

Interpersonal Dynamics

By Joshua D. Rosenberg

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1. Introduction:

a. Lawyers Need Relationship skills

Most people in this country do not like lawyers. Most lawyers in this country do not like their jobs.¹ As a law professor, I spend most of my waking hours helping to turn good, likeable people into those disliked and unhappy lawyers. As a result, I have felt some responsibility to at least consider both how the legal academy may be contributing to all of this disliking, and what we can do to change it.² After decades of pondering these questions,³ I believe that I have come up

¹ The rate of depression (and of Alcoholism) among lawyers is approximately double the national average. Andrew H. Benjamin & Bruce D. Sales, *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT'L J.L. & PSYCHIATRY. 233, 241 (1990); Andrew H. Benjamin & Bruce D. Sales, *Lawyer Psychopathology: Development, Prevalence, and Intervention* 281-301 (in JAMES R. P. OGLOFF, LAW AND PSYCHOLOGY: THE BROADENING OF THE DISCIPLINE 281 (Carolina Academic Press 1992)). The depression often begins in law school. Entering students are not more depressed than any other group of graduate students, but law school, for many, brings it on quickly, Andrew H. Benjamin, *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B FOUND. RES. J. 225, 228 (1986); Bridget A. Maloney, *Distress Among the Legal Profession: What Law Schools Can Do About It*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 307, 317 (2001); Paula Garber, *Just Trying to Be Human in This Place*, 10 YALE J.L. & FEMINISM 165 (1998); THIELENS WAGNER, *THE SOCIALIZATION OF LAW STUDENTS* (Ayer Co. Pub. 1980); Paul D. Carrington & James J. Conley, *The Alienation of Law Students*, 75 MICH. L. REV. 887 (1977); Stephen B. Shanfield & Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J.LEGAL EDUC. 65 (1985); Arleen Jacobius, *Coming Back From Depression*, A.B.A. J. 74 (April 1996); Ellen I. Carni, *Stress and Productivity: For Better or Worse*, N.Y.L.J. Nov. 26, 1996, at 5. (citing studies finding that U.S. lawyers suffer from clinical depression twice as often as general population); *See also*, Am. Bar Ass'n, *Legal Education & Professional Development --An Educational Continuum*, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap 220-21 (1992) (commonly known as the MacCrate Report); Susan Daicoff, *Asking Leopards to Change Their Spots: Should Lawyers Change? A Critique of Solutions to Problems with Professionalism by Reference to Empirically-Derived Attorney Personality Attributes*, 11 GEO. J. LEG ETHICS 547, 582-83 (1998); Debra Baker, *Cash-and-Carry Associates*, A.B.A. J. 40-44 (May 1999).

² I am not alone in this respect. *See, e.g.*, HOWARD LESNICK, *BEING A LAWYER: INDIVIDUAL CHOICE AND RESPONSIBILITY IN THE PRACTICE OF LAW* 228-30 (West Wadsworth 1992); THOMAS L. SHAFFER & ROBERT L. COCHRAN, *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* (1994); Jack Himmelstein, *Reassessing Law*

with some useful answers, and I write this article to share them.⁴

While most law professors, as most lawyers, seem to relish disagreeing with almost everything, we at least approach consensus on one common goal. We all strive to teach students to “think like a lawyer”: to accurately ascertain the relevant facts, and to apply disciplined logic and reason to those facts in order to arrive at a solution to whatever problem it is they are addressing.⁵ These skills are essential. Unfortunately, however, we do not teach people how to use these skills in the contexts where they are most needed—in interactions and relationships with colleagues, opposing counsel, clients and decision-makers.⁶

Most lawyers live in a world full of disagreement, hostility, competition and pressure.⁷ They are often hired as combatants in preexisting conflicts, and conflicts arise constantly (and inevitably) among those working together on the same side. While conflict among coworkers is by no means

Schooling: An Inquiry into the Application of Humanistic Educational Psychology to the Teaching of Law, 53 N.Y.U. L. Rev. 514, 541-43 (1978); Laurie A. Morin, *Reflections on Teaching Law as Right Livelihood: Cultivating Ethics, Professionalism, and Commitment to Public Service from the Inside Out*, 35 TULSA L.J. 227, 240, 255-274 (2000); John Mixon & Robert P. Schuwerk, *The Personal Dimension of Professional Responsibility*, 58 LAW & CONTEMP. PROBS. 87 (1995); Lucia Ann Silecchia, *Integrating Spiritual Perspectives with the Law School Experience: An Essay and an Invitation*, 37 SAN DIEGO L. REV. 167 (2000); ELIZABETH DVORKIN, JACK HIMMELSTEIN, & HOWARD LESNICK, BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND LAWYERING 3 (West Wadsworth 1981); Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients*, 7 HARV. NEGOT. L. REV. 1 (2002). See also text accompanying notes 15-20, *infra*.

³ I have not actually spent entire decades pondering just these questions, but, as an academic, it is my job to ponder, and these questions have interested me for quite some time.

⁴ To be precise, what I seek to share is not so much about how my colleagues and I may be (unintentionally) contributing to this unhappiness, but rather how we might begin to alleviate it.

⁵ Kurt M. Saunders & Linda Levine, *Learning to Think Like A Lawyer*, 29 U.S.F. L. Rev. 121, 185 (1994); Alex M. Johnson, Jr., *Think Like A Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL L. REV. 1231, 1243-45 (1991); Michael C. Dorf, *Legal Indeterminacy and Institutional Design*, 78 N.Y.U. L. Rev. 875, 930 (2003).

⁶ Stephen Wiesner, *Is Learning to Think Like A Lawyer Enough?*, 17 YALE L. & POL'Y REV. 583, 586 (1998); Alan Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392 (1971); Johnson, *supra* note 5, at 1245; John Henry Schlegel, *Law and Endangered Species: Is Survival At one Cause for Celebration?*, 28 IND. L. REV. 391 (1995).

⁷ Johnson, *supra* note 5, at 1245.

restricted to law firms, the hostility, time-pressure and amounts of money involved in the work lawyers do puts significant stress on those who work in law firms. This stress both increases whatever conflicts evolve and tends to generate additional conflicts. For lawyers, the ability to work through stress-generating and stress-induced (or stress-enhanced) conflict productively is essential both to mental health and to success.⁸

Although many lawyers work too hard, most unhappy young lawyers do not complain exclusively, or even primarily, about the amount of work they are asked to do.⁹ Instead, their complaints tend to focus on the way they are treated by their superiors at work. They feel at best disregarded, and at worst abused, by the partners, and they feel isolated in the discomfort brought about by these reactions to law firm life.¹⁰ They often do not know where to turn for help, advice, or even a friendly ear.

Almost every partner, and almost every associate, at almost every firm, has at some time had some variant of the experience where Partner (P), who feels pressed for time, asks Associate (A) to do some research. Because P is rushed, she describes the issue quickly and begins to turn to her other pressing demands. A assumes, from the quick description and from seeing P begin to turn towards other work, that P wants and expects him to understand exactly what he is supposed

⁸ James J. Alfini & Joseph N. Van Vooren, *Is There A Solution to the Problem of Lawyer Stress? The Law School Perspective*, 10 J.L. & HEALTH 61 (1996).

⁹ The long hours expected of most young lawyers is nonetheless also problematic. *Id.*

¹⁰ The American Bar Association recently determined that among the most significant causes of attorney stress and dissatisfaction is the “failure to encourage lawyers to communicate openly their professional as well as personal needs and problems, and to develop collegiality, mutual support, and institutional loyalty.” A.B.A., AT THE BREAKING POINT, THE REPORT OF THE NATIONAL CONFERENCE ON THE EMERGING CRISIS IN THE QUALITY OF LAWYERS’ HEALTH AND LIVES--ITS IMPACT ON LAW FIRMS AND CLIENT SERVICES 7 (1991); *See also* Michael Orey, *Misery*, AM. LAW., Oct. 1993, at 5 (attributing higher attrition in legal profession to lawyers’ lack of personal fulfillment from work); Judith Schroer, *Discontented Lawyers Flee Profession*, USA TODAY, Oct. 7, 1993, at B1 (lawyers leaving legal profession for jobs with less stress, conflict, and monotony); Saundra Torrey, *Attorneys Who Come In-House from the Cold*, WASH. POST, July 10, 1995, at F7.

to do and to not ask any more questions. A has several questions about the research he is asked to do. Because P has already indicated that she wants A to go and start the work, A fears that if he asks questions, P will be annoyed and will think him less capable. As a result, he does not ask any questions.

Upon leaving P's office, A struggles to find direction in his research, and works hard, until 2:00 a.m., to get it right. He returns the next day with his work product. P looks it over and sees that it is not what she wanted. She realizes, and says, that the most efficient approach to the issue is for her to do the research herself.

As a result of these interactions, P feels worried about getting her work out on time, annoyed at herself (and a little guilty) for not having given more clear guidance, annoyed at A for not having produced a good product, and somewhat less confident in A's abilities. A feels inadequate and resentful. They are both less comfortable working with each other, and their joint work product, as well as their work experience, is likely to suffer. In large part because of many interactions like that above, many young lawyers often feel fearful, confused, dissatisfied and generally unhappy, and their superiors at the firm often feel harried, resentful, guilty and disappointed.

The same relationship skills that would help attorneys like A to avoid the most problematic aspects of law practice by enabling them to react effectively in situations similar to that described above are also the ones that can enable attorneys to have the kinds of interactions that can make lawyering most rewarding.¹¹ When asked what they like best about their work, lawyers who *like* their work typically respond with statements about relationships: "I like to help people;"

¹¹ *Id.*

or "Last week, a client told me that what I did for her made a big difference in her life;" or "I like being part of a team." Like other humans, lawyers get satisfaction from helping others and from good relationships.¹²

Unfortunately, many lawyers who are unhappy in their work simply do not get any of these kinds of satisfactions. Their interactions with their coworkers may typically be like that of A, above; their interactions with opposing counsel are worse; and their interactions with clients are often limited and rushed. High salaries are wonderful things (for those who receive them).

Nonetheless, they do not help lawyers like their work; they only keep lawyers working in the jobs they dislike.¹³

While some may be willing to accept that unsatisfying personal interactions are simply part of the cost of the high salary, status and power that are available to attorneys, the truth is exactly the opposite. Not only do relationship skills allow a lawyer to *enjoy* her success, but, perhaps more importantly, they are essential tools to *achieve* that success. The skills and abilities that would enable A to deal effectively with P above would also enable her to negotiate successfully with opposing counsel and with clients. In addition, even in areas where legal negotiation is not an issue, success in law (as in other fields) correlates significantly *more* with relationship skills than it does with intelligence, writing ability, or any other known factor.¹⁴

¹² DONALD P. LAY, *LAW: A HUMAN PROCESS* (West 1996); ANTHONY T. KRONMAN, *THE LOST LAWYER* (Belknap Press 1995).

¹³ Of course, if given the choice between more money and a hug from a client, they would choose the money and laugh at the absurdity of the Alternative. They do not consciously miss the interpersonal reinforcement and reward of being, and feeling, appreciated. Nonetheless, the fact that many lawyers do not "miss" having better relationships may be for reasons similar to the reasons that businesses, students and academics in the first three quarters of the twentieth century did not miss computers. We had no idea that they were even possible.

¹⁴ DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE*, 27-29, 35-39 (Bantam Books 1995).

b. Law Schools' attempts at solutions

One might suggest that if a student has learned to “think like a lawyer,” she ought to be able to use those skills to develop the relevant facts and solve whatever problems arise in her relationships with others, just as she has learned to apply those skills to legal issues.

Unfortunately, regardless of how well A has learned to think and analyze facts and issues, that ability alone is *not* likely to serve her well in situations like that with P, above.

The problem in relationships is not that the important facts are indeterminable or that the most useful course of action could not be reasonably thought out and developed. It is that when A most needs those abilities to discern the facts and to reason logically in the context of interpersonal relationships, she is least likely to be able to access them.¹⁵

Basically, most lawyers and academics vastly overestimate the importance of reason and logic. We tend to view them as both the primary motivator of our own behavior and the primary tool to change the thinking and behavior of others.¹⁶ Although they are important, they are only one part of the puzzle. There are important differences between the kind of dispassionate reasoning and

¹⁵ PAUL EKMAN, *EMOTIONS REVEALED*, 52-75 (Times Books, Henry Holt & Co. 2003).

¹⁶ *See supra* notes 2 and 5. I cannot count how many times I have logically and reasonably discussed my views on such things as proper economic, tax or foreign policy, affirmative action, gay rights, and any number of political and/or social issues. In all these discussions, my logic and reasoning are, every time, superior to those of whomever I am talking to (at least, that is how I see it). Still, I cannot think of a single time when my superior reasoning brought the other person around to seeing things my way. The more typical result of my superior reasoning is that the other person continues to disagree on the issues, but likes me just a little less. Occasionally when I find myself in disagreements about policy matters, I try always to ask the person with whom I am speaking whether they have ever been convinced by logical analysis to change their mind about a similar issue. Usually the response, after a brief reflection, is “no,” and while I will then quit that particular discussion without having convinced the other person of my point, I will also have left without having elevated my own blood pressure to dangerous levels.

analysis in which lawyers and law students engage while sitting at desks at home, in the office, or in the library, and the kind of activities in which we engage when we are dealing in real time with real people. Real time, real life interactions implicate emotions, learned patterns of behavior, habituated perspectives and frames of reference, and other human, but not reasoned, responses.¹⁷

To be sure, the notion of teaching about the role of emotions and irrational human biases is not entirely new to law schools.¹⁸ Students in clinical programs,¹⁹ internships and externships,²⁰ and in courses such as Negotiation, Mediation, Client Counseling, and ADR are taught that there is much other than pure logic that drives human behavior. In addition to learning more creative problem-solving and different, and often more constructive, ways to define any particular “problem,”²¹ they typically learn about the numerous environmental, interpersonal and

¹⁷ AARON T. BECK, *LOVE IS NEVER ENOUGH: HOW COUPLES CAN OVERCOME MISUNDERSTANDINGS, RESOLVE CONFLICTS, AND SOLVE PROBLEMS THROUGH COGNITIVE THERAPY*, 154-170 (Harper Press 1989).

¹⁸ Melissa L. Nelken, *Negotiation and Psychoanalysis: If I'd Wanted to Learn About Feelings, I Wouldn't Have Gone to Law School*, 46 J. LEGAL EDUC. 420, 423 (1996); Robert S. Redmount, *Attorney Personalities and Some Psychological Aspects of Legal Consultation*, 109 U. PA. L. REV. 972, 985 (1961); Erwin N. Griswold, *Law Schools and Human Relations*, 37 CHI. B. RECORD 199, 201 (1956); Howard R. Sacks, *Human Relations Training for Students and Lawyers*, 11 J. LEGAL EDUC. 316, 317 (1959); Andrew S. Watson, *The Law and Behavioral Science Project at the University of Pennsylvania: A Psychiatrist on the Law Faculty*, 11 J. LEGAL EDUC. 73 (1958); Andrew S. Watson, *Teaching Mental Health Concepts in the Law School*, 33 AM. J. ORTHOPSYCH. 115, 120 (1963); John O. Mudd, *Academic Change in Law Schools*, 29 GONZ. L. REV. 29, 36-39(1993-94). See also Jerome Frank, *A Plea for Lawyer Schools*, 56 YALE L.J. 1302 (1947).

¹⁹ I agree with Professor Engler when he writes that “[c]linics have made, and continue to make, an invaluable contribution to the entire legal education enterprise. They are a key component in the development and advancement of skills and values throughout the profession. Their role in the curricular mix of courses is vital.” Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 114 (2002).

²⁰ See e.g., Daniel J. Givelber, *Learning Through Work: An Empirical Study of Legal Internship*, 45 J. LEGAL EDUC. 1 (1995) (examining Northeastern University School of Law's cooperative program, internships in general, and their impact on law students' learning); See also Peter Jaszi, Ann Shaleck, Marlana Valdez, & Susan Carle, *Experience as Text: The History of Externship Pedagogy at the Washington College of Law American University*, 5 CLINICAL L. REV. 403 (1999).

²¹ Training in at least certain kinds of problem-solving make up most of the three years of law school. If nothing else, law students learn well how to review what has happened, to assign blame, and to argue persuasively about why one party ought to be held responsible for what has gone wrong. Courses in Negotiation, Mediation and Preventive Law tend to emphasize creative and forward-looking problem solving, with an emphasis on identifying and working to pursue each party's interests and goals rather than on assigning blame. Janet Weinstein & Linda

informational factors that affect litigants, attorneys and decision-makers.²² They learn how these factors might be manipulated to encourage collaborative problem-solving, one-sided concessions,

Morton, *Stuck in a Rut: The Role of Creative Thinking and Problem-Solving and Legal Education*, 9 CLINICAL LAW REVIEW 835 (Spring 2003); Carrie Menkel-Meadow, *When Winning Isn't Everything: The Lawyer As Problem Solver*, 28 HOFSTRA L. REV. 905 (2000) (lawyers need to be able to "think outside of the box"); Paul Brest & Linda Krieger, *On Teaching Professional Judgment*, 69 WASH. L. REV. 527, 538 (1994); Comments of Diane Yu, *Plenary III: Mobilizing Creative Problem Solvers*, 37 CAL. W. L. REV. 83, 92 (2000). *See generally* Maureen E. Laflin, *Toward the Making of Good Lawyers: How an Appellate Clinic Satisfies the Professional Objectives of the MacCrate Report*, 33 GONZ. L. REV. 1, 7 (1998); Alan M. Lerner, *Law & Lawyering in the Workplace: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solver*, 32 AKRON L. REV. 107, 109 (1999); David R. Culp, *Law School: A Mortuary for Poets and Moral Reason*, 16 CAMPBELL L. REV. 61 (1994).

²² These courses typically identify the following as most important: (1) knowledge of typical human biases--a basic understanding of situational, environmental, and behavioral factors that generally influence human behavior, and (2) skills, including primarily problem solving and communication and preparation. *See generally* ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, *INTERVIEWING, COUNSELING AND NEGOTIATION* (Little, Brown & Co. 1990); ROY J. LEWICKI, DAVID M. SAUNDERS & JOHN W. MINTON, *ESSENTIALS OF NEGOTIATION* (McGraw-Hill Irwin Press, N.Y.) (2d ed. 1997).

Through the years, psychologists, researchers, observers and gurus of all kinds have discovered numerous "rules" or truths about human behavior—specific biases, tendencies, and patterns typical of most people. Among the most well known of these factors are:

- (1) Gravitational force: the closer we are to something or someone, and the bigger (or more intense) that thing is, the stronger is the force they have on us (and we have on them). We tend to pay more attention to people physically closer to us, than we do to those at a distance, and we are even more subject to being influenced by someone who is close enough to make us a little uncomfortable than we are to be influenced by someone standing at what feels to us to be a more appropriate distance.

The notion of gravity has an emotional correlate: the more we are attracted to, and the closer we *feel* to a person, the more impact that person has on us and the more receptive we will be to her ideas and proposals. We pay most attention to ourselves, of course, and there is a strong tendency for people to overestimate themselves, in terms of their relative capabilities, and, for attorneys, in terms of the strength of their case.

- (2) Inertia: We tend to have an innate preference for things to stay going the way they are. If something is mine, I want to keep it, even though if it weren't mine, I would not want to acquire it. We are more likely to be persuaded by the statement that "that's how it's always been" than we are by other kinds of statements that are equally void of reason. The physical correlate of inertia, momentum, also has a human correlate. Once I say "yes" to one or two propositions, I am more likely to continue to say "yes" than I might otherwise have been.
- (3) Reciprocal reactions (for every action there is an equal and opposite reaction): we are likely to treat others the way we understand them to be treating us. If someone does us a favor or treats us with respect, we tend to want to return that favor or respect. If we believe someone is mean to us, we tend to be mean to them. If we believe someone is listening to us and cooperating with us, we will be more likely to listen to them. We are not as aware of the extent of reciprocal behavior as we might be because of communication problems. Often the message person A intends is not the message person B understands. When B responds in kind to the message she thought she was getting from A, A often misinterprets that response, and even if A interprets it correctly, she does not notice any reciprocity because it is B's response or her own misinterpretation of A's message.
- (4) Directional force and velocity: the more people are going in parallel directions, the less severe their impact on each other will be; when people are going in opposite directions (i.e., facing each other) their impact on each other will be more intense (either positively, or negatively).
- (5) Relativity: Our reaction to something depends on what it is we are comparing it to. Just as lukewarm water will feel cold to someone who has had her hand in hot water, and will feel hot to someone who has had her hand in ice, if a negotiator first hears a very unacceptable offer first, she will be more receptive to the following, somewhat better, offer, than she otherwise would have been, because it seems better compared to that first offer. If my chair is higher than the other person's, I will feel bigger, and vice versa.

or both (as well as how they might backfire and end up encouraging only resentment). They learn about skills such as listening, reframing, questioning, and blocking strategies, and they are also often given opportunities to both observe the impacts of those components and to try to put them to work in their own role-plays.

I have taught several of these courses²³ and written extensively and supportively in these areas.²⁴

After a few years of teaching these courses, though, I found myself getting somewhat frustrated.

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- (6) Pressure (stress): as stress increases, people will act less predictably and less rationally. People in conflict will see the conflict as being disproportionately greater than it is, and will see areas of agreement as disproportionately smaller than they are.
 - (7) Patterning: people tend to do what they observe others do (to reproduce observed behaviors). The more uncertain they are, the more likely they will be to imitate what they observe.
 - (8) People have an inherent need for certainty and clarity. We tend to see complete figures and concepts where they may not exist, and are more comfortable with certainty (even if we are wrong) than we are with ambiguity. We are more comfortable with “yes” or “no” or black and white than they are with “maybe” or “grey.” We seek out and are more receptive to proposals that tend to imply certainty.²²
 - (9) Fractiles: Patterns of behavior tend to replicate themselves infinitely, with infinite variations in size. The same patterns of interaction that describe a long term relationship are usually evident in even an excerpt of only a few minutes of that same relationship.

Some version of each of these factors appears in almost every book on negotiation, *e.g.*, BASTRESS & HARBAUGH, *supra* at 363-370.; LEWICKI ET AL., *supra* at 117-125.; JAMES C. FREUND, SMART NEGOTIATING, 208-212 (Simon & Schuster 1992).

The communication skills that lawyers need are essentially the same ones that everyone else needs, and they also are discussed in every course on Negotiation and have been set forth and discussed in literally thousands of books on Negotiation, sales, management, mediation, self help, and just plain communication, *e.g.*, LEWICKI ET AL., *supra* at 110; GERARD I. NIERENBERG, THE ART OF NEGOTIATING (Simon & Schuster 1968); CHESTER L. KARRASS, THE NEGOTIATING GAME (Crowell Publishers 1970). Not surprisingly, these include (1) listening so that others will (a) speak about what you want them to and (b) feel connected to you; and (2) speaking so that others will (a) listen and be receptive to what you have to say and (b) feel connected.

Basically, active listening includes not only taking in what the other has to say and how she feels about it, but also doing so in a way that communicates as much to the speaker. It also requires checking out one’s understanding, both of the substance of, and the emotion behind, what the speaker is saying, and probing for more information and clarification when appropriate.

Speaking in a way that others will be likely to listen to and consider requires presenting information and arguments in a way that will both maximize the listener’s interest and minimize the listener’s perceived threat. Assuming the listener is equally interested in what the speaker has to say, the more room that the speaker appears to leave the listener to come to her own conclusions, the more likely the listener will be to be receptive to the speaker. As a result, statements that declare absolutes about an area of disagreement are likely to be rejected. Statements that purport to declare only the speaker’s perceptions and ideas, rather than the absolute “reality” of a situation, are more likely to be heard. The more that statements purport to describe facts close to, or known by, the listener, the more likely she is to be met with resistance. Statements that purport to actually describe the listener’s (as opposed to the speaker’s) state of mind, feelings, or intentions, are most likely to be met with not only resistance, but with hostility.

²³ Negotiation, Mediation, and an ADR overview course

It dawned on me that while one might cover important relational skills in the service of teaching other subjects, the entire notion of teaching these skills as an adjunct to certain specific areas of law practice was somehow backwards. Teaching relational skills as a component of Client Counseling, and as a component of Negotiation, and as a component of Mediation, and then having practicing lawyers learn them again as a component of Law Practice Management, and then again as a component of CLE courses in Ethics, Substance Abuse, and Marketing a Law Practice, strikes me not simply as unnecessarily repetitive, but, much more importantly, as inevitably insufficient. It is the equivalent of a high school offering courses in subjects such as "Grocery Shopping," "Getting and Keeping a Job," or "Leisure Activities" with each course including a component of driving skills (because some stores, work, or leisure activities are not readily accessible by walking or by public transportation), but never offering a self-contained course in driving. Whether it be steering a car through city traffic and highways, or steering one's self through myriad relationships in different contexts, there is a fundamental skill set that is both important to learn and, once learned, has daily applications in numerous contexts.

Were it as easy to actually learn relational skills as it is to learn Torts, or even Tax law, the typical law school approach to these topics would be more than adequate. Whatever was left out of the classes in Negotiation or Mediation could be gleaned from the relevant treatises. Lawyers and law students can certainly acquire knowledge about human behavior and typical biases, or about what constitute the essential components of effective listening and speaking, as easily as they can learn about subjects tested on the Bar exam and left out of the law school curriculum.

²⁴ Joshua D. Rosenberg & H. Jay Folberg, *Alternative Dispute Resolution: An Empirical Analysis*, 46 STAN. L. REV. 1487 (1994); Joshua D. Rosenberg, *In Defense of Mediation*, 33 ARIZ. L. REV. 467 (1991); Joshua D. Rosenberg, H.J. Folberg & Robert Barrett, *Use of ADR in California Courts: Findings and Proposals*, 26 U.S.F. L. Rev. 343 (1992); Joshua D. Rosenberg, H.J. Folberg & Robert Barrett, *The Use of Mediation in Small Claims Courts*, 9 J. DISP. RES. 55 (1993).

Indeed, unlike typical law school courses, there are thousands of books on communication skills, and every bookstore in the country carries at least a few.²⁵ If we could learn communication skills as readily as we learn substantive law, we would have all done so long before law school.

Unfortunately, despite all of the books, and the occasional class, most of us *never* actually learn them. The basic reason is that we simply cannot learn communication skills the same way we learn *information*. We need to learn them as we learn other *skills*, such as dancing or tennis—by practicing, getting feedback, and practicing some more.

There is, of course, an intellectual component to relational skills, and most lawyers can learn that relatively quickly. After only a few hours of reading about these skills, many lawyers could analyze the transcript of most conversations and interactions, realize where they started going off track, and determine what might have been said to either have kept them, or gotten them back, on track. No doubt they could pass even a difficult written exam on the subject.

Similarly, when reviewing a tape of a professional baseball game, we can also determine that the batter should have swung a little higher or lower at any particular pitch, but that will not make us major league players. Just as the ability to see that the batter should have swung higher does not make us major league baseball players, the ability to analyze a transcript does not make us effective communicators. Both skills take a great deal of practice to learn well. The difference is that while batting is not essential to success in law, communication is.

²⁵ Amazon.com currently lists about 1,500 books on the subject “communication skills”. http://www.amazon.com/exec/obidos/search-handle-url/ref=pd_kk_sr_2/102-5686795-7216967?index=books&field-keywords=communication%20skills.

c. Interpersonal Dynamics: An Approach That Works

For the last several years, I have been teaching a course, *Interpersonal Dynamics for Attorneys*, that is devoted to actually teaching the relationship skills that are (or at least ought to be) used by attorneys daily--the skills that make them better negotiators, better co-workers, better investigators, and better at attracting and retaining clients. They are also the skills that will enable them to have more effective and more meaningful relationships with those with whom they work. These skills, put simply, are (1) the ability to communicate (listen as well as speak) more clearly and completely; (2) self-awareness, and (3) an openness and receptivity to other people.

The course is not necessarily “intellectually” stimulating. There are few new ideas or theories to learn or apply.²⁶ Students spend approximately 100 hours during the course of the semester “practicing” a very few basic concepts.²⁷ Nonetheless, for most students it is the most challenging, provocative and stimulating class they take in law school. Almost all of the students who have taken the course have found it to be the “single most useful course” they have ever taken, at any school. Some have described it as “life-changing,” as “an amazing, amazing class,” or as “the one class that made law school worthwhile,” and almost all believe that its lessons have more relevance to their future careers as lawyers than any other course.

²⁶ The only required reading is *The Interpersonal Dynamics Reader*, by David Bradford & MaryAnn Huckabay (2001) (unpublished reader on file with Joshua D. Rosenberg), *DIFFICULT CONVERSATIONS* (Penguin Books 1999), by DOUGLAS STONE, BRUCE PATTON & SHEILA HEEN (of the Harvard Negotiation Project), and a few relatively short articles.

²⁷ See discussion at text accompanying notes 58-65, *infra*. In many Negotiation courses, students may spend as much as 10 or 20 hours “practicing” by doing role-plays. The kinds of practice students do in *Interpersonal Dynamics* is not only much more in depth, it is also significantly more intense, and generates significantly more, and more useful, feedback for the participants. See discussion at text accompanying notes 58-70, *infra*.

I do not take personal credit for these reactions. My friend and mentor, David Bradford, has been teaching a very similar course, with similar student reactions, at the Stanford University Graduate School of Business for many years. As I explain below, the role of the professor in this course is limited. Students' learning comes not from listening to what the professor has to say, but from paying attention to themselves and to their fellow students. Students' positive reactions are to the *experience*, not to the professor.

I believe that courses in Interpersonal Dynamics are a way to dramatically improve all law schools, legal education, and the capabilities and lives of attorneys. After 20 years of achievements in legal academia,²⁸ I believe, for the first time in my career as a law professor, that with my involvement with this course I am genuinely doing something important.

2. Why It Takes More Than Intellectual Understanding: Human Behavior as a System

In this part I explain in greater detail why it is that neither an intellectual understanding of human behavior nor the ability to reason and analyze translates into the ability to engage effectively in interpersonal relationships. I suggest that our own reactions, as well as those of others with

²⁸To date, I have taught 17 classes at 7 different law schools, co-authored three textbooks (each used at approximately 100 law schools), written numerous articles, many of which appeared in the best law reviews, and been awarded several best teacher awards, etc. I do not say this to be boastful. Instead, my point is precisely the opposite. For me, simply participating in Interpersonal Dynamics, and helping it spread, is significantly more important than any of my publications or awards.

whom we interact, are determined not simply by what we logically conclude to be appropriate at any time, but by numerous responses that may be triggered by learned behaviors, emotions, distortion in perceptions and self-fulfilling prophecies as well as by the application of pure reason to all the relevant facts. Basically, human behavior is explained neither by a top down model (one that presumes that all behavior is rational) nor by a bottom-up model (which might assume that all behavior is somehow instinctual, emotional or behaviorally conditioned). It is *systemic* in nature: our thoughts, feelings, perceptions and behavior influence, and are influenced by, each other.

a. Feelings Affect Thinking

Few would doubt that our feelings can significantly impact our thoughts—both what we think about and the way we think about it. Perhaps the most obvious example of this phenomenon is the behavior of anyone in the throes of love (or in the throes of the dislike that, for some, tends to follow the disillusionment of lost love). Such a person may find it difficult to think about things other than the object of her intense feelings; and the content of those thoughts will depend significantly on which "throes" the person is in (that is, "in love," or in "dislike") at the time. A person who thinks certain behaviors are endearing while she is in love may well start to think of those same behaviors as offensive once that love turns to dislike.

Feelings not only affect what we think about and how we think about it, but they also impact the *quality* of our thinking. As Paul Ekman has recently written, feelings can prevent us from having

cognitive access to otherwise available information and memories. During, and immediately following, the grip of emotions, “our thinking cannot incorporate information that does not fit, maintain or justify the emotion we are feeling.”²⁹ Rather than functioning as it otherwise would and allowing us to remember and operate from our typical cognitive frame, our brain retrieves and focuses only on memories related to the emotion we are experiencing, even if those memories themselves are typically not accessible when we are not feeling that emotion.³⁰ As Ekman explains, “[W]e evaluate what is happening in a way that is consistent with the emotion we are feeling, thus justifying and maintaining the emotion. Expectations are formed, judgments made, that typically serve to maintain rather than diminish the felt emotion.”³¹

Of course, most lawyers are not dealing with either current or former lovers while at work, so we tend to believe that the impact of emotions during work is limited or nonexistent. Perhaps surprisingly to some, relationships of all kinds implicate, and are impacted by, emotions.³² Many people are unaware of these emotions, and the impact they have, until the emotions reach a level that makes them impossible to ignore. Others are more aware of the presence of emotions at lesser intensities, but they are typically unaware of the way emotions *impact* our focus, thoughts and perceptions.³³

The reactions to emotions occur whether or not the person is aware of either the reaction or the emotion, and they *significantly* impact the outcome of most negotiations and most other

²⁹ PAUL EKMAN, EMOTIONS REVEALED, 39, 63 (Times Books 2003). *See also* MEMORY FOR EVERYDAY AND EMOTIONAL EVENTS (N.L. Stein, P.A. Ornstein, B. Tversky & C. Brainard, eds., 1997).

³⁰ EKMAN, *supra* note 29, at 63.

³¹ *Id.* at 63.

³² *Id.*; GOLEMAN, *supra* note 14, at 35, 117.

³³ *See* discussion at text accompanying note 31, *supra*.

interpersonal interactions. People who become anxious may tend to over-accommodate the other by inappropriately giving in on the substance of the discussion, or may tend to talk too much (or too little) in an unconscious effort to forestall that anxiety. People who become irritated may tend to become slightly belligerent or withdrawn in ways that can harm their interactions. *Any* feelings are likely to trigger unconscious patterns of thought and behavior that will inevitably influence an interaction.³⁴

b. The Impact of Emotions and Behavior on Perception

It is not just how we *think* about what we perceive that is tainted by our feelings. Our very perceptions themselves are determined, in part, by our feelings (and thoughts). As an initial matter, emotions precipitate changes in the autonomic nervous system. These changes include increasing the heart rate, changing breathing patterns, skin changes such as perspiration or blushing, and redirecting blood flow (anger has been found to direct blood to the hands, presumably for combat; fear has been shown to redirect blood to the legs, presumably for running).³⁵ At a micro level, these changes in the autonomic nervous system change not only our ability to think, but also our ability to act and perceive. Along with our thoughts, our blood flow, and our energy, the focus of our attention and our ability to take in data are significantly changed by our emotional state. Not only our behavior, but also our perceptions become both differently

³⁴ For example, as suggested at note 22, *supra*, the feeling of “liking” someone will make a person more receptive to that person’s ideas. Also note the role of feelings in the partner-associate interaction discussed at text accompanying notes 2-4, *supra*.

³⁵ EKMAN, *supra* note 29, at 63; R.W. Levenson, Paul Ekman, K. Heider & W. Friesen, *Emotion and the Autonomic Nervous System Activity in the Minangkabau of West Sumatra*, 62 J. PERSONALITY & SOC. PSYCH. 972-978 (1992).

focused and usually less accurate.³⁶

c. Thinking Affects Perception

Obviously, our thinking significantly affects our behavior. Perhaps less obviously, but equally important, our thinking also impacts our *perceptions*. We all have not only specific thoughts at any given time, but also more general “frames of reference”—ways we tend to understand the world. The impact of these frames of reference on our perceptions, though perhaps most apparent when we are subject to intense emotions, is by no means limited to those times. Instead, our frames of reference impact on us constantly, determining both *how* we see things and *what* things we see (or pay attention to).³⁷ As an example, just yesterday I was in our garden, together with my wife and three year old son and a friend. My wife, thinking about her beautiful garden, was aware only of colorful, sweet-smelling flowers. My son, thinking about how much he loves to catch flies, was aware only of a particular fly that he was trying to catch. My friend, who was thinking about his own one-year old child, was aware only of how big and energetic my three year old was (and his one year old soon would be). I, alas, was thinking about work, and was aware primarily of how many weeds were growing and how much work I would have to do in the garden after finishing this article. Because of our different frames of references, we had four very different perceptions, and experiences, of the same event.

³⁶ EKMAN, *supra* note 29, at 62-64. The specific changes depend on the emotion. Some level of anxiety can actually increase the accuracy of certain types of perceptions.

³⁷ The notion of analyzing different frames of reference and their influence on perception was first made popular by Richard Bandler and John Grinder in *REFRAMING: NEURO-LINGUISTIC PROGRAMMING AND THE TRANSFORMATION OF MEANING* (Real People Press 1982). The concept is now quite widespread. *See, e.g.*, LEWICKI ET AL., *supra* note 22, at 22-32.

d. Behavior Impacts Thinking and Feeling

Although no one doubts that thinking impacts our behavior, the extent to which the exact *opposite* is also true is worth noting. What we do significantly impacts both how we think and what we think about. In order to make this point to students, I have conducted in some negotiation classes a simple experiment in which some students are chosen for each of two groups, and the remaining students (who have previously, and secretly, been instructed on how to act) are designated as "observers" of each group. Each group, with its designated "observers," is sent to a different room and asked to toss pennies to see how close they can get them to the wall. One group's tossing is met with complete silence by its "observers," who pretend to busy themselves with note taking. The other group receives constant praise from its "observers" (for example, for their ability to get pennies close to the wall, for their good form, etc.). Not surprisingly, the second group invariably continues long after the first group stops.

When asked why they stopped, the first group typically replies that they had other things to do (such as "reviewing" the reading they were supposed to have done for that day's class). When asked why they continued for as long as they did, the second group typically responds with statements such as "it reminds me of when I was a kid, so it brings back fond memories," or "it was fun," or simply "you told us to." None in the second group respond that they continued because they were getting cheered on by others, and none in the first group suggest or believe that they stopped because their "observers" were silent. Each group thought differently about the

tossing they had done, and each individual had very reasonable and logical thoughts about why she did what she did. In each case, however, these thoughts were the *result* of their behavior, rather than its cause.

Equally as important as the fact that their actions drove their reasoning is the effect of those actions on the general *topics* about which they thought during the experiment. The group that continued tossing pennies was thinking about how to get the pennies close to the wall--how to improve their outcomes and their technique. The other group was thinking about the content they were reading (after they quickly stopped either throwing the dumb pennies against the wall or thinking about the pennies). While each group might have been thinking very rationally, what they were thinking *about* was determined not by rational choice, but by their *behavior* (which, in turn, was determined by the actions of their "observers").

Students have pointed out that penny-throwing was more enjoyable for the group that had the active and engaged observers than it was for the group that had silent note-takers, so that the decision of one group to continue while the other group quickly quit is entirely "reasonable." My point, however, is not about whether the behavior of both groups appears reasonable to an objective observer. It is instead that none of those who participated were thinking about their own behavior in that way. They may have been acting according to known principals of behavioral psychology, but *they thought* they were acting for other reasons entirely.³⁸

³⁸ Although many of us are unaware of the extent to which we engage in this kind of *ex post* rationalization with respect both to what we think about and how we think about it, we all do it, almost all the time. See PETER GOLDIE, *THE EMOTIONS* 47 (Oxford University Press, 2000). On a personal note, when I was in Las Vegas tossing my own coins into slot machines, I told myself things like "If I put the money in just right, at the right time, and with the right spin, I'll win," or (toward the end) "I only have three more quarters; I might as well get rid of them." If asked whether I really believed these thoughts at the time, I would likely have denied it, but the fact remains that I did

In addition to affecting our thoughts, how we act also affects our emotions. We all know that there are certain activities that make us feel better (sports, relaxation, being with close friends and family, etc.) and others that make us feel worse (some kinds of legal work, being with certain people (sometimes family), etc.). More recently, researchers have shown that merely adopting certain postures or facial expressions has immediate impact on emotions, regardless of the reason the postures are adopted and regardless of whether the positions are physically comfortable, uncomfortable, stressful or relaxing.³⁹ Similarly, how we act while experiencing emotions significantly impacts the course of those emotions, regardless of the way that our behavior impacts on others who might be the cause or target of those emotions.⁴⁰ Again, while lawyers may not toss pennies at work, they are constantly engaging in *some* behavior and adopting some physical position and attitude. All of it impacts not only their emotions and thinking, but also the reactions of others.⁴¹

e. The Result: Interacting Systems and Self-fulfilling Prophecies

Basically, our thoughts, feelings, behaviors and perceptions influence each other. We react *to* our

"think" them. In fact, slot machines are configured, with the assistance of behavioral psychologists, to generate payout schedules that maximally sustain the behavior of putting money in the machines. In other words, I was throwing my money away (just as my students were throwing their pennies against the wall) because I was being conditioned to do so, and those entirely irrational thoughts I was having about the likelihood of my winning were not so much the *cause* of my gambling, as the *result* of it.

³⁹ PAUL EKMAN, EMOTIONS REVEALED 35, (Times Books 2003); Ekman & Davidson, *Voluntary Smiling Changes Brain Activity*, 4 PSYCHOLOGICAL SCIENCE, 342-344 (1990).

⁴⁰ Ekman & Davidson, *supra* note 38.

⁴¹ For examples of how some lawyers take advantage of these reactions in others, see DONALD B. GIFFORD, LEGAL NEGOTIATION THEORY AND APPLICATIONS 73-83 (West 1989); CHARLES B. CRAVER, EFFECTIVE LEGAL NEGOTIATION AND SETTLEMENT 167-202 (The Michie Co. 2d ed. 1993).

perceptions of the world around us while our own behavior impacts *on* the world. Of course, the patterns of our behavior, thoughts, perceptions and feelings are far from random. We tend to learn patterns of thought, feeling, and behavioral reactions in childhood.⁴² In adulthood we tend to engage in those patterns we learned as children, often resulting in “self-fulfilling prophecies” that tend to reinforce those same old patterns. Basically, because of our particular frame of reference (thoughts, feelings, etc.), we expect people to act in certain ways, and we act towards them in ways that tend to precipitate the behaviors we expect.⁴³ When people do act in the ways we expected, we interpret that behavior in line with our expectations, and we react in certain predictable ways (which tend to confirm to us the validity of our earlier expectations).

Negotiation experts are aware of the significant impact of self-fulfilling prophecies on negotiations,⁴⁴ but the actual impact of these patterns extends well beyond “negotiations,” to encompass *most* of our interactions in life.⁴⁵ To demonstrate how frequently, extensively and unconsciously these self-fulfilling prophecies direct us, I often discuss in class the person P at a party who looks at person AC and thinks she is arrogant and cold, and then looks at person FW and thinks he is friendly and warm. It is almost inevitable that by the end of the event, P's initial perspective will prove (to P, at least) correct (regardless of the actual personality of either AC or FW). In all likelihood, P will approach and be receptive to FW, who in response will likely act friendly. On the other hand, in what P believes is simply self protection, she will likely retreat from AC, who in turn will be less likely to act warmly toward P. P will then leave the party unaware of how her own feelings and beliefs impacted her behaviors, or of how her own

⁴² BECK, *supra* note 17, at 139-149, 295-304.

⁴³ HANS H. STRUPP & JEFFREY L. BINDER, *PSYCHOTHERAPY IN A NEW KEY* 70-80 (Harper Collins 1984); LEWICKI ET AL., *supra* note 22, at 121.

⁴⁴ LEWICKI ET AL., *supra* note 22, at 121.

⁴⁵ STRUPP & BINDER, *supra* note 42, at 70-80.

behaviors impacted AC and FW, but acutely (albeit inaccurately) aware of her own insight and ability to predict human behavior. These self-fulfilling prophecies and other generally unconscious learned responses significantly impact the outcome of most negotiations and most other interpersonal interactions.⁴⁶

f. Human Communication: Colliding Systems

As all of the above suggests, despite our typical estimation to the contrary, we are often unaware of the actual causes (and unintentional consequences) of our own behavior, thinking, emotions and perceptions. We are not sufficiently self-aware to realize how many of our patterns of acting and thinking are ingrained, unconscious or triggered by our autonomic nervous system rather than by reason.⁴⁷ Communication, of course, is a two way street, and much of the time we are even more misguided about what is headed *towards* us than we are about where we ourselves are going. Just as we incorrectly believe that we understand our *own* behavior better than we do, we also (and to a much greater degree) wrongly believe that we understand *others* much better than we actually do.⁴⁸ Of course, if we did not have *some* accurate understandings of others, and ourselves, it would be impossible to function.⁴⁹ We all need to make judgments about others and

⁴⁶ *Id.* People who become anxious may tend to over-accommodate the other by inappropriately giving in on the substance of the discussion, or may tend to talk too much (or too little) in a learned, but essentially an unconscious, reaction to that (often unconscious) anxiety. People who become irritated may tend to become slightly belligerent or withdrawn in ways that can harm their interactions. *Any* interaction will likely trigger unconscious patterns of thought and behavior that can significantly influence an interaction.

⁴⁷ BECK, *supra* note 17, at 154-162.

⁴⁸ LEWICKI ET AL., *supra* note 22, at 121-122.

⁴⁹ Almost everyone agrees on the need to understand someone in order to be able to effectively influence her, but what most of us do not realize is just how little we *do* understand others. While people say things like "I don't care how she feels or what she thinks, I just want her to do what she is supposed to do," the suggestion that people will

about the world in general, and probably the majority (albeit for many people a very slim majority) of the judgments we make are correct. The problem lies in the facts that a great number of the judgments we make are incorrect, we do not know which ones they are, and we vastly underestimate their number.

As an initial matter, researchers have concluded that the single greatest weakness of most negotiators is that they too often fail to even consider the thinking and emotions of others.⁵⁰

Perhaps even more significantly, when we *do* attempt to consider the thinking and feelings of others, we usually get it wrong. We often attribute to them moods, goals or motivations that simply are not there,⁵¹ or we exaggerate the significance of *one* of many reactions they may be having and forget that, like our own, their reactions might be both dynamic and complex.⁵²

While we tend to be accepting of situational factors that impact our *own* behavior, we tend to be

simply go along with what I want just *because* I want them to is no more logical than the notion that my broken car will begin to work because I want it to.

The only marginally less nonsensical notion, that I can persuade someone to think about something the way I want her to without my understanding her current perspective, is similar to the notion that I can *fix* my own car without knowing what is wrong with it or how the engine operates, or the notion that I can cure someone's illness without understanding the disease. Sometimes a broken car may simply start to run again, and diseases may spontaneously cure themselves, or may be overcome by the body's immune system over time, but if I believe that my ignorant attempts at fixing the problem have been effective, I am very likely in error (or very lucky). Similarly, if I tell myself (or others) that understanding another is not important to being able to purposefully influence that other (at least in difficult situations), I am simply engaging in self-deception.

Most people have at least a minimal level of respect (fear?) for authority, so that in many cases a person can bring about wanted behavior in subordinates simply by saying "do it or else" (which may at some time have the same kind of consequences as those that resulted when I simply forced my car to keep going despite the smoke pluming from the engine—it went for a little longer before it just quit completely). In these situations, the only understanding necessary is that the subordinate wants to keep her job. It is only in more complicated situations (or situations where I am concerned about long term consequences as well as the short term) that I need to know a little more.

⁵⁰ LEWICKI ET AL., *supra* note 22, at 120-122. This failure often manifests itself in ideas such as "I'll show him..." which tend to precipitate actions that are ultimately less useful than those which follow ideas such as "If I 'show him' by doing X, what is he likely to do in response, and how is all of that likely to impact the negotiation?"

⁵¹ *Id.*

⁵² *Id.*

unaware of, and inattentive to, the impact of such situational factors on others.⁵³ As a result, we tend to think of ourselves as more sympathetic, as having a better case, or as being a better person than the one with whom we are dealing.⁵⁴ In turn, this often leads us to devalue the other's case and proposals,⁵⁵ and to fail to reach agreements that are available and would have been in our client's (or our own, as the case may be) best interest.

Basically, we tend to assume, too often inaccurately, that the message *we take* from the other is actually the message they *intended to send*. We vastly underestimate not only the impact of our own perspectives, feelings and thinking on the message we take in, but also the role of simple miscommunication.

Compounding the problem of our misperceptions of others is the fact that we are basically unaware that the problem even exists. Research clearly shows that more than 98% of us are unable to tell when others are lying or telling the truth.⁵⁶ We are essentially equally likely to believe those who are lying as we are to believe those who are telling the truth, and we are equally likely to *disbelieve* those who are actually telling the truth as we are to disbelieve those who are lying. Interestingly, and typically, I have never met a person who believes that she is a part of that 98% majority.⁵⁷

⁵³ *Id.* For example, if someone looks at us as if in happiness or pain, we may automatically assume that the expression has something to do with us, and not that the other person may have other reasons to be happy, or may actually be in some physical pain.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ PAUL EKMAN, TELLING LIES, 162 (W.W. Norton 1992).

⁵⁷ For those interested in testing their own ability to detect lies, tests are available from the author.

All of this obviously makes for significant misunderstandings and unnecessary conflict. Even worse, it is often self-perpetuating. Because we believe that we already understand others, we rarely take the time to try to understand them better. If they do not act as we want or hope, we tend to attribute their “failure” to act “properly” to some personality defect on their part. Rather than seek to learn more about them, we tend to dismiss them or negatively characterize them. We will in turn likely act in ways that may ultimately alienate them, and they will likely react in ways that will confirm, in our minds, our initial “understanding.”⁵⁸

Human communication is then the interaction of two individuals, each of whom believes that she alone understands both herself and the other, while in fact *neither* really understands either herself *or* the other, and neither seeks to gain understanding (because each thinks she already has it). Perhaps more surprising than the amount of miscommunication and conflict in the world is the fact that, at least occasionally, accurate communication does take place.

3. How we can learn: Giving and Getting Feedback—the Substance of Interpersonal Dynamics

In this part, I describe the single most important lesson of Interpersonal dynamics—how to give and receive effective feedback. I then explain how once people begin to give and receive feedback, they begin to gain the kinds of self awareness and awareness of others whose absence

⁵⁸ See text accompanying notes 41-45, *supra*.

is at the heart of so many conflicts. Finally, I explain how the kind of feedback loop that gets created when people give and receive effective feedback also leads directly to learning communication skills and to developing an attitude towards people and towards communication that will serve people well throughout their lives.

a. Feedback as the Way to Learn About Others and About Ourselves

As with anything else, the best way to learn the extent to which we either ignore or mistake the thoughts, motivations and emotions of others is by testing out the understandings we do have—finding out the extent to which they are accurate and complete. By explaining my reactions to, and understandings about, another, and having that other person confirm the extent to which those understandings are correct (or at least the extent to which my understanding of her is consistent with her own understanding of herself), I can at least begin to test out the accuracy of my understandings of that other.⁵⁹

Unfortunately, for most of us this hardly ever happens. We rarely share our understandings of others with them, and as a result we almost never find out whether or not those understandings of others are correct (other than through the kind of self-fulfilling prophecies discussed earlier).

While we may share our attributions about others with our friends (whom we trust to agree with us), we neither seek to, nor do, find out the truth from the one person who actually knows it. We

59. I do not suggest that this beginning is all that we need. If we assume that someone else has some negative characteristics and, when asked the other person says she does not in fact have them, our thinking will likely not change. In order to allow for the possibility of real change in our views about another, we need to engage in continuing dialogue rather than a simple question and answer.

solicit, and get, only self-affirming feedback;⁶⁰ we never check out the validity of our attributions; and we end up with no more understanding of, but significantly more confidence in, their accuracy.⁶¹

b. Feedback as self disclosure

Of course, our general failure to actually check out the accuracy of our attributions with the “source” seems entirely sensible. The idea of approaching a coworker or fellow student and saying, “Excuse me, but I think you are a jerk. Are you?” likely strikes no one as a particularly useful exercise. It would be not simply rude and useless, but exceedingly stupid, especially if the coworker were strong.

The single most important aspect of Interpersonal Dynamics is that it ultimately functions as a space where people *can and do* check out their attributions and get a sense of the extent to which they may or may not be correct. Fortunately, interactions like that above are not exactly the ones that fill that space.

In order to check out their understanding of others’ intentions and motivations, people need to be able to present those understandings in a way likely not to generate excessive hostility. The more threatened a person feels, the less likely she is to accurately absorb whatever information she

60. I do not suggest that we get only feedback that affirms our merit. Instead, I mean that we tend to get feedback that affirms our preexisting conceptions, whatever they may be.

61. See David Bradford & Mary Ann Huckabay, *Interpersonal Dynamics Reader* (2001)(unpublished reader on file with Joshua D. Rosenberg).

hears.⁶² When we hear someone telling us we are wrong about almost anything, it becomes difficult to absorb the information or argument. When we hear someone calling us names and applying inaccurate labels to us, the task of taking in the information goes beyond difficult; it is virtually impossible. Whether we tell someone that she is controlling or annoying, or that she is all loving and caring, we are telling her what she is like; and given the nature of our understanding of others, we are always either wrong or, at a minimum, incomplete.⁶³ When the labels we apply are negative, the only important reaction we are likely to get is defensiveness and hostility. Merely appending the words “I think” in front of those labels and “are you really?” after them will not dampen that impact.

That, however, is exactly the way that most people give “feedback” to others, and what most of us would do were we to simply “check out” the accuracy of our understandings *about* others; and the notion of a group of people engaged in that activity does not make a pretty picture.

Fortunately, there are ways to give feedback without labeling the target of the feedback, and it is exactly that understanding of how to give feedback that is the single most fundamental lesson Interpersonal Dynamics both teaches and relies on.

The notion is a fairly simple one. In order to give feedback in a way that someone can listen to, it is important to avoid labeling that person, either positively or negatively. Instead, I need to describe (1) specific behaviors in which that person engaged, so that she will know what it is I am reacting to, and (2) my own reaction to those behaviors. In describing my reaction, I need to be clear that what I am describing is only *my reaction*, and not necessarily “*the reality*.”

⁶² ROBERT BOLTON, *PEOPLE SKILLS* 15-24 (Simon & Schuster, N.Y. 1968).

⁶³ *Id.* Even if we are completely accurate, people do not like to be labeled by others, and may well react negatively.

Because so many books describe how to give effective feedback by essentially describing a template onto which one might fit her feedback in order to ensure that it is delivered appropriately,⁶⁴ I feel compelled to elaborate on the fact that when I discuss effective feedback, I have in mind not so much a template for framing feedback as a real change in both the focus and substantive content of that feedback.⁶⁵ Probably the single most important key to giving effective feedback is the acknowledgment that all we can know about others, with a relatively high degree of accuracy, is no more than (1) what *they do*—behaviors such as what they say, how they say it, and how they move and position themselves,⁶⁶ and (2) how *we* react. The implication of this acknowledgement is that when I give appropriate feedback, once I describe the specific behaviors to which I am reacting, the rest of what I am describing is not either the other person or “reality,”⁶⁷ but is simply the reaction that occurs completely *within me*.

If I give feedback as a description of my own internal reaction to specific behaviors I have identified, I will be giving feedback that is significantly less threatening to the hearer (because it does not purport to label her) and that is significantly more accurate (because it honestly describes *my* reaction, rather than (probably inaccurately) describing *her* motivation). Basically, the difference between effective feedback and conflict-generating labels lies not simply in the use of a template (although templates can be helpful reminders), but in an understanding of *what*

⁶⁴ BOLTON, *supra* note 61, at 259.

⁶⁵ *Id.*

⁶⁶ Bradford & Huckabay, *supra* note 26, at 11. While even our perceptions of their behavior are always distorted somewhat by our own biases, and while that distortion increases with stress, our perceptions of behaviors are nonetheless much more likely to approach accuracy than are our attributions of motivations and states of mind, because at least there is observable behavioral data in the external world, even if our perceptions of it are imperfect.

⁶⁷ I do not mean to suggest that my understandings are *never* right. Sometimes what I conclude about others actually is real. I mean instead that we will be well served if we generally leave the issue of the accuracy of our understandings of others to them, and that we not either assume our understandings are accurate or present them as if they necessarily describe reality.

I am describing (my reaction) and *where* it occurs (within me). If I understand and communicate that, others will be receptive to my feedback. Similarly, if I present my understandings of others in the same way, I will likely be able to begin a dialogue rather than a fight.

One important reason that Interpersonal Dynamics meets for about 100 hours with a faculty/student ratio of about 1/6⁶⁸ rather than the 42 hours and 1/100 faculty/student ratio a typical three unit course demands) is that while it is relatively easy to *describe* how to present one's understandings of others, and to give effective feedback, it is much more difficult to actually *do* it.⁶⁹ It is one thing to intellectually consider that my own ingrained patterns of acting, thinking, feeling and perception play a significant role in mediating between the outside world and my internal "reality." It is something very different, and much more difficult, to actually *accept* that much of what I believe I "know" about others may be nothing but my own fantasies. Humans have a strong need for certainty and completion in our understanding of our surroundings;⁷⁰ and giving up that certainty is difficult. To take one's understanding of the external world (or parts of it) and to view it, albeit only tentatively (until that view is either confirmed or disaffirmed), as nothing more than the internal workings of one's own mind is not easy. The approach described above requires it, and that takes quite a bit of practice to do in even very simple situations.⁷¹ It takes a great deal of work and practice to be able to do in the kinds of difficult situations where it is most needed.

⁶⁸ See text accompanying note 105, *infra*.

⁶⁹ In this respect, giving effective feedback is no easier, and no more difficult, than many other kinds of behavior in which it is one thing to know what we *should* do and something else altogether to actually do it. Examples include giving up unhealthy habits (smoking, drinking, eating unhealthy foods, etc.), taking up healthy ones, giving up relationships that do not work and taking up better ones, etc.

⁷⁰ BECK, *supra* note 17, at 56-61, 157.

⁷¹ See discussion at notes 102-104, *infra*.

c. The cycle of feedback/self-disclosure

i. Increasing Awareness by Self-disclosure

A. Self-awareness

Since effective feedback as described above relies on self-disclosure, it should not be surprising that focusing on giving such feedback both requires and inevitably increases self-awareness. Initially, even an unsuccessful attempt to appropriately express one's reaction to a person or event can be enlightening. As discussed above, it requires, at a minimum, that people pay attention to the difference between (1) behaviors of others that are external to us and (2) the way we react to those behaviors (the internal "meaning" we make of those behaviors). The simple act of attending to this difference requires an almost complete reversal of the normal process.

Typically when we enter conversations in the work environment, it is because there is some task with which that other person might help us (whether it be opposing counsel negotiating a settlement, a peer helping out with a research lead, or anything else). While conversational specifics may occasionally drift away from the task, the entire interaction is essentially task motivated and naturally task-focused. More often than not, we see even the non task-specific conversation as a component of our broader task of getting the other's cooperation.

After a relatively brief time, we tend to unconsciously form some sort of mental picture of that other which includes a view of her relevant interests, motivations and intentions; and we likely have some emotional response to that picture we create, depending in large part on how well it coincides with what we had hoped for or expected. If we take time to consider in the middle of an interaction, usually what we are considering is how to respond in light of our conclusions about the other. We do not take time to analyze our conclusions in depth to determine their accuracy (although we may attempt to withhold judgment for some time). We certainly do not unwind and examine the process by which we reached those conclusions.

For most people, the process of retreating from a chosen action or response to the other, back to the motivating judgments about the other, and then further retreating from those judgments *of* the other into some “internal” reaction *to* the other requires a level of attention to one’s own internal processes— thoughts, emotions and motivations—that most of us are not used to giving.⁷²

Once one does begin to look closely, and separately, at the other’s behaviors and at her own reactions, she will likely find that her judgments and conclusions about the other are not inevitable. Instead, she is likely to note that the behaviors to which she is reacting might support numerous different conclusions about the actor, and might give rise to numerous different emotional reactions by different observers.

B. Relational Awareness

⁷² According to Professor Riskin, students at seven U.S. law schools have earned credit for participation in courses that include mindfulness meditation. See Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and their Clients*, 7 HARV. NEGOT. L. REV. 1 (2002). As Professor Riskin explains, meditation can do more than increase self-awareness, although that is an essential element.

Of course, one might attend to her internal reactions to others without actually *expressing* those reactions in the form of feedback. Indeed, a determined focus on the examination of one's internal processes and reactions lies at the heart of many well known practices such as psychoanalysis, other forms of psychodynamic therapy, and mindfulness meditation.⁷³ This shift of focus provides a fairly rare opportunity for self-examination and for many proves to be quite helpful.

Importantly, and significantly different from practices like psychotherapy and meditation, Interpersonal Dynamics is *not* essentially contemplative in nature.⁷⁴ While the process requires attention to one's internal processes, the class is not simply, or even primarily, a process of self-examination. Instead, the class requires self-examination as a part of the broader goals of both giving feedback *to* the person to whom one is reacting⁷⁵ and soliciting feedback *from* that person.

The process which lies at the heart of Interpersonal Dynamics is neither task-oriented nor contemplative. It is distinctly, and uniquely, *relationally* oriented. The overarching goal is neither task completion nor mere introspection. It is increased understanding by the people in a relationship of what happens *in that relationship*. What I look for within myself, and then share

⁷³ *Id.*

⁷⁴ In Professor Blatt's commentary on the use of meditation in law schools, he points out that meditation alone, even while increasing self-awareness, does nothing to improve essential communication skills and may, in fact, decrease the meditator's skill level. William S. Blatt, *Mindfulness in the Law and ADR: What's Special about Meditation? Contemplative Practice for American Lawyers*, 7 HARV. NEG. L. REV. 67 (2002). While this is a clever and interesting comment on meditation generally, its validity evaporates in the case of Professor Riskin's use of meditation, since he in fact does teach meditation in conjunction with communication and negotiation skills. Teaching meditation, and then separately teaching communication skills, however, is quite different in technique and in effect from teaching relational skills directly.

⁷⁵ See discussion at notes 104-107, *infra*.

with the other, is not my history or upbringing, but my actual reaction *to* that other in the moment. Self-awareness develops not in the service of personal enlightenment, but as a means to mutual understanding and relationship-building.⁷⁶

ii. Developing the basic skills

While increased understanding and awareness is impressive to observe, actual development of relational skills requires more. In addition to learning what she may be doing “wrong,” one needs to learn ways to act that will serve her better, and finally, she needs to be able to practice those new alternatives. Participating in the process of giving and receiving feedback provides incentives to learn as well as both new alternatives and a place to practice them.

A. Listening

By sharing their own reactions to others, and their own understanding of (attributions about) others, and having those others either confirm or deny the accuracy of those understandings, people quickly learn, and are almost inevitably stunned by, the extent to which they misunderstand others (as well as and by the extent to which others misunderstand them)⁷⁷ By checking out the accuracy of their attributions with somewhere between 10 and 14 different

⁷⁶ Although the *process* by which the class proceeds is not task focused, the entire course has a very significant task to accomplish—teaching the relational skills that will enable attorneys to work together more productively and to negotiate and communicate more effectively.

⁷⁷ See discussion notes 104-107, *infra*.

people⁷⁸ numerous times over the course of a semester, students learn quite clearly that, indeed, their mind-reading capabilities are quite limited. Over time, the “theoretically possible” hypothesis that we do not really know what goes on inside another's head, become the empirically obvious reality for everyone.

While mere self-examination may reveal gaps in one’s reasoning, perceptions and fact development about others, it provides little incentive to do anything about those gaps, or to pay more attention to them, so long as one believes that, despite those procedural gaps, she has nonetheless reached the correct substantive result. When one becomes aware of how often her conclusions about others are wrong or incomplete, motivation to learn to understand others better grows.

As suggested above, there are numerous books that purport to teach listening skills;⁷⁹ and they all emphasize the importance of both “probing” to ensure that the listener gets all the information she needs, and “reflecting,” or “checking out” one’s understanding of the thinking and feelings of the speaker (“active listening” or “reflective listening”).⁸⁰ Acceptance of the possibility (even *probability*) that I do not understand what is going on in the mind of another is exactly what will motivate me to *find out* what I no longer *assume* that I already *know*. The knowledge gained from realizing the extent of our misunderstandings of others provides us with the mindset that is

⁷⁸ Faculty members include themselves in this group. See discussion at note 104, *infra*. Although this kind of participation is rare among law faculty, it is not without either encouragement or example in educational institutions. See PARKER J. PALMER, *TO KNOW AS WE ARE KNOWN: EDUCATION AS A SPIRITUAL JOURNEY* 115 (Harper 1993).

⁷⁹ *E.g.*, ROBERT BOLTON, *PEOPLE SKILLS*, 27-75, (Simon & Schuster 1979); CARL ROGERS, *ACTIVE LISTENING* (U. of Chi. Press 1957); LEWICKI ET AL., *supra* note 22, at 124-128.

⁸⁰ LEWICKI ET AL., *supra* note 22, at 124-128.

at the heart of active listening. Without it, the “skills” are nothing more than a minimally useful, and usually transparent, tool for manipulation.⁸¹

In addition to instilling the proper *attitude* towards listening, participation in a group where one is receiving feedback provides the perfect opportunity to *practice* listening. Because no one will be immediately adept at giving feedback, there are inevitably numerous opportunities to probe and to check out one’s understanding of what another says. Indeed, unless one practices listening actively, and working to really understand what the other is saying in these circumstances, the proffered feedback is often likely to come across inaccurately. The listening and reflecting that gets practiced by the listener is an essential complement to the speaker’s own attempts at self-reflection.

B. Effective Speaking

In addition to believing that we understand others better than we actually do, we also tend to believe that *others* understand *us* better than they do (not necessarily because we think they are so intuitive, but because we believe we are better communicators than we actually are.⁸² When we speak, *we* know the unspoken context of our words and we have the completed picture in our minds. We believe that if the listener is at all competent, that picture ought to be equally clear to her). Basically, we assume that our listeners *understand* the same message that we *wanted to send*. As a result, we almost never take the time to present our message in the way most likely to get across. We simply do not think we need to make the effort.

⁸¹ JOHN GOTTMAN, CLINICAL MANUAL FOR MARITAL THERAPY, 11, 12 (The Gottman Institute 2002) (2000). *Cf.*, JOHN GOTTMAN, THE RELATIONSHIP CURE, 198-204 (Three Rivers Press 2002).

⁸² See discussion at note 22, *supra*.

Typically, students are as surprised to learn the extent to which others misunderstand *them*, as they are to learn the extent to which they misunderstand those others. By hearing the intentions and motivations that others attribute to us (and we hear them whenever they share their understandings with us), we quickly and convincingly learn that the same biases and mistakes that affect our understanding of others also affect their understanding of us.⁸³ Hearing the same kinds of attributions from many different people over the course of the semester makes it difficult to retreat to the typical mindset that the other person is simply “dense.” If nothing else, this gives people the kind of motivation needed to make the effort to communicate more clearly.

Conveniently for those who have the motivation, the process of learning to give effective feedback replicates the process of effectively conveying almost any information and arguments in the way least likely to make the listener defensive and most likely to be taken in--by presenting the information as one’s understanding, rather than as “reality.”⁸⁴ In addition, the experience of giving and receiving feedback encourages people to work at ensuring not only that they understand, but also that they are being understood, by checking out the other’s understanding. It is exactly that process that is essential to accurate and effective communication.⁸⁵

iii. Emotions

⁸³ See discussion at note 22, *supra*.

⁸⁴ Of course, in addition to conveying information in a less threatening manner, effective speaking also requires keeping the other person interested. To some extent, listening to the other will tend to generate reciprocal interest, but more is obviously involved. Affect, modulation, organization and presentation of the material are, obviously important. Alas, there is only so much that one course can do. For the rest, there is the other two years, one semester and 12 hours of classes (Interpersonal Dynamics is three units out of a typical 15 units semester).

⁸⁵ BOLTON, *supra* note 61, at 173-186.

As people begin to look inward in efforts to provide feedback, they will note that, almost inevitably, the judgments and attributions they make about others are accompanied by emotional reactions. Many people tend to be unaware of emotions, at least at lower levels.⁸⁶ For them, the discovery that they actually do have emotional reactions, and that they have them almost continuously, can be quite surprising. For some, it brings to life a whole new appreciation of emotions, and an openness and receptivity to their own and to those of others. For others it clarifies why they initially attempted to suppress some or all of their emotions—some of their feelings make them uncomfortable. Either way, becoming more aware of emotions is an essential first step to learning how to react to them effectively.⁸⁷

In addition to becoming more conscious of the emotion itself, by attending to one's reaction and becoming more aware of it, one can also gain an awareness of the types of events or actions that tend to trigger particular emotions, and can begin preparing to act on them a crucial few moments before the emotions and their accompanying patterns reach full force.⁸⁸ That awareness can not only help one predict and prepare for her emotions, but it can also help her understand what it is she may be reacting to and reconsider that reaction.

As discussed earlier, emotions can have a significant distorting impact on thinking, behavior and perception. Although emotions at less intense levels may escape awareness, even they nonetheless affect us. Changing the pattern of our reactions to emotions (that is, our heightened focus on and access to thoughts, memories and perceptions that reinforce the emotion) is

⁸⁶ BECK, *supra* note 17, at 256-261.

⁸⁷ EKMAN, *supra* note 29, at 21, 37, 65-74.

⁸⁸ *Id* at 23-53.

difficult, but not impossible. Making that change requires, in addition to awareness of the emotion, learning and practicing ways to respond effectively to that awareness. Psychologists have long known that, in addition to looking at the emotional triggers, reevaluating the judgments one might have made, and simply “cooling off,” the most effective way to react to emotions is usually to express them in a controlled and direct manner.⁸⁹

Fortunately, what it takes to give effective feedback is exactly what it takes to deal properly with emotions in most situations—the clear, non-blaming expression of one’s own reaction (thoughts and emotions, etc.) and the specific behaviors of the other that triggered the reaction. By learning to give effective feedback and practicing doing so, students learn to deal with emotions in the most appropriate and helpful way, one which is likely to allow them to minimize their negative impact, increase the other’s positive response, and enable one to overcome her emotional state.⁹⁰

Significantly, research has shown that in order to effectively change the way we deal with emotions it is not enough to practice different ways of acting while in *non*-emotional situations. To learn new patterns of reacting to emotions, we need to practice them while in an emotional state.⁹¹ In this respect, learning relational skills is similar to learning any other kind of skills. It takes practice. Just as learning to play the guitar requires practice on a real guitar, learning to respond more effectively to emotions requires practice responding to real emotions. One can practice responding to “pretend” emotions, of course; but this will be no more helpful in learning emotional skills than playing the “air guitar” is in learning to actually play a real one. While this does not mean that we need to be furious or overjoyed or at any peak of emotionality, it does

⁸⁹ *Id.* at 55-90

⁹⁰ STONE ET AL., *supra* note 26, at 102-114.

⁹¹ EKMAN, *supra* note 29, at 54-71.

mean that we need to *be* emotionally engaged if we are going to learn how to react more effectively to that emotional engagement. Being in a situation where effective feedback is given is almost guaranteed to produce that state, certainly to a much greater degree than do typical role-plays.

Finally, even if some students do nothing other than start to become aware that they have feelings, and start to pay attention to what those feelings are, they will have made huge strides in terms of their negotiation capabilities.⁹² Ultimately the goal of a whole series of negotiation tactics is to intimidate the other side. Most of the experts agree that in order to have any chance of combating these tactics, it is essential that a person be aware of their existence, and that the best way to reach that awareness is to have a sense that one is beginning to feel intimidated.⁹³ Once one becomes aware of her emotional reaction, there are numerous ways to deal with the tactics. Without that awareness, the tactics are much more likely to be successful against her.

iv. Receiving and Using Feedback: Discovering Patterns

Ultimately, the more one can become aware of her typical patterns of thought and of emotional responses, the more likely she is to be able to make conscious, *reasoned* conclusions based on a full understanding of the facts.⁹⁴ This ability to respond appropriately will prove more significant

⁹² "That awareness--of how our emotions affect what we are doing--is the fundamental emotional competence. Lacking that ability, we are vulnerable ... to being sidetracked by emotions run amok. Such awareness is our guide in fine-tuning on-the-job performance or every kind, managing our unruly feelings, keeping ourselves motivated, tuning in with accuracy to the feelings of those around us, and developing good work-related social skills, including those essential for leadership and teamwork." DANIEL GOLEMAN, *WORKING WITH EMOTIONAL INTELLIGENCE*, 55 (Doubleday 1998). See also GOLEMAN, *supra* note 14, at 231-243.

⁹³ E.g., LEWICKI ET AL., *supra* note 22, at 79; ROBERT B. CIALDINI, *INFLUENCE, THE PSYCHOLOGY OF PERSUASION*, (Quill Press 1998).

⁹⁴ EKMAN, *supra* note 29, at 54-81.

than the best logical arguments ever could in developing and maintaining good working relationships, in negotiating, and in retaining satisfied clients.

Becoming more aware of the attributions we make about others, and realizing that those attributions are as often comments on ourselves as they are insights into others can also teach us a great deal about ourselves. Whether I attribute one person's quietness and restraint to shyness and insecurity, or to self-centeredness and disinterest, and whether I attribute another's talkativeness to her need to control or to her anxiety and desire to please and entertain me, might tell me very little about that other person (which is why I need her there to tell me the truth about herself), but it can tell me quite a bit about myself. At a minimum, it can give me a very useful "heads up" in future interactions, with the same person or with others to whom I might attribute similar motivations. I do not suggest that everyone to whom I have similar reactions will have identical motivations and intentions; but we would all often be well served by either refusing to jump immediately to our typical conclusions or, if we cannot resist making that initial jump, at least leaving ourselves some room to reconsider.

In addition to providing guidance for specific future interactions, the kind of growing self-awareness I suggest may, and always does for at least a few, lead to an entire series of self-understandings and explorations. As students increase their own self-awareness, they will be able to give increasingly accurate, and thus increasingly useful, feedback to others concerning the reactions they have. As the class gets to know each other better, it also turns out that while many attributions are off-base, others are accurate.

Some students demonstrate patterns of thinking or acting that get noticed only by a few others, only after several weeks, and only because people are spending so much time in close quarters with the purpose of giving and receiving feedback about their behaviors and internal processes. Comments on these patterns can lead people to some very useful insights not just about how they might act more effectively, but also about how they might start to “think” more effectively as well. The person who often smiles and nods in agreement may find that these behaviors make her well-liked, but may also find that she is taken less seriously than others and that her opinions and desires are typically disregarded. As a result, she may work on acting more assertively when appropriate. In addition, she may begin to discover patterns to her own thinking that coincide with these behaviors-- patterns she had previously taken for granted. She may begin to understand that she thinks of herself as less capable than others, or as less deserving than others, and that her behaviors accurately reflect that thought. At that point, she may, with feedback from others, reassess that thought and change her self-image along with her behavior.

Similarly, after several weeks, some person may suggest that a particular student tends to challenge and dispute others, or to belittle others. That student may learn that she can become more effective by listening more and stifling her urge to dispute, and learning and practicing those behaviors would likely serve her very well. Possibly, in addition, she may start to examine her thought processes more closely, and to see that she tends to attribute to others an intent to belittle or dispute her, and that she reacts the way she does in order to avoid being “done in” by others. She may begin to see that she continuously plays out the self-fulfilling prophesy that others are trying to trick and disagree with her, and, with feedback from the group, may be able to see that her attributions are often incorrect.

A talkative student may learn that some see her as helpful and nurturing, while others may see her as bossy and pushy. She may begin to work on talking less and learning to tolerate more silence and lapses in conversation (learning which will serve her very well in negotiations). In addition, she may begin to see that when there is silence, she begins to feel anxious. Once she becomes aware of that anxiety, she may look for the thoughts she has that generate that anxiety, and she may see that she tells herself that it is her responsibility to fill in the silence. Once she becomes conscious of that thought, she may begin to look at it, and, perhaps, to change it. Alternatively, she may find that when there is silence she becomes anxious and begins to predict awful consequences that will result from that silence. By slowing down her internal processes enough to become aware of those images, she will give herself the chance to look at them and test their appropriateness.

A quiet student may find that while some see him as shy, others view him as vain and haughty. He may decide to work on talking up more, and he may (or may not) begin to look at what he tells himself, or imagines, that causes him to remain silent, and may, as a result, develop assertion skills that will serve him well throughout his career.

vi. Establishing and Maintaining Connection

The ability to establish and maintain some “connection” with any person I work with is important for several reasons. As an initial matter, the extent of my influence on any person

depends, in part, on that person's feelings towards me.⁹⁵ In addition, the personal connection between two people is often an important part of what can enable them to engage in creative problem-solving and collaborative bargaining in the midst of conflict. Significant research on negotiation shows that one of the essential components of successful collaborative negotiating is the ability to refocus discussion away from areas of disagreement onto areas of commonality and agreement,⁹⁶ and the ability to establish those areas of commonality and connection is a key aspect of the ability to focus on them.

Probably more important, and definitely more overlooked in the negotiation and mediation research familiar to lawyers, is the fact that regardless of one's conflict resolution skills, many conflicts are *never* really resolved.⁹⁷ While conflict resolution skills are essential to attorneys, they are not sufficient. People need to not only resolve conflicts when possible, but also to be able to maintain contact and good relationships, both with other attorneys and with clients, in the absence of such resolution.

The ability to establish and maintain connection with another is not easy to learn, and many of those who are well liked do not necessarily have to work hard at it. Nonetheless, to the extent we dismiss the ability as completely due to genetics and natural disposition, we do ourselves, and our ability to improve, an injustice. There are behaviors that can increase connection to others, and they can be learned. Much research shows that interested listening increases the speaker's

⁹⁵ LEWICKI ET AL., *supra* note 22, at 149. There are, of course, many kinds of influence—based on power, status, reputation, etc. With respect to these other kinds, *see id.* at 132-162.

⁹⁶ *Id.* at 90.

⁹⁷ Although the data is not available for coworkers, research indicates that among spouses, approximately 70% of disagreements are never resolved. GOTTMAN, *MANUAL FOR MARITAL THERAPY*, *supra* note 79 at 115.

attraction to the listener⁹⁸. In addition, since labeling others is one of the surest ways to truncate whatever connections exist between people and to build resistance to future connection, speaking in the “non-threatening” manner discussed above is important to enabling growth and maintenance of connection. Learning to discover, share and take note of commonalities is a skill that can be practiced. In addition, while it is neither necessary nor helpful to bare one’s soul to strangers, coworkers or opposing counsel, some personal disclosure often results in increased attractiveness.⁹⁹ Again, by learning how to engage in self-disclosure, by practicing, and by seeing the results, one can learn a very useful approach to relationships.

vii. Appreciation of others

Most law students and lawyers function under time pressure. We have (usually too many) tasks to accomplish, and we inevitably need to work with others to accomplish them, so that communication skills are important. When these skills are learned and used in a setting where there is no externally imposed task, people not only learn the skills, but they also learn that human communication in general can do significantly more than facilitate task completion and efficiency.

For the most part, students do not know each other well at the beginning of class. Typically, they are not enemies, but neither are they close friends. As a result, simply being in a small, interactive class together engenders a degree of contact with peers that they otherwise might not have had.

⁹⁸ LEWICKI ET AL., *supra* note 22, at 149-153; STEPHEN R. COVEY, *THE 7 HABITS OF HIGHLY EFFECTIVE PEOPLE*, 236-241 (Simon & Schuster 1989).

⁹⁹ BOLTON, *supra* note 69, at 139-143.

Much more important than simply having contact, however, is the kind of contact that they have. Either prior to or early on in the class they have formed judgments of most of their fellow students. As discussed earlier, we all tend to not consider others sufficiently, and when we do consider others, we are typically significantly less generous with our understanding of them than we are with ourselves.¹⁰⁰ When people check out their attributions, they get responses that allow them to get a much fuller picture of the other person. They begin to learn that others are indeed equally as deserving of acceptance. They start to understand that others, like themselves, had difficult times, and they begin to develop a real appreciation of both what those people went through to get where they are and of what their experiences are really like. Sometimes they learn that the good-looking, smart person who seems to “have it all” and appears aloof is actually withdrawn because she is trying to deal with her mother’s terminal illness; and sometimes they learn that, despite her looks and brains and money, she is simply shy. Sometimes they learn that the “uncool” and “unattractive” person has had some amazing experiences and insights. Sometimes they just get to know others well and to enjoy being with them.

In many cases, what develops is an intimacy with and appreciation for others that people may never have experienced before (in or out of law school). What seemed like way too much time to have to even be in the same room as a few other people, for many turns into unexpectedly rewarding connections with and appreciation of their classmates.

This experience may transform the way people look not only at communication, but at the opportunities that human relationships offer. Just as riding a bike or skiing can bring pleasure to

¹⁰⁰ See note 22, *supra*.

some and great pain to those who lack the skills to stay upright and, as a result, suffer all sorts of scrapes and bruises, relationships provide little joy and too much pain to those who lack essential relational skills. To convince them that there can be real pleasure in relationships is akin to convincing an out-of-shape couch potato that skiing or riding a bike is better than watching a rerun of one of his favorite shows. In either case, there is nothing in the other's experience that correlates with the point you are trying to make, and much that suggests to him that you are wrong. Being in a group that engages in honest and effective feedback, as a result of which people really do get to know and appreciate each other, very often does much not only to develop the skills, but also to change this attitude.

4. Getting from There (a Typical Law School Class) to Here (Interpersonal Dynamics)

a. It's a Long Journey from the Typical Classroom

Once the class becomes engaged in the process of giving and receiving effective feedback, wonderful and amazing things begin to happen. As explained above, people learn tremendous amounts about themselves, and have opportunities to learn and practice new and more effective ways of relating to others. As the class goes on, people become more and more skilled; as they both give and receive more effective feedback the class itself continues to improve. In addition, by learning how to give and receive effective feedback, students learn the skill that will most likely enable them to continue to learn about themselves and others throughout their lives¹⁰¹ and

¹⁰¹ Bradford, *supra* note 26 at 5-8.

they both establish, begin to appreciate, and learn how to make, meaningful and useful relationships among themselves.

Although the end result of the class is, for almost everyone, exceptional, getting to that end result is never easy. Although the behaviors I describe (paying attention to internal process, and expressing it) may seem simple, getting people to engage in those behaviors is not. The behaviors that make for productive learning of relational skills are exactly those behaviors that law students have been trained and encouraged *not* to engage in.

Law school tends to focus on, to teach, and to reward the same qualities that academics and attorneys already overemphasize-- rational and logical analysis of external facts and theoretical propositions.¹⁰² Professors typically focus on both doctrine and the skill of legal analysis. In order to ensure that the students hear and attend to the teacher, all students in a large class face the teacher. When they ask or answer questions, they address their questions or answers to the teacher. Students do not look at each other and rarely talk to each other. When they do talk to each other, it tends to inspire the professor's wrath or irritation (because they are not listening to the professor).

Typically, the professor will ask a question, a student will make a legal argument in response, and the quality of that legal analysis becomes the focus of everyone's attention. We are not told, do not ask, and generally do not care, about how the student or anyone else feels about being called on, or the "meaning" she makes of being called on (for example, whether she thinks to

¹⁰² See, e.g., James E. Moliterno, *Legal Education Experiential Education, and Professional Responsibility*, 38 WM & MARY L. REV. 71 (1996).

herself that the teacher is picking on her, or is embarrassed by the attention she is getting, or fears ridicule if she gives a wrong answer, or is engaged in and challenged by the theoretical discussion, etc.).¹⁰³ Indeed, if a student, after being called on by a professor, began to discuss with her fellow students the thoughts and feelings she had about the professor at that moment, the professor and her fellow students would, after overcoming their initial shock, likely do whatever it took to get that student psychiatric help as soon as possible.

Although students in seminars and other small classes may sit facing each other, may be expected to talk to each other, and generally expect the environment to be more casual than it is in large classrooms, even these classes are still forums for the students to engage only in the type of legal discussion at which they have (hopefully) become skilled. While the students may talk about topics such as “Movies and the Law,” or “Law and Mathematics,” or “Ancient Blood Feuds” or almost anything else, and while they may engage in direct discussion with each other rather than have all of the discussion moderated and mediated by the professor, the type of discussion that goes on in these classes is still essentially the same—logical analysis and argumentation. A seminar is certainly not a forum for attending to one's own internal processes, for finding out about another's emotional reactions (except to the extent that those emotional reactions exhibit themselves in the form of persuasive argumentation), or for trying on new and potentially embarrassing behaviors. Appropriately, they allow for no more intimacy than is typical when people sit around a table discussing the law.

¹⁰³ Some may make attributions about the student (for example, they may conclude that she is a “show-off” or arrogant if she does well, or that she was unprepared or uninterested if she does poorly), but they rarely feel any need to, or interest in, finding out whether these attributions are all accurate (although they may well hold onto conclusions without any feedback from the student herself). Others may talk to the student after class, out of concern and empathy for her. When this occurs, it may lead to the kind of self-affirming feedback discussed at text accompanying note 60, *supra*.

I do not mean to suggest that all other law school classes *ought* to be different than they are--that the student who is called on should explain what it "means" to her to be called on, or how she feels about being called on, instead of explaining the holding of the case or why that holding is right, wrong, consistent or inconsistent, etc. There is a time and a place for everything, and most law school classes are the time, and the place, to pay attention to legal doctrine, the art of legal reasoning and analysis, and the aspects of negotiation not covered in *Interpersonal Dynamics*.¹⁰⁴ It is important, though, to note that the kinds of discussions that are most helpful in learning essential relational skills are those which are not simply frowned upon in the rest of law school classes, but are those which, if one engaged in during any other class, would likely lead her to be characterized as "insane" by the rest of the student body, as well as by the faculty.

Because students are so accustomed to attending to logical analysis and to determining right and wrong, listening to another's statement in an effort to understand that person, rather than to determine whether that other is "right," or making a self-descriptive statement without attempting to convince others of its accuracy or appropriateness, is difficult. Students are used to, and comfortable, explaining their theoretical analysis of facts and laws that are all outside of themselves. It takes some time to get comfortable with paying attention to their own reactions, as opposed to their conclusions about others, and to simply saying what those reactions are and what, exactly, they are reactions to.

¹⁰⁴ Perhaps I overstate somewhat my acceptance of most law classes. Unfortunately, by attending so pervasively to making arguments and focusing so much on "right" and "wrong," we do tend to exaggerate the tendencies of students to see things in those terms, rather than in terms of figuring out how to best work together towards mutually beneficial outcomes. It is likely that there is something about law school classes that contributes to the fact that most students are reasonably happy when they enter law school, but it usually does not take long for them to begin to share the unhappiness of many lawyers. See Susan Daicoff, *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 225, 228 (AM. B. FOUND. RES. J. 1986)

Essentially, asking students accustomed to traditional law classes to come together in small groups to discuss their personal reactions and internal processes is somewhat akin to asking practicing attorneys to be naked in court. It seems crazy, inappropriate, and wrong, not to mention incredibly embarrassing. While some might be interested, and others embarrassed, to see what others have to reveal, almost everyone would resist to their utmost revealing anything of themselves. Such is, at times, the beginning of the class in interpersonal dynamics.

b. Beginning: Creating Expectations

To create an environment conducive to the kinds of learning and activities described above, it is helpful, first of all, to work with students' expectations. Because faculty expectations for this class are so different from those in other law or undergraduate classes, it is essential that students understand something of what the course is like prior to enrolling; and the more they understand about the possibilities and goals of the class, the better off they, and the class, will be. For some the very idea of the class is scary; to others it seems silly; and to others it is only confusing. For all, having an idea about what will be asked of them, what they can expect to learn, and the reactions of others who have already taken the course is important.¹⁰⁵

c. Safety

¹⁰⁵ At the Graduate school of Business of Stanford University, where the course has a longer history and is constantly oversubscribed, students are asked to do some self assessment and some inward-looking self examination before being allowed to enroll.

To have any hope of helping students give useful feedback to others (that is, disclosure of ones own reactions), one needs to be in an environment that allows students to feel safe doing that-- one where they might begin to be able to leave themselves open to awkwardness, embarrassment, connectedness, and other potentially uncomfortable emotions. In Interpersonal Dynamics, we begin by attempting to create an environment that, unlike either large classrooms or typical law school seminars, enables people to take the kinds of personal risks that can lead to real learning of relational skills and useful attitudes. While the class may have as many as thirty-six people in it and meets as a large group one day a week (one and a half hours per week), it is also divided into smaller groups of not more than twelve, with each group having two faculty leaders (facilitators). In addition to meeting for one and a half hours per week during the regular weekly class time, each small group meets for at least an additional four and one half hours per week, and for a full weekend together toward the end of the semester. Most of the real learning occurs in these small groups.

Since people will likely be more willing to disclose their internal processes (thoughts and feelings) directly to a few people they know than they would be to disclose the same things indirectly through hearsay to hundreds they do not know, and since some people may be embarrassed by what they do, what they say, or how they do it, confidentiality is necessary to create any semblance of the safety necessary for the kinds of learning anticipated. As a result, and as mentioned above, toward the beginning of class the small groups discuss the notion of, and are asked to reach an understanding with respect to, confidentiality. While knowledge of the confidentiality of any disclosures they may make will not eliminate the sense of risk they might

feel, it at least ensures students that any embarrassment they do experience will likely be limited to the actual classroom setting.

d. Time

Engaging in the activities described above takes time. The kinds of inward looking behaviors typical of the class require each person to attempt to “slow down” her internal processes enough to be able to become more aware of them. Basically, people need an opportunity, and encouragement, to focus *too much* on these areas, in order to gain the awareness and skills that will allow them to focus an *appropriate* amount at other times. We need a chance (indeed, encouragement) to intentionally "err" on the side of self-disclosure and self-expression, because the rest of the time we are encouraged to, and we do, consistently err on the other side.¹⁰⁶ Only after having the experience of becoming more self-aware and being *too* self-disclosive can people even begin to look for the happy medium of appropriate disclosure. Without the awareness, learning and practice that come with over-emphasis on internal processes they simply have no choice.

In order to allow the time and opportunity to focus on the kinds of internal processes which, for most of us, usually occur automatically and outside of consciousness, the class meets for six, rather than three hours per week (one and one half hours as a full class, four and one half hours in small groups), and also has one full weekend of class time (almost exclusively in small

¹⁰⁶ Appropriately, working (or, more apropos to law school, studying) groups focus primarily neither on self-awareness or self-expression. These groups have other goals, and if we always took the time to make sure that we understood other peoples' responses correctly, and to express our own personal reactions completely, we would rarely be able to accomplish anything.

groups). Students are in class for more than twice the amount of time they spend in the classroom in other courses.¹⁰⁷ In addition, during that time, the class has no cases to read, no legal theory to discuss and no apparent distractions. While the very idea of that amount of time in close proximity to others, without any externally imposed task, and without distractions will itself be intimidating to many, it is necessary to allow students not just to learn how to give and receive effective feedback, but also to just do it.

e. The Role of Faculty

Having some idea of what is expected, being assured of confidentiality, and having adequate time is only a small part of what it takes to get from the typical law class to an environment that facilitates real learning of relational skills. When it comes down to it, most people come into the course with neither the ability nor the willingness to engage in the kinds of conversations that will ultimately prove the most helpful. Despite his or her best efforts, the prospect of engaging in honest self-disclosure is for almost everyone anxiety provoking. People worry about both embarrassing themselves and offending others.

As a result, the role, and the responsibilities, of the “teacher” are quite different from those typical of law professors. We neither lecture, nor use the Socratic Method, nor use any other techniques typical of most law classes. Our efforts are directed at (1) helping to create the kind of atmosphere that allows students to take the (potentially embarrassing) step of talking about their

¹⁰⁷ The extra class time corresponds with reduced reading and writing requirements, so is usually met with enthusiasm by the students.

internal processes, (2) modeling the kinds of behaviors that we hope students will learn and which will allow the students, in turn, to learn what they need to about themselves and about others, and (3) helping focus discussion.

Initially, helping students feel safe enough to take risks involves creating a supportive and appreciative atmosphere and choosing not to *push* them to take risks for which they feel they are not ready. We provide encouragement and some guidance for students, positively reinforce students' efforts and successes, and often find ourselves simply waiting to allow the process to begin.

Much of the faculty's ongoing work consists of helping students focus internally to get and stay in touch with their own present internal processes (thoughts, feelings, etc.). In addition, we attempt to ensure maximum, and maximally diverse, feedback by ensuring both that everyone participates and that the students engage with each other rather than sequentially engaging with the facilitator. When people make general statements about their reactions to people in general (for example, "I don't like when people do Y"), we ask them to specify a person in the class and address that person. When they make statements about other people's reactions to them, we ask them to check out their conclusions with actual others in the class.

Finally, faculty members participate in the giving and receiving of feedback. By doing so, we continually attempt to model how to give effective feedback, how to listen empathically, and the kinds of risk-taking that we seek to encourage.

f. How Things Might Start: Some Examples

In order to see how this process might work, below is a short example from a typical class.

Because the class often begins with students being asked to agree to some sort of confidentiality,

I begin at that point. A typical conversation about confidentiality might begin as follows:

A: Ok. Lets get our confidentiality agreement (picks up a pad and a pen).

B: (Smiling) I know this is law school, but I don't think we actually need a written agreement.

C: How about we just say, whatever we say in here stays in here. That's simple.

D: OK, but I can tell you, if that's the agreement, I'm not gonna stick to it. I know my wife is going to ask about what happened, and I can't just say "It's all confidential." I mean, I know I'm going to talk to her about what happens.

This simple, task-oriented conversation has likely generated lots of unspoken personal reactions, as the following draft of the same conversation suggests:

A: Ok. Lets get our confidentiality agreement (picks up a pad and a pen). [*Unspoken, but conscious: I want to be involved in this class, whatever we do, so I might as well start it off. Also, in case I get bored, at least now I'll be able to doodle.*]

B: (Smiling) I know this is law school, but I don't think we actually need a written agreement.

[*Unspoken, but conscious: A wants to write this all up. I thought for once this would be an*

interesting class, but he's already acting like a lawyer. I wish people at school would just lighten up. We can't agree on one simple thing without writing up a "contract."]

A: [Unspoken, but conscious: I was not going to write up an "agreement." I was just maybe going to take notes, and maybe just doodle, in case I get bored. B just made me look silly. I can't say anything, though, or people will think I'm petty and defensive. B just put me in a no-win situation. B is a jerk.]

C: How about we just say, whatever we say in here stays in here. That's simple. [Unspoken, but conscious: we shouldn't take up any more time than necessary with this whole confidentiality thing. Who cares, anyway. Its not like we're really going to reveal any "confidential" information]

D: OK, but I can tell you, if that's the agreement, I'm not gonna stick to it. I know my wife is going to ask about what happened, and I can't just say "It's all confidential." I mean, I know I'm going to talk to her about what happens. [Unspoken, but conscious: I do not want to be put in the position of having to break rules. I want to act in good faith, so I'm making sure we don't get an agreement that won't work. Plus, I don't see what difference it should make to anyone else if I tell my wife. It's not like she knows anyone at school anyway. But I want to make sure that we don't end up with a rule I'd have to break.]

C: [Unspoken, but conscious: I can't believe D is saying he's just going to ignore an agreement we make. If he doesn't like it, why doesn't he just say so, instead of telling everybody that he's

just going to ignore it. That's incredibly disrespectful.]

I do not believe that the above re-writing of the original conversation is complete. With each of the participants, there are likely more thoughts and feelings that might emerge.¹⁰⁸ Nor do I believe that this particular conversation has a lot more, or a lot stronger, unspoken elements than many in which we engage every day. Indeed, this is the kind of "straightforward" conversation in which we often engage. We tend to believe that we understand the others with whom we are dealing, and that if there is something we do not understand correctly about someone's position, they will let us know. Often, as in this case, we are simply wrong.

From a functional workplace perspective, the above groups' productivity would be enhanced if its members could communicate just a bit more clearly with each other, and if each one was sufficiently aware and competent to take whatever action might be needed to help her perform effectively in the group. For example, A has a fairly strong reaction to B's comment about not needing a "written agreement," and it is likely that her reaction will keep her from participating at her most effective level.¹⁰⁹ If A could find a way to feel better and continue to participate, rather than remain stuck with hostility and a need to remain silent, she could likely contribute more effectively. She might reply to B "I wasn't going to write down an actual agreement. I just like having a pen and pad in my hands to take notes or just to doodle. I feel a little awkward about taking time to even talk about it, but I was feeling embarrassed and a little irritated, and I needed to say something." If A could do that, it is likely that A and B would soon have understood each other more clearly, and A would both feel better and work better.

¹⁰⁸ See discussion immediately following..

¹⁰⁹ EKMAN *supra* note 29 at 39, 63

Of course, as the re-written dialogue suggests, that kind of response would have required not only some skill, but also some self-awareness that A simply did not have (about her reaction to B). She was aware of thinking bad thoughts about B, and of having good reasons for not speaking any more, but he was not conscious of his resentment or of his embarrassment.

To see how one might "err" on the side of more complete self-awareness and expression, let us return again to the dialogue. The first problem with asking or expecting (or even hoping) A to respond in an appropriate and helpful manner is that A is not even quite aware that she feels embarrassed, irritated, and trapped. If she were to attempt to express herself as fully as she could, she might simply say: *"I was not going to write up an "agreement," I was just going to take notes. Also, I like having a pen and paper, even if it's just to doodle. B is a jerk."* Given A's awareness of the two possibilities of either remaining silent (as she does) or expressing her reaction to the extent she is conscious of it, as suggested here, it ought not be surprising that A chose not to speak in that situation. If A somehow could express whatever she is conscious of, in an environment where it did not lead inevitably and directly to an intense conflict with B, she could make significant progress towards the greater self awareness, and skills, that could eventually enable her to communicate clearly and effectively. The conversation might go something like this:

A: *"I was not about to write up an "agreement," I was just going to take notes. Also, I like having a pen and paper, even if it's just to doodle with. B, you are a jerk."*

T: I get the part about why you picked up the pad and pen. Can you say something more about

the "B is a jerk" part. I'm guessing you have some feelings about that.

A: Obviously. It makes me angry.

T: What exactly makes you angry?

A: He was trying to make me look like an idiot, making fun of me.

T: Can you make that into a statement about yourself?

A: Sure. *I think* he was trying to make me look like an idiot and was making fun of me.

T: Do you want to check that out with B?

A: Not really....ok. B, is that what you were doing?

B: I thought you were going to write down an agreement and have us all sign it, like a contract. I was frustrated.

A: So why were you smiling?

B: Was I? I guess I was just trying to not seem frustrated. I didn't want to be rude.

Although this is only a minor incident, at this point, it is likely that A might have a little more appreciation of the role of his feelings (anger and embarrassment) and the beginnings of a glimmer of recognition that his attributions (in this case, about B's motivation) may not always be right. This same little bit of conversation might also open up substantial areas for the other participants. Possible further discussions might include the following:

With B

R: I don't quite follow. What would be "rude" if you didn't smile?

B: The fact that I was frustrated with her-that I was pissed. All she did was pick up a pad and pen. I didn't have any right to get annoyed at her. Nobody else was.

R: Are you sure? That's something you can check out with others if you want.

B: OK, was anyone else bothered when A picked up her pad and pen?

Silence, shaking of heads

F: Well, I was a little concerned that it looked like the confidentiality thing might take longer than I wanted, but it didn't really bother me.

B: So I was right. I should have just let it go. It shouldn't have bothered me.

A: What made you think I was going to write a formal contract? I mean, I admit, that would be a bit much.

B: It just seems to be the kind of thing that always happens in law school. Everybody always makes sure they get all the details and get everything in writing. Everybody's so serious all the time. It's just not my style. I just wish people would "lighten up" a little.

Y: B, I hear you saying that "everyone" is like that. I don't think I am. Who are you referring to? Anyone here?

B: Hmm, good question. Actually, I don't know. I guess I just assume everyone is. I guess I assumed A was.

While this, as the above conversation with B, is relatively brief, it is the kind of conversation that might well be repeated several times over the course of the semester. By the end of the class, B, as A, is likely to learn at least that his attributions (in this case, about all other law students being "serious all the time") are often inaccurate. At some time he may also begin to see how he attempts not to express his feelings directly, because he thinks it is rude to do so, and may begin to learn that the effect of that is often not to appear "well-mannered," but to appear more "rude" than he is. Hopefully, he will have opportunities to express his feelings directly, to become more

aware of them, and to begin to become aware of the attributions and “automatic thoughts” that lead him to have those feelings (i.e., the belief that all law students want to be serious and “lawyerly” all the time). With that growing awareness of the thoughts and attributions he has that lead to the feelings he has, he will become more able to check out the conclusions he draws, and more able to take responsibility for and to communicate (as his own reactions, rather than as A’s misbehavior) his feelings. Given enough time, B might even start to see how his belief that others are always serious and detail-oriented may lead him to reject them, which in turn will tend to cause them to reject him, which in turn will reinforce his belief that those others are simply “too serious” for him.

With C and D

C: How about we just say, whatever we say in here stays in here. That's simple.

D: OK, but I can tell you, if that's the agreement, I'm not gonna stick to it. I know my wife is going to ask about what happened, and I can't just say "It's all confidential." I mean, I tell her everything.

C: You're just going to ignore the agreement?

D: If we have one that says we can't tell anybody anything.

Q: C, you seemed to just jump up at that. It's my guess you had some feelings about it.

C: Yeah. If D is just going to ignore whatever we do, it doesn't make any sense to do anything.

T: How do you feel about that?

C: I guess irritated, a little angry. I don't want to put time into something and just have somebody ignore it.

D: Wait a minute. I didn't ignore anything, and I wasn't going to. That's why I said something,

because I wanted a rule I can live with.

C: So why did you just say we should go ahead and you'd just ignore whatever rule we made?

D: I didn't say that....Did I?

G: I don't think so.

H: I thought you were just wanting a less harsh rule.

I: Yeah, you did say something like "go ahead. I'll just ignore it."

D: That's amazing. I definitely did not mean that I'd ignore the rule. I was hoping we could get a little more flexible rule, cause I know BettyLou is going to want to know what happened, and I know I won't just be able to not say anything. I didn't want to come out and say "that rule is no good," so I tried to point out how hard it would be. And I bet there are a bunch of you who have spouses or somebody you're going to tell.

W: Yeah, that's probably right

M: Yeah, me too.

C: Well that's fine with me.

Again, in a relatively brief conversation, C may begin to see that his attributions are not always right, and may begin to learn to check out his conclusions even when they seem correct. While D may not have learned anything explicitly from this conversation, it is likely that, during the semester, he will respond to other suggestions in a manner similar to the way he did here ("ok, but..." rather than "not ok because"). Because of the group's focus on internal process and communication, it is likely that someone will note that repeated response. Perhaps D will learn, later in the group, that he says "ok, but" rather than simply pointing out that C's proposed rule won't work for him because he believes that C will be offended by D's disagreement, and that he

wants to avoid offending C. In time he may learn that by feigning agreement when he does not agree, he may tend to provoke more hostility than if he simply expressed his concerns directly. He may get some practice at more clear and direct expression, may begin to understand some of the automatic reactions he has that have gotten in the way of that kind of expression (perhaps some rule he follows that suggests “it is wrong to disagree with someone”), and may find that direct expression of disagreement need not alienate anyone, and likely can improve communication for him.

5. More Examples

Unlike almost every other law class, Interpersonal Dynamics does not focus on any particular content. It is focused primarily on process. As a result, no one class is like any other. Different people bring different experiences, thoughts, emotions and reactions to the class, and different groups progress through very different paths. As a result, it may be useful to see more examples of typical scenes from different classes. What follows are a few situations that have arisen in classes (with minor changes to preserve confidentiality for participants).

a. The “Conceit Conceit”

Allen (to Paul): You know, I can’t say exactly why, but I sort of get the impression that you think you’re better than everybody else. It kind of bugs me a little.

Paul: No I don’t. Not at all.

Allen (to the group): See. That's what I mean. It's always like "you're wrong. The end." Like you don't care about it at all. Like nobody else matters to you.

Donna: Well, I don't know. Allen, you say Paul doesn't even care, but Paul, you look upset to me.

Paul: Well, how would you like it if someone said those things to you?

Allen: See. There you go again. It's always everybody else who's doing something, like you don't have any part in it or anything to do with it.

Felicia: Allen, I don't have any idea what you're talking about. You just come out of the blue saying how Paul thinks he's better than everybody else, and I don't know where you get that. You're attacking Paul and it's not fair.

Jess: I gotta admit, Paul, I get the same impression--that you're just above it all, and we're just not interesting to you. And it bugs me, too, sometimes.

Frank: Jess, and Allen, can you say what it is that Paul did that makes you think that?

Allen: Yeah, I'll try.... When anyone else is talking, he just sits back with his hands behind his head, doesn't even look at the person, like he's totally uninterested.

Facilitator: Can you give a specific example, and also can you talk to Paul, not to me?

Allen: Sure--twenty minutes ago, when I was talking about how I screwed up that interview. You were just sitting back and looking down at the ground, like it was totally irrelevant to you.

Facilitator: Do you want to check that out with Paul--find out whether he was interested or not, and what was going on with him?

Allen: Sure (looks at Paul).

Paul: I was interested in what you were saying. I've got an interview coming up tomorrow, and it made me start worrying about that a little, and I felt bad for you, and it also reminded me of an interview I had last year that I screwed up. If you want to know why I didn't look at you, it was because it seemed like *everybody* was looking at you, and I felt kind of bad for you, like everybody should give you a break and not just stare at you and put you on the spot.

Allen: Wow. That's hard to believe. You were just leaning back, looking so confident and bored.

Paul: Actually, I was just really uncomfortable for you, and worried for myself at the same time.

Rhonda: To be honest, Paul, I've had the same reaction Allen had, even though now what you say makes sense.

This scene was quite rich in terms of students' learning essential communication skills. Paul learned that certain of his behaviors convey, to a sizeable number of people, arrogance and disrespect, even though what he is actually feeling may be quite different. If nothing else, he is now aware of the specific behaviors that trigger those reactions, and, if he chooses, he will now be able to work on changing those behaviors.

Allen has learned that when he makes attributions into someone else's state of mind based on limited evidence, he may well be wrong, regardless of how certain he feels, and regardless of whether others feel the same way. He, and others, have hopefully learned the value of checking out certain assumptions before acting on them. He may have also just begun to learn that he will

be more likely to get his message across and get the kind of response he seeks if he does not try to communicate his own attributions (for example, that Paul is disinterested or bored or thinks he's better than others) as "truth," but if he instead points to specific behaviors, and explains his own reaction to those behaviors as *his* reaction rather than as truths about someone else.

b. Under and Overbearing

Barb: Well, since nobody else is talking, I guess I might as well ask for some feedback about what happened with me and Alicia last week, whether you all think I was being unfair, or if anybody wants to tell me.

Tess: To be honest, I don't even remember what happened. I'm more interested in finding out about how Jan's weekend went. (looks at Jan)

Jan: It was great. We went out on Friday and on Saturday and on Sunday. I think I'm in love.

Ben: I want to know why that never happens to me.

Tom (smiling): It's cause you're ugly as a dog. (everyone laughs)

Facilitator: Barb, what's going on with you now?

Barb: I don't know. I shouldn't have asked about last week. It was old stuff.

Facilitator: It looks like you've sunk down about a foot in your chair.

Barb: Well, it's just that it seems like whenever I bring something up, it's not interesting or not important, I guess. It just sinks like a lead balloon. It's kind of depressing.

Fran: If I were you, I wouldn't have been depressed; I would've been pissed. You asked a

question and Tess just completely ignored it and cut you off.

Barb: Actually, you're right. Tess, that was pretty rude and selfish.

Tess: I'm sorry. I thought you didn't really care one way or the other. It didn't seem like you were really interested anyway.

Barb: Actually, I was really interested in getting that feedback. The only reason I waited was because I didn't want to interrupt anybody else.

Tom: You know, Barb, I'm with Tess on this one. It seemed to me that you weren't really very interested in getting feedback, the way you just kind of said, "since nobody's talking, maybe I'll ask . . ."

Fran: Now that I think about it, Barb, I think you do that a lot. You seem to preface your comments with something like, "well, just to say something," or "it really doesn't matter, but . . ." So most of the time when you talk, I sort of tune out, cause I figure if it's not that important to you, it won't be very interesting to me.

Jan: Yeah, I've noticed the same thing. I don't completely tune out, but it seems like you often kind of put yourself down before you talk, or you make some comment to kind of suggest that what you're going to say isn't very important.

Barb: Hmm. Maybe I do. I wonder why. I guess I don't want to push anyone else out of the way, and maybe I'm a little afraid that people won't be interested, so I sort of cushion myself against hearing that.

Jan: I couldn't say why, and I'm not sure I even care about why, but I can say how it impacts me. And that's that it does kind of *make* me less interested in what you're going to say.

Tess: I'm sorry, but I've got to say I really didn't like what Barb said to me, and the more I think about it, the angrier I get. You were telling me that I was rude and selfish, and I

wasn't. Just like everybody else said, you set yourself up. I actually would've been happy to wait to ask Jan about the weekend, but I had no idea you really wanted feedback, and then I get labeled as rude and selfish. It's not true. And it seems like you can get away with that because you're so quiet and everybody wants you to talk, but I get stuck having to just accept your labels, and I don't like it.

Barb: Yeah, I guess I can see your point. I should have said that I was angry and felt interrupted, instead of just labeling you as rude or selfish.

Tess: Thanks. I appreciate that. And I can see how you could have felt interrupted. I really didn't know . . .

The above scene actually represented a mini breakthrough for Barb. In addition to beginning to learn that stating behaviors and their impact on her is, in general, a much more effective way to communicate than to label someone else, she began to see how often and in how many ways she tended to belittle herself, and she began to intentionally stop herself from doing so. While to this day she is still working on the same issue, she has made significant progress, and her representation, interviewing, and negotiation skills have increased dramatically.

c. Valentine's Day

Ann: I kind of resent that class tonight goes until 10:00. I mean, it's Valentine's Day, and even though I like the class, we meet way more than any other class. I know we can't cancel class, and I wouldn't want to, but I was wondering if we could just end at 9:00,

so we could at least have a little time to go out and celebrate.

Ron: I totally support that idea. My fiancé has been giving me an incredibly hard time for missing Valentine's Day, and she just won't believe that I can't miss class, especially since I have been known to miss a class or two in the past.

Lee: I think that's a great idea.

John: Me too. Let's take a vote.

Bill: Well, I got a problem with cutting class short. I take this class seriously, and I've committed every Thursday night to this class, and I intentionally don't make any plans for Thursday nights because I know we have this class. And I've got to admit that I feel a little resentful that you don't seem to take the class very seriously. I know it's fun to go out and party, but we all agreed that we would meet until 10:00 every week, no exceptions. I've committed to doing that, and you did too.

Ann: I don't like your characterization of me as not committed. I obviously am committed. I'm here now. I didn't blow off the class. I'm just suggesting that we could leave a little early on Valentine's Day. I'm not breaching any contract, and it sounds like that's what you're accusing me of doing.

Bill: I didn't exactly "AmJur" Contracts, so I don't want to go down that road too far, but my point is that we all made an agreement, and I relied on that agreement and cleared out every Thursday night on my calendar, including tonight, for this class. Now, in the middle of the semester, you want to make up exceptions, and it's not right.

Lee: Look, Bill, nobody's making exceptions or canceling class. John just said we should vote on it. If a majority wants to stay, we'll all stay.

Sandy: I agree. It's not like anybody's refusing to come. But we all decided to stay until

10:00, and if we want, we can all decide to leave early on one night.

Bill: I don't think we could cancel class or stop early anyway. Rosenberg said during the first week that we have to meet at least three hours a week in this group, and if we miss one class we fail. He wouldn't let us leave early even if we wanted to. (looks at Tom, who is one of the co-facilitators of this group)

Tom: Actually, I'm not sure what the rule would be . . .

Ann: If we left early tonight, we could just make it up some other night, tack on an extra hour.

Sandy: Yeah, or we could like just tack on an extra five minutes each week for the rest of the semester. It's just not a big deal.

Ann: So, Tom, could we vote on it?

Bill: Just a reminder, when we agreed to meet every Thursday, it was by a unanimous decision, not just a majority vote. If we decided to change our agreement, it would have to be the same way.

Brenda: Bill, what the f... is your problem?

Tom: Brenda, can you turn that question to Bill into a statement about yourself-your feelings and thoughts-and about what you're observing?

Brenda: Good idea. I guess I was being kind of nasty. Well, I'm feeling really frustrated.

Bill, it seems to me that whatever anyone says about ending early, you have a rebuttal. Each of your statements is logical and makes sense, but just the fact that you're so quick to rebut makes me think that there's more to it. It's like you're just set against ending early, and even though you give a lot of reasons, I guess I don't really believe them. It makes me think there's something else going on, and I have no idea what it is.

Bill: I don't know . . . I guess I look forward to coming here, and I don't like it that everyone else seems to look forward to leaving early. It kind of makes me feel like a sap. Like I must be a real dork to like coming here because everybody else has something better to do.

Tami: Well you're not the only one who likes coming here. I do, and even Ann said she likes it, or didn't want to cancel. I think lots of us like it. Some people just want to leave a little early because it's Valentines Day.

Bill: Yeah . . . I know . . . I guess I just know that if we leave early, Ann's going out with her husband, and Ron's going out with his fiancé, and everybody's got somebody. And I'd go home to an empty apartment to study the UCC, and it just really sucks. My girlfriend broke up with me about six months ago, and I'm getting to just hate going home alone .

. .

Silence

Ann: Boy, does that make a lot more sense to me. I know what that's like.

Brenda: Me too. It makes me understand you better and it makes me feel closer to you than when you were being, well, than the way you were being before.

(several people nod in agreement)

The class continued well after this scene. Most members of the group went from feeling irritated or frustrated with Bill, who was making more and more petty arguments against leaving early, to feeling much closer and more empathic with him. As it turned out, the subject of leaving early was dropped. The group stayed until 10:00, and at the end of the group, one member asked Bill if he wanted to go get a beer.

To quote a term often used in legal negotiation classes, effective negotiating often requires understanding one's own, as well as the other party's "interests" rather than merely knowing "positions." What Professors Fischer, Ury and Patton¹¹⁰ meant by this, and what every student who takes negotiation learns, is that in order to have any hope of reaching a "win-win" resolution, it is essential to know what the parties really want, and what would make them satisfied with the negotiation. Unless the other party knows what I want, it will be very difficult for them to give it to me. In this scene, it turned out that Bill really wanted to not feel lonely at the end of the night, and he got what he wanted. If nothing else, Bill learned the difference, in Fischer's terms, between interests and positions.

Bill also learned much more. He saw that often one's real interests are not obvious, even to oneself, and that it is well worth taking some time to learn them. Finally, and perhaps most importantly, he learned that it is often (if not always) difficult to persuade by logical argument, and that it can be much more persuasive to actually be a little personally revealing of one's own weakness. This last lesson is likely to be extremely helpful in his relationships with others at his firm and with clients. More surprisingly, if used properly, this understanding may also serve him very well in future negotiations with opposing attorneys.

d. Who's in Control?

¹¹⁰ ROGER FISHER, WILLIAM URY & BRUCE PATTON, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (Penguin Books 2^d ed. 1991).

Ari: Joelle, I really enjoy a lot of your contributions, but sometimes you're too controlling, and it gets you in trouble.

Brad: Ari, can you turn that into a statement about yourself?

Ari: Sure. I think Joelle is too controlling.

Brad: Based on ...?

Ari: Actually, it's based on lots of different things.

Brad: Like?

Ari: Well, like just before, when you (Joelle) were moving the chairs around and telling everybody where they should go.

Joelle: I was just doing that because we were supposed to start class, and the chairs were a mess.

Ari: Class wasn't going to start for a few minutes. Everything would've been fine..

David: Joelle, it looks like you've got some feelings about this?

Joelle: Well, I think Ari's being unfair. I was trying to be helpful and I end up getting criticized.

Ari: Hey, I was just trying to be helpful to *you*.

Freeman: Ari, I don't believe that. Are you saying you weren't irritated at Joelle before? You were just trying to help her?

Ari: Well, maybe a little. I didn't like getting bossed around.

Joelle: Well, next time say something.

David: Ari, you don't look happy.

Ari: It's the same thing. Joelle is telling me what to do and I don't like it.

Joelle: I just said next time tell me if you don't like something. What's wrong with that?

Ari: I don't know. I just know that when you tell me what to do, I start to feel controlled—pushed around. I guess maybe it's not what you're trying to do, but it is the reaction I have.

Brad: Joelle, you just got some feedback from Ari, do you want to check it out with others?

As a result of this interaction, not only Joelle and Ari, but likely even observers, began to learn more about giving effective feedback—that the more one can present a reaction as one's own, as Ari did in his last attempt, the more likely that feedback is to be heard. Joelle, in turn, may learn that when she appears to be telling people what to do, she may be perceived, perhaps inaccurately, as less helpful than she is and as more controlling.

e. Comments on the Examples/ Integration of Learning

None of the above examples show people with perfect self-awareness or giving perfect feedback. Those are not levels we humans ever attain. Nonetheless, as the class goes on, self-awareness, listening skills, and clear, non-blaming self-expression and assertion grow geometrically. The class is not about each individual having an epiphany, but about everyone learning something continuously.

Some students learn how to “talk the game,” early on. They quickly learn to state their observations, then their thoughts, and then their feelings and wants. For a small number of these, the mere separation of observations, thoughts, feelings and wants is enlightening, and enables

them to both receive and give effective feedback, and provides a jump in self-awareness. For most, that is not the case.

For many students, it takes a while, and numerous incidents, to begin to understand what we try to teach. Many find it difficult to actually separate behavioral observations from the conclusions they draw from those observations—to realize that their attempts at “mind-reading” are something other than mere observations of reality. Others are able, relatively quickly, to separate out their observations from their attributions, but find themselves unable to specify their feelings about their observations and attributions, because they have none, or at least none of which they are aware. Students proceed at very different paces, and each student’s learning is unique.

Because people learn at different paces, because there is no single template that can be universally applied, and because not even the best students reach perfect mastery, the class will never eliminate miscommunication and misunderstandings. It can, though, give people the awareness and skills necessary to both decrease the amount of miscommunication that occurs and to notice and correct misunderstandings that do arise.

To see how these skills might translate into the workplace, return to the typical Partner-Associate interaction discussed above, in which A works hard, albeit with some misdirection, to bring P a research memo. There, the notion that A might have asked for more guidance before leaving P’s office was likely obvious even to A. While the intellectual obviousness of A’s preferred action might suggest to some that Interpersonal Dynamics is unnecessary, I believe it suggests just the

opposite. We do not need the course simply, or even primarily, to learn what we *ought* to do in any situation; we also need the course in order to be able to actually *do* it.¹¹¹

6. It is not Psychotherapy

When I first began teaching the class, some faculty members, and some students, believed that the notion of teaching Interpersonal Dynamics, and the way that I proposed to teach it, were silly. I was allowed to teach it, at first, only as an overload, and only because I could point to the success of the same course at the Stanford Business School under David Bradford. Every semester, however, a majority of the students in the class explain, to other students and to whatever faculty will listen, that the course was the most useful and most rewarding class they have ever had. As time passes, more and more of the faculty have become supporters of the class simply because they have noticed, or heard about, the results.

Quick to follow the suggestions that the class was somehow *less* than it ought to be, though, were suggestions that, somehow, the class was something *more* than it ought to be. Both some faculty and some students who had heard bits and pieces about the class suggested that it was “psychotherapy,” and was inappropriate to the law school setting. In fact, Interpersonal Dynamics is no more psychotherapy than the training that athletes get is “physical therapy.” The course is not intended to, or able to, cure mental illness. It is intended to teach certain relational skills and self-awareness. It does a much better job at teaching these than does psychotherapy, but it does nothing to cure mental illness. Some of the tools that we use are similar to some of the

¹¹¹ See text at note 91, *supra*.

tools that psychotherapists may use, but then, much exercise equipment used by world class athletes is also used by physical therapists, and much dietary advice developed for the sick has turned out to be incredibly valuable to enable the very healthy to stay healthy.

Some have suggested to me that it could be “dangerous to get people to explore their thoughts and feelings.” The apparent dangers inherent in this exploration are similar to the dangers feared by those who oppose labeling food ingredients—we might not like what we see. Just as the danger with toxic foods is not *knowledge* of the toxicity, but consumption of the food, the danger with our thoughts and feelings is not awareness, but is in *acting without* awareness. That said, I do want to emphasize that it is of utmost importance to the facilitators to ensure that people feel “safe.” Personal boundaries are respected, people are asked not to push themselves to speak about things that make them too uncomfortable, and we ensure that people are not forced to listen to feedback or attributions that would push them too far. While we ask people to push themselves, neither the facilitators nor the students are allowed to push others in ways they make clear they do not wish to go. The reason for this is not so much that *people* might be “in danger,” but that their *learning* would be. Just as stress often causes poor communication in negotiations, stress in class decreases, often significantly, a student’s ability to learn.¹¹²

7. Why Others Have Not Done it Yet (and How It Can Be Done)

¹¹² Barbara T. Bowman, *Self-reflection as an Element of Professionalism*, 90 TEACHERS COLLEGE RECORD 444, 449 (1989).

Although courses in relationship skills may seem odd to those familiar with law schools,¹¹³ similar courses, and numerous varieties of courses that teach teamwork, have been staples at some of the country's best business schools for decades.¹¹⁴ To observers of the legal profession (especially to those familiar with the reputation of lawyers in this country), and of legal education, who have not themselves been indoctrinated into the standard legal education methodology, it would not be the *presence* of courses in relationship skills, but the almost complete *absence* of such courses, that would seem odd.¹¹⁵

a. Firms

To some extent, of course, the absence of courses in relationship skills reflects the historic inattention to these skills in law firms. Lawyers, as most other people, tend to focus on the short term;¹¹⁶ and in many cases, whether it be trial deadlines or imminent transactions, the short term in law firms is often very short. Relationship skills take time not only to teach and to learn, but they also take time to implement, even after they have been learned-- time that is not billable and that may interfere with immediate deadlines.

¹¹³ Professor Menkel-Meadow discusses this and other aspects of law schools' shortcomings in the Washington Law Review July, 1994 Symposium: *The 21st Century Lawyer: Is There a Gap to be Narrowed?*; Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing From the MacCrate Report--Of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593 (1994).

¹¹⁴ Among the business schools teaching such courses are Stanford and Wharton. Owen Thomas & Thomas Mucha, *The Talent Hunter's Guide to Business Schools, Business 2.0* (September, 2003).

¹¹⁵ It is not just outside observers who have remarked upon the need for legal education to teach the skills that lawyers actually need. See MacCrate, *supra* note 19. See generally Menkel-Meadow, *supra* note 110.

¹¹⁶ This is another example of how people pay most attention to things closest to them, although in this case the proximity is temporal rather than physical. See note 22 *supra*.

In addition, those with the most power to make significant changes in firm priorities are probably the least likely to do so. They themselves have succeeded without training in “relationship skills,” and see no reason why others should need it. They believe either that those skills are unnecessary or, more likely, that they cannot be learned. While the most rational among them might be persuaded by the substantial available data that the skills can be learned and that they can be tremendously valuable, few attorneys either look at that data or consult with those familiar with it. Training in relationship skills is simply not a part of law firm culture.

b. Schools

Law schools have their own reasons for not focusing on teaching relationship skills.¹¹⁷ First of all, law schools were designed to train would-be lawyers in the skills peculiar to the practice of law--those skills that make lawyers different from everyone else. We teach students how to read and analyze cases, how to draft briefs, and, most importantly, how to "think like a lawyer."¹¹⁸

Since law schools were formed, and grew, to train would-be lawyers in the things that make lawyering *different* from other professions, it makes sense that these schools would not have

¹¹⁷ Indeed, some have argued persuasively that the primary purpose that law schools serve for law firms is not educational at all, but is a screening function. Rather than base hiring decisions simply on college grades and test scores, the existence of law schools allows firms to examine three years of law school grades. While these grades may reflect different ranges of students and different grading guidelines, they at least reflect grades earned in similar curricula, with similar kinds of tests and similar subjects of study. Johnson, *supra* note 5, at 1246. See also Gary A. Munneke, *Legal Skills for a Transforming Profession*, 22 PACE L. REV. 105, 126 (2002) (“Legal educators sometimes argue that the role of law school is not to train people to practice law; such preparation should be the responsibility of the practicing bar. Members of the bar, on the other hand, insist that the law schools should be doing the training. Across this intellectual Maginot Line, academics and practitioners lob artillery while students, new lawyers and the consumers of legal services pay the price.”).

¹¹⁸ See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850’S TO THE 1980’S* 53 (UNC Press, Reprint ed. 1987).

been designed to teach those skills and abilities which are (or, more accurately, ought to be) a fundamental part of *every* profession.¹¹⁹ Relationship and communication skills, though important to both success and happiness in the practice of law,¹²⁰ are, obviously, not considered uniquely the domain of lawyers (Indeed, if anything, these skills are considered by most to be uniquely *outside* the domain of most lawyers).

As law schools have "matured" (or at least have taken on some direction different from, or in addition to, merely training would-be lawyers), their growth has been in the direction established by the most brilliant and creative of the academics.¹²¹ The best law schools have become fertile breeding grounds for legal theory and philosophy,¹²² and the quality of any law school is measured (by US News and the academics polled for US News) primarily by its faculty's ability to produce quality scholarship.¹²³

In addition, the entire structure of law schools has from the beginning led away from instruction in relationship skills. In order to maximize revenue and minimize costs, law school courses were,

¹¹⁹ There are several studies that show that, of the skills most important to lawyers, many are not unique to lawyers. Typically, despite their importance, they are not taught at law schools. Deedra Benthall-Nietzel, *An Empirical Investigation of the Relationship Between Lawyering Skills and Legal Education*, 63 KY. L. J. 373, 377, 385 (1975); Robert A. D. Schwartz, *The Relative Importance of Skills Used By Attorneys*, 3 GOLDEN GATE U. L. REV. 321, 343-50 (1973). See generally ZEMANS & ROSENBLUM, *THE MAKING OF A PUBLIC PROFESSION* at 124-25 (Am. Bar. Found. 1981); Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469 (1993).

¹²⁰ See generally Menkel-Meadow, *supra* note 110.

¹²¹ See e.g., Edward H. Levi, *The Place of Professional Education in the Life of the University*, 32 OHIO ST. L. REV. 229 (1971).

¹²² See Deborah Rhode, *Legal Scholarship*, 115 HARV. L. REV. 1327 (2002). Not all of the scholarship is necessarily very good, but it nonetheless qualifies as scholarship, and the schools nonetheless qualify as fertile breeding grounds of that scholarship. See *id.* note 64, where Professor Rhode reviews some other commentary on legal scholarship; Richard A. Posner, *The Deprofessionalization of Legal Teaching and Scholarship*, 91 MICH. L. REV. 1921, 1928 (1993); see also David P. Bryden, *Scholarship About Scholarship*, 63 U. COLO. L. REV. 641, 641-42 (1992); Robert W. Gordon, *Lawyers, Scholars, and the "Middle Ground,"* 91 MICH. L. REV. 2075, 2111 (1993); Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926, 928-931 (1990); Elyce H. Zenoff, *I Have Seen the Enemy and They Are Us*, 36 J. LEGAL EDUC. 21 (1986).

¹²³ See generally Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992).

and for the most part still are, typically taught in large sections.¹²⁴ The course I have described has a student-faculty ratio of only six to one (compared to a more typical ratio of perhaps 100 to one in a large class, and 24 to one in a typical seminar), and requires approximately 100 classroom hours for each faculty member each semester (as opposed to the 42 hours a faculty member usually spends in the class for a three unit, 14 week, class).

Another apparent drawback to the course I describe is that it could not easily be taught by most law professors without additional training. Those hired to teach at law schools are individuals who are, for the most part, *academically* and *intellectually* gifted,¹²⁵ and who are creative *thinkers* and *theorists*. They are, obviously, recruited from those who went to law school rather than to a school of education or counseling. They are those who succeeded in law schools that were focused on written examinations testing logical and legal analysis.¹²⁶ Among that group, they are the ones who show a propensity for and an interest in theoretical analysis and scholarship.

¹²⁴ PETER DE L. SWORDS & FRANK K. WALWER, *THE COSTS AND RESOURCES OF LEGAL EDUCATION, A STUDY IN THE MANAGEMENT OF EDUCATIONAL RESOURCES*, NEW YORK COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, 1974). See also A.B.A., *REPORT OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS - AMERICAN BAR ASSOCIATION COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION* 133 (1980); Ruta K. Stropus, *Mend It, Bend It, Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 *LOY. U. CHI. L.J.* 449, 455-65 (1996). As Deborah Rhode has put it: "As a threshold matter, the structure of legal education should permit greater diversity among and within faculties. The ABA's accreditation requirements and the Association of American Law Schools' membership review standards should become more flexible. Both organizations need to value a broader range of characteristics, encourage greater programmatic specialization, and foster more interdisciplinary collaboration. In a world of scarce resources, not every institution can do everything well. Schools need greater latitude to choose their priorities and to increase their expertise in fewer areas." Deborah Rhode, *Legal Scholarship*, 115 *HARV. L. REV.* 1327, 1357, 1358 (2002).

¹²⁵ I admit that a few surprisingly ungifted make it through the cracks (E.g., See, and attend a class taught by _____), but not many.

¹²⁶ See Philip C. Kissam, *The Ideology of the Case Method/Final Examination Law School*, 70 *U. CIN. L. REV.* 137 (2001).

c. How It Can Be Done

How does one then implement a class requiring *several* faculty members at schools which cannot afford to dedicate intensive faculty resources, and where *no* faculty member may be qualified to teach the course in any event? Surprisingly, it can be done with relative ease and little expense. The kinds of skills that we teach, and that faculty must possess, are much more akin to those typically possessed by Organizational Behavior consultants, corporate coaches, and some psychotherapists than they are to those typically possessed by lawyers. Each of these fields likely has hundreds of individuals who are not only *capable* of helping out with a similar course, but who also would be more than *willing* to do so, at a relatively small expense to the law school (those who have worked with me have either worked for free or have received \$1,000 per semester (about \$10 per hour). Indeed, the interest that extremely capable and qualified (and otherwise highly paid) people have in helping with this course has been astonishing to me. Some see it as a chance to do some *pro bono* work (by helping lawyers become, in their view, better people); others simply enjoy the work (I put myself in this category, and have several times taught the course as an overload); and for many both motivations are present.

d. We Are Going In the Right Direction: It's Simply the Next Step

i. Scholarship

Despite the biases against a focus on relationships in law firms and in law schools, legal academics have not ignored the limitations of rationality, as well as the significance of relationships, to the law. While followers of the school of law and economics analyze the proper role and application of law based on the assumptions of rational judges making decisions to bind rational litigants,¹²⁷ many scholars have long assumed that litigants, if not judges, are at least not exclusively rational;¹²⁸ and others have explained the non-rationality not only of the public subject to legal decision-makers, but also of those decision-makers themselves, be they jurists or legislators.

More recently, scholars have gone on to pay attention not simply to the significance to the law of *non-rational* aspects of human behavior in general, but to the overarching importance of human *relationships* in particular.¹²⁹ The development of relational feminism has added tremendous amounts to legal scholarship,¹³⁰ and writing in Therapeutic Jurisprudence,¹³¹ and Preventive

¹²⁷ See RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW* 24-26 (6th ed. 2003); A. MITCHELL POLINSKY, *AN INTRODUCTION TO LAW AND ECONOMICS* (2d ed. 1989); ROBERT COOTER & THOMAS ULEN, *LAW AND ECONOMICS* 135 (1988). *But see* Christine Jolls, Cass R. Sunstein and Richard Thaler, *A Behavioral Approach to Law and Economics*, 50 *Stan L. Rev.* 1471 (1998)

¹²⁸ See Robert H. Frank, *Commitment Problems in the Theory of Rational Choice*, 81 *TEX. L. REV.* 1789, 1790 (2003).

¹²⁹ John Mixon & Robert P. Schuwerk, *The Personal Dimension of Professional Responsibility* 58 *LAW & CONTEMP. PROBS.* 87, 103 (1995); James R. Elkins, *The Legal Persona: An Essay on the Professional Mask*, 64 *VA. L. REV.* 735, 756-57 (1978); Robert S. Redmount, *Attorney Personalities and Some Psychological Aspects of Legal Consultation*, 109 *U. PA. L. REV.* 972, 985 (1961).

¹³⁰ Cynthia Grant Bowman & Elizabeth M. Schneider, *Feminist Legal Theory, Feminist Lawmaking, and the Legal Profession*, 67 *FORDHAM L. REV.* 249, 251 (1998); Sylvia A. Law, *Rethinking Sex and the Constitution*, 132 *U. PA. L. REV.* 955, 1003-08 (1984); CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (Harvard U. Press 1993); Carol Gilligan, *Getting Civilized*, 63 *FORDHAM L. REV.* 17 (1994); Carrie Menkel-Meadow, *What's Gender Got to Do with It?: The Politics and Morality of an Ethic of Care*, 22 *N.Y.U. REV. L. & SOC. CHANGE* 265 (1996); Katharine Bartlett, *Feminist Perspectives on the Ideological Impact of Legal Education Upon the Profession*, 72 *N.C. L. REV.* 1259 (1994); Susan D. Carle, *Book Review, Gender in the Construction of the Lawyer's Persona*, 22 *HARV. WOMEN'S L.J.* 239 (1999); CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 233 (Harvard U. Press 1989); CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND THE LAW* 38-39 (Harvard U. Press 1987).

¹³¹ Therapeutic jurisprudence is the study of the role of the law as a therapeutic agent. It uses social science to study the extent to which a legal rule or practice promotes the psychological or physical well-being of the people it affects. *ESSAYS IN THERAPEUTIC JURISPRUDENCE* 187 (David B. Wexler and Bruce J. Winick, Eds., 1991); Christopher

Law¹³² are also making significant impacts on the development of law. Because of law schools' focus on scholarship rather than teaching, however, this expressed concern for relationships, which has led to a still growing arena of legal scholarship, has not done enough to increase the teaching of relationship skills to lawyers (or law students or law professors) themselves.

ii. Curriculum Changes: ADR and Clinics

Of course, the academy has not turned a deaf ear to all of the pleas for increased training in relationship skills for law students.¹³³ The rise of clinical programs and internships¹³⁴ has probably been the single greatest change in the law school curriculum since the inception of the Socratic method.¹³⁵ Courses in negotiation, mediation, and client counseling, once nonexistent, now abound, in large part because law professors wanted to teach something of relationship skills, and these courses seemed the ideal venue to so.¹³⁶

Slobogin, *Therapeutic Jurisprudence: Five Dilemmas to Ponder*, 1 PSYCHOL. PUB. POL. & LAW 193 (1995); David B. Wexler, *New Directions in Therapeutic Jurisprudence: Breaking the Bounds of Conventional Mental Health Law Scholarship*, 10 N.Y.L. SCH. J. HUM. RTS. 759, 759-62 (1993); David B. Wexler, *Reflections on the Scope of Therapeutic Jurisprudence*, 1 PSYCHOL. PUBL. POL'Y & L. 220, 231 (1995).

¹³² Preventive law seeks to avoid litigation and intervene in situations before disputes actually arise. It emphasizes a proactive approach by the lawyer, a client-centered focus, and planning by the lawyer to avoid lawsuits. ROBERT M. HARDAWAY, *PREVENTIVE LAW: MATERIALS ON A NON ADVERSARIAL LEGAL PROCESS* (Anderson Pub., 1997); Dennis P. Stolle, David B. Wexler, Bruce J. Winnick & Edward A. Dauer, *Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering*, 34 CAL. W. L. REV. 15, 15 (1997).

¹³³ See Deborah L. Rhode, *Whistling Vivaldi: Legal Education And The Politics Of Progress*, 23 N.Y.U. REV. L. & SOC. CHANGE 217, 223 (1997).

¹³⁴ See generally Daniel J. Givelber, Brook K. Baker, John McDevitt & Robyn Miliano, *Learning Through Work: An Empirical Study of Legal Internship*, 45 J. LEGAL EDUC. 1 (1995).

¹³⁵ Anthony G. Amsterdam, *Clinical Legal Education - A 21st Century Perspective*, 34 J. LEGAL EDUC., 612 (1983); James E. Moliterno, *Legal Education, Experiential Education, and Professional Responsibility*, 38 WM. & MARY L. REV. 71, 78 (1996).

¹³⁶ Gary A. Munneke, *Legal Skills for a Transforming Profession*, 22 PACE L. REV. 105, 123 (2002); See, e.g. Don Peters., *Mapping, Modeling, and Critiquing: Facilitating Learning Negotiation, Mediation, Interviewing and Counseling*, 48 FLA. L. REV. 875 (1996). "Transformative" mediation has taken law courses as far as anything else in terms of developing and valuing relationships and relational skills. See generally ROBERT A. BARUCH BUSH &

8. Conclusion

Many schools, and many academics, have been working hard to increase legal education's focus on those skills that are essential to successful law practice. Progress has been steady, if not spectacular. In large part, it has been limited by an apparent lack of means, methods and money much more than by a lack of will or interest. Interpersonal Dynamics can enable law schools to finally move past those limitations, by employing a means to teach relational skills that can work well both educationally and financially. It is to these schools and faculty members that have been at the forefront of progress made to date that I write this invitation to join me in taking the next step. It is an important one, a powerful one and, hopefully in the long term a revolutionary one.

JOSEPH P. FOLGER, THE PROMISE OF MEDIATION: RESPONDING TO CONFLICT THROUGH EMPOWERMENT AND RECOGNITION (Jossey-Bass, 1994); Joseph P. Folger & Robert A. Baruch Bush, *Transformative Mediation and Third-Party Intervention: Ten Hallmarks of a Transformative Approach to Practice*, 13 *MEDIATION Q.* 263 (1996). Its advocates may be, in reality, advocates of using relationship skills and of teaching people to empathize with others and to care about others; but in order to fit into the law school curriculum, these skills and abilities are presented not as ends in themselves, but as "tools" to be used in mediation, or conflict resolution. Although the transformation which its advocates intend it to bring is not one necessarily related to legal conflicts, in order to be relevant to the law school curriculum as it now stands, every kind of ADR necessarily depends on the presence of a pre-existing legal conflict to become relevant.