on skills. Thus, professionals who rely exclusively on rules in skills training are likely to be disappointed with the results.

As a case study, I will focus for analysis on a single instance of skills training in professional education. In legal education, the dominating skills concern is thinking/communicating/[re]searching [t/c/s] behavior. While the priority given in the first year of law school to teaching students "to think like lawyers" is based on its pervasive importance to all lawyering, the aspect most often focused on involves cognitive learning of legal content and making connections between legal content and stated fact situations. Thinking, communicating, and searching are inseparable processes. Thinking about a subject requires both an understanding of others' oral and written communications and the ability to articulate, and thus communicate, one's own developed understanding. Merely finding and understanding the facts and holding in a court opinion requires sophisticated deciphering. Searching is required not only to find material—in one's experience or in the library and elsewhere—that will help assess implications and build generalizations but, more basically, to find in one's own

intended by the instructor. In contrast, the worker may be the one responsible for achieving the result, being guided by an understanding of cause and effect in the machine's operating system.

mind the most appropriate schemata to connect with the material being experienced. While the crystallization of a conception is usually something that just happens (one does not practice seeing the "Hidden Man"), t/c/s behavior helps such an event occur.

The aspect of t/c/s skill which law students most need to develop is, in my experience, searching. Searching involves patience, perseverance, and flexibility—flexibility to indulge free association, to choose the most apt schemata for the resulting cognitive structures from among the largest possible pool of associations, and to give new conceptions an opportunity to emerge. Too frequently students seize and settle upon the first associations that come to mind, and do not bother to discuss them with others for reality testing and for obtaining the benefit of another's experience. We sometimes complain of students' poor logic, but more frequently the problem is distorted and limited perception.

Searching is certainly critical to thinking like a good lawyer, as it is for thinking generally, but law students frequently find it difficult for several reasons. A student's prior education may not have included t/c/s skill learning, searching behavior may not have been consistently rewarded, and a student may not have acquired schemata by which to recognize the presence or absence of searching behavior. Searching may, in fact, be an intellectual activity not highly valued in the general culture and not consistent with the expectations and personal agenda of some students. That is, students coming to legal education expect a particular style of cognition to be relevant. Their primary concern is that their careers satisfy their personal needs, and among those needs resourceful thinking may not have a high priority. Further, students may find that the nature of legal education disables them from using the skills they have acquired earlier. As they begin their legal education, they are on unfamiliar ground, worried about being put on the spot among strangers in large groups, coping with a heavy work load, seeking to master subject matters which do not conform to their expectations. Some students feel that their previous academic rewards and certifications of accomplishment are somehow fraudulent, and they worry that they will fail in this new program in which their future careers are at stake.

In typical law school courses faculty teach t/c/s skills principally through modeling and through social interaction in "Socratic" dialogue. In the terms used throughout this discussion, results rather than behavior are modeled and rewarded. Faculty feel that they reward sound reasoning, but such reasoning tends to be the completed structure of inferences and deductions built on plausible premises and not the t/c/s processes of construction. That is, students receive comments and are given illustrations about the results of t/c/s for legal content and applications, but they receive

27. A student comments, "Have you ever considered the possibility of fatigue as an explanation? Do you know how hard it is to think after 14 hours of reading, briefing, outlining, and putting the day's work into context, or [in responding to] professors who ridicule students for being idealistic/naive or even tell students not to think?"
little direct help in building a model of thinking/learning processes. For example, while students are told what to include in a brief of a case, little attention is paid to how one arrives at the stage of being able to summarize concisely the significant aspects of a court opinion. The implication of this kind of instruction is that one should "get it right," and beginning students frequently learn in class that they have not.

The classroom ethic requires students to come up with results that answer the instructors' questions correctly; the display of groping mistakes is not rewarded. Instructors might offer good models of t/c/s behaviors, but their interrogative styles tend not to be "Socratic" in this sense. Instructors are supposed to know the answers without evident effort; they are valued for the ease with which they are brilliant. Instructors who express their tentative explorations are perceived as confusing, and students who speak tentatively are experienced by professors and students as wrong (and not brilliant). In these circumstances, students are left to develop schemata of t/c/s behavior largely on their own.

As students answer an instructor's questions or volunteer comments, they experience the responses of faculty and classmates as rewarding or punishing. Reinforcements experienced by many students are predominantly negative and are less effective than positive rewards which create feelings of support and togetherness. Instructors suggest that if students love good thinking and pursue it with vigor, at the end of the course they will be rewarded with a good grade which will enable them to get ahead. While students develop some conceptions of good results, the principal test of their learning is, typically, a final examination, to which the response is a single overall grade that the student may not receive for several weeks. This reward comes too late, and many students despair that they will ever receive a grade they feel is good. For many students, their ambition comes to be to get along rather than to get ahead.

Most faculty provide models of individuals who love good thinking by the examples they set, by the rewards they give, and by demonstrating how good thinking can be integrated into a successful, satisfying career and way of life. Some students have difficulty, however, in responding to this model because they feel that they will not be able, or that it may be hazardous, to emulate the faculty model. Many students feel that instructors inhabit an alien world of elite backgrounds and extraordinary abilities, a career world whose valued attitudes may be different from those of the world of legal practice. Students have fewer contacts with faculty than with each other and with outsiders, and the models and reinforcements students give each other are frequently more powerful than those faculty members provide.

These conditions limit the teaching of t/c/s behavior in typical law school courses. In fact, faculty continue to be distressed by the quality of students' thinking in the second and third year of law school and with the products of lawyering work of alumni.

To the extent t/c/s skills teaching is effective in typical law school classes, it may have an unintended effect. Since the t/c/s processes most used and focused upon in legal education are those related to legal doctrine and
associated aspects of legal content, there are dangers that other dimensions of t/c/s skills will be neglected and remain undeveloped and that the emphasized behaviors will become so highly valued that they will be persistently relied upon, even for tasks for which complementary t/c/s behaviors might be more appropriate. Behavior that facilitates understanding of legal doctrines and processes in written authorities does not suffice for teasing out the complexities and ambiguities of clients' situations in an interview.

There is considerable interplay between skills learning, cognitive learning, and adjusting roles and relationships. For example, law students frequently assert that their controlling style in initial client interviews is necessary, arguing that to use time most efficiently, they have to interrupt clients' irrelevant statements. In skills training these students may come to see that, at the outset, clients (as those who know about their situations) may be better judges of relevancy than the professional, that interruptions may unsettle and confuse clients, causing them to forget or omit important matters; that, by interrupting, interviewers lose the opportunity to observe clients in a state less contaminated by interaction with the interviewer, and that interrupting may not be efficient, for when the interviewer is talking, the client is not. Once they have recognized these factors and have practiced less controlling behavior, students may understand that they are making choices regarding professional roles and relationships.

III. Adjusting Roles and Relationships

In every phase of their work, professionals and clients make choices regarding their roles. While they lack experience with each other, they act in roles derived from prior experiences. As they fulfill the requirements of different aspects of their work together and learn to understand each other, they explicitly or implicitly negotiate what the terms of their roles will be in the specific case, although their emotional needs may divert them from strictly task-related role behavior.28

One choice that professionals and clients make, for example, is whether to adopt the role of one who persuades or of one who learns.29 Persuaders attempt to induce others to accept the validity of their own propositions, while learners invite others to join in a process of discovery. Both roles have value, and professionals and clients must adopt different postures for different aspects of their work. At the outset of clinical relationships, when clients know a great deal more about themselves and their problems than do professionals, the learning mode would seem most appropriate for the professional. Authoritarian habits and the need to defend professional positions, however, may make a learner's role difficult, especially when persuasion is a publicly conspicuous part of the job description, as it is in the legal profession. Models of human relationships which assume that be-

tween professional and client either one or the other must be in charge do not support shared exploration.\textsuperscript{30}

While professionals and clients are adjusting their roles to each other, they also manage their roles in other significant relationships. Solving a client's problems frequently involves adjustments of the client's continuing roles and relationships. For the client, illness, divorce, labor relations with a union, becoming a professional, even writing a will, all involve adjustments in roles and relationships with business associates, family, and friends. And lawyers are concerned with their roles in relation not only to their clients but to their firms. Consider, for example, a lawyer recently employed by a firm who interviews a client who seeks counsel about a proposed transaction in which the client would lease a commercial property to the son of a friend. Such matters involve an interplay of business, personal, and legal concerns, and lawyers, in representing their firms, act on their understanding of their authority and responsibilities when they decide how far to go in counseling clients in these different aspects.

Clinical work can have therapeutic effects even when therapy is not the principal work of the clinic. For example, people often have problems in part because they have difficulty in their relationships with others. Troubled individuals frequently view their world as one in which people exist to use each other and do not have mutually constructive relationships. The attorney who acquiesces in being only a tool, a "hired gun," of such a client reinforces those beliefs and behaviors which involve the client in difficult situations. The professional will either be part of the solution or part of the problem. There is no way to stand apart.

Unless their training has prepared them for work with social relations and mental health matters, professionals may express discomfort with and may even deny the idea that adjusting roles and relations is part of the service they render clients. There are some professions whose primary focus is treating roles and relations, and other professions may wish to assign all roles and relations concerns over to them. All professionals, however, by the work settings they create, by their interactions with clients, and by the choices they help clients make, inevitably effect adjustments in the clients' roles and relations. The only question is whether this aspect of the treatment will be conscious and deliberate or part of a hidden, unplanned agenda.

The relevance of cognitive and skills learning to adjusting roles and relationships is clear. Conceptions of both roles and potential skills must be acquired. For example, professionals and clients must conceive models of "learning" and "persuasion" postures and must learn behaviors appropriate to these models before they are able to choose among them. An individual's behavioral repertoire is inevitably limited, and yet the possibility of greater behavioral flexibility may be explored in skills development. Teamwork among those with complementary capabilities—among professionals (of the same and of different professions), between professional and client,

within the client (when the client is a group), and between the client and others—can also compensate for individual limitations. But a conception of collaborative relations and rehearsal of the requisite behavior are what make the choice possible.

In making choices, individuals apply their values to their perceptions of facts. Some values are acquired early in life; others may be adopted as one joins new groups. Perceptions of good and bad are affected by one's understanding of cause and effect in social processes. Values are what make adjusting roles and relations something more than cognitive learning and acquiring skills.

Among the values affecting an individual's role choices are those associated with social survival. For professionals, acting in a way that might prejudice one's career may not seem like an available choice. The alcoholic whose behavior is destroying him may perceive sobriety as a threat if he feels his social survival is at stake. Even testing the reality of such concerns may feel risky. The most seductive and corrupting conflicts of interest in clinical work are frequently very subtle.31 Becoming acquainted with role possibilities, recognizing the implications of choices, developing attitudes toward taking risks, and making commitments are the core of being responsible in roles and relationships.

Deliberate treatment of roles and relations is likely to have one of two orientations, either to the formal rules (and their application) that limit choice or to the factors that influence choice within those rules. Lawyers' conduct, for example, is constrained by codes of professional responsibility, rules of court procedure, and legislation (such as anti-trust laws), and by courts and bar organizations that make decisions applying such rules. Similarly, clients must understand how they are governed, for example, by legislation controlling labor relations, by court decrees in divorce and child custody, and by contracts and leases to which clients have consented.32 Within the constraints of rules and their authoritative application, however, professionals and clients have discretion to choose, significant roles and relations issues can be resolved by individual perceptions of fact and application of values. The more difficult the role choice, in fact, the less likely it is to be governed by a clear rule. Professionals and clients may share the wistful hope that reasoned discussion can resolve dilemmas and that codes of responsibility can provide clear and generally acceptable guidance for role choices. The ethical problems facing professional and client, however, are often true dilemmas, and decisions regarding them will not be universally acceptable. To decide whether such issues should be governed by authoritative rules or left to individual conscience is itself a matter of applying values to perceptions of fact.

32. In addition to law, sociology and economics, among other disciplines, provide insight into the institutions that make constraining decisions.
Contrasting approaches to treating roles and relations are illustrated by traditional courses in The Legal Profession\textsuperscript{33} and by my course, “Roles and Relations in Legal Practice.”\textsuperscript{34} Legal Profession courses tend to emphasize content and processes of institutional decision making (by courts and bar associations), while “Roles and Relations in Legal Practice” emphasizes choices made by individual lawyers; the former focuses more on doctrinal and sociological materials, the latter more on psychology. Legal Profession tends to use the instructional methods of typical law school courses, while “Roles and Relations” is atypically experiential and nondirective, leaving the students to learn on their own from the course’s role-enactment exercises and group discussions. It relies on consultation with rather than direction from the instructor. While classes in Legal Profession discuss in passing what students would do when confronted with dilemmas within permitted choices, confronting issues of choice is the primary focus of “Roles and Relations.”

Deliberate attention to teaching roles and relations is, regrettably, frequently given low priority. This may be so even in professional schools in which learning “professionalism” would seem to be a central matter. For example, in typical law school courses, in which the majority of legal education’s teaching resources are invested, professionalism is taught through what is generally known as the “pervasive approach.” Occasionally, a brief portion of a course may focus on ethical issues raised by the particular subject matter. More often, however, questions of ethical practice are noted in passing in materials being studied principally for other purposes.\textsuperscript{35} The issue is usually raised and discussed for a while, and then, under the press of time, the class returns to the main agenda. On most roles and relations matters, the dominant assumption seems to be that students will adopt the mores and \textit{modus vivendi} of their employers and practice

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\item[33.] A.k.a., “Professional Responsibility.” Not all courses offered under these titles are “traditional” in the ways described. “Roles and Relations in Legal Practice” (see note 34 \textit{infra}) was in fact first offered experimentally under the legal profession label.
\item[34.] The purpose of “Roles and Relations in Legal Practice” is to introduce law students to interpersonal phenomena in law practice and to lead students to reflect on lawyer’s roles and their personal relation to these roles. Edwin H. Greenebaum and Phyllida Parsloe, \textit{Roles and Relations in Legal Practice}, 28. J. Legal Educ. 228 (1976); Greenebaum (1983), \textit{supra} note 1, at 112–15. The course examines selected work- and decision-making roles frequently played by attorneys and evaluates the professional issues—personal, ethical, and legal—that typically arise in the various contexts. For each project students are given a fact situation that requires them to enact roles of lawyers, clients, senior partners, and others involved in the situation. Class work uses the students’ behavior as evidence in demonstrating and making explicit the models in students’ minds on which they act. When the students realize that they have each seen things differently and have chosen to act in different ways, the search for explanations of their diverse responses leads to instructive discussions. Similarly, when the group acts uniformly—even though useful alternatives can be demonstrated to exist—and when no one appears to see things that are plainly visible, the collusions, which inhibit using diverse experience and competencies, also beg explanation. Examining the parallels between present and future realities is helpful. As students enact the roles of lawyer and client, they can compare their enacted roles to their work with me as my clients and thus learn to conceive how lawyers’ clients may feel. Distrustful of my intrusiveness in their work, students resist my control, yet want me to make the practice of law safe for them. Learning to work responsibly with each other in law school can help them consider strategies for preserving their ideals in practice.
\item[35.] See e.g., Greenebaum (1984), \textit{supra} note 1, at 110–12.
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communities. Different areas of legal practice typically confront lawyers with different ranges of ethical dilemmas, and students search for a practice in which they can be both comfortable and ethical. On the whole, students in legal education are left to gather impressions from unsystematic chance encounters without programmed assistance.

Professional students might be expected to concentrate on roles and relations issues in clinical fieldwork placements where they encounter practitioners, faculty, and fellow students as models and make their own operational choices in practice contexts. The degree to which roles and relations instruction is planned, however, varies in clinical education, as does the extent of reflective examination on professionalism issues, and different aspects of professionalism will be emphasized according to the interests of faculty, supervising attorneys, and students. Many law students gain clinical experience outside the formal curriculum in non-credit clinics and part-time employment, and supervision for educational purposes may be very limited.

The impact of clinical work on participants' roles and relationships, then, frequently occurs through unplanned and unexamined processes. When the role is one in a major helping profession, the matter is of community as well as of individual importance. Assuming roles in groups is one aspect of the evolution of an individual's identity, which relates political phenomena to individual growth. Erik Erikson notes a human propensity for pseudo-speciation, in which individuals associate themselves with "good" and project onto foreigners and pariahs their negative identities. "Ritualizations of everyday life" are devices for identifying and associating (and being identified and associated) with the good. The need for such associations is satisfied by membership in religious, national, and other significant social groups, and family life mediates entry into these groups through an extended, dependent childhood. In adolescence, we search for and "choose" (sometimes after or in rebellion) an identity we feel to be our own. In this era in which society has the means to destroy itself, Erikson vests his hope for our survival in identification with the real species, universal humanity. Meanwhile, we well may be concerned that for many individuals, old identifications with pseudo-species such as church and state seem less satisfactory, and more atomistic identifications more attractive—in extreme cases to narcissistic identification with one's self and an ethic of "doing one's own thing."

Assuming professional roles would seem to serve dual (sometimes contradictory) functions, serving as a medium relating to overreaching societies and providing, in itself, a pseudo-species with which to identify.

36. Giving cognitive and skills learning higher priority than professionalism may seem a necessity when the immediate interests of clients are at stake. Cf. Robert J. Condlin, The Moral Failure of Legal Education (College Park, Md., 1981). Clinical faculty and supervising attorneys tend to be individuals who seek to combine the satisfactions of teaching and practice, and a predominant interest in teaching professionalism in its broad aspects is not always a necessity.

Joining a profession and searching for the good and the bad in professional life thus can serve an individual's developmental needs. By the time students enroll professional school, they are largely past adolescence, and their individual identities are almost, if not completely, developed. Any new identifications professional students make, then, must be elaborations on trends already established, and these trends will determine whether a student will be inclined to identify with the diligent, the intellectual, the aggressive, the tough, the controlling, the political and the practical, the caring, the self-made individual, or the communal collaborator. Diverse students will take on aspects of several such identifications, meanwhile adopting the rituals by which they will recognize and be recognized members of the subspecies they have chosen. Some students opt out of certain group identifications very early, searching for, fantasizing about, and hoping to find the groups to which they can belong in practice. This process has profound implications for politics in each profession, and in professional schools subgroups of faculty and students develop the need to separate themselves from and distrust each other. These processes of group differentiation are inherent in human development and not to be wished away.38

Many law students feel caught in the strong currents of preprofessional waters, adrift without charts or navigation equipment. They feel the need to find a safe way to shore. Some, especially those who receive the positive feedback of good grades, associate themselves with those who will be on the law review and progress to practice with large firms where the intellectual aspects of and intensive submersion in the law will be valued. Others say, with both relief and affirmation, that they have realized they will not be intellectual lawyers and that they will not invest so much time and energy into law as might interfere with other valued aspects of their lives. These choices, of course, have many themes and variations. Each emerging group needs to feel itself an elite, and so each finds negative qualities in the others: sloppy and lower quality work, naïveté and lack of practical orientation; some are sellouts to “the system,” others, do-gooders more concerned with protecting the slothful and guilty than victims and hard workers, and so forth. But in each group some members will live with the doubts arising from their chosen identification depending on denying aspects of themselves.

Faculty frequently avoid direct examination of the impact of law schooling on roles and relations by maintaining that their task is to convey knowledge and hone intellectual skills; that little can be done to change students because their characters are already formed by the time they come to law school; and that each individual’s psyche is nobody else’s business. But even more determinative than such faculty views is the structure of the law school institution in which there is no subsystem primarily concerned

38. Deliberate intervention that affects the trend of professional development by making fundamental adjustments in attachments and cognitive configurations bucks the “conservative impulse.” Peter Marris, Loss and Change, 4–22 (London, 1974). The work roles that a professional adopts will have influence beyond the boundary of the professional self and permeate nonprofessional life and relationships.
with the development of roles and relations. We faculty members, of course, stand to gain by protecting our elite and avoiding intimate examination of our role in the profession. Bitterly complaining members of the bench and bar also collude in protecting the status quo. Their expressed dissatisfaction with law schools focus on neglected knowledge and skills they think important to successful and acceptable practice in areas important to them. Each group seeks to promote its own particular identity instead of trying to find or conceive of one species, "lawyer," capable of accommodating and using diverse and complementary aptitudes and orientations. Students collude in maintaining the status quo because the multiplicity of lawyer species is likely to provide them some niche in which they fit, and also allows them to avoid testing their power to change matters, even though, for many students, the collusion comes at the cost of part of the "ideal" of their futures.

Another significant and also frequently unplanned way in which roles and relations are taught is by example, and the result, in my view, is too often unfavorable. In law school, where single instructors meet very large classes, it is difficult for faculty to assume the role of learner, to be models of those who can accept as well as give help and who can work constructively with the personal dimensions of their clients' learning problems. Instructors are strongly motivated to avoid these personal aspects of treatment because such matters require some intimacy and because, if one has not been trained to recognize it, one may fear overstepping the boundary between education and therapy.

In their academic studies professional students are already operating in a professional role, developing the attitudes and behaviors they will carry into their practices. Students make choices—for example, in how they use their time—that will affect the services they render to their future clients. Their own behavior and that of fellow students and faculty provide students with models of diligence and resourcefulness, of helping relationships, and of reflection (or the absence of it) on roles and relations issues.

Responding to dilemmas can be very difficult for persons who prefer to resolve problems by the technical application of rules. Many issues of practice, however, are not realistically amenable to resolution by rules. When individuals are incapable of working out such issues on their own authority and must resort to an external authority to provide an effortless, "magical" solution, there are costs. The posture of a professional helper who in turn needs (can use) no help is an awkward one. It creates an imbalanced relationship in which trust is difficult. All humans need help from time to time, and especially professionals, including lawyers and teachers, need their clients' help in rendering them the services most responsive to their clients' needs. Making mistakes is acutely awkward for those who find it difficult to reconcile themselves to the reality that their work will always be a partial success and a partial failure.

[Re]learning roles and relationships is part of improving the client's

status in clinical contexts, including professional education, and even when the professional discipline is not psychotherapy, clinical work will have therapeutic implications. Professional helpers are significant models, and if professionals are therapeutic in their working relationships (as opposed to being therapists), clients in turn may be more constructive in their relationships outside the boundaries of the clinic. To act as though clinical work affects only technical matters within the boundaries of a professional discipline reflects purely wishful thinking.

IV. The Ethics and Politics of Treatment

Clinical work requires the encounter of two minds each with its own values and its own view of the makeup of the social world. Professionals and clients will be changed by their encounters with each other and will, to some degree, have to accommodate themselves to social realities constructed by others. Thus, clinical work always has ethical and political dimensions.

Consider the experience of writing and reading this text as a clinical treatment. Assuming the role of one who has benefited from study and reflection in the disciplines of social psychology and legal education, I am writing this text in the belief that professionals (and their clients) who come to understand the material I am presenting will become more productive and responsible in their clinical work. The readers I care most about are those who have chosen to engage with the text for purposes of professional development, but I will be delighted if readers who began to read this essay for other purposes should also find themselves better able to understand their clinical experience. This is a conversation I am carrying on with you, even though I must construct you in my mind without the benefit of observation and direct feedback, and even though your reading this text may have been required.

The treatment I am offering here fosters cognitive learning most directly, helping you, in your roles as professionals or as clients, to recognize and better understand aspects of your clinical experiences. When we participate in social systems, such as those through which professional services are rendered and received, we make decisions on the basis of the models of human behavior and social processes which we carry in our minds. However primitive or sophisticated, inchoate or articulate, unconscious or conscious, these models influence the goals we select and the effectiveness and responsibility with which we pursue them. If I succeed in influencing your perceptions of clinical experience, I will change the world in which you live and work. While cognitive learning is the immediate goal,

40. This exercise no doubt stretches the concept of clinic (see note 1 supra) in that while I write I must construct my reader/client in my mind without the benefit of return communication. This process has been facilitated by my use of drafts of this text in my law school course, "Understanding Clinical Experience" and in an interdisciplinary "Workshop on Understanding Clinical Experience." My use of this article as a metaphor for a clinical event is heavily influenced by James Boyd White, When Words Lose Their Meaning (Chicago, 1984). The references in the footnotes indicate the extent of my debt.

41. For example, the editors of the journal to which I submitted the text for publication were required to read it by the responsibilities of their positions.
that learning may lead you further: to perceive the need to acquire new skills and to make different choices in your clinical roles and relationships.\textsuperscript{42}

If treatments such as the one to which you are now exposing yourself always involve changes in the participants, the question arises: Who is changing whom, and according to whose agenda? As clients enter new worlds in their clinical work, they cannot know fully what they are letting themselves in for. Professionals who influence their clients to enter a new world of knowledge, skills, and roles and relationships should not pretend that their clients are making entirely free choices.

In this text I am engaging in political action: in attempting to influence readers in the ways stated, I aim to alter the clinical institutions and professions in which they participate and, through them, the larger society. But while I pursue my agenda, I am being used by the existing political world with which I have had to make my bargains to find my place to work. Using the tools (concepts and language) professional disciplines make available to me limits me, although I have sought to remake and use them for my purposes. Professionals and their clients get the best they can from professional worlds created for interests that may not be their own.\textsuperscript{43}

Our professional poses tend to be ones of rational neutrality, but professional disciplines, as recreated in the mind of each professional, carry implicit values, whether of health, law, or something else. Issues of ethics and politics in clinical work are screened from our attention by the myth that professional work is rational and value-neutral. The view of our practices as “scientific” has heuristic value, but it also falsifies the nature of our work.\textsuperscript{44}

Our clients (including you, my readers) have good cause to approach us with some wariness, for, although we cannot force them to acquiesce in our point of view\textsuperscript{45} and may even wish to treat their autonomy with respect, it may not be so easy to distinguish respect from manipulation. The effects of treatment may be surprising,\textsuperscript{46} and there are coercive elements in clinical situations in which clients are convinced that they must acquiesce in the treatment to obtain an essential goal (recover their health, retain custody of their children, obtain a good grade in a course, and so forth). So the question remains whether it is possible to act as a professional and respect a client’s autonomy.

To act with our clients on an ethic of mutual respect requires that we adopt the role of learner as well as persuader.

The true center of value of a [professional discipline], its most important meaning, is to be found in the community that it establishes with its [clients]. It is here that the [professional] offers his [client] a place to stand, a place from which he can observe

\textsuperscript{42} See White, supra note 40, at 15.
\textsuperscript{44} See White, supra note 40, at 21–22.
\textsuperscript{45} Id. at 16–17.
\textsuperscript{46} Cf. White’s discussion of Swift’s Tale of a Tub, in id., ch. 5.
and judge the characters and events of the world he creates, indeed the world itself. . . .

I have no intention of claiming the final word on these issues. My entire article is in one aspect a response to the tension between promoting change and respecting autonomy. Grappling with the ethics and politics of treatment is the daily challenge of clinical work.

Figure 2. The Hidden Man Revealed.  

47. *Id.* at 17. I have substituted "professional discipline" for "text," "clients" for "reader," and "professional" for "author."