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Teaching the Power of Empathy in Domestic and Transnational Experiential Public Defender Courses

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Teaching the Power of Empathy in Domestic and Transnational Experiential Public Defender Courses

*Cary Bricker**

I. Introduction

A Chilean public defender was interviewing a mock client in our first role play of a two week training program in Santiago, Chile.¹ The “client” a teenage gang member named Pancho, faced charges of assault and robbery.² The lawyer, Carlos, meeting his client for the first time, began the interview by informing Pancho about the charges. His tone was both accusatory and robotic. Carlos engaged in limited eye contact, arms crossed. His comportment created distance between himself and his new client. In response, Pancho appeared to mask fear with bravado, growing increasingly sullen, shutting down.

Carlos ignored his client’s cues and fired case-related questions at him, getting back monosyllabic answers. The new client punctuated these answers with questions like: “Man-aren’t you supposed to be helping me? You sound just like a prosecutor.” In response, Carlos grew increasingly annoyed, creating more distance between himself and his client. This attorney-client relationship was headed to the Intensive Care Unit.

In my role as instructor I turned to Carlos, and asked him to break role for a moment and answer my questions:

“Carlos: do you have a son?”

“Yes”

“How old is he?”

“Four months”

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¹ In 2012, the Chilean National Public Defender hired Pacific McGeorge Law School to train senior Chilean public defenders in the areas of client interviewing, counseling and plea negotiations during a two week program in Santiago. Professors Emily Garcia Uhrig, Raquel Aldana, Assistant Federal Defender Matthew Fleming and I prepared materials over a two month period, then conducted a workshop in Santiago. We engaged the participants in exercises and presented lectures based on American clinical pedagogies. The goal was to expose this group of experienced lawyers to techniques and methods that were effective in the United States, then invite them to adapt them to their existing system.

² In addition to the North American faculty, two Pacific McGeorge law students Charles Young and Meghan Clair, both fluent in Spanish, were part of the teaching staff, playing the roles of clients accused of crimes punishable under Chilean criminal laws. Their instructions were to play the roles true to life. The client in this particular fact pattern was charged with assault and robbery. At this stage in the process, the attorney had been provided limited discovery by the prosecutor in addition to the charging instrument. This meeting was set up with the dual goals of information gathering and relationship building.

“Now he is fourteen years old and he is sitting in front of you. Go back and interview your son, with all of his fears and concerns and talk to him about this legal problem he is in. Can you do that?”

“Yes.”

Carlos resumed the client interview but this time his demeanor changed. His voice softened, his questions about the case lost their accusatory tone. When he started to engage with his client the rewards were immediate. The more he actively listened, the more Pancho began to share thoughts about his case. Carlos shed his judgmental stance and replaced it with concern. With that change in lawyer perspective, the attorney-client relationship moved off of life support.

Where one of Carlos’ primary goals of this initial interview was to create a connected attorney-client relationship, fostering open dialogue, the lawyer’s first attempt failed.³ But once Carlos approached Pancho with compassion, no longer conveying that accusations by the state summarily equal guilt, he became a partner in defending his case.⁴ The odds were greatly improved that Carlos would grow professionally and advocate zealously as Pancho began to “trust in his lawyer’s judgment....the most valuable currency the lawyer has...”⁵

Focusing on one subgroup of lawyers, public defenders, this article begins with the premise that empathy benefits lawyers across the board, irrespective of age, sex, years of experience or nationality. Building on a body of literature that analyzes why empathic relationships are so integral to *client* satisfaction, the article argues that real connection with clients also results in *lawyer* satisfaction, improving quality of professional life and client representation, reducing burn-out and fostering a personal commitment to advancing social justice. The article also argues that public defenders (and likely all lawyers working directly with clients) share a common goal of acquiring tools necessary to engage empathically with their clients, even when this learning process pushes them in uncomfortable directions and uncharted waters.

Although one cannot overstate the importance of relationship building with clients, the challenge lies in figuring out how to teach this intangible trait to current and future defenders. Focusing on two public defender “classrooms,” this article offers methods to cultivate empathy

³ See, Stefan Krieger & Richard K. Neuman, Jr., *Essential Lawyering Skills: Interviewing, Counseling, Negotiation, and Persuasive Fact Analysis* 89 (2d ed. 2003). (“Client interviewing is hard for two reasons. The first is the intellectual challenge of beginning a diagnosis of the client’s problem while, at the same time, carefully discovering the client’s goals and the facts known to the client. The second is the emotional challenge of establishing a bond of trust and helping a person who may be under substantial stress.”)

⁴ During my 16 years as a state and Federal Defender I faced the challenge of trying to “prove” that I was committed to zealously representing clients who felt that society had repeatedly turned its back on them. Some of my richest interactions were with clients who did not win their cases but felt they had been given the opportunity to participate in the decision-making process. By learning to redefine “success” to encompass this kind of client connection, my commitment to the job increased .

⁵ Richard Zitrin, *Viewpoint: Don't Just Talk About Trust -- Earn It*, The Recorder News Alert, Mar. 9, 2012, LEXIS doc-id (#1202544886592#). (“A client’s trust in a lawyer’s judgment may be the most valuable currency the lawyer has-more than legal skills, experience , intelligence or knowledge.....”)

in lawyers in a way that makes it “stick” over years of practice.⁶ Thus the teacher must find a way of infiltrating each lawyer’s natural defenses. These classrooms include the Federal Defender seminar at Pacific McGeorge Law School that supplements a year-long clinic⁷ and the public defender workshop in Santiago, Chile. In both settings, our goal was the same: to use effective experiential teaching techniques⁸ designed to move our participants toward client-centered representation.⁹ What we discovered in both countries was that when our participants surrendered to the process of “learning” empathy, they felt more personally and professionally committed to achieving positive outcomes for their clients.

Section II of this article explores the many reasons that empathy is a cornerstone of both client and lawyer satisfaction, from personal, professional and societal perspectives.¹⁰ Where cultivating relationship is the goal, it is instructive to look at other professional training to see what light that may shed on the consideration of empathy training in the legal profession. To that end, after a discussion of legal scholarship addressing the value of nurturing connection between lawyer and client, Section II briefly explores a similar development in medicine. Medical teachers, building on their finding that empathic relationships between doctor and patient brings benefits to both, have incorporated experiential methods of creating this connection into programs for students, interns and residents. Indeed, Massachusetts General Hospital and other medical centers have created whole programs dedicated to teaching empathy

⁶ Although this article focuses on teaching public defenders empathy, the principles and methods have application across the legal profession.

⁷ Assistant Federal Defender Lauren Cusick and I created the clinic and accompanying seminar in 2009, modeling the structure after the superb Federal Defender Clinic at NYU Law School. In our clinic, pursuant to local practice rules, student-lawyers represent clients charged with federal misdemeanors in the Eastern District of California. The clinic component of the year-long course is physically located at the Federal Defender Office and supervised by their Chief Assistant Linda Harter. This is supplemented by a weekly seminar on campus, which I teach with an experienced federal lawyer. In the seminar, students discuss professional ethics, critically examine the criminal justice system, and engage in role plays, many of which, like client interviewing and counseling, require students to learn from simulations how to establish rapport and trust with the people they represent.

⁸ Here, experiential learning is defined as that which "integrates theory and practice by combining academic inquiry with actual experience... using students' experiences in the roles of lawyers or their observations of practicing lawyers and judges to guide their learning." See, Roy Stuckey, et al., *Best Practices for Legal Education: A Vision and a Road Map* 121 (1st ed. 2007).

⁹ See, Elliot Milstein, *Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations*, 51 J. Legal Educ. 378 (2001). (“Client-centered lawyering, perhaps the ideological core of clinical education, is the idea that lawyers represent clients and must do it in a way that ensures the autonomy of the client as the primary decision-maker over the life of a case. It assumes that all important decisions involved in solving a legal problem involve value choices and that a primary job of a lawyer is to help a client make those decisions in a way that is consistent with the client's values”).

¹⁰ See, Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathic, Heroic Public Defender*, 37 U.C. Davis L. Rev. 1203, 1208 (2004). Smith discusses what motivates public defenders to remain committed to the profession and to their clients: “Defenders who approach the work out of respect for client, pride in craft, and a sense of outrage about inequality, injustice, and the routine abuse of power by those in a position to wield it are able to sustain their careers despite the systemic incentives to fail.”

to their health professionals.¹¹ The focus and techniques provided in these programs have direct application in the legal as well as medical arenas.

Section III describes the design and implementation of different experiential techniques that we developed or adapted, to help cultivate empathy in our practitioners.¹² Through years of trial and error, colleagues and I kept reworking these teaching strategies to maximize their effectiveness. I present some of them here.

Section IV examines goals our current and future lawyers set for themselves as well as the obstacles they encountered along the way and concomitant teaching challenges we faced. I was fascinated but not surprised to learn that public defenders in both adversarial systems¹³ face remarkably similar obstacles when the goal is developing empathic relationships with clients. And central to the thesis of this article, I also discovered that both groups displayed virtually identical objectives in connection with learning how to relate empathically with clients. In both environments, once our students surrendered to the process, let down their defenses, and took emotional risks in an experiential setting, they made noticeable strides toward developing trusting relationships with their clients. Having been given permission to feel and exhibit emotional connection in a professional setting, they became more committed to their jobs as criminal defense lawyers.

¹¹ See, e.g., Massachusetts General Hospital Treatments and Services Program in their school of Psychiatry Empathy & Relational Science Program, http://www.massgeneral.org/psychiatry/services/empathy_home.aspx (last visited Mar. 20, 2013).

¹² These techniques were all simulation and role-play based. See Section II, *infra*, for discussion of benefits and drawbacks of simulation versus live-client exercises in the clinical setting. This author concludes that while there is no question that live-client interactions, following the three step clinical teaching methodology of planning, doing and reflecting, can be an effective means of cultivating empathy in public defenders, the same can be achieved through simulations including role plays with changing facts.

¹³ See, Lydia Brashear Tiede, *Taking Rights Seriously in Chile*, 15 Int'l J. Hum. Rts. 1275 (2011). In contrast to the United States, only recently, in 1990, Chile transitioned from a dictatorship to a democracy after Patricio Aylwin won the presidency. As a result of Aylwin's push for human rights, Chile's criminal law system moved from inquisitorial to adversarial. The reforms also created a public defender's service, la Defensoría Penal Pública, and gave Chilean criminal defendants basic rights.

II. WHY TEACH EMPATHY TO CURRENT AND FUTURE PUBLIC DEFENDERS?

Both scholarship and anecdotal evidence support the conclusion that an empathic attorney-client relationship benefits client *and* lawyer at every stage of litigation.¹⁴ Here, empathy is broadly defined as “the ability to understand what another human being is thinking or feeling.....a multi-faceted process, with some aspects of it being ...automatic and emotional,....and others aspectsmore reflective and conceptual.”¹⁵ In the legal context, scholar Lynn Henderson describes how empathy embraces “three distinct phenomena” : “(1) feeling and emotion of another, 2) understanding the experience or situation of another, both affectively and cognitively, often achieved by imagining oneself to be in the position of the other; and 3) action brought about by experiencing the distress of another.”¹⁶

A. *Benefits to client: more effective representation*

This section begins by exploring distinct ways that empathy benefits public defenders and enhances the quality of their representation thereby maximizing their chances of providing effective assistance of counsel¹⁷ First, where the relationship between client and lawyer has trust at its base, that client will provide critical information to the lawyer during the interview phase and will be receptive to the lawyer’s advice during the counseling phase.¹⁸ Next, a client’s willingness to impart biographical and case related facts to the lawyer will provide the latter with ammunition to engage effectively in plea negotiations.¹⁹ This sharing of background and facts is

¹⁴See, e.g., Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 Harv. L. Rev. 1239 (1993). See also, Julius G. Getman, *Human Voice in Legal Discourse: Voices*, 66 Tex. L. Rev. 577, 582-83 (1988), (taking the position that empathy results in more effective advocacy on behalf of clients); Charles A. Reich, *Law and Consciousness*, 10 Cardozo L. Rev. 77,77-80, 91-92 (1988).

¹⁵ Richard Lopez, “*Empathy 101*”, Psychology Today, July 12th, 2010 <http://www.psychologytoday.com/> (last visited Mar. 20, 2013). (“The word empathy comes from the German *einfihlung*, which literally translates as “feeling into.” For thousands of years, empathy has attracted the attention of great thinkers in many fields of study. What’s most likely.... is that empathy is a multi-faceted process....Whether the more automatic or the more reflective aspect “kicks in” will necessarily depend on the social context in which we find ourselves. Indeed, there is definitional consensus, across disciplines, about the meaning of empathy”). See also, Definition of empathy, Merriam Webster Online Dictionary www.merriam-webster.com/ (Search for “empathy”). (2. [T]he action of understanding, being aware of, being sensitive to, and vicariously experiencing the feelings, thoughts, and experience of another of either the past or present without having the feelings, thoughts, and experience fully communicated in an objectively explicit manner.”)

¹⁶ Lynne Henderson, *Legality and Empathy*, 85 Mich. L. Rev.1574, 1579 (1987).

¹⁷ See, e.g., Smith, *supra* note 10 at 1221. (“It is easier to represent people who do bad things if you are able to establish a personal connection with them. Similarly establishing rapport and mutual trust is easier when there is a shared understanding. There is no question that empathy is part of good defense lawyering, or if not exactly empathy, then at least the ability to imagine a client’s situation”).

¹⁸ Krieger & Neumann, *supra* note 3 at § 8.1.

¹⁹ See, e.g., William G. Young, *Vanishing Trials, Vanishing Juries, Vanishing Constitution*, 40 Suffolk U. L. Rev. 67 (2006-7).

particularly important in the current legal environment given a pronounced recent trend toward fewer trials and far more guilty pleas.²⁰

Where trials once played a more prominent role in the criminal justice system, today plea bargains happen every day in every courtroom in the country.²¹ In Lafler v. Cooper and again in Missouri v. Frye, the Supreme Court recognized the extraordinary role that plea bargaining currently plays, holding that defendants have a 6th Amendment right to effective assistance of counsel during this stage of the proceedings.²² Noting this trend, in Lafler v. Cooper, Justice Kennedy wrote: “Criminal justice today is for the most part a system of pleas, not a system of trials. The right to adequate assistance of counsel cannot be defined or enforced without taking account of the central role plea bargaining takes in securing convictions and determining sentences.”²³ Indeed, in light of the rise in volume of negotiated pleas, public defenders must be able to engage in productive plea negotiations. The effectiveness of individual lawyers in this setting may turn on their ability to use empathic skills to confer and bargain with opposing counsel.

Empathic attorney-client relationships will also help the lawyer develop a trial narrative, another essential ingredient of effective representation.²⁴ Unless the lawyer has successfully collected facts from the client, both personal and case-related, she will have difficulty crafting case theory, opening statements or closing arguments that both resonate with the jury on an emotional level and comport with common sense.²⁵ The inability to present a compelling portrait of the client during opening statement and closing argument risks reducing courtroom

²⁰ Lafler v. Cooper, 132 S.Ct. 1376 (2012); Missouri v. Frye, 132 S.Ct. 1399 (2012)

²¹ Young, *supra* note 18 at 74, commenting on defendants’ motivation to plead guilty and resulting frequency with which that occurs. (“[I]n... federal courts, manipulation of the U.S. Sentencing Guidelines has the consequence of imposing savage sentences upon those who request the jury trial guaranteed them under the U.S. Constitution. These sentences are five hundred percent longer than sentences received by those who plead guilty and cooperate with the government”).

²² Lafler v. Cooper, *supra* note 21.

²³ *Id.* at 1388.

²⁴ See, e.g., John H. Blume, Sheri L. Johnson, & Emily C. Paavola, Every Juror Wants a Story: Narrative Relevance, Third Party Guilt and the Right to Present a Defense, 44 Am. Crim. L. Rev. 1069 (2007), discussing the importance of narrative relevance in criminal trials. (“Empirical studies have shown that more than legal standards, definitions or instructions- narrative plays a key role in the juror decision-making process”). See also, W. Lance Bennett & Martha S. Feldman, *Reconstructing Reality in the Courtroom, Justice and Judgment in American Culture* 81 Mich. L. Rev. 1009 (1983); Nancy Pennington & Reid Hastie, *A Cognitive Theory of Jury Decision-Making: the Story Model*, 13 Cardozo L. Rev. 519 (1991); *Old Chief v. United States*, 519 U.S. 172 (1997).

²⁵ See, Sunwolf, *Talking Story in Trial: The Power of Narrative Persuasion*, *Champion Magazine* at 27 (Sept./Oct. 2000). (“Trials are essentially *story-battles*. In the courtroom, each attorney will tell the jury a different story, call witnesses to support that story, and make contrasting arguments for what a just verdict might be, according to the plot of the story the advocate is offering. After hearing these tales, the judge or the jury is faced with choosing between competing tales. The stories may disagree on plot (*what* actually happened), they may disagree on the motive of central characters (*why* it happened), or they may disagree on what the consequences of the events should be (what would constitute *justice*). Jurors are hungry for fairness, and seek it by reconstructing the stories they receive from admittedly-biased storytellers (the parties’ advocates).”)

persuasion²⁶ as shown in recent “empirical studies... (which find)... that more than legal standards, definitions or instructions-narrative plays a key role in the juror decision-making process.”²⁷

Lastly, in the event of conviction, an empathic attorney-client relationship will fuel the lawyer’s mitigation arguments at sentencing.²⁸ In the sentencing context, mitigation encompasses both sympathetic “offender” and “offense” characteristics.²⁹ If the lawyer learns his client’s personal history, asking questions and seeking clarification as the relationship develops, he will invariably gain compassion along the way³⁰ and sound authentic when arguing at sentencing.³¹ Further, the client will benefit when that lawyer successfully places the criminal conduct in context, provides mitigating factors that reduce its severity and shows why this individual defendant warrants leniency. In so doing the lawyer will make strides toward convincing the judge to view the individual client as a three dimensional human being who made bad choices rather than just another “criminal.”

Several distinguished jurists have also recently argued that judges, too, need to access empathy in the courtroom generally and when determining the appropriate sentence for criminal defendants, specifically. Legendary Federal Judge Jack Weinstein explained that“(s)entencing...turns on the judge’s heart and life experience. It reveals the human face of the law. Without empathy between judge and defendant, sentencing lacks humanity. It is a form of robotism.”³² Federal Judge Denny Chin echoed this sentiment when he stated that:

“[E]mpathy is particularly important when it comes to sentencing, when a judge is called upon to pass judgment on another human being....When confronted, for example, with the question of whether to send a mother to jail and take her away from her family, we will not find the answer in a book or statute or case. We must call upon our life experiences and the wisdom and judgment that hopefully we have gained as we weigh competing considerations to arrive at a just and fair sentence. The ability to have some

²⁶ *Id.* See also, Stephanie Kane, 34 Litig. 52, 58 (2008). (“Narrative, The Essential Trial Strategy” (“The more the trial lawyer understands her own humanity, the more she can appreciate the humanity of her clients and others in their struggles with life, and the more powerful her storytelling will be”).

²⁷ See, John Mitchell, *Narrative and Client-Centered Representation: What is a True Believer to Do When His Two Favorite Theories Collide?* 6 Clinical L. Rev. 85, 85 (1999). (“...narrative storytelling...is our most basic form of communication and the primary lens through which we understand day to day human experience”).

²⁸ See, Janet Hinten, *Developing Mitigation Evidence*, http://moe.fd.org/Dev_Mitigation.php (last visited Mar. 20, 2013).

²⁹ *Id.* (“Mitigation evidence is critical to effective sentencing advocacy... Mitigation encompasses any circumstances that significantly affect or affected (a) client’s character and behavior related to the offense. Mitigation possibilities are of course endless. There is often important information in the client’s history which will need to be gathered by the attorney and presented to the probation officer, prosecutor and the court. Mitigation evidence can be created and further developed from the initial client meeting up until the sentencing”).

³⁰ See, Ogletree, *supra* note 14 at 1273. (“It is critical to look beyond the crime with which the client is charged, to gain insight into the often difficult, impoverished, and painful life that preceded the commission of the crime”).

³¹ See, Smith, *supra* note 10 at 1221. (“[Empathy] may even be essential to good criminal defense advocacy, especially at sentencing when a defender must capture in words not simply a client’s criminal act, but a client’s life”).

³² Jack B. Weinstein, *Does Religion Have a Role in Criminal Sentencing?* 23 Touro L. Rev 539, 539 (2007).

understanding of the defendant's motivations and "hopes and struggles" can only help in that endeavor.³³

If judges are ready to understand a defendant's motivations and struggles, criminal defense lawyers must be ready to bring that kind of information to the judge's attention.

B) Benefits to lawyers: more personal and professional satisfaction

A public defender walks into a case knowing that the power dynamic between himself and his client is inherently unbalanced, the client having no say in selection of counsel, and little knowledge of judicial process.³⁴ Many defendants are in custody during the pendency of their cases, accused of serious crimes and out of contact with family and friends. This power differential, while frustrating for the client,³⁵ can prove equally frustrating to the lawyer, motivating her to level the playing field by "tak(ing) an empathic view of her client."³⁶ The ability to do so fosters an environment of mutual respect, providing incentive for the public defender to remain committed to the job.³⁷ Indeed, "[public] defenders who approach the work out of respect for client, pride in craft and a sense of outrage about inequality, injustice, and

³³ Denny Chin, *Sentencing: A Role for Empathy*, 160 U. Pa. L. Rev. 1561, 1581 (2012).

See also: Remarks on the Retirement of Supreme Court Justice David H. Souter, 1 Pub. Papers 604, 604 (May 1, 2009). "The process of selecting someone to replace Justice Souter is among my most serious responsibilities as President, so I will seek somebody with a sharp and independent mind and a record of excellence and integrity. I will seek someone who understands that justice isn't about some abstract legal theory or footnote in a case book; it is also about how our laws affect the daily realities of people's lives, whether they can make a living and care for their families, whether they feel safe in their homes and welcome in their own nation. I view that quality of empathy, of understanding and identifying with people's hopes and struggles, as an essential ingredient for arriving at just decisions and outcomes....").

³⁴ Philip Genty, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic and the Teaching of Empathy*, 7 Clinical L. Rev. 273, 277 (2000). (Empathetic lawyering requires the lawyer to look at the legal system through the client's eyes. In addition, the lawyer must prepare the client for, and guide the client through, an encounter with that system. This is, of course, an exceedingly complicated role, for the lawyer is, at one time, both a part of the mistrusted legal system and the client's only practical means of gaining access to and results from that system. The attorney is an officer of the court with an allegiance to a legal system that her or his clients experience as unjust. The empathy skills involved in preparing a client for and taking the client through the fearful experience of a legal proceeding are therefore among the most difficult to master").

³⁵ Monroe Friedman, "Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions", 64 Mich. L. Rev. 1469, 1473 (1966). ("The indigent defendant... meets his lawyer for the first time in the cell block or the rotunda. He did not choose the lawyer, nor does he know him. The lawyer has been sent by the judge and is part of the system that is attempting to punish the defendant. It is no easy task to persuade this client that he can talk freely without fear of prejudice").

³⁶ Ogletree, *supra* note 14 at 1274. "...the quality of a lawyer's representation often will improve when she takes an empathic view of her client. Empathizing with a client necessarily means caring more deeply for the client. The attorney with a deeper understanding of and sensitivity to the client wants to help him, and this desire affects both her will to represent the client and the form that the representation itself takes. When she cares about the client as an individual, not only does she want to assist him through the complex maze of our legal system, but she also wants him to succeed; as a result, her defense is zealous."

³⁷ *Id.*

routine abuse of power by those in a position to wield it are able to sustain their careers despite the systemic incentives to fail.”³⁸ This process takes time, patience and resiliency.

This connection often creates in the lawyer a sense of professional fulfillment, commitment to social justice³⁹ and sometimes even a desire to effect social change.⁴⁰ The more the lawyer connects, the more invested he or she becomes.⁴¹ Simply stated, when we care, we work harder and feel professional and personal satisfaction.⁴² And when we care, we communicate that sincerity to others, including people we represent, adversaries, prosecutors and judges.⁴³

C. Reviewing empirical studies in medicine to underscore comparable need to teach empathy to public defenders

One might assume that lawyers can intuitively access something as powerful and critical as empathy- that it is an innate part of our repertoire as human beings, nurtured when we are young, integrated into our law school training,⁴⁴ then easily accessible when we represent clients. But a closer inspection reveals that at the beginning of their careers, newer defenders may avoid emotional connection, feeling uncomfortable displaying empathy or making the strategic

³⁸ Smith, *supra* note 10 at 1208.

³⁹ *Id.* at 1209. (“Indeed, defenders are the embodiment of the most important of all rights, the right to counsel, which is inextricably connected to the client’s ability to assert all other rights. Thus, in zealously representing clients, defenders of the accused promote social justice. Defenders uphold the political philosophy underlying the American system of justice and safeguard the dignity of each member of society no matter how low he or she has fallen.”) *See also*, James S. Kunan, How Can You Defend Those People? The Making of a Criminal Lawyer 27 (1st ed. 1983). (“We mean to protect the rights not only of the wrongly accused but of the guilty themselves. That’s the nature of rights -you don’t have to earn them or deserve them; you *have* them”).

⁴⁰ *See, e.g.*, Peter Margulies, *Re-Framing Empathy in Clinical Legal Education*, 5 *Clinical L. Rev.* 605, 606 (1999). (“Clinics struggle with merging the micro-version of empathy...which focuses on interpersonal relationships... with the macro form of empathy...which focuses on distributive issues in society.... (T)he virtue of law school clinics in which law students supervised by law teachers offer legal services to people living in poverty is that clinics merge the personal and the political. Students learn something about their clients’ lives, even if that understanding is merely partial. At the same time, students can extrapolate from their clients’ lives to learn important political lessons, like lessons about the scapegoating of the poor, the insensitivity of the bureaucracy, and the persistence of the human spirit in the face of such abuse”). *See also*, Reich, *supra* note 14 at 77-80, 91-92, (taking the position that empathy must play a role in legal consciousness to bring about social change).

⁴¹ Ogletree, *supra* note 14.

⁴² *See*, 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). (“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.... Not only do relationship skills allow one to *enjoy* her success, but, perhaps more importantly, they are essential tools to *achieve* that success”).

⁴³ Ogletree, *supra* note 14.

⁴⁴ Although a topic for another day, many scholars bemoan the fact that empathy is not taught as a core lawyering skill in law school and advocate for legal reform in this area. *See, e.g.*, Ian Gallagher, *Thinking Like Non-Lawyers: Why Empathy is a Core Lawyering Skill and Why Legal Education Should Change to Reflect its Importance*, 6 *Syracuse C. L. Fac. Scholarship* (2012). (“Empathy... is a core lawyering skill...[C]urrent legal education practices are designed systematically to eliminate empathy from law students... a mistake that can affect a lawyer’s ability to communicate with juries, clients, and the other non-lawyers with whom a lawyer comes into contact.”)

decision to act as disinterested clinicians. Some defenders rationalize and perhaps even believe that keeping a professional distance will help them maintain a necessary level of objectivity.⁴⁵ But this approach can affect the quality and effectiveness of their representation.

This connection between empathy and better client representation finds support in anecdotal data, but there is little to no empirical proof. Conversely, in the field of medicine there are hundreds of empirical studies on the role of empathy in patient care. Upon closer inspection, lawyer-client and doctor-patient relationships and the role empathy plays share many characteristics, thus the conclusions of the medical studies provide transferable insights. Not surprisingly, the results of these doctor-patient studies consistently establish that when physicians fail to engage empathically with their patients, their patients walk away dissatisfied.⁴⁶ Even more critical, patients sometimes turn away from necessary treatment when they do not feel an emotional connection.⁴⁷

Like criminal defendants who do not choose to be charged with crimes and do not choose their public defenders, patients' relationships with their physicians often "flow from necessity, not choice."⁴⁸ Where defendants face the possibility of loss of liberty, patients face the possibility of loss of health and even death: their interactions with their physicians are often highly charged, centering on issues of vital importance.⁴⁹ And as with public defenders and their clients, the doctor-patient relationship "involves interaction between individuals in unequal positions, is often non-voluntary, concerns issues of vital importance, is therefore emotionally laden, and requires close cooperation."⁵⁰

Again paralleling defender-client relationships, the chief means of interpersonal communication between doctors and patients is through the exchange of information.⁵¹ Doctors need accurate reporting or fact-gathering from their patients to diagnose accurately and to develop a treatment plan.⁵² Patients need to hear and trust information from their doctors in order to make difficult medical decisions.⁵³ Similar to the importance of clients heeding their lawyers' advice, health is often contingent on compliance or adherence to the treatment plan advocated by the treating physician: indeed, this final criterion is commonly relied on as an indicator of effective doctor-patient communication.⁵⁴

45 Eric J. Miller, *Keeping it Real: Empathy and Heroism in the Work of Charlies J. Ogletree, Jr.*, 22 Harv. BlackLetter L. J. 131, 134 (2006). ("[C]hoosing the side of the underdog is only half the battle. It is an often-acknowledged but generally underemphasized feature of public interest law that many of the most powerful advocates for the worse off members of society are least able to empathize with those they purport to serve").

46 See, e.g., Kelly B. Haskard Zolnierek & M. Robin DiMatteo, *Physician Communication and Patient Adherence to Treatment: A Meta-analysis*, 47 Med. Care 826 (2009).

47 *Id.*

48 L.M. Ong, *et al.*, *Doctor-Patient Communication: A Review of the Literature*, 40 Soc. Science Med. 903, 905 (1995).

49 *Id.* at 904.

50 *Id.* at 903.

51 *Id.* at 903.

52 *Id.* at 911.

53 *Id.* at 905.

54 *Id.* at 911.

What follows are a sampling of medical studies focusing on the role of empathy in patient care. All lead to the same conclusion that emotional connection and the ability of the physician to view the case from the perspective of the patient are critical components of doctor-patient relationships and positively affect outcomes.

A study out of the University of Wisconsin School of Medicine and Public Health, focusing on patients with common colds, found a statistically significant correlation between empathetic doctor-patient interactions and the duration and severity of these colds among patients.⁵⁵ Patients were instructed to fill out a questionnaire, called CARE (Consultation and Relational Empathy) to assess ten areas of the medical appointment. These areas asked whether the clinician 1) made the patient feel at ease 2) gave the patient the opportunity to tell his or her story 3) really listened to that story 4) viewed and treated that patient as a whole person 5) meaningfully understood the patient's concerns 6) showed care and compassion 7) was positive 8) took the time to explain the medical situation clearly 9) empowered the patient to take control and 10) helped the patient create a plan of action. Patients used a one to five point scale for each criterion. The study concluded that CARE scores predicted the duration of their colds: those patients who gave their treating doctors perfect scores got better one full day before those patients who felt that their caretakers had not engaged empathically with them.⁵⁶

A second study out of the University of Edinburgh, Scotland, focusing on acupuncture practitioners and patient outcomes, found that patients' perception of whether their health care providers engaged empathically with them is predictive of a positive change in health outcome eight weeks after treatment.⁵⁷ Basing their conclusions on CARE scores once again, those conducting the study found that when patients engaged empathically with the practitioner, they were more able to accept and follow treatment instructions from day one. They also experienced greater long term health benefits resulting from acupuncture treatments than patients whose treating practitioners failed to do so.⁵⁸

A group of social scientists at Radboud University Medical Centre in the Netherlands conducted a survey of abused women who disclosed partner abuse to their primary care physicians; their goal was to determine whether physician empathy played a role in encouraging them to make these disclosures.⁵⁹ The study concluded that women who provided a description of partner abuse prefer a communicative approach and that empathy is "indispensable in response to disclosure of..(that)... abuse."⁶⁰ Women who shared this information with their doctors wanted them to take a complete history, including asking about current and past

⁵⁵ See, David P. Rakei, *et al.*, *Practitioner Empathy and the Duration of the Common Cold*, 41 *Fam. Med.* 494 (2009).

⁵⁶ *Id.* at 495.

⁵⁷ Sarah Price, *et al.*, *Practitioner Empathy, Patient Enablement and Health Outcomes: A Prospective Study of Acupuncture Patients*, 63 *Patient Educ. & Counseling* 239 (2006).

⁵⁸ *Id.*

⁵⁹ Sylvie Lo Fo Wong, *et al.*, *Talking Matters: Abused Women's Views on Disclosure of Partner Abuse to the Family Doctor and Its Role in Handling the Situation*, 70 *Patient Educ. & Counseling* 386 (2008).

⁶⁰ *Id.* at 393.

violence.⁶¹ None of the women who went to see their physicians for treatment of their injuries planned to disclose partner violence, but found that when their doctors adopted an empathetic approach they were encouraged to share their stories and reported feeling emotional relief and support.⁶² Women also valued an empowering approach, where physicians did not treat them like victims and instead encouraged them to take action.⁶³

A study of diabetic patients in Parma, Italy, conducted by Dr. Stephano Del Canale, concluded that physician empathy is significantly associated with positive outcomes among this patient population.⁶⁴ Here, those conducting the study administered the “Jefferson Scale of Empathy”⁶⁵, a validated measure of physician empathy and compared its ratings to acute metabolic complications suffered by diabetic patients. The results confirmed that “shifting from a low to a high scoring category of physician empathy decreased the odds of metabolic complications among diabetic patients by 41%.”⁶⁶

These and numerous other studies reveal better patient outcomes when treating physicians engaged empathically with them. But they also reveal another outcome relevant to the thesis of this article: doctors reported that they, too, felt more empowered, more effective and less prone to professional burn-out when they took the time to try to put themselves in the shoes of their patients.⁶⁷ Similar to the conclusions of legal scholars with criminal defendants, medical scholars conclude that empathy is the “foundation of patient care,”⁶⁸ and that it provides the foundation for “humanistic physicians”.⁶⁹ Dr. Howard Spiro, in his article “The Practice of Empathy” argues that this emotional connection “has always been and will always be among a physician’s most essential tools of practice.”⁷⁰

⁶¹ *Id.* at 386.

⁶² *Id.* at 392.

⁶³ *Id.* at 389.

⁶⁴ Stefano Del Canale, *et al.*, *The Relationship between Physician Empathy and Disease Complications: An Empirical Study of Primary Care Physicians and Their Diabetic Patients in Parma, Italy*, 87 *Acad. Med.* 1243 (2012).

⁶⁵ See, Gregory C. Kane, *et al.*, *Jefferson Scale of Patient’s Perceptions of Physician Empathy: Preliminary Psychometric Data*, 48 *Croat. Med. J.* 81 (2007). (“The Jefferson Scale of Empathy was developed by researchers at the Center for Research in Medical Education and Health Care at Jefferson Medical College to measure empathy in physicians and other health professionals medical students and health professional students. It has been translated into 42 languages including Arabic, Chinese (China, Taiwan), Croatian, Czech, Danish, Dutch (Belgium [Flemish], the Netherlands), Filipino, Finnish, French (Belgium, Canada, France), German, Greek, Hebrew, Hindi, Hungarian, Indonesian, Italian, Japanese, Korean, Lithuanian, Norwegian, Persian (Farsi), Polish, Portuguese (Brazil, Portugal), Romanian, Russian, Serbian, Spanish, (Catalan, Chile, Mexico, Peru, Spain), Swedish, Thai, Turkish and Urdu (Pakistan). “

⁶⁶ Del Canale, *supra* note 65 at 1246.

⁶⁷ Howard Spiro, *What is Empathy and Can it be Taught?*, 116 *Annals of Internal Med.* 843, 843 (1990). See also, Paul E. Stepansky, *Pathways to Empathy?*, *Medicine, Health and History*, (May 18, 2012), <http://www.adoseofhistory.com> (“[D]octors who are empathic doctor better. They learn more about their patients and, as a result, are better able to fulfill core medical tasks such as history-taking, diagnosis, and treatment”).

⁶⁸ Spiro, *supra* note 68 at p. 843. This page number does not make sense.

⁶⁹ *Id.*

⁷⁰ *Id.* Dr. Spiro reports that he hopes to raise consciousness on this point, finding that once medical students become physicians, their ability to empathize with their patients declines throughout the course of their medical

These studies demonstrate that trust-based relationships in patient care are essential to optimal clinical outcomes, from both the patient's and the physician's perspectives.⁷¹ As a consequence, medical schools regularly include empathy training in "doctrinal" classes, as well as in clinical setting in hospitals.⁷² Similarly, in the attorney-client context, the answer to why we teach empathy is because it works on numerous levels: it enriches one's practice, results in professional satisfaction for the lawyer, assures zealous representation for the client, and helps to facilitate justice. The challenge for the clinical law professor lies in figuring out how to "teach" empathy to current and future public defenders. The next section addresses that issue.

education. He argues that it can be restored through novels, art, fiction, stories, and paintings in addition to patient history-taking. It is his firm belief that history-taking serves a dual function of explaining what is going on medically with the patient but also strengthens connection between doctor and patient and in so doing fosters empathy.

⁷¹ *Id.*

⁷² See e.g. Massachusetts General Hospital Treatments and Services Program, *supra* note 11, in their school of Psychiatry, Empathy & Relational Science Program where they promote evolutionary, evidence-based empathy training that optimizes the patient experience to promote respectful, compassionate, and effective communication at al⁷² *Id.* at 386.

⁷² *Id.* at 392.

⁷² *Id.* at 389.

⁷² Stefano Del Canale, *et al.*, *The Relationship between Physician Empathy and Disease Complications: An Empirical Study of Primary Care Physicians and Their Diabetic Patients in Parma, Italy*, 87 *Acad. Med.* 1243 (2012).

⁷² See, Gregory C. Kane, *et al.*, *Jefferson Scale of Patient's Perceptions of Physician Empathy: Preliminary Psychometric Data*, 48 *Croat. Med. J.* 81 (2007). ("The Jefferson Scale of Empathy was developed by researchers at the Center for Research in Medical Education and Health Care at Jefferson Medical College to measure empathy in physicians and other health professionals medical students and health professional students. It has been translated into 42 languages including Arabic, Chinese (China, Taiwan), Croatian, Czech, Danish, Dutch (Belgium [Flemish], the Netherlands), Filipino, Finnish, French (Belgium, Canada, France), German, Greek, Hebrew, Hindi, Hungarian, Indonesian, Italian, Japanese, Korean, Lithuanian, Norwegian, Persian (Farsi), Polish, Portuguese (Brazil, Portugal), Romanian, Russian, Serbian, Spanish, (Catalan, Chile, Mexico, Peru, Spain), Swedish, Thai, Turkish and Urdu (Pakistan). "

⁷² Del Canale, *supra* note 65 at 1246.

⁷² Howard Spiro, *What is Empathy and Can it be Taught?*, 116 *Annals of Internal Med.* 843, 843 (1990). See also, Paul E. Stepansky, *Pathways to Empathy?*, *Medicine, Health and History*, (May 18, 2012), <http://www.adoseofhistory.com> ("[D]octors who are empathic doctor better. They learn more about their patients and, as a result, are better able to fulfill core medical tasks such as history-taking, diagnosis, and treatment").

⁷² Spiro, *supra* note 68 at p. 843. This page number does not make sense.

⁷² *Id.*

⁷² *Id.* Dr. Spiro reports that he hopes to raise consciousness on this point, finding that once medical students become physicians, their ability to empathize with their patients declines throughout the course of their medical education. He argues that it can l levels of healthcare. [Their] training and consultations are grounded in the neurobiology and physiology of human interaction and emotion and are informed by relational sciences

III. Some Suggested Experiential Methods of Teaching Empathy to Public Defenders

Because effective public defenders must master the ability to relate empathically with their clients, the challenge lies in figuring out how to teach student defenders and experienced lawyers, alike, to make that emotional connection.⁷³ Some of the self-selected pool of lawyers who choose this area of practice are empathic by nature.⁷⁴ Still others must be taught methods of nurturing innate empathic tendencies,⁷⁵ sometimes taking them well past their comfort zone in the process. What follows are suggested teaching methods we have tested out on American student defenders and Latin American senior defenders.

It took me sixteen years of practice as a public defender to become what I would now describe as a client-centered lawyer.⁷⁶ The challenge in the Federal Defender and Chilean programs was to find effective ways of starting lawyers on the road to that ultimate goal in weeks rather than decades. With that objective in mind, my colleagues and I developed materials using experiential techniques that were specifically designed to foster empathic attorney-client connection.⁷⁷ These exercises necessarily pushed students to dig deep and make themselves vulnerable, causing occasional pushback in the classroom setting.⁷⁸ For students and teachers, alike, this kind of teaching required several leaps of faith and a willingness to take emotional risks before colleagues.⁷⁹

⁷³ See, Ogletree, *supra* note 14 at 1273. (“[I]t is critical to look beyond the crime with which the client is charged, to gain insight into the often difficult, impoverished, and painful life that preceded the commission of the crime. If a public defender maintains distance, she might overlook the humanity of her client —his positive attributes, the background which may have led him to commit crimes, and the multiple needs that transcend his current criminal case”).

⁷⁴ See, e.g., *Id.* at 1272 for illustration of attorney with innate empathic approach to client representation: (“My view of empathy has significant implications for the character of the lawyer-client relationship. My relationships with clients were rarely limited to the provision of conventional legal services. I did not draw rigid lines between my professional practice and my private life. My relationship with my clients approximated a true friendship. I did for my clients all that I would do for a friend”).

⁷⁵ See e.g. Dan DeFoe, *Emotional Intelligence, Lawyers, and Empathy – Using The Power of Listening With Care to Build Better Professional Relationships and Satisfy Clients*, *Psycholawlogy*, (November 25, 2012) <http://www.psycholawlogy.com>. (“How should lawyers respond to their clients’ complaint that they lack empathy? Many clients surveyed by researchers report they feel that their lawyers do not understand them and do not care about their feelings”).

⁷⁶ My “empathy” turning point came eight years into practice when a client, convicted after trial of possession of a weapon, and sentenced to four years in prison, wrote me a letter thanking me for the role I had played in his life. He wanted me to know that had committed the crime but felt it was important to make the government prove its case, a relief to any defender who harbors the fear that she may have played a role in the conviction of an innocent client. He added that the fact that I took him seriously during our meetings and tried to address his concerns left him feeling that the system had worked. I took this message to heart in future meetings with clients.

⁷⁷ These materials included simulated case files where Chilean clients were charged with crimes under that country’s penal code in addition to several role play assignments.

⁷⁸ For examples of near mutinies by students/participants, see, Section IV, *supra*.

⁷⁹ See, Ogletree, *supra* note 14 at 1289. “[R]ather than fostering empathy, legal education often encourages a relationship of detached professionalism. Lawyers are taught to avoid the intimacy necessary for the development of empathy for the client...Detachment encourages the lawyer to see the client as an “other”, someone different and not “related” to the lawyer. To counter the risk of disillusionment, we must encourage lawyers to form a meaningful bond with their clients. Human concern and understanding must complement abstract principle. Only by permitting

The importance of teaching empathy to law students generally⁸⁰, and public defenders specifically, was brought home to me several years ago when a colleague recounted a Trial Advocacy skills session at my law school. A student was conducting a mock direct examination of a young mother whose two year old daughter had died unexpectedly of a subdural hematoma. As the prosecutor in this case, the student-lawyer began by introducing the witness to the jury, then moved to her visit to the hospital where her daughter had been rushed hours earlier. The following interchange occurred:

Q: Mrs. Donaldson, where did you go once you arrived at the hospital?

A: I found Dr. Martin, the doctor who had called me at work and told me my baby was injured.

Q: What did you do after you found Dr. Martin?

A: He took me to a gurney where my baby was located.

Q: What did he do next?

A: He pulled back a sheet and showed me my baby. My baby was dead.

Q: *Where did you go next?*

At the end of the examination the professor focused on why the student had not responded empathically to a young mother's observation that she was forced to look at her dead child and instead chose to move the case along by asking the general question "where did you go next?" The student answered, candidly, that she had done so because she did not need more information about the baby to prove her case. This turned into an excellent teaching moment where the professor was able to engage the whole class in a discussion of the value of empathy, here in the context of trying a case, and more generally as a valuable life skill. Together the class reached the conclusion that the better path for the lawyer would have been to take a moment to pay homage to the courage of this young mother, perhaps by asking her how she felt when she saw her child, perhaps by acknowledging her loss, or through some other illustration of compassion. In so doing, the lawyer would be tapping into her own emotional intelligence, would put the mother more at ease in a tragic setting and would communicate caring to the jury.

In the Federal Defender and Chilean programs, we focused on constructing a curriculum geared toward cultivating empathic attorney-client relationships by incorporating "learning by

a meaningful link between lawyer and client can we hope to provide a sustaining motivation for indigent defense work."

⁸⁰ Although beyond the scope of this article, it is noteworthy that scholars have recently taken the position that empathy is a core lawyering skill that should be taught to all students in law school. See, Gallagher, *supra* note 45. ([C]urrent legal education practices are designed systematically to eliminate empathy from law students...(t)his is a mistake that can affect a lawyer's ability to communicate with juries, clients, and the other non-lawyers with whom a lawyer comes into contact. (L)aw schools should make core changes in the way they teach their students... (A)ttention to empathy as a critical lawyering skill should begin before law school begins, should continue throughout all three years of formal legal education and should continue after law students graduate from law school.)

doing” skills-based advocacy techniques⁸¹ coupled with specific clinical teaching methodologies.⁸² To that end, we borrowed or developed exercises whose specific design was to help our lawyers see life from the perspectives of the individuals they represented. We began by developing student learning objectives and outcomes⁸³ from which we crafted detailed lesson plans. Although we knew that some of our techniques might be perceived as too intrusive by participants, we pushed ahead.

In both programs, a primary goal was to break down emotional barriers at the outset of each course. We were acutely aware that merely *instructing* participants to feel certain emotions or lecturing them on the merits of developing client relationships was useless. In our view, they needed to undergo a deeply personal process of experiencing vulnerability in order to tap into meaningful connection with clients. To that end, after an initial “ice-breaking” exercise⁸⁴ where each participant introduced him or herself to the group, describing location, years and type of practice, we followed up in both the Federal Defender and Chilean programs with a modified version of an exercise a clinical colleague developed several years ago.⁸⁵ We then held our collective breath to see how our students responded.

During the first five minutes of the first Federal Defender seminar at my law school, I instructed students to pair up with fellow students who were not their assigned partners in the clinic. In the Santiago program, we similarly instructed our group of experienced public defenders to pair up with someone from a different region in the country, someone with whom they had little or no familiarity.

The participants were told to think of some personal experience in their lives that left them feeling vulnerable, sad or powerless, and then to spend five minutes sharing the story in private with the partner. At the end of five minutes, we called “switch” and had the other member of the pair tell an equally personal story. We provided no additional instructions at this juncture.

⁸¹ Our primary critique methodology came from the four step process created many years ago by the National Institute for Trial Advocacy (NITA). The four component parts include: 1) Headline 2) Playback 3) Prescription 4) Rationale. See, Christopher W. Behan, *From Voyeur to Lawyer: Vicarious Learning and the Transformational Advocacy Critique*, 38 Stetson L. Rev. 1, 7 (2008).

⁸² See, e.g., Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy* 18 Clinical L. Rev. 505, 517 (2012). (“Clinical pedagogy is intentional, experiential, reflective, and dependent upon the context of the interactions among faculty, students, and clients”).

⁸³ For discussion of importance of establishing student learning objective and outcomes see, Roy Stuckey *et al.*, *supra* note 8 at 30-40. (“An important step is to articulate clear educational objectives for the program of instruction and, preferably, to describe those objectives in terms of desired outcomes. Outcomes-focused education is becoming the norm throughout higher education. In fact, regional accrediting agencies are requiring institutions of higher education, including some law schools, not only to state educational outcomes but also to prove that their students are attaining those outcomes. It is time for all law schools to make the transition”).

⁸⁴ Ice-breaking exercises at the beginning of a program initiate a bonding process among participants by non-threatening information sharing. The information we ask the participants to share with the room is neither intrusive nor provocative. Sometimes we invite humorous responses by asking participants what they would have done if they had chosen a career other than law.

⁸⁵ See, Laurie Shanks, *Whose Story Is It, Anyway?-Guiding Students to Client-Centered Interviewing through Storytelling*, 14 Clinical L. Rev. 509, 510 (2008). “[T]his exercise was developed as a tool to bring law students out of the competitive academic world and instill in them the value of truly listening to their clients”).

After all participants shared their stories, we called on individuals and had them come to the front of the room. We asked them to deliver their partner's stories in the first-person.⁸⁶ (e.g. "When *I* was ten years old *I* was in a near fatal car accident.") Indeed, several Chilean lawyers took the assignment so heart that they began their story-telling by introducing themselves using their partners' full names.

At the end of each story, we turned first to the person who presented the narrative, then to the person who was the subject of that narrative told to a room of relative strangers. We asked the storytellers what their goals were and whether they felt any kind of responsibility to their colleague when they shared a borrowed experience with the group. Across the board, among my clinical students in Sacramento, and seasoned public defenders in Chile, each story-teller talked about the desire to "get it right", to "honor their partner's experience", to relay the emotion of the story properly and to present the facts accurately.

Uniformly, the person who was placed in the passive role of listening as his personal story was being told talked about feelings of vulnerability when someone else shares an intimate "piece" of you. Each described moving from embarrassment to nervousness to pride, depending on how accurately the partner conveyed the emotional content of the story, how well she appeared to put herself in the shoes of the person whose story she was sharing. Uniformly, indeed predictably, at least one participant in each program initially pushed back, angered that we had not revealed, up front, that his story would be shared publically.⁸⁷

The reaction of a current student in the Federal Defender clinic to the story-telling exercise is instructive:

This was more than an exercise: it was an experience. When we were asked to share a private experience from our lives, I began to feel nervous. I didn't know how much I really wanted to share and I didn't know how my story would be received. I was nervous and vulnerable but slowly began to feel comforted when I saw my partner listening and emphasizing. When I finished telling my story, I thought the worst was over. I soon learned that wasn't so when I was asked to share my partner's private story with the room. I began to feel nervous again, but in a different way. Would I remember everything he shared, would I be able to figure out the most important parts, would I be able to do his story justice, would I be able to connect with my audience and produce the same emotion my partner displayed with he opened up to me about an important moment in his life? When I finished telling my partner's story, I sat down a sense of what it means to have the responsibility of being a voice for another. No matter how hard I tried to convey emotion, I felt there was more, much more that I could and should have shared.

⁸⁶ A second method of conducting this exercise is to have the participants pair off and tell one another their stories in private, then conduct the regularly scheduled class. Near the end of class the professor instructs each student to tell her partner's story. When done this way, story tellers forget some critical details or fail to capture the emotions of the person whose story is being told. In some respects, this method of running the exercise more closely replicates the experience of clients whose public defenders have large caseloads and little time to cultivate relationships with individual clients.

⁸⁷ See, Goals and Obstacles, Section IV *supra*, for stories of participants who pushed back.

And when I sat listening to my partner tell my story, I listened to every word, because for me every single word mattered. My life was being exposed and I wanted it told the “right” way. From this experience, I learned that our clients can be vulnerable, scared and nervous when they share their stories with us. And when we take on the job of representing our clients, we take on a tremendous responsibility. We are not just telling a story. We are exposing human life.

This student’s response is hardly unique. It also demonstrates how students start to open up, even if slowly, to the process.

In subsequent sessions with both groups of participants, we continued to work on developing empathic relationships with their clients through role-plays with prepared “clients” for whom we had provided specific personal characteristics. By design, none of these biographical facts was revealed to the lawyers before the simulations began.⁸⁸ The specific exercises focused on client interviewing and counseling. Participants, either solo or in teams of two, would perform a discrete portion of an interviewing or counseling session for approximately ten minutes in real time, without interruption.⁸⁹ Thus, for example, we broke up interviews into five sections, with different teams assigned different portions. For interviewing, one team would be assigned the job of asking “ice-breaking” questions, another team gathering background information, another discussing with the client the charges and criminal process, another discussing facts surrounding the alleged offense conduct and the last group asking more general questions and providing instruction about the next steps in the case.

During these role-plays the assigned lawyers learned to work with a variety of personality types through different client roles. It was not uncommon for one of the instructors to pull that “client” aside before the next interview and suggest a different background and immutable characteristics than those displayed at the preceding interview. A young and vulnerable first offender might show up for the first part of the interview, followed by a gang member of a different race and ethnicity with a long criminal record next, followed by someone with developmental, psychological or substance abuse issues. These changes in traits and characteristics challenged our lawyers to find ways to engage empathically in sometimes challenging settings, in addition to developing ways to recognize and work with critical cross cultural lawyering issues.⁹⁰

⁸⁸ We chose among some of the listed client characteristics to create challenging client profiles: middle-aged first offender, 20-year old first offender, illiterate client, sophisticated client, naïve client, con artist. Chauvinist; male client with female lawyer issues; indigenous client, hardened recidivist; battered overly compliant woman, single mother, “borderline IQ” or otherwise developmentally challenged.

⁸⁹ The more real the interview session, the greater the learning experience for the student. Thus we assiduously avoid breaking role during simulations. Part of our jobs as teachers is to clearly delineate role-play from the critique and classroom discussions that follow. When students occasionally try to break role, we stop them in their tracks.

⁹⁰ Although this article does not separately address the importance of cross cultural sensitivity when working with public defenders on developing empathic relationships with their often culturally diverse clients, we do spend whole classes on this topic. These classes make use of the concepts in Sue Bryant & Jean Koh Peters, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 Clinical L. Rev. 33, 40 (2001). As part of her teaching mission in the area of cross-cultural lawyering, Professor Bryant writes: “lawyers and clients have different ethnic or cultural

In a simulated interview room, with the class watching silently, performing lawyers were instructed to “make it real”, and not to leave the interview until expressly instructed to do so. After ten minutes, we stopped the simulation, moved into classroom mode and engaged in critique and discussion.

As faculty we needed to pay close attention during each simulation, alternating between verbatim note-taking and watching the interactions between lawyer and client. Our teaching consisted of a hybrid of critique, student self-reflection, and providing an opportunity for a “redo”.⁹¹ In order to maximize our effectiveness using the four step NITA critique method of providing a “headline” for our critique point, “playing back” the words and behaviors the participant had displayed during the simulation, providing a “prescription” where we suggested a different way of interacting with the client to foster more intimacy and offering a “rationale” or explanation of why our suggested approach might work, we needed to stay extremely focused at all times. We followed the principle that one or two critique points per lawyer worked best.⁹² More than that ran the risk of overwhelming the student whose “performance” was on the chopping block. Having more than two teaching points per lawyer also resulted in superficial critiques, rather than more nuanced ones that provided clear examples and clear suggested “fixes”.

Although our critiques were multifaceted, covering substantive areas of interviewing and counseling, in addition to communication skills, this article focuses on the latter. In that context, we focused our critiques and guided self-reflections on behaviors that potentially created distance between client and lawyer, offering suggestions, from subtle to obvious, about ways to improve communication and connection. These included both words and body language. We pointed out universal distancing behaviors, including failing to engage in active listening⁹³, forgetting to shake the client’s hand at the beginning of the meeting, avoiding eye contact, keeping arms crossed, doodling and other note writing while the client was talking, tapping

heritages and... they are socialized by different subsets within ethnic groups. By this definition, everyone is multi-cultural to some degree. Cultural groups and cultural norms can be based on ethnicity, race, gender, nationality, age, economic status, social status, language, sexual orientation, physical characteristics, marital status, role in family, birth order, immigration status, religion, accent, skin color or a variety of other characteristics. In teaching about the importance of culture to lawyering, we want to avoid reinforcing stereotypes. By using a broad definition of culture, we hope to teach students that no single characteristic will completely define the lawyer's or client's culture.”

See also, Michael L. Perlin & Valerie McClain, Where Souls Are Forgotten: Cultural Competencies, Forensic Evaluations, and International Human Rights, 15 Psychol. Pub. Pol’y. & L. 257, 258 (2009). (Why Is an Understanding of Cultural Competency So Critical? Legal scholars are now beginning to understand how trial lawyers (especially, criminal defense lawyers) must address the potential impact of cultural differences on interactions with their clients... An understanding of cultural competency is critical to the criminal justice system because (1) decision-makers must be able to respond to the client’s intrinsic humanity, and the defense team must thus investigate and present anecdotal_____”)

⁹¹ “Redo’s” consist of sending the student back into the interviewing or counseling session with the “client” to try again, incorporating critique and self-reflection tips into the role-play.

⁹² NITA and most trial advocacy programs at law schools follow this teaching principle

⁹³ *See, Krieger & Neumann, supra note 3, at 92. (“Active listening...is a way of encouraging talk without asking questions. It also reassures a client that what the client is saying has an effect on you. In active listening, you participate in the conversation by reflecting back what you hear”).*

fingers, repeatedly talking over the client, using legalese when explaining law and procedure, speaking formally rather than speaking colloquially, name dropping credentials, answering client questions without any basis in fact, failing to answer client questions, overpromising and racing through topics rather than engaging in meaningful dialogue.⁹⁴

Another critical aspect of this teaching method was to invite the student-lawyer to engage in self-reflection. Here we chose from a lengthy array of questions, among them: “How did that interviewing/counseling session feel for you?”. “Do you feel like you made a connection” “What stood in the way of that connection?” “What were your objectives?” “Do you feel you met those objectives?” “If not, why not?” “What do you think you could have done differently?” “Were there aspects of this interview that made you feel uncomfortable?” “What were they?” “Did you feel distance from your client because of your different background/race/ethnicity/religion?” “How so?” “What steps to you take to bridge the gap of that cultural diversity?” “How well did it work?” “What could you have done differently?” And so on. At the end of this self- reflection session, we often asked the student to conduct a short “redo” incorporating our suggestions and the student’s own insights.

For example, in a mock interview with an 18 year old female client from the nearby city of Valparaiso charged with sale of narcotics, the defender was assigned the job of discussing her criminal charges. His interactions with this young woman provided several areas to critique. Limiting myself to one point, with the goal of developing it fully, I began by providing him with a structured headline. Thus I explained that we would be focusing on ways that he had created distance between himself and his young client with no criminal record through words and body language. I described his use of legal jargon with this scared and unsophisticated client by playing back the fact that instead of referring to criminal “charges” he said “allegations”. Instead of saying the prosecution claims she sold drugs, he said the prosecution claimed “she perpetrated a crime.” I pointed out that he talked with this young woman about the “burden of proof” and “presumption of innocence” attempting to provide explanations for both but doing so in a way that left her confused. We talked about ways that the lawyer’s sophisticated knowledge of the law might create a chasm between himself and his client, making her feel foolish and alone.

Finally, I noted that he did not ask her if she had questions during this portion of the interview. Nor did he check in with her at different points to see if she understood what he was saying or had specific concerns she wanted addressed. Because of this distancing behavior, at the end of his ten minute session, he and his client sat in different corners of the room, both literally and figuratively.

During the critique I suggested that he use colloquial language and asked him to suggest more conversational word choices, which he did with ease. I added that he may want to hold off entirely on explaining the law during this information gathering session, saving it for a later meeting. I practiced having him explain legal concepts by using language that was accessible to a non-lawyer but not condescending. I also discussed the value of “checking in” periodically with the client, asking her if she understood what he was saying, if she had questions or if she

wanted to raise concerns. I also invited the participant to engage in self- reflection, asking him several of the questions outlined in the paragraph above. Finally, I sent him back into the interview room, for a “redo” of a portion of his interview. The fact that he was able to connect much better with his client the second time around served two functions. One, it helped cement good habits that included an empathic approach to interviewing clients and two, he felt empowered because he had noticeably improved in one session.

When a second participant interviewed the same client, my colleagues and I found other areas to critique, so that by the end of a two hour class, we had achieved the goal of providing the class of eighteen with a number of discrete teaching points. Because I noted that during his interview the lawyer looked more at his notes than at his client, and consequently missed her looks of confusion, we practiced maintaining eye contact. We also worked together on body language he could employ to create intimacy appropriate in this professional setting, including uncrossing his arms and writing only intermittently, and never when his client was talking. As with the first participant, he engaged in self- reflection, then conducted a piece of the interview again, with more confidence and connection.

Sometimes our critiques focused on aspects of participants’ role-plays that had worked effectively. Because of the dual goal of helping the performing student while simultaneously providing direction to the rest of the class, positive reinforcement in this context is an effective teaching method. When a lawyer displayed an obvious ability to connect with a client, that behavior became our “critique” topic. We gave affirming comments, for example, when the attorney engaged such conduct as active listening, looping, a technique where the lawyer incorporates part of the client’s last response, verbatim, into the his next question to show interest,⁹⁵ spoke conversationally and comfortably with the client, let the client describe events and vent anxieties, answered questions without overpromising results, set boundaries for each meeting, shared pertinent information with the client, remained open-minded rather than judgmental and evinced a real belief that the depth of the attorney client relationship is in no manner informed by the legal or factual guilt of the client.

One of our chief pedagogic goals during these sessions was to try to meet each performing participant at his or her emotional and cognitive level. The best teacher cannot impart wisdom if the student is closed to hearing it.⁹⁶ In the context of teaching empathy, where a large part of the teaching method is confronting the performing student’s vulnerabilities, it is important to try not to force that student into a defensive corner. The teacher, by taking into account each student’s individual emotional make-up, must display the same kind of empathy while teaching that she is attempting to awaken in her students. To illustrate this point I refer

⁹⁵ An example of looping is laid out in the following dialogue with a lawyer and his client:

Q: How are you doing?

A: Okay I guess?

Q: Do you have any specific worries or concerns you want to talk about?

A: Yes. I’m scared that if I take this plea deal, I may lose my children in a custody battle.

Q: *When you say that you’re concerned about losing the kids if you take this deal, why don’t you describe for me in more detail what you mean.*

⁹⁶ See, e.g., Stuckey, *supra* note 8.

back to my interaction with my Chilean participant Carlos. Before I stopped him and asked him to turn the client into his son, I thought about whether I was meeting him at his level of emotional comfort when I interjected his child into the equation. If not, I risked him shutting down rather than cultivating empathy. Concluding that he was, I forged ahead.

A final note on this teaching process: when time allows, we ask our “clients” to provide direct feedback after the interviewing or counseling sessions and again after the “redo”. I instruct them to speak candidly about what had worked and, perhaps more importantly, what had not. For example, during another role play in Chile, one of our American students played the role of Carla, a young woman charged with robbery. Her alleged co-conspirator was the same Pancho who is discussed at the beginning of this article, a tough gang member. She was extremely anxious during her interview, and reticent to answer the lawyer’s questions about the incident resulting in her arrest, although he appeared not to notice. Instead he plowed through his questions, never stopping to ask her what was on her mind. She effectively stonewalled him. At the end of the interview my colleague began the critique by asking “Carla” how she felt about her interaction with her lawyer. She responded that she felt alone, and that her lawyer obviously did not care about her.

When Carla was asked what would have made the difference she said, “if he had stopped to ask why I was so upset I could have told him that I was worried that anything I say to the lawyer might hurt Pancho and I love him so much and don’t want to hurt him. Then maybe we could have figured out what to do together.” This unvarnished “client” feedback facilitated real learning both on the part of the performing participant and the rest of the class who were observing.⁹⁷ After the critique, the lawyer took a second try at the interview, this time with more sensitivity. The rewards were immediate.

⁹⁷ One of the main tenets of this teaching methodology is that ego must be checked at the door. This kind of teaching is not productive when the instructor or student-client spend time complimenting the student on a great job. The learning comes with being confronted with ways to change an approach, to sharpen skills and to become more client-centered. Improvement is the goal, not patting the student on the back for a job well done.

IV. Obstacles and Goals of Participants and Concomitant Teaching Challenges

In both Sacramento and Chile, we encouraged our lawyers to bring their personalities into the client interview and counseling sessions, rather than effecting an artificial persona. While encouraging them to maintain professional boundaries when interacting with clients, we urged them to “be real” at all times, and in so doing to enhance their credibility from the outset. As instructors we had to maintain boundaries when participants initially responded to some of the more intrusive role-plays with skepticism. Our job was to stay on task, encouraging them to have faith that the process was working, then to push them some more. With the Chilean participants, we also watched out for potential pedagogic roadblocks arising from transnational and cultural issues.⁹⁸ Many of the defenders had been practicing for fifteen or more years and were set in their ways. Some had been lawyers before the Chilean criminal justice system changed from inquisitorial to adversarial. One participant was a self-described dissident during Pinochet’s rule. Thus we needed to find ways to maintain our credibility as teachers while honoring our participants’ backgrounds and beliefs.

To my surprise, neither cultural nor transnational differences seemed to affect participant “buy in” and ability to access empathy. When confronted with an array of exercises, our lawyers in the Santiago program displayed the same strengths and weaknesses as my American students in the Federal Defender clinic. Perhaps even more surprising, our Chilean lawyers pushed back against our more intrusive exercises in the same ways I experienced in the American clinic. In the final analysis, however, participants in both programs exhibited a willingness to engage fully in the process of learning to access empathy, later reporting that these methods had improved their relationships with their clients.

A. Teaching obstacles and challenges

As a teacher, I faced pedagogic challenges when our participants exhibited initial reticence to engage in certain exercises. Was I pushing them too far, too soon? Did I risk losing their commitment to this process of learning empathy because they were placed in positions of vulnerability before colleagues? Was I helping the students achieve important learning outcomes through these teaching methods? For example, during my first seminar class in Sacramento, after we conducted the story-telling exercise described in Section III, above, one student remarked that his story embarrassed him and that although he acknowledged the potential utility of the exercise, he was not sure it was worth the discomfort it caused him. He explained that having the incident recounted before seven other students brought up feelings of indignity and vulnerability. Similarly in Santiago, one participant urged that if he had known that his story was going to be retold before an audience that included strangers, he would have chosen a more innocuous one. His story was about his reaction as a parent to his young child being diagnosed with cancer. Although she subsequently made a complete recovery, he felt exposed when his colleague shared this story with a room full of relative strangers.

In the American class, my initial reaction was that I may have pushed the student too far too soon, before he had “bought into” this experiential methodology. In Chile, my colleagues and I initially reacted to our participant’s comments by second-guessing having put him in this position; we worried that he may opt out emotionally during the rest of the program. We had some concerns that we had transgressed transnational or cultural norms, placing him in a compromising position.⁹⁹ But after engaging in our own intensive self-reflection, we concluded that the type of discomfort these participants were experiencing meant that the exercise had, in fact, worked. They both felt, first-hand, the vulnerability many of their clients felt when meeting them post-arrest. Their discomfort was a prerequisite to breaking down barriers to intimacy, to empathy.

In the final analysis we concluded that to succeed, we needed to “stick to the program”, to embrace the fact that both men had experienced this discomfort, that neither had shied from the room nor quit the class. We needed to overcome our misgivings and have faith that the process would work: that over the course of many exercises these participants would commit to developing empathic, client-centered relationships. Happily, by the end of the program, the Chilean lawyer was one of our most enthusiastic participants. Similarly, the America student, still in my year-long seminar, has been displaying increasingly empathic behavior toward his clients in both our simulated role-plays and with live clients in the clinic. More than once he has expressed that he “knows what his clients are going through,” in part because he faced embarrassment and survived to tell the tale. Once both men felt they had permission to relate to clients as human beings, rather than automatons, their connections deepened as did their job satisfaction.

Another anecdote from Chile illustrates the strength of letting down emotional barriers and relating with others empathically. I previously alluded to one of our participants who spent years of his life fighting the dictatorship in Chile. Now working within the adversarial system, he nonetheless carried with him a certain defensive stance when working with clients or negotiating with prosecutors. Taking to heart the idea of infusing vulnerability and emotionality into his practice, he recounted for us an interchange that happened when he returned to practice after the program. He met with a client charged with murder and conducted an interview that he described as “connected” and “personal. When he subsequently talked with the “tough” prosecutor, seeking an adjournment of the trial to prepare the case more thoroughly, he consciously set out with the goal of humanizing his client. By vividly describing his client’s horrendous pretrial jail conditions, he convinced the prosecutor that this man would never be seeking the extension unless he truly needed more time to prepare. By effectively putting the prosecutor in his client’s shoes, this lawyer succeeded in getting more time to defend the case. He found the exchange empowering.

Another teaching challenge we faced was moving the class forward without getting sidetracked. As described in Section III, we used different teaching methods at different times, sometimes engaging in structured critique and sometimes inviting participant feedback and self-

reflection. Part of our effectiveness as teachers lay in keeping distance between the two methods. Thus we had to be vigilant when students during the critique phase grew defensive and wanted to “explain” their choices, sometimes quite vociferously. Our challenge was to have them receive critiques with open minds, without offering immediate commentary. They were free to adopt or reject our suggestions, but had to hear them first in order to make that assessment. This potential roadblock was particularly acute with the more experienced public defenders in the Chilean group, who had spent years of their lives practicing a certain way. Unaccustomed to receiving constructive criticism, and unfamiliar with experiential teaching methods, some initially balked, becoming more receptive to these methodologies each day.

We faced another obstacle when participants in both Chile and Sacramento grabbed onto any opportunity to engage in extended discussion and analysis of the law instead of performing before their colleagues. As teachers we had to keep reminding ourselves that legal analysis, the bread and butter of doctrinal law school courses, does not engage the participants experientially nor inculcate them with the ability to relate empathically to clients. These kinds of discussions are a comfortable and familiar hiding place in an experiential educational setting. Reorienting focus in this manner proved particularly challenging in Chile where we were learning about an adversarial system which differed in some respects from our American system.¹⁰⁰ These differences necessitated interjecting some discussion of substantive criminal law and procedure, although we kept these discussions to a minimum.¹⁰¹

We also had to prepare for the situation where a participant tried to “leave” the role-play setting, in the middle of an exercise, and seek instruction from one of us. As previously stated, the success of this teaching method is predicated on staying in role until the simulation is completed.¹⁰² We found that the more challenging the interaction between lawyer and client, the thornier or more threatening the issues, the more the lawyer tried to jump out of the exercise and into the classroom. More than once I gave the terse instruction: “You are in the interview. Stay there!”

¹⁰⁰ See, Guillermo Arthur , *The Arrival of Oral Trials to the Chilean Judicial System: Repercussions on Evidence Law*, Am. Comp. L. Rev., http://www.haclr.org/index_archivos/Page757.htm. (“With the adoption of the Criminal Procedure Code in 2000, Chile initiated one of the most significant social transformations in its republican history. All started with the implementation of oral proceedings, leaving behind -gradually- its written, sometimes secret and often unreasonably long proceedings. Since the criminal procedure reform was completed, similar oral proceedings have been established for all new Family Law and Employment Law cases in Chile. This transformation will be completed with the civil procedure reform, which is still in early stages of discussion...under the new model, best known as adversarial system, trials consist of consecutive hearings where attorneys make their arguments and produce the evidence before a present judge. After hearing these arguments and observing all the evidence, the same judge must, without delay, pronounce judgment. In this context of immediacy and orality, judges are able to detect every relevant detail that can strengthen or weaken one of the parties’ theories, such as attitudes or demeanor of witnesses, attorneys or parties; all details that are either invisible or very hard to detect in written proceedings.”)

¹⁰¹ Thus, for example, we curtailed what could have been a lengthy discussion of comparative criminal procedure related to pretrial motions to suppress on Constitutional grounds, Chilean and U.S., well before the participants were ready to do so.

¹⁰² See, footnote 90.

B) Participant goals

After teaching participants in two different countries, at radically different levels of experience, with different ethnic and cultural backgrounds, I was struck by the realization that the challenges our Chilean public defenders faced when confronted with experiential teaching methods designed to cultivate empathy mirrored those our American federal defender students faced. But equally surprising and rewarding, we discovered a common set of goals among participants, Latin American or North American, young or old, students or experienced lawyers, men or women: all wanted to achieve client-centered relationships and all, in the final analysis, displayed a willingness to take risks and to move outside their comfort zones to attain those objectives.¹⁰³

Coming full circle with Carlos, our Chilean defender, in his final counseling session with Pancho, he was so comfortable with emotion that when given the opportunity to do so, he interjected humor into the conversation. He correctly intuited that humor with this client would ease the tension in the room and create a more intimate connection. When Pancho said he was going to kill his mother if she did not help him get out of jail, Carlos responded with: “that’s a crime for another day. Let’s stick to what you’re charged with here.” Pancho laughed, Carlos laughed and all vital signs of this attorney client relationship were strong.

¹⁰³ For a decade I was among the faculty teaching groups of new public defenders in the intensive New York State Defenders Trial Institute, offered through the New York State Defenders Association. With a client-centered focus, this program used many of the teaching techniques presented in this article. In the NYDSA program, trial lawyer faculty were paired in each training room with experts in Communications. After performing portions of trial, participants received critiques that focused on technical skills, communication based on persuasive narrative, and client-centered approaches to representation. The roles of all clients are played by local actors, who provided feedback to participants. Not surprisingly, participants consistently displayed the same learning objectives and encountered the same obstacles to learning as the Chilean defenders and my Federal Defender students.

V. Conclusion

With its transnational focus, this article explored the significant role that empathy plays in facilitating effective representation of counsel for the client and in maximizing the lawyer's chances for professional and personal satisfaction in the process. Through a review of literature in law and medicine on the value of empathy, and detailed descriptions of several experiential teaching techniques that were central to our North American and Latin American public defender training classes, the article reached the conclusion that empathy can indeed be taught in a way that has lasting effects. Moreover, students in these experiential classroom settings displayed a willingness to take the emotional risks necessary to learn how to relate empathically with their clients, overcoming a common set of obstacles to learning along the way. The article also concluded that irrespective of levels of experience, ethnicity, nationality and personality, current and future public defenders share the view that there is value in learning how to put oneself in the shoes of others, most particularly clients, but prosecutors and judges as well.