Lawyers' Relationship to Their Work: The Importance of Understanding Attorneys' Behavior

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where the underlying message does not differ from that of other teachers. Students struggling to learn the new game of law school are likely to concentrate on the game used by the majority of teachers and ignore variants of the game used by the few.

The teacher who wishes to change the content of a law school curriculum must apply the same techniques that are used to change the content of the law. In essence, that technique is to find the oldest, most traditional bottles possible for the new wine stamped by the teacher. If students doubt the practicality of a teacher’s message, examples of its practicality can be introduced; students may be particularly impressed by cases of bar discipline or malpractice liability of lawyers who did not understand the message the teacher is conveying. Documents used in the real world and newspaper accounts of the experiences of human beings can also reinforce the practicality of a teacher’s message.

The overall technique required is course design with an eye toward the human needs of the law student as a student in addition to the traditional emphasis on the substantive message to be conveyed. There is nothing untoward about a law teacher using the same good sense that a lawyer uses in a jury trial.

LAWYERS’ RELATIONSHIP TO THEIR WORK:
THE IMPORTANCE OF UNDERSTANDING ATTORNEYS’ BEHAVIOR

EDWIN H. GREENEBAUM*

Understanding attorneys’ behavior, including one’s own behavior, is critical to understanding the law and to responsive lawyering. All decisionmaking, in law and elsewhere, involves the application of values to perceptions of facts. The legal system structures decisionmaking processes, allocating decisionmaking responsibility to different institutions, to roles within institutions, and to the past, present, and future. These allocations are themselves decisions

applying values to perceptions of fact. Law is complex and obscure not only because the resolution of even "simple" legal matters depends on a great many decisions, but also because values and perceptions of facts influence each other and are, to a significant extent, unstated and unacknowledged in the rationalizations that purport to explain legal decisions. Indeed, they are sometimes unrecognized by the decisionmakers themselves.

How values and perception influence the work decisions of attorneys is significant because, in its impact on people, the law is what lawyers in their various roles do. Understanding the law and its impact on clients, therefore, requires understanding lawyers' behavior and values, where those values come from, and how they are applied to perceptions of facts. How attorneys help their clients is determined, in part, by how they perceive clients' communications, how they conceive relevant legal authority and arguments, and what they predict about the decisions of others, including judges, other attorneys, and their clients. These processes of perception and conception are complex and heavily influenced by attorneys' personal and work-related motivations.¹

Understanding behavior is controversial. Recurrent issues include: the extent to which behavior is learned or instinctive, is the product of rationality or emotion, and is influenced by conscious or unconscious mental processes. Without taking sides on the issues that have bedeviled psychology, one can begin with some premises that seem validated by widely accepted psychological theory and by observation:² attorneys and law students are influenced by both personal and work-related motives and by factors of which they are unaware; they attempt to reduce the anxieties inherent in being professional helpers; and they are limited by their own personal experience in their efforts to perceive facts and conceive ideas.

¹ A helpful discussion for understanding lawyers' behavior can be found in M. ABERCROMBIE, THE ANATOMY OF JUDGMENT: AN INVESTIGATION INTO THE PROCESSES OF PERCEPTION AND REASONING (1960).

We should distinguish at the outset areas of study that are important, but that are not the concern here. Human behavior is in many instances itself the subject matter of the law. Mental competence, intent, and the best interests of children are obvious instances. Interdisciplinary interests in such matters have been addressed in developing law school curricula in courses in law and psychiatry, psychology, or social work, and have been incorporated into courses such as family or criminal law. These are important studies, but their focus turns away from the attorney.

² In addition to the usual opportunities for observation available to a law professor, I have had the opportunity to observe lawyers and students role-play and discuss their work in my course, Roles and Relations in Legal Practice, which is described in Greenebaum & Parsloe, Roles and Relations in Legal Practice, 28 J. LEGAL EDUC. 228 (1967).
Some of these points may be illustrated by the common experience of law students with legal education. It often seems that law students have more trouble learning than the inherent intellectual difficulty of the subject matter warrants. Law students come to their professional training with preconceptions and illusions about law. Law is authority, and the profession tends to attract persons who want this authority to be clear, predictable, and just, and to point clearly to proper ethical choices. The reality is that the law is often unclear, unpredictable, and sometimes an engine of injustice. Further, since law is a helping profession, practitioners must face subtle and difficult conflicts of interest between themselves, their clients, and society, frequently involving distressing human circumstances. The ethical choices facing practitioners are a challenge to anyone's maturity. Finally, the transition that students must make during their law school years—to adult roles in their profession, families, and communities—is made more difficult by their ambivalent feelings toward their images of lawyers and lawyering. Because these realities are unacceptable to them, students are motivated to avoid seeing them.

These factors lie in the background of their initiation into the legal profession, but students are more likely to be aware of those law school experiences that intensify their immediate anxieties. Foremost among these is the law school class. "Socratic methods" vary greatly from teacher to teacher, but they all require the student to learn through vicarious participation in conversations carried on by others about unfamiliar subjects. This vicarious participation is made more difficult by the differences between the students' and the faculty's preconceptions about law. The feeling of not being in touch with what is going on is discomforting for many. It would help if students could think of each other and of their instructors as colleagues engaged in a joint learning enterprise, rather than as competitors and task masters. But because the sources of their anxiety are personal, unshared, and perhaps undiscovered, many law students feel isolated.

The relationship of students with each other and with their instructors is complicated by another matter worth considering. Most law students have spent their lives as children and students, depen-

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3 A fuller discussion of these matters may be found in Greenebaum, Attorneys' Problems in Making Ethical Decisions, 52 Ind. L.J. 627 (1977).

4 The exercise of authority and responsibility in groups is an important area of study for understanding lawyers' work. A collection of useful essays is contained in Group Relations Reader (A. Coleman & W. Bexton eds. 1975).
dent on and subject to the authority of parents and teachers. At the time they enter law school, students are making the transition to adult, and in some cases parental, responsibilities. Law faculty, aware that their charges will soon be authority figures, attempt to make them assume an appropriately aggressive and responsible posture toward legal subject matters. Students, ambivalent about the transition—resentful of dependency while resistant to responsibility—tend to transfer their ambivalence toward authority figures to the faculty. Further, student groups develop tacit rules regarding acceptable relations to instructors and to law studies, and students experience additional ambivalence in choosing between individual expression and the comfort of group norms. Students often acquiesce in group behavior, but project responsibility for their choice on the faculty, whom they accuse of treating students like sheep. Faculty, of course, may obtain satisfaction from the power implicit in this projection. Thus, students and faculty collude in the satisfaction of their respective emotional needs, to the detriment of accomplishing their work—a prototypical experience of professional-client relationships.

The quality of their relationships with the faculty and with their peers influence how effectively students and faculty will collaborate and communicate with each other, how accurately students will perceive legal subject matters (that is, how authoritative decisionmakers apply values to perceptions of facts), how willingly they will recognize the complexity and indeterminacy in the law, and to what extent they will accept the responsibility to create as well as to apply the law. In these matters, the habits students develop will tend to persist throughout their careers.

Moreover, specific subjects and situations may present emotional and attitudinal problems for attorneys that, if not understood, will limit effective lawyering. The following is a case that might enter the office of a general practitioner.

A parent comes to an attorney's office seeking help, whose infant daughter suffered a scarring burn on her face when she fell from a bed onto a hot radiator pipe in a hotel room in which mother and daughter were spending the night. The parents report that the mother had requested a crib for the infant, but that the hotel had failed to provide one. Medical expenses have been a severe burden to the family due to the father's modest income (he works for an underground newspaper). The daughter, formerly a happy and cheerful baby, is now anxious and irritable, and the mother is distraught, receiving psychiatric care and no longer able to work part-time.
How an attorney responds to such a situation, including how much information he learns, will be determined, in part, by his willingness to listen, his tolerance of his own distress regarding injured children and disrupted families, his stereotypes of the clients and others, his attitude toward emotional problems, judgmental feelings toward a mother who would allow an event of this kind to occur, feelings that an attorney must be able to help people in need, and ability to accept the distrust of people who become unhappily dependent upon attorneys. Attorneys are frequently unaware of how much of the data they gather from lawyer-client or -witness interactions are the product of their own perceptions and responses. An appropriate response depends not only on skill, but on insight and understanding as well.

The self-understanding required for responsible lawyering is inhibited by undeveloped cognitive understanding and by unconscious defenses, which are not easily overcome. We all have too many vested interests and are too likely to collude with our colleagues in beliefs that make us comfortable. It would of course be very advantageous to train lawyers in self-understanding. The object would not be to strip lawyers of all defenses, but rather to teach them more appropriate means of coping with the anxieties of law practice. Because learning to cope may feel threatening and calls for flexibility and experimentation, the work is best started in the kind of protected setting with the sort of disinterested guidance not usually afforded by the early years of law practice. This aspect of professional development will be assisted best by professionals whose business is education.

Those interested in these reflective aspects of professional development agree that education in understanding behavior in work roles must focus on students’ present work experience, but that the experience of clinical education does not necessarily fulfill the need. The “all-purpose course” has kept legal education in a static mold for decades. That is, all the purposes of legal education are supposed to be pursued pervasively throughout the curriculum without assigning priorities among courses. The result has been that the all-purpose course sometimes seems not to have done anything very well. The new trap for legal education is the all-purpose clinic.

There are three goals variously pursued in clinical teaching: (1) learning a subject matter, (2) skills training, and (3) understanding work roles and interpersonal relations. To illustrate, in a course in family law, one could simply read about the problems and experi-

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5 See, e.g., Watson, Some Psychological Aspects of Teaching Professional Responsibility, 16 J. LEGAL EDUC. 1 (1963).
ences of those with domestic problems. But if students play the roles of individuals with family difficulties, they may gain a deeper insight into the problems, and if they interviewed such individuals they might discover factual information, nuances, that cannot be conveyed in a written description. In contrast, skills training involves learning the behavior required to get a job done, for example, how to conduct an interview so as to obtain the maximum information or a negotiation so as to produce the optimal result. A third, distinct goal is gaining insight into and making choices about the lawyer's work role and the impact of his perceptions and motivations on fulfilling those responsibilities.

Subject matter, skills, and "roles and relations" are three aspects of the same clinical event, but in developing a teaching program, pursuit of one goal frequently results in the relative sacrifice of another. When teaching skills, for example, one may wish to isolate an operation and have students repeat it several times, actively directing their attention to discrete behaviors, reinforcing those viewed as effective and attempting to extinguish those viewed as dysfunctional. Teaching a subject matter, on the other hand, may lead to the inclusion of as much material as possible, so as to present a complete view, and time may not permit isolation and repetition. Here the materials would be selected to develop a subject matter theme. And skills and subject matter learning may both be relatively sacrificed in the introspective, nondirective approaches most useful in learning regarding roles and interpersonal relations.

The understanding of personal relations to work roles has thus far suffered from neglect in clinical and interdisciplinary developments in legal education. There are a number of reasons for this neglect. Scholars from fields such as economics, psychology, psychiatry, and sociology who have joined in legal education have predominantly been interested in contributing to the understanding of those subject matters of mutual interest to their fields and to the law. Clinical teachers who are typically former practitioners seeking to combine the satisfactions of teaching and practice often find that where service to immediate clients is at stake, skills and subject matter training seem of overriding importance. Further, lawyers do not know how to teach roles and relations, for they did not themselves receive such training when they were students. Interest in roles and relations work is growing, however, and legal educators can turn for assistance to fields such as social work, clinical psychology, and psychoanalysis where methods of professional training are well developed.

Because roles and relations training has not been traditional in legal education and because reflection on why we do what we do has
not been a prominent characteristic of the legal profession, directing attention, effort, and resources in this direction will require patience and determination. We cannot honestly pretend to understand the law and the legal profession, however, unless we understand ourselves.