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The Heart of Lawyering

«« CLIENTS, EMPATHY, AND COMPASSION »»

by Kristin B. Gerdy

IN SEPTEMBER 2006, KAREN J. MATHIS, PRESIDENT
OF THE AMERICAN BAR ASSOCIATION, COMMENTED:

Ultimately, lawyering is a delicate balancing between a constantly evolving world and the fundamental principles that define our legal system. It calls upon your compassion as well as your intellect, your heart as well as your head. . . . [C]aring is as much a part of the legal profession as intelligence. . . . [I]t is every lawyer's responsibility in every setting to serve others.²

ILLUSTRATIONS BY ANNA AND ELENA BALBUSSO

Understanding clients and exercising empathy and compassion comprise the heart of lawyering. The *Oxford English Dictionary* defines empathy as “the power of projecting one’s personality into (and so fully comprehending) the object of contemplation.”³ The English word *empathy* comes from the German word *Einfihlung*, which literally translated means “feeling into.”⁴ According to Carl Rogers, the founder of the client-centered therapy movement, to demonstrate true empathy is “to sense the Client’s private world as if it were your own, but without ever losing the ‘as if’ quality,”⁵ whereas compassion, which is often mistakenly seen as synonymous with empathy, is “the feeling or emotion when a person is moved by the suffering or distress of another and by the desire to relieve it; pity that inclines one to spare or to succour.”⁶ This definition refers to the compassion given “towards a person in distress by one who is free from it, who is, in this respect, his superior.”⁷

Empathy and compassion must go hand in hand with “thinking like a lawyer,” and in fact, caring actually makes analysis stronger. If we accept the premise that understanding clients and demonstrating empathy and compassion are essential to the successful practice of law, then it becomes important to understand how they function in practice.

Laura Biering and Debby Stone, professional coaches and consultants who specialize in working with lawyers, describe a hypothetical lawyer whom they call Catherine. Catherine is the typical law professor’s “dream graduate”: top of her class, Order of the Coif, highly recruited out of law school, and ultimately settling on a prestigious law firm.⁸ Members of the firm are impressed by the work she does and by her intellect and work ethic, and the overwhelming opinion is that she is on a fast track to the top: certainly partner, if not ultimately running the firm. The only problem is that as she begins working closely with clients, the firm finds that while she is certainly intelligent and competent, clients feel she doesn’t care about them:

*They felt she didn’t hear them. There was no connection. It was as though she knew what they would say before they even met. She would ask elaborate questions, leading the clients to the answers she presupposed. And when the clients offered new information that didn’t fit with her agenda, she glossed right over it.*⁹

While Catherine may possess a great level of legal knowledge, she lacks the greater intelligence necessary to see the value in what her client is saying, the value in really listening. What she wrongly assumes is that her great “intelligence” leads her to the arrogant and ignorant position of believing that she knows the answers before all of the information is on the table.

The hypothetical story of Catherine underscores the truth that “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.”¹⁰ Professor Joshua Rosenberg rightly explains the interplay between the heart and the head:

*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 behavior and the primary tool to change the thinking and behavior of others. Although they are important, they are only one part of the puzzle. There are important differences between the kind of dispassionate reasoning and 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.*¹¹

In other words, while analyzing the law and using one’s intellectual skills is the key to preparation, to learning the law, to conducting legal research, and to analyzing problems, once the lawyer steps into the room with the client, her understanding, empathy, and compassion (which are often expressly manifest in her ability to actually listen to the client) become equally important. As other scholars have noted,

Many lawyers believe that the practice of law demands concentration of the facts of a case and leaves no room for concern about the emotional state of a client. These lawyers seem to approach each case simply as a factual matter, giving at most minimal, and more frequently no attention to the emotions of their client. Most lawyers view the practice of law as a set of legal problems that must be solved like a puzzle, rather than as a vocation which assists people who have problems involving both factual and emo-

*tional dimensions. Their primary orientation is the problem; the person seems incidental.*¹²

Not only does the involvement of empathy and compassion in practice make clients happier, it also makes lawyers happier. According to Professor Rosenberg:

*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”; 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. . . . Not only do relationship skills allow one to enjoy her success, but, perhaps more importantly, they are essential tools to achieve that success.*¹³

Empathy, or “the power of projecting one’s personality into (and so fully comprehending) the object of contemplation,”¹⁴ is a vital lawyering skill.¹⁵ Professor Carrie Menkel-Meadow describes empathy as “learning how to ‘feel with’ others,” and she asserts that empathy “is an essential part of the client-lawyer relationship.”¹⁶ Empathy is central to human relations and has been referred to as “the cornerstone of not only professional interpersonal relations, but also any meaningful human relationship.”¹⁷ Leading legal counseling scholars have said that empathy “is the real mortar of an attorney-client (indeed any) relationship.”¹⁸

To “understand, from a human point of view, what the other wants to happen in the world” requires the lawyer to think, feel, and understand what that person would think, feel, and understand, to be what Professor Martha Nussbaum terms “an intelligent reader of that person’s story.”¹⁹ Simply put, when a person experiences empathy, she is able to “stand in the shoes” of the other person. As Atticus Finch explained so clearly to his daughter, Scout, in Harper Lee’s classic novel *To Kill a Mockingbird*, “You never really understand a person until you consider things from his point of view . . . until you climb into his skin and walk around in it.”²⁰ Young Scout finally understood her father’s lesson much later after Boo Radley, the object of earlier mocking, saved her life and that of her brother. After walking Mr. Radley home, Scout reflects, “Atticus was right. One time he said you never really know a man until you stand in his shoes and

walk around in them. Just standing on the Radley porch was enough.”²¹

To experience empathy means to share or at least understand a client’s feelings, to imagine and thereby nonjudgmentally understand what it would be like to be in the client’s position.²² Once the lawyer has developed empathy for the client, she can more effectively exercise her other skills on the client’s behalf.²³

To be truly effective in the use of empathy, the “intelligent reader” of the other’s story must become the “accurate translator” of that story to others. A lawyer fundamentally is a translator.²⁴ As such, she needs to be able to empathize with the other side in order to translate that point of view for her client during settlement negotiations. She also needs to empathize with what opposing counsel is experiencing in order to relate effectively with her. She needs to empathize with the judge or the jury in order to know their concerns and address them as she conveys information to her client and as she makes her own strategic judgments. In other words, empathy is fundamental to the hard-core lawyering skills that affect results.

Despite some lawyers’ contentions that developing empathy for the client is at best uncomfortable and inefficient and at worst inappropriate and manipulative, empathy does play an important role in law practice.²⁵ Every interaction a lawyer has with a client involves an emotional component, and facilitating the client’s discussion of her emotions through expressions of empathy is not only appropriate but also beneficial to the lawyer-client relationship and ultimately to the legal case itself.²⁶

Developing empathy is key to all types of law practice—it isn’t just a trait for the litigator:

*[T]he imagination of human distress, fear, anger, and overwhelming grief is an important attribute in the law. Lawyers need it to understand and depict effectively the plight of their clients. Judges need it to sort out the claims in the cases before them. Lawyers advising corporations need it in order to develop a complete picture of the likely consequences of various policy choices for the lives of consumers, workers, and the public at large, including the public in distant countries where corporations do business. Factual knowledge is crucial, and in its absence the imagination can often steer us wrong. But knowledge is inert without the ability to make situations real inside oneself, to understand their human meaning.*²⁷

Thus, every lawyer must develop the capacity to empathize with others and in so doing will increase her effectiveness. Specifically, empathy can aid the lawyer in building rapport with her client, thus fostering a more beneficial relationship; foster open and complete communication; lead to more thorough legal analysis; improve the image of the legal profession; and satisfy client expectations.

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First, instilling empathy in the relationship can improve rapport between lawyer and client and thereby improve the relationship. While there is a lively scholarly debate about the ideal relationship between lawyers and their clients and the roles that each should play to maximize success,²⁸ the unfortunate reality is that too many lawyers treat their clients like they are children who must be supervised, watched over, and occasionally even disciplined. These lawyers believe that they “know what is right” for the client and are willing to impose their views even when the client objects.²⁹

Relationships with clients are central, even critical, to the “helping professions,” which include counseling, teaching, social work, ministry, and law.³⁰ Positive relationships between the professional and the client are conditioned upon “empathy, respect, and genuineness,” which is primarily in the control of the professional rather than the client. Additionally, “[r]apport, or mutual trust, is . . . central to a good client-professional relationship.”³¹ The most important ingredient in establishing rapport is empathy. In therapeutic contexts research shows that a therapist’s empathy is the “key behavioural element in professional-patient interactions which builds the therapeutic alliance, increases patient motivation to participate actively in treatment and is a predictor of successful outcomes.”³² The same is true with the attorney-client relationship. When clients feel understood and believe that the lawyer is truly

interested in a successful solution to their problems and concerns, the client becomes less anxious and more at ease. And when a lawyer truly empathizes with what a client is feeling and experiencing, “decisions might be made differently and the process of arriving at decisions might be made with more consideration for the client’s actual needs.”³³

Second, instilling empathy can improve communication between lawyer and client. Clients who feel that their lawyer understands them are more willing to provide information,³⁴ including information that might be potentially embarrassing yet important to their case. “Active listening,” which is a technique used to demonstrate empathy, has long been heralded as the key to effective legal interviewing and counseling. Through active listening, empathic lawyers can bolster their clients’ trust and more effectively open lines of communication. Expressions of empathy can also reduce client anxiety, which can lead to increased accuracy and relevancy in what the client tells the lawyer, and can prevent, or at least diminish, hostility toward the lawyer.

Third, instilling empathy can enhance a lawyer’s legal analysis. According to Professor Lynne Henderson, empathy plays a role not only in the lawyer’s analysis but also in the decisions that are ultimately made by judges and others. Empathy “aids both . . . the procedure by which a judge . . . reaches a conclusion . . . [and the] justification for] the conclusion . . . in a way that disembodied reason simply cannot.”³⁵

Fourth, instilling empathy in individual lawyer’s client interaction may ultimately

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improve the public's perception of lawyers and the legal profession. If, as described above, many Americans feel that lawyers are uncaring and even manipulative, an increase of empathy among individual lawyers may benefit the overall image of the profession.³⁶

Finally, instilling empathy satisfies client expectations. Clients expect at least some degree of empathy from their lawyers. In fact, empathy is specifically mentioned by *Consumer Reports* editors in their article advising people about what to do when they need a lawyer:

*Communication with your attorney is crucial. Before you hire anyone, make sure you'll feel comfortable speaking honestly and opening with him or her. Take note, too, of whether the lawyer can explain things clearly. Make it known that you want to be kept informed of what happens in the case, and agree on some ground rules—perhaps that you'll be sent copies of documents or given periodic reports over the phone. That doesn't mean that your lawyer has to be your best friend. But you might expect him or her to be empathetic and supportive if you're going through a crisis.*³⁷

While empathy is certainly beneficial to the lawyer's practice and her relationship with clients, lawyers should be cautioned that too much empathy—in other words, “too complete identification with the client”—may be harmful. Effective lawyers must be able to “step back from the client's situation, in ways that the client often cannot, in order to provide the critical eye and assessments that are part of [the lawyer's] obligation to him.”³⁸ Although too much empathy may cause problems, lack of empathy certainly will. Lawyers have to be objective, but not robotic. They must hone their empathic skills, and that takes training and practice.

Unlike learning how to analyze a case or write a persuasive argument, learning to empathize requires the lawyer to engage her ability to empathize with and care for her client in addition to her ability to analyze, strategize, and advocate. Developing empathy requires the lawyer to set aside her analytical tendencies and simply learn to feel. Professor Joshua Rosenberg explains that “[e]mpathy is not entirely, or even primarily, a cognitive experience. Indeed, it involves the momentary suspension of most of the key cognitive functions.”³⁹ Such intellectual functions as judgment, evaluation, analysis, and problem solving must be set aside to allow the person to empathize with another. Doing this requires the person to do more than read or think; it requires her to actually place herself in positions to experience what the other person is feeling.

To fully empathize with a client, a lawyer must actually experience the legal world from the client's point of view; the lawyer must try to figuratively “walk in the skin” of her client. Occasionally lawyers have the opportunity (if they can call it that) to actually be a client—to be involved as a party to a lawsuit. That experience can be a tremendous opportunity to learn empathy. Gail Leverett Parenti, former president of the Florida Defense Lawyers Association, tells of her experience as a defendant in numerous cases including a malpractice action that lasted 15 years and how these experiences taught her things and gave her “insights [she] couldn't



have learned in any other way” about what it means to be a client.⁴⁰ For example, she relates that lawyers “can’t have a true appreciation of the anguish, the sleepless nights, the self-doubt, the depression, the impotent rage, the frustration with the legal system, the delays and the endless nonsense that a litigant experiences until [they] have experienced it first-hand.”⁴¹

But lawyers need not actually be involved as clients in litigation to have at least limited personal experience with what their clients are feeling. Lawyers can gain a level of understanding and empathy by meeting their clients in “their environment” rather than in the sterile law office. Being in the client's environment helps the lawyer see firsthand what the client experiences. For example, a domestic relations lawyer could interview her



clients in a shelter for battered women—or at the very least she could spend a few hours volunteering there to better understand and appreciate the plight of the women who come there for solace.

Lawyers can also develop their empathic skills by participating in role-playing and other simulation scenarios with their colleagues. Such hands-on, participative experience is essential to gaining true empathy because “studies indicate that learning to care must be situated in concrete learning rather than in general, abstracted learning.”⁴² Such experiential learning must be repeated throughout a lawyer’s career, because empathy or “the imagination of human predicaments is like a muscle: it atrophies unless it is continually used.”⁴³

In addition to being aware that they need to find concrete experiences in which to come in contact with the feelings and experiences of their clients, lawyers wishing to develop greater empathy must be aware of behaviors and character traits that detract from empathy. Smith and Nester summarized empathy-detracting behaviors including:

Saying nothing, failing to accurately respond to the client, using clichés, distorting what the client says, ignoring his feelings, putting the client’s problem in a bigger picture too soon, ignoring client clues about the inaccuracy of the lawyer’s responses to him, feigning understanding, parroting the client’s words back to him, allowing the client to ramble too much, doing nothing else but communicating empathy, seeming

*overeager, using inappropriate language, using legal jargon or stilted phrases, being longwinded, making wrong choices about whether to respond to the client’s feelings or the content of his speech, responding to the feelings of the client too quickly, responding defensively or negatively to client questions, asking too many questions, asking only leading questions, and asking questions whose answers do not help the lawyer in counseling the client.*⁴⁴

Thus, developing and exercising empathy is key to successful lawyering.

In addition to showing empathy—feeling with the client—a successful, effective lawyer also shows compassion and feels “for” her client—she feels that desire to relieve her client’s distress and provide aid and succour. Dean Kevin J Worthen acknowledged this reality to a group of law students on their first day of law school:

*Because of the ubiquity and complex nature of law in our society, people are required to trust lawyers with their hopes, their dreams, their fortunes, their rights, and sometimes even their lives. How lawyers deal with those precious commodities is of extreme importance to those people. . . . [H]ow important it is that [lawyers] learn to really care enough about the human condition that they will refine and use those skills to improve others’ lives.*⁴⁵

The lawyer’s ability to care for others has been lauded by multiple leaders in the legal community. For example, Paul L. Stevens, then president of the Pennsylvania Bar Association, wrote that lawyers “need to become more compassionate about [their] clients. [Lawyers] need to show [their clients that they] care for them, and [lawyers] need to communicate with [their clients] as people,

not treat them as just another case. We need to let them feel they are helping ‘run the store.’”⁴⁶ Similarly, Maryland Lieutenant Governor Michael Steele, speaking at the Catholic University Law School, exhorted students: “Be a lawyer, yes, be a good lawyer, absolutely, but be a man or woman . . . whose words and deeds are touched by . . . compassion and abundant love.”⁴⁷

Compassion deeply engrained in a lawyer can provide the reason and the motivation for the hard work, long hours, and personal dedication necessary to succeed in law practice. As Sharon Salzberg stated:

*Compassion is not at all weak. It is the strength that arises out of seeing the true nature of suffering in the world. Compassion allows us to bear witness to that suffering, whether it is in ourselves or others, without fear; it allows us to name injustice without hesitation, and to act strongly, with all the skill at our disposal.*⁴⁸

Some lawyers may mistakenly believe that compassion detracts from their ability to practice law or even makes it impossible for them to do some of the things that lawyers frequently find that they must do in practice. For example, some lawyers may believe that if they develop compassion in their practice they might have difficulty impeaching a hostile witness at trial, painting the facts in the light most advantageous for their client, or in other ways zealously advocating for their clients. While this may be true to a small extent for some lawyers, it is a small price to pay for the other benefits of compassion.

In her piece about enlightened advocacy and a more humanistic and holistic approach to lawyering, Ingrid Tollefson made the following key observation:

*The lawyer as nurturer implies a focus on the client’s needs encompassing humanistic, analytical, and technical approaches to conflict resolution. The metaphor, however, does not imply a “new-age,” “feel-good,” “touchy-feely,” or “warm-fuzzy” approach to lawyering. Proficiency in the intellectual and technical rigors of legal analysis, or “thinking like a lawyer” is fundamental to capable and accomplished lawyering. However, compassion is equally pragmatic. It functions as an essential and practical component of the nurturing practice. Thus, for the nurturing lawyer, ambition to master critical reading, writing, argument, and reasoning skills met with the ambition to cultivate compassion creates the ideal for what it means to be “successful” in the art of legal advocacy and counseling.*⁴⁹

Despite its possible misuse, compassion plays an important role in the effective practice of law. In fact, lawyers need to develop and express compassion to best serve their clients because “the quality that elevates us from being a great lawyer and moves us into the next level is simply caring.”⁵⁰

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Compassion plays a role in nearly all interactions with clients, but it is essential in those where emotions are strong and pain very real. Philip Weinstein, of the Rhode Island Bar Association, reminds lawyers that family law is ripe with the need for compassion: "It behooves us to work to better understand and appreciate the pain and grief that people go through with a failed marriage, the pain their children endure, and the anger that people feel in a divorce."⁵¹ But compassion and care is not limited to the personal emotions of family law, it is key in other litigation contexts as well. For example, lawyers can show compassion for plaintiffs injured because of another's negligence or for a patient whose life is forever changed because of medical malpractice.⁵²

Truly compassionate lawyers also find opportunities to extend care to those accused of negligent behavior or even "for a physician who is being sued for producing an injury despite his Hippocratic Oath to do no harm."⁵³ Compassion even comes into play in purely transactional practice as lawyers extend care to aging parents who seek to create an estate plan to best protect their children or structure business arrangements between partners who ultimately may have differences that lead to the dissolution of the partnership.

Finally, lawyers should develop compassion because their clients often value it. When a client feels that a lawyer truly cares about her and is compassionate, she feels that the lawyer is loyal to her cause and "can be a source of emotional sustenance, particularly for those clients whose legal problems are as painful as they are complex."⁵⁴ With the emotional support of a compassionate lawyer, the client may be better equipped to face a long, difficult legal battle. A client who feels compassion from her lawyer "may be more responsive to the lawyer's advice, and while this possibility opens the door to manipulation, it also offers the hope that good advice, which would have been discounted by a more reserved client, will now be taken seriously."

Compassionate lawyers bear the burdens of others, namely, their clients. Lawyer F. Burton Howard once said that it "is the principal business of a lawyer to bear the burdens of another."⁵⁵ Speaking to a group of alumni from the BYU Law School, James E. Faust,⁵⁶ a former attorney, encouraged them to "[l]ook

upon [their] learning and license to practice law as a way to do great things for little people and little things for everyone."⁵⁷ The ways that lawyers can serve others differ from the more tangible services provided by those in other professions like engineering or medicine, but, as John W. Davis once remarked, that service is equally valued and necessary. He said,

*True, we build no bridges. We raise no towers. We construct no engines. We paint no pictures—unless as amateurs for our own amusement. There is little of all that we do which the eye of man can see. But we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men's burdens and by our efforts we make possible the peaceful life of men in a peaceful state.*⁵⁸

Compassionate lawyers can hardly be restrained from trying to render assistance and to bring healing when they witness suffering, pain, and other injustice. A moving example of the desire to bear another's burden is found in the following story, shared by an extraordinary lawyer:

*[A] few weeks ago, I went to see one of the children who is a named plaintiff in a mental health class action I am litigating in Massachusetts. He lives with his grandmother in a tiny, one-bedroom apartment also shared by his aunt, her husband, and their two infant children. He has profound behavioral and language challenges, strikes out frequently and hugs, a bit roughly, almost as frequently. He has much to say but can barely speak. He loves to play but has no one to play with. He is loved by his grandmother but almost no one else. As a result of his behavioral challenges, complex needs, and poverty, he is isolated, segregated, and abandoned by most educational and mental health providers. I had been spending long hours on this complex case on behalf of the class of children and had little time left over for individual advocacy. But when I left his tiny apartment, got in my car and closed my eyes, I made a decision that I would do everything in my power to alter this desperate situation. I vowed to represent him in whatever forums, for however long, in whatever ways necessary to remedy this neglect.*⁵⁹

Truly this lawyer has developed compassion, and all lawyers can help to bear the burdens of others as they focus on the people they serve and seek solutions for the problems they face.

Further, compassionate lawyers comfort those who stand in need of comfort. Often this comfort is given by small acts of compassion that may or may not be directly related to the legal proceedings in which the lawyer is involved. Sometimes this compassion is shown simply by the way the lawyer interacts with the client and in the relationship that develops between the two. The lawyer who could not be restrained from aiding the struggling boy in Massachusetts shared this example of compassionate comforting:

*Laurie was a client of mine at the Northampton State Hospital. She was a twenty-five year old woman who had been institutionalized for eight years. She was afraid to talk to anyone. I spent almost a year, visiting with her at least once a week. For months we only sat quietly together. After a while we held hands, and gradually she began to respond to my questions, albeit with only a nod of her head. Eventually we started having conversations. A year later she initiated these conversations, eagerly and with a smile on her face. She told me of her abuse, and witnessing the abuse of her siblings. Eventually, as her confidant and dedicated advocate, I helped her leave the hospital and move to a community home. When she died a few years later . . . I cried because I had lost a dear friend. But her presence and friendship was an enormous teaching in patience and compassion.*⁶⁰

While this lawyer did offer traditional legal services to Laurie, perhaps the most important service he rendered was by being a comforter and a friend. Lawyers can employ that same compassion in their interactions with opposing counsel and others by seeking to transcend the adversarial nature of the proceedings. The following story about an otherwise typical lawyer illustrates such integration:

*Litigation is often contentious; sometimes overly so. On one occasion, this lawyer found himself in a deposition involving several attorneys, one of whom repeatedly verbally abused one of the other lawyers, engaging in personal attacks and tirades. [The lawyer], somewhat stunned, did little to intervene on behalf of the victim, in part because the issues which sparked the outbursts had nothing to do with his client. That evening, however, he felt horrible. He resolved that he would never again allow that to happen to another attorney or witness when he was present . . . He has kept that resolve to this day.*⁶¹

By bearing burdens, giving comfort, and showing care in their interactions with others, lawyers can demonstrate compassion in their professional practice.

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NOTES

- 1 Adapted from Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the "Heart" of Lawyering*, 87 NEB. L. REV. 1 (2008).
- 2 Karen J. Mathis, keynote address at the Drexel University College of Law Inaugural Celebratory Dinner (September 27, 2006), http://www.abanet.org/op/mathis/speeches/drexel_univ_dinner_speech_0906.pdf (accessed January 4, 2007) (emphasis in original).
- 3 OXFORD ENGLISH DICTIONARY (2d Ed. 1989), available at <http://dictionary.oed.com>.
- 4 Carrie Menkel-Meadow, *Is Altruism Possible in Lawyering?* 8 GA. ST. U. L. REV. 385, 389 (1992).
- 5 John L. Barkai and Virginia O. Fine, *Empathy Training for Lawyers and Law Students*, 13 SW. U. L. REV. 505, 507 (1982) (quoting CARL ROGERS, *ON BECOMING A PERSON* 284 [1961]).
- 6 OXFORD ENGLISH DICTIONARY (2d Ed. 1989), available at <http://dictionary.oed.com>. The Oxford English Dictionary gives two definitions for *compassion*. The first is very similar to the definition of *empathy*; under this definition, compassion is "suffering together with another, participation in suffering; fellow-feeling, sympathy." However, this first definition is to be used "between equals or fellow-sufferers." It is this second definition of compassion, the desire to relieve distress or succor another that is most applicable to lawyers.
- 7 *Id.*
- 8 Laura Biering and Debby Stone, *Coaching Tools for Better Client Communication*, 2 Complete Lawyer no. 2 <http://www.thecompletelawyer.com/volume2/issue2/article.php?ppaid=61> (2006).
- 9 *Id.*
- 10 Joshua D. Rosenberg, *Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance, of Human Relationships in the Practice of Law*, 58 U. MIAMI L. REV. 1225, 1229 (2004) (citing Daniel Goleman, *Emotional Intelligence* 27-29, 35-39 (1995)).
- 11 *Id.*
- 12 Barkai, *supra* note 5, at 505.
- 13 Rosenberg, *supra* note 10, at 1228.
- 14 OXFORD ENGLISH DICTIONARY (2d Ed. 1989), available at <http://dictionary.oed.com>.
- 15 For a general discussion of empathy for lawyers, see David A. Binder et al., *Lawyers as Counselors: A Client-Centered Approach* (West 2001).

- 16 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, 620 (1994).
- 17 Philip M. Genty, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic and the Teaching of Empathy*, 7 CLINICAL L. REV. 273, 275 (2000) (quoting Robert M. Bastress and Joseph D. Harbaugh, *Interviewing, Counseling, and Negotiating: Skills for Effective Representation* 117 (1990)).
- 18 David A. Binder et al., *Lawyers as Counselors: A Client-Centered Approach* 53 (1991).
- 19 Martha C. Nussbaum, *Cultivating Humanity in Legal Education*, 70 U. CHI. L. REV. 265, 270-71 (2003).
- 20 HARPER LEE, *TO KILL A MOCKINGBIRD* 34 (Warner Books Edition 1960).
- 21 *Id.* at 282.
- 22 Robert Dinerstein et al., *Connection, Capacity and Morality in Lawyer-Client Relationships: Dialogues and Commentary*, 10 CLINICAL L. REV. 755, 758 (2004).
- 23 Philip M. Genty, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic and the Teaching of Empathy*, 7 CLINICAL L. REV. 273, 275 (2000).
- 24 Thanks to Professor Linda Edwards both for this phrase and for her insights on this point.
- 25 Barkai, *supra* note 5, at 516 (citations omitted).
- 26 *Id.*
- 27 Nussbaum, *supra* note 19, at 277-78.
- 28 See Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990).
- 29 See Menkel-Meadow, *supra* note 4, at 389.
- 30 Barkai, *supra* note 5, at 511 (citations omitted).
- 31 *Id.*
- 32 Helen R. Winefield and Anna Chur-Hansen, *Evaluating the Outcome of Communication Skill Teaching for Entry-Level Medical Students: Does Knowledge of Empathy Increase?* 34 MEDICAL EDUCATION 90, 90 (2000) (Australia).
- 33 Menkel-Meadow, *supra* note 4, at 389.
- 34 Barkai, *supra* note 5, at 513 (1982).
- 35 Lynne N. Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574, 1576 (1987).
- 36 See Barkai, *supra* note 5, at 512-13.
- 37 *When You Need a Lawyer*, CONSUMER REPORT 34, 36 (Feb. 1996).
- 38 Robert Dinerstein et al., *Connection, Capacity and Morality in Lawyer-Client Relationships: Dialogues and Commentary*, 10 CLINICAL L. REV. 755, 767 (2004).
- 39 Joshua D. Rosenberg, *Teaching Empathy in Law School*, 36 U.S.F. L. REV. 621, 632 (2002).
- 40 Gail Leverett Parenti, *Things I Learned from Being a Defendant*, 25 TRIAL ADVOC. Q. 2 (Summer 2006).
- 41 *Id.*
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- 49 Ingrid N. Tollefson, comment, *Enlightened Advocacy: A Philosophical Shift with a Public Policy Impact*, 25 HAMLINE J. PUB. L. & POLICY 481, 501 (2003-04).
- 50 Robert F. Blomquist, *Ten Vital Virtues for American Public Lawyers*, 39 IND. L. REV. 493, 508 (2006) (quoting Michael N. Dolich, *Finding Joy in the Practice of Law*, PA. LAW. 34, 38 [Feb. 25, 2003]).
- 51 Philip M. Weinstein, *Legal Representation: A Place for Compassion*, 54 R.I. B. J. 3 (Feb. 2006).
- 52 *Id.*
- 53 *Id.*
- 54 Stephen Ellmann, *Empathy and Approval*, 43 HASTINGS L. J. 991, 1000 (1992).
- 55 F. Burton Howard, "Keepers of the Flame," CLARK MEMORANDUM, Fall 1994, 25.
- 56 While I was finishing this article, President James E. Faust, who served as the Second Counselor in the First Presidency of The Church of Jesus Christ of Latter-day Saints, passed away on August 10, 2007. I would be remiss if I failed to publicly acknowledge his example of compassion and empathy both as a lawyer and as a Church leader. His example is one that attorneys of all faiths would be wise to emulate. He will be missed.
- 57 James E. Faust, "Become Deliverers," CLARK MEMORANDUM, fall 2002, 29.
- 58 James E. Faust, "Be Healers," CLARK MEMORANDUM, spring 2003, 7 (quoting John W. Davis, address at 75th Anniversary Proceedings of the Association of the Bar of the City of New York [March 16, 1946]).
- 59 Steven J. Schwartz, "Maintaining Integrity and Cultivating Compassion," speech at the NARPA Annual Conference 2003, available at <http://napra.org/integrity.htm>, p. 3-4 (accessed January 4, 2007).
- 60 *Id.* at 6.
- 61 Kevin J Worthen, "Religiously Affiliated Law Schools," CLARK MEMORANDUM, fall 2007, p. 15.