

USING PSYCHOLOGICAL TYPE THEORY TO HELP LAW STUDENTS DEVELOP PROFESSIONAL IDENTITY

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INTRODUCTION

Two recent events have challenged American law schools to more comprehensively engage and motivate students to learn and apply knowledge, skills, and values to help them develop professional identity. The comprehensive examination of the preparation of lawyers in law schools published by the Carnegie Foundation for the Advancement of Teaching in 2007 was the first prominent event.¹ Emphasizing daily teaching and learning practices, comparing them to approaches used by other professions, and applying “contemporary understanding of how learning occurs,”² this Report articulated a three pillar framework for effective legal education consisting of “legal analysis,” “practical skill,” and “professional identity.”³

The *Carnegie Report* concluded that while American law schools impressively create a legal analysis pillar, they do not build the remaining columns effectively.⁴ The Report determined that American law schools typically pay relatively little attention to direct instruction in the practical skills required for competent, ethical, and professional practice.⁵ It also

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¹ See WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 13–14 (2007) [hereinafter CARNEGIE REPORT]. Also published in this same year was another important book drawing on learning theory and experiences of other common law countries to support its recommendations. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 1 (2007). Both works made complementary claims arguing for greater focus in legal education on preparation for professional and ethical practice and experiential education. See CARNEGIE REPORT, *supra*, at 160; STUCKEY ET AL., *supra*, at 62.

² CARNEGIE REPORT, *supra* note 1, at 1–2.

³ CARNEGIE REPORT, *supra* note 1, at 12–14. The report defines professional identity as encompassing “professionalism, social responsibility, [and] ethics” with the main purpose of “draw[ing] to the foreground the purposes of the profession and the formation of the identity of lawyers guided by those purposes.” *Id.* at 14.

⁴ *Id.* at 185–88.

⁵ See *id.* at 188. A major study published in 1992 showed that law schools devoted nine percent of total instructional time to direct instruction in these practical skills. Task

concluded that American law schools typically failed to complement their successful efforts to develop legal analysis with adequate attention to and support for “developing the ethical and social dimensions of the profession” effectively.⁶

Seven years later, the American Bar Association provided additional encouragement to American law schools to emphasize professional identity development by changing its accreditation standards to require greater emphasis on knowledge relevant to competent exercise of professional and ethical responsibilities.⁷ Because of this change, Accreditation Standard 301 now requires schools to prepare students “for effective, ethical, and responsible participation as members of the legal profession.”⁸ These amendments also refocused Accreditation Standard 302 by requiring law schools to establish learning outcomes that encompass helping every student internalize and exercise minimum competency in exercising “proper professional and ethical responsibilities to clients and the legal system” and “[o]ther professional skills needed for competent and ethical participation as a member of the legal profession.”⁹

Reinforcing this shift to focusing specifically on what students should learn, the ABA amendments added new accreditation Standard 314, requiring assessment of student learning that uses “both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.”¹⁰ This comprehensive accreditation change also added to the existing requirement that successful completion of at least one two-credit professional responsibility course must also encompass substantial instruction in the legal profession’s “history, goals, structure, values, and responsibilities.”¹¹ This addition requires satisfactory completion of at least one six-credit experiential course that “integrate[s] doctrine, theory,

Force on Law Schools and the Profession: Narrowing the Gap, *Legal Education & Professional Development—An Educational Continuum*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR 241 (1992) [hereinafter *MacCrate Report*]. They devote most of their time to learning law, adjudicatory procedures and skills, and rule-based advocacy skills. See *id.* at 241, 255–59.

⁶ CARNEGIE REPORT, *supra* note 1, at 188.

⁷ Task Force on the Future of Legal Educ., *Report and Recommendations* 3 (2014), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf (expressing the views of the Task Force, which as of the time of the report’s publication had not yet been adopted by the ABA); see also 2014–2015 ABA STANDARDS FOR APPROVAL OF LAW SCH. Standards 301, 302 (2014); *infra* notes 7–13 and accompanying text.

⁸ 2014–2015 ABA STANDARDS Standard 301.

⁹ *Id.* Standard 302.

¹⁰ *Id.* Standard 314.

¹¹ *Id.* Standard 303.

skills, and legal ethics¹² while engaging students in performing one or more core professional practice skills.¹³

A professional identity encompasses multiple dimensions, making it difficult to define precisely. It embraces intellectual, practical, and ethical attitudes and behaviors, as well as personal and professional values.¹⁴ It includes, yet transcends, ethics and professionalism.¹⁵ It also embodies the exercise of wisdom to resolve dilemmas when ethical standards are either ambiguous or conflicting while also leading a fulfilling, satisfying life.¹⁶ A simplistic but useful approach conceptualizes professional identity as stories law students and lawyers tell themselves about who they are and what they do.¹⁷

The *Carnegie Report* proceeded on the non-controversial assumption that law schools influence the stories that law students tell themselves about the roles they assume as lawyers and how they will behave as they become and act as attorneys.¹⁸ The report also recommended that law schools be more intentional and thoughtful about the stories they help students learn regarding the complex roles lawyers play,¹⁹ necessary commitments to social justice,²⁰ and foundational behaviors underlying ethical decision-making.²¹ Both the *Carnegie Report* and the 2014 ABA

¹² *Id.* Standard 303(a)(3).

¹³ *Id.* Interpretation 302-1. Interpretation 302-1 defines these as the core skills that fulfill this requirement: “interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation.” *Id.* In addition, law schools must provide students with “substantial opportunities” for faculty supervised clinical courses and field placements and participation in “pro bono legal services” or “law-related public service activities.” *Id.* Standard 303(b).

¹⁴ See Daisy Hurst Floyd, *Lost Opportunity: Legal Education and the Development of Professional Identity*, 30 *HAMLIN L. REV.* 555, 556 (2007).

¹⁵ Martin J. Katz, *Teaching Professional Identity in Law School*, 42 *COLO. LAW.* 45, 45 (2013).

¹⁶ See Benjamin V. Madison, III & Larry O. Natt Gantt, II, *The Emperor Has No Clothes, But Does Anyone Really Care: How Law Schools are Failing to Develop Students’ Professional Identities and Practical Judgment*, 27 *REGENT U. L. REV.* 339, 352–53 (2015).

¹⁷ See Daniel L. Shapiro, *Identity: More Than Meets the “I,”* in *THE NEGOTIATOR’S FIELDBOOK: THE DESK REFERENCE FOR THE EXPERIENCED NEGOTIATOR* 225, 225 (Andrea Kupfer Schneider & Christopher Honeyman eds., 2006).

¹⁸ See *CARNEGIE REPORT*, *supra* note 1, at 129 (arguing that “law schools shape the minds and hearts of their graduates in enduring ways” in thinking habits and developing “professional purpose and identity”).

¹⁹ See *id.* at 131–32 (arguing that legal education should introduce students to complex roles and the nuances of those roles linked to the type of lawyering involved).

²⁰ See *id.*

²¹ See *CARNEGIE REPORT*, *supra* note 1, at 30; see also Madison & Gantt, *supra* note 16, at 382 (suggesting that these behaviors encompass “self-awareness,” sensitivity

Accreditation Standards amendments reaffirm that it matters to learn what lawyers who are demonstrating appropriate professional identity do.

Carefully examining the most effective ways to teach law students what lawyers do is important to ensure that students learn and comply with minimum conduct rules and understand the broader issues of character and morality.²² Lawyers and law students demonstrate their professional identity and reveal their understanding about who they are by the ways they act.²³ They have general obligations under the ABA Model Rules of Professional Conduct to act honestly,²⁴ competently,²⁵ and diligently.²⁶ They also demonstrate morality and character by their actions when confronting situations where conduct rules are silent, ambiguous, or conflicting.

This Article argues that using psychological type theory helps law students learn and perform actions that develop and demonstrate their professional identity. This Article first describes psychological type theory and the Myers-Briggs Type Indicator (MBTI).²⁷ The MBTI is a simple, easily administered question-and-answer instrument that suggests type preferences²⁸ users may hold.²⁹ This Article shares the Authors' experiences drawn from more than seventy combined years working with law students in academic support contexts,³⁰ experiential learning

discerning and analyzing ethical issues, "cultural competency," relational skills, and abilities to reach practical judgments resolving competing values regarding ethical dilemmas).

²² See Carnegie REPORT, *supra* note 1, at 129.

²³ See *id.* at 31.

²⁴ See, e.g., MODEL RULES OF PROF'L CONDUCT RR. 2.1, 3.3, 3.4 (2013). The preamble to these rules requires that lawyers shall be "competent, prompt, and diligent" in all that they do. *Id.* at pmbl. In addition, most law schools have rules regarding basic honesty and trustworthiness regarding academic issues prohibiting cheating and misrepresenting. See Carnegie REPORT, *supra* note 1, at 129–30.

²⁵ MODEL RULES OF PROF'L CONDUCT R. 1.1 (2013).

²⁶ *Id.* R. 1.3.

²⁷ See *infra* notes 39–44 and accompanying text that describe psychological type theory.

²⁸ See *infra* notes 55–56 and accompanying text for an explanation of the concept of type preferences.

²⁹ See ISABEL BRIGGS MYERS ET AL., MBTI MANUAL: A GUIDE TO THE DEVELOPMENT AND USE OF THE MYERS-BRIGGS TYPE INDICATOR 7 (3d ed. 1998) [hereinafter 3D MBTI MANUAL]. The MBTI is one of the instruments most widely used with normal populations to identify personality type preferences and explain their behavioral implications. See Anthony Monahan, *Are You at Loose Ends?: Will Career Testing Really Help You?*, 18 BARRISTER 22, 25 (1991) (estimating that two million persons used the MBTI in 1990); Lillian Cunningham, *The Myers-Briggs Personality Test Is Embraced by All Kinds of Large Organizations—But Not by Many Psychologists*, WASH. POST, Dec. 16, 2012, at G01.

³⁰ MARTHA M. PETERS & DON PETERS, JURIS TYPES: LEARNING LAW THROUGH SELF-UNDERSTANDING, at xi–xii, 274 (2007) [hereinafter JURIS TYPES]. Co-author Martha Peters developed the Law Student Resources Program, one of the first academic support programs

approaches in clinical courses involving actual clients,³¹ and simulation-based professional skills classes.³² Applying these experiences, this Article examines how using this theory helps law students become more aware of their behavioral tendencies regarding actions essential to demonstrating professional identity.

This Article also analyzes how this self-knowledge facilitates the development of professional skills for competent and ethical lawyering. It focuses on the contexts of teaching and learning effective “interviewing, counseling, negotiation, . . . conflict resolution, . . . collaboration, . . . and self-evaluation.”³³ It illustrates how this knowledge enhances formative assessment and provides safe ways to discuss learning dilemmas and resolution options regarding ethical and moral challenges. By examining the MBTI scale relating to decision-making in the critical context of building and maintaining lawyer-client relationships, this Article also

in this country at the University of Florida College of Law in 1984, launched the Academic Achievement program at the University of Iowa College of Law in 1999, and as a founding faculty member of Elon University’s School of Law in 2006 worked with the MBTI as a tool for developing leadership skills as well as awareness of individual learning strengths and challenges. *Faculty Description*, GLOBAL ALLIANCE FOR JUSTICE EDUC., <http://www.gaje.org/martha-m-peters/> (last visited Apr. 11, 2015); see JURIS TYPES, *supra*, at xi–xii, 274. She shared many of her specific experiences using psychological type theory in this context in *Juris Types: Learning Law Through Self-Understanding*. JURIS TYPES, *supra*, at xi. She remains active, consulting and presenting workshops at law schools in this country and abroad since taking Emerita status in 2012.

³¹ JURIS TYPES, *supra* note 30, at 274. Co-author Donald “Don” C. Peters founded, directed and taught the civil clinic at the University of Florida in 1973 and its small claims mediation clinic in 1996. *History of the Clinics: The Development of the Law Clinics*, LEVIN C. OF L., <http://www.law.ufl.edu/academics/clinics/about-the-clinics/history-of-the-clinics> (last visited Apr. 11, 2015); see Joseph “Josh” B. Stulberg et al., *Creating and Certifying the Professional Mediator—Education and Credentialing*, 28 AM. J. TRIAL ADVOC. 75, 79 (2005). He also described many of his experiences using psychological type theory in these contexts in *Oiling Rusty Wheels: A Small Claims Mediation Narrative*, 50 FLA. L. REV. 761, 762–63 (1998) and *You Can’t Always Get What You Want: Organizing Matrimonial Interviews to Get What You Need*, 26 CAL. W. L. REV. 257, 262–64 (1990) [hereinafter *Organizing Matrimonial Interviews*].

³² Faculty Description, *supra* note 30. Don has frequently taught simulation based courses emphasizing developing professional skills in negotiation, mediation, and mediation advocacy, and both Don and Martha have taught simulation based interviewing and counseling courses. JURIS TYPES, *supra* note 30, at 274. They have described some of their experiences using psychological type theory in these contexts in several articles. See Don Peters, *Forever Jung: Psychological Type Theory, the Myers-Briggs Type Indicator, and Learning Negotiation*, 42 DRAKE L. REV. 1, 11–12 (1993) [hereinafter *Forever Jung*]; Don Peters, *Mapping, Modeling, and Critiquing: Facilitating Learning Negotiation, Mediation, Interviewing, and Counseling*, 48 FLA. L. REV. 875, 877–78 (1996) [hereinafter *Mapping, Modeling*]; Don Peters & Martha M. Peters, *Maybe That’s Why I Do That: Psychological Type Theory, The Myers-Briggs Type Indicator, and Learning Legal Interviewing*, 35 N.Y.L. SCH. L. REV. 169, 174–75 (1990) [hereinafter *Maybe That’s Why I Do That*].

³³ 2014–2015 ABA STANDARDS FOR APPROVAL OF LAW SCH. Standard 302(d), Interpretation 302-1 (2014); see *infra* notes 78–86 and accompanying text.

demonstrates how knowledge of natural tendencies helps law students learn both complex role dimensions and specific actions that will enable them to develop and exercise behaviors manifesting appropriate professional identity. Finally, this Article examines how the knowledge and use of psychological type theory helps students acquire and improve the skills that are foundational to ethical dilemma recognition and resolution such as self-awareness, self-reflection, and empathy.

I. PSYCHOLOGICAL TYPE THEORY AND THE MYERS-BRIGGS TYPE INDICATOR

Lawyers encounter and deal with personality differences daily. Because people differ, they commonly manifest different actions resulting from variations in perceptions, positions, interests, interpretations, values, beliefs, expectations, experiences, traditions, communication approaches, and decision-making methods. Many of these differences generate problems, and some of these problems escalate to disagreements, disputes, and conflicts. Perhaps more than other professionals, a lawyer's professional identity must include competent abilities to anticipate, recognize, and deal with differences as a foundation for helping their clients sidestep and solve problems, avoid and resolve disputes, and end or manage conflicts.³⁴

Theories of psychological type show patterns of fundamental differences in various important contexts and how these differences affect various approaches used to perform common actions.³⁵ The theoretical foundations of different human types extend back twenty-six hundred years to Hippocrates' theories of social temperaments.³⁶ More recently, Carl Jung, a Swiss psychologist, provided the contemporary impetus for using a theory of psychological types to understand common behavioral

³⁴ The importance of these abilities is reflected by ABA's listing of "negotiation," "conflict resolution," and "collaboration" as examples of skills needed for "competent and ethical" law practice in its Accreditation Standards. 2014–2015 ABA STANDARDS Standard 302(d), Interpretation 302-1. Problem-solving was listed first in a list of "fundamental lawyering skills" in an ABA Task Force Report directed at improving legal education and professional development. *MacCrate Report*, *supra* note 5, at 135, 141–42. The Task Force's analysis of problem solving emphasized the underlying component of dealing well with differences when "identifying and diagnosing . . . problem[s]," "generating alternative solutions and strategies," "developing a plan of action," "implementing . . . plan[s]," and remaining open to new information and ideas throughout. *Id.* at 141–48.

³⁵ *Forever Jung*, *supra* note 32, at 10.

³⁶ *Id.* Hippocrates theorized four distinct human behavioral patterns which he labeled temperaments: "Choleric, Phlegmatic, Melancholic, and Sanguine." DAVID KEIRSEY, PORTRAITS OF TEMPERAMENT 6 (2d ed. 1989).

variations.³⁷ He did this by publishing a typology regarding similarities and differences he observed in common action patterns.³⁸

Jung worked with clients from similar ethnic and economic backgrounds in normal and clinical situations, and his work led him to believe that what appeared to be random human behaviors were actually the result of those people's different attitudes and mental functions.³⁹ Jung then "grouped these common but different behavioral patterns into a theory of psychological types."⁴⁰ Jung's objective was "to identify patterns of characteristic behaviors to facilitate self-understanding" through self-awareness of cognitive inclinations, action tendencies, and challenges.⁴¹ He did not intend the typology to be used to stereotype individuals,⁴² and he strongly warned against assuming that type preferences determine specific behaviors.⁴³

"A psychometric indicator designed to make Jung's theory of psychological types accessible and useful emerged in the 1950s from the

³⁷ *Forever Jung*, *supra* note 32, at 10; *see also* GORDON LAWRENCE, PEOPLE TYPES AND TIGER STRIPES: A PRACTICAL GUIDE TO LEARNING STYLES 6 (2d ed. 1982).

³⁸ *See* C. G. Jung, *Psychological Types*, in THE COLLECTED WORKS OF C. G. JUNG 542, 548 (Herbert Read et al. eds., H.G. Baynes trans., 1971); *see also* LAWRENCE, *supra* note 37, at 6. Jung integrated these behavioral similarities and differences into formal principles to create his theory of psychological types. ANGELO SPOTO, JUNG'S TYPOLOGY IN PERSPECTIVE xvii (Sisa Sternback ed., 1989). Jung's other theoretical formulations include "the collective unconscious, archetypal psychology, . . . synchronicity, and the individuation process." *Id.* at 4. According to one commentator, Jungian theories including his view of psychological types have largely fallen into disfavor by contemporary psychologists. Richard E. Redding, Book Review, 58 J. LEGAL EDUC. 312, 318–19 (2008) (reviewing MARTHA M. PETERS & DON PETERS, JURIS TYPES: LEARNING LAW THROUGH SELF-UNDERSTANDING (2007)).

³⁹ Jung, *supra* note 38, at 6 (theorizing that his experiences showed typical differences regarding attitudes toward mental functions involved in perceiving and deciding in addition to the distinctions between introversion and extroversion). *See* LAWRENCE, *supra* note 37, at 6 (noting that Jung saw patterns in ways people oriented their energy outwardly or inwardly and prefer to perceive and make judgments).

⁴⁰ *Forever Jung*, *supra* note 32, at 10. Jung's theory discussed attitudes and functions. Jung, *supra* note 38, at 330; SPOTO, *supra* note 38, at 20. Attitudes connote a fundamental orientation toward or away from external environments, which he labeled extraversion and introversion. *Id.* at 21. Functions dealt with perception and judgment and Jung labeled them in the following two ways: sensation and intuition affecting perception, and thinking and feeling influencing decision-making. *Id.* at 20.

⁴¹ *Forever Jung*, *supra* note 32, at 10; *see* ISABEL BRIGGS MYERS & PETER B. MYERS, GIFTS DIFFERING: UNDERSTANDING PERSONALITY TYPE 24 (1980); *see also* SPOTO, *supra* note 38, at 15.

⁴² Jung, *supra* note 38, at 554–55 ("It is not the purpose of a psychological typology to classify human beings into categories—this in itself would be pretty pointless.")

⁴³ *See* C. G. Jung, *The Development of Personality*, in THE COLLECTED WORKS OF C. G. JUNG 7 (Herbert Read et al. eds., R.F.C. Hull trans., 1954); *infra* notes 328–33 and accompanying text.

work of Katharine Briggs and Isabel Briggs Myers.⁴⁴ After Myers and Briggs amassed data from over ten thousand high school and medical students, the Educational Testing Service published the Myers-Briggs Type Indicator (MBTI).⁴⁵ “The MBTI is the simplest, most reliable way to determine a person’s Jungian [psychological] type” preferences.⁴⁶ It is used widely in organizational development contexts to promote self-awareness and facilitate leadership instruction, team building, and other effective workplace communication skills.⁴⁷

Although some psychometricians and psychologists question the validity⁴⁸ and reliability⁴⁹ of the MBTI, this instrument meets all

⁴⁴ *Forever Jung*, *supra* note 32, at 11.

⁴⁵ Mary H. McCaulley, *The Myers-Briggs Type Indicator: A Jungian Model for Problem Solving*, in *DEVELOPING CRITICAL THINKING AND PROBLEM-SOLVING ABILITIES* 37, 38 (James E. Stice ed., 1987); *see also* OTTO KROEGER & JANET M. THUESEN, *TYPE TALK AT WORK: HOW THE 16 PERSONALITY TYPES DETERMINE YOUR SUCCESS ON THE JOB* 6 (1992).

⁴⁶ *Forever Jung*, *supra* note 32, at 11 n.39.

⁴⁷ *See* LEE BARR & NORMA BARR, *THE LEADERSHIP EQUATION: LEADERSHIP, MANAGEMENT, AND THE MYERS-BRIGGS*, at v–vii, x (1989); ROBERT BENFARI & JEAN KNOX, *UNDERSTANDING YOUR MANAGEMENT STYLE: BEYOND THE MYERS-BRIGGS TYPE INDICATORS* xvi (1991); KROEGER & THUESEN, *supra* note 45, at v–vi, xiii.

⁴⁸ “Validity in this context means whether the indicator measures those things it claims to measure or the degree to which inferences about the results may be supported by empirical evidence.” *Forever Jung*, *supra* note 32, at 21 n.87. Although resolving this disagreement requires getting quickly into deep statistical analysis and math regarding psychometric approaches and measurement that exceeds the focus and scope of this article, it is fair to note that a disagreement exists regarding the MBTI’s validity. MBTI Manuals extensively document the MBTI’s empirical validity. ISABEL BRIGGS MYERS & MARY H. MCCAULLEY, *MANUAL: A GUIDE TO THE DEVELOPMENT AND USE OF THE MYERS-BRIGGS TYPE INDICATOR* 176–213 (Robert Most ed., 1985) [hereinafter 2D MBTI MANUAL]; 3D MBTI MANUAL, *supra* note 29, at 172–219. A study of how MBTI outcomes compared with self-assessments by Jungian analysts showed 100% agreement on the extraversion and introversion index, 68% on sensing and intuition, and 61% on thinking and feeling. Katherine Bradway, *Jung’s Psychological Types: Classification by Test Versus Classification by Self*, 9 J. ANALYTICAL PSYCHOL. 129, 132 (1964), available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1465-5922.1964.00129.x/abstract>. On the other hand, some dismiss many of these validating studies as “methodologically flawed,” “of relatively low quality,” and “published in low-prestige forums.” Redding, *supra* note 38, at 318. Answering Redding’s argument reviewing *Juris Types* that the authors suffered from confirmation bias in writing *Juris Types*, we note that he did the same thing by cherry picking studies that attack the MBTI’s validity while not examining those that support it beyond generalized dismissals of their methodology and the journals in which they were published. *See id.* at 318–19.

⁴⁹ Reliability in this context usually means whether the information an instrument reports is accurate. *See Forever Jung*, *supra* note 32, at 21–22 n.88. Like the disagreement regarding validity, disputing claims apparently exist in the psychometric and contemporary psychological world concerning reliability. Compare 3D MBTI MANUAL, *supra* note 29 at 159–69 (discussing the extensive research supporting the reliability of the MBTI), with Redding, *supra* note 38, at 318–19 (citing Robert R. McCrae & Paul T. Costa, Jr., *Reinterpreting the Myers-Briggs Type Indicator from the Perspective of the Five Factor Model of Personality*, 57

requirements for psychological assessment instruments.⁵⁰ The MBTI has also “withstood more than 50 years of scientific scrutiny” and has been deemed useful by “thousands of organizations and millions of people worldwide.”⁵¹ This instrument easily and quickly indicates degrees to which persons express preferences for the aspects of attitudinal and mental functioning that Jung’s typology articulates.⁵² The MBTI lets users indicate their psychological type preferences on four indexes that reflect the person’s predispositions regarding his perception, judgment, orientation toward external or internal interactions, and tendencies to seek closure or new information.⁵³

A completed MBTI assesses psychometric weightings of choices in each of these four areas based on the user’s answers to simple questions involving everyday situations and indicates which preference from each pairing users select.⁵⁴ Psychological type preferences that are indicated by

J. PERSONALITY 17, 18 (1989) (“Psychometricians are troubled by the conception of psychological types and the limited evidence that the MBTI measures anything other than quasi-normally distributed personality traits.”) (citations omitted)). These validity and reliability disagreements reflect different world view perspectives favoring either trait-based measurements, which are more quantitative and work better in scientific management contexts, or instruments like the MBTI, which are more qualitative and work better in human development contexts by giving more personal insights and more awareness for modifying behavior.

⁵⁰ See Rich Thompson, *The Myers-Briggs Assessment Is No Fad—It’s a Research-Based Instrument that Delivers Results*, CPP BLOG CENTRAL (Sept. 19, 2013), <http://www.cppblogcentral.com/cpp-connect/the-myers-briggs-assessment-is-no-fad-its-a-research-based-instrument-that-delivers-results/>; *supra* notes 48–49 and accompanying text.

⁵¹ *Id.* This view of the MBTI’s usefulness was affirmed by an overwhelming majority of the law students, faculty groups, and law firm members with whom the authors have worked in the United States, Malaysia, Poland, Taiwan, and Uganda.

⁵² 3D MBTI MANUAL, *supra* note 29, at 5–6.

⁵³ These are the four psychological type preferences indicated by the Myers Briggs Type Indicator. JURIS TYPES, *supra* note 30, at 1. They address aspects of “perception, judgment,” outward or inward emphasis, and a “lifestyle orientation” toward planning or remaining flexible. *Id.* An external or internal orientation is indicated by E for extraversion and I for introversion. *Id.* at 14. Perception is indicated by S for sensing and N for intuition. *Id.* Judgment is indicated by T for thinking and F for feeling. *Id.* Finally, a life style orientation featuring openness or closure is indicated by P for perceiving or J for judging. *Id.*

⁵⁴ See 3D MBTI MANUAL, *supra* note 29, at 16, 116–17. Trait theories are currently ascendant in the personality literature, and some view them as superior to typologies. See Redding, *supra* note 38, at 320 (arguing that modern psychology conceptualizes personality as consisting of complex traits which exist along a continuum). Trait-based personality measures hypothesize the existence of categories and then measure variation along a continuum. See McCrae & Costa, *supra* note 49, at 23. The MBTI “seeks to identify a respondent’s status on either one or the other of two opposite personality categories.” 3D MBTI MANUAL, *supra* note 29, at 5 (emphasis omitted). The MBTI’s focus “is on its usefulness to respondents.” *Id.* Because trait theories lack the underlying theoretical background provided by Jung and incorporated by the MBTI, many organizational

the MBTI refer to the innate predispositions that Jung originally identified rather than conscious selection of attitudes and action tendencies that persons might desire or deem most useful.⁵⁵ A preference indicates feeling so “comfortable with a particular way of behaving and experiencing” that this influences behaviors most but not all of the time.⁵⁶

An analogy to handedness is often used to explain psychological type theory’s use of the term preference in this specialized context.⁵⁷ Virtually everyone is oriented to primarily use either their right or left hand for tasks such as using pens and pencils, throwing balls and other objects, manipulating cutlery, and many other actions.⁵⁸ Like type preferences, this orientation is usually deeply ingrained, has existed for years, and cannot be explained easily. This orientation is revealed in the behaviors it influences, just as type preferences often are.

In addition, handedness, like type preferences, does not necessarily warrant evaluative judgment as right, wrong, better, or worse. Left- or right-handedness is simply different. Similarly, the type preferences in the four indexes are different from, but not superior or inferior to, each other.⁵⁹ Moreover, type preferences, like a handedness orientation, influence default actions when individuals are reacting to surprise, experiencing strong stress, or failing to pay attention to their behavioral choices.⁶⁰ This aspect is very important to learning lawyering roles, skills, and other foundational professional identity abilities.⁶¹

II. PSYCHOLOGICAL TYPE THEORY’S VALUE ADDED IN DEVELOPING PROFESSIONAL IDENTITY

Understanding the influences that psychological type preferences often exert on actions helps law students learn and improve the behaviors needed to develop and demonstrate professional identity and supplies its value-added reason for using this approach.⁶² Like a handedness preference, psychological type theory preferences tend to influence certain actions and discourage other ones.⁶³ Although humans can and frequently

development professions working with trait theories incorporate specific behavioral descriptions drawn from the MBTI to enhance understanding. *See McCrae & Costa, supra* note 49, at 23–24.

⁵⁵ *Forever Jung, supra* note 32, at 12.

⁵⁶ ROWAN BAYNE, PSYCHOLOGICAL TYPES AT WORK: AN MBTI PERSPECTIVE 19 (2004).

⁵⁷ *Id.*

⁵⁸ *See* SANDRA HIRSH & JEAN KUMMEROW, LIFETYPES 4 (1989).

⁵⁹ *See* KROEGER & THEUSEN, *supra* note 45, at 18–19.

⁶⁰ Jung, *supra* note 38, at 536.

⁶¹ *See* 3D MBTI MANUAL, *supra* note 29, at 260 (explaining that an understanding of psychological type can be important for students in a classroom setting).

⁶² *See id.*

⁶³ *See* Jung, *supra* note 38, at 536; *supra* notes 57–59 and accompanying text.

do perform contrary to natural preference-influenced actions, they tend to use preference-influenced behaviors more often.⁶⁴ These psychological preference influences tend to provide a broad framework for an individual's best developed behavioral repertoire.⁶⁵ Performing tasks that would normally be influenced by non-preferred attitudes and functions typically takes more conscious effort to perform.⁶⁶ It also usually requires substantial practice to develop proficiency performing these actions as effectively as done when following preference-influenced tendencies.⁶⁷

For example, virtually all nondisabled adults are able to use both their right and left hands, but they typically perform tasks first and more skillfully with the hand they prefer.⁶⁸ Consequently, humans typically develop more proficiency performing preference-influenced actions.⁶⁹ For example, right-handed persons tend to write and throw primarily with their right hand. Although most right-handed persons are able to write and throw with their left hand, doing this typically requires more conscious effort, feels much less comfortable, and initially produces less proficient actions. Even those who are somewhat proficient at performing actions with their non-preferred hand may revert to using their preferred hand for relevant behaviors when they are surprised or strongly stressed.⁷⁰

Many factors motivate and influence human behavior. No psychological theory, including Jung's ideas regarding a preferences typology, can capture the full range of complexity involved in what motivates and influences human behavior.⁷¹ Consequently, no direct

⁶⁴ See Jung, *supra* note 38, at 536.

⁶⁵ See BAYNE, *supra* note 56, at 19–20; WILLIAM C. JEFFRIES, TRUE TO TYPE: ANSWERS TO THE MOST COMMONLY ASKED QUESTIONS ABOUT INTERPRETING THE MYERS-BRIGGS TYPE INDICATOR 25 (1991).

⁶⁶ See, e.g., KROEGER & THUESEN, *supra* note 45, at 14 (noting that change and growth come slowly and take major effort); MYERS & MYERS, *supra* note 41, at 194 (noting that learning to perform consistently with less favored, less developed preferences is challenging).

⁶⁷ See KROEGER & THUESEN, *supra* note 45, at 14; MYERS & MYERS, *supra* note 41, at 194.

⁶⁸ See, e.g., HIRSH & KUMMEROW, *supra* note 58, at 4; 2D MBTI MANUAL, *supra* note 48, at 3.

⁶⁹ See HIRSH & KUMMEROW, *supra* note 58, at 4; 2D MBTI MANUAL, *supra* note 48, at 3.

⁷⁰ *Forever Jung*, *supra* note 32, at 25–26.

⁷¹ Barbara J. Gilchrist, *The Myers-Briggs Type Indicator as a Tool for Clinical Legal Education*, 10 ST. LOUIS U. PUB. L. REV. 601, 603 (1991) (arguing that “the MBTI is a framework” rather than “a fixed formula” because it does not explain all the complexities of human behavior); see Redding, *supra* note 38, at 321 (“Human behavior is enormously complex and often situationally specific, and so even the best personality tests account for only a modest portion of the variability in behavior.”).

causal relationship between psychological type theory and specific behaviors exists. Psychological type preferences indicated by the MBTI only suggest behavioral tendencies that may result from favored ways of acting and are potentially influenced by the aspects of mental attitudes and functions described by psychological type theory.⁷²

Substantial research supports Jung's belief that behaviors are often influenced by psychological type preferences.⁷³ Research relevant to law practice showed that participants who preferred introversion and intuition, both alone and in combination, were more prone to accept post-event information about a situation they had observed.⁷⁴ Our study of legal interviews in a law school clinic showed that extraverted students who preferred sensing perception on the MBTI, as predicted, used specific approaches to information gathering.⁷⁵ These students asked more questions than introverted students who preferred intuitive perception on the MBTI and would use, according to the theory, more general, and less specific approaches to inquiry.⁷⁶

The behaviors influenced by psychological type preferences usually do not connect to specific professional actions in the direct ways that particular motor actions are often affected by handedness. The four areas addressed by psychological type theory encompass favoring external or internal interactions; emphasizing specific or general orientations to perceiving and communicating about information; preferring step-into,

⁷² *Forever Jung*, *supra* note 32, at 23–24.

⁷³ A study of 96 students showed those who preferred sensing perception performed significantly better achieving the lowest production costs than students who preferred intuitive perception. Donald L. Davis et al., *An Experimental Application of Personality Type As an Analogue for Decision-Making Style*, 66 PSYCHOL. REP. 167, 172–73 (1990). Another study found that students who preferred a subjective decision-making approach rated significantly higher than students who favored an objective decision-making approach in applying participative management concepts to a hypothetical management problem. Christa I. Walck, *Training for Participative Management: Implications for Psychological Type*, 21 J. PSYCHOL. TYPE 3, 4–5 (1991) (examining how feeling personality types outperformed thinking personality types in a study); see generally Roger A. Kerin & John W. Slocum, Jr., *Decision-Making Style and Acquisition of Information: Further Exploration of the Myers-Briggs Type Indicator*, 49 PSYCHOL. REP. 132, 132 (1981) (explaining how feeling personality types “prefer analyzing subjective impressions when arriving at a decision” while thinking personality types “view information objectively and impersonally weigh facts when arriving at a decision”).

⁷⁴ Roger A. Ward & Elizabeth F. Loftus, *Eyewitness Performance in Different Psychological Types*, 112 J. GEN. PSYCHOL. 191, 196 (1985). The participants accepted both misleading and consistent post-event information. *Id.*

⁷⁵ *Maybe That's Why I Do That*, *supra* note 32, at 190. “A sensing preference signals primary reliance on observable facts or happenings through one or more of the five senses.” *Id.* at 175–76.

⁷⁶ *Id.* “An intuitive preference, in contrast, focuses on patters, possibilities, and meanings when attending to and gathering information.” *Id.* at 176.

subjective or impersonal, objective decision-making; and desiring structured, planned approaches to external interactions rather than flexible, spontaneous approaches and supply the broad contours of what psychological type preferences influence.⁷⁷ Although these impulses potentially influence specific aspects of the complex behavioral sequences required to represent clients competently and resolve ethical dilemmas professionally, these connections usually need to be explored when discussing theories of effective actions and reviewing individual application of those theories.⁷⁸ Relying solely on broad descriptions of potential type preference-influenced behaviors that typically accompany distributing MBTI results is seldom sufficient.⁷⁹

Learning potential behavioral influences by adding psychological type theory to skills components of professional identity development fits well with a learning theory premise that humans design behaviors that they use when interviewing, counseling, negotiating, and performing other professional tasks needed to represent clients competently and ethically.⁸⁰ Nothing that lawyers do in these contexts depends on premises that occur inherently in the nature of the universe.⁸¹ Instead, lawyers design and select their actions “even if they often are not aware of the reasons underlying these choices.”⁸² Many implicit and explicit reasons

⁷⁷ See *id.* at 175–77.

⁷⁸ See *Forever Jung*, *supra* note 32, at 27, 105 (describing how potential type influences on student negotiation experiences should occur when the entire class discussed assigned negotiation and in small groups of students who participated in each session, noting that using videotaped clips enhances both).

⁷⁹ These descriptions have been criticized as being “so broad as to have little explanatory . . . value” and “sufficiently vague to apply to a large number of people in a wide variety of situations.” Redding, *supra* note 38, at 322. Despite these criticisms, the authors’ experiences have been that law students find their MBTI results very helpful after they receive information introducing them to MBTI concepts, use specific examples and contextualized descriptions, and follow this with frequent discussions about how they might connect to evolving learning and lawyering action theories. See *JURIS TYPES*, *supra* note 30, at 5–6; *Maybe That’s Why I Do That*, *supra* note 32, at 179–180; *Forever Jung*; *supra* note 32, at 102–04; *Mapping, Modeling*, *supra* note 32, at 903–04. Demonstrating these values, students in Don’s negotiation courses described their experiences using the psychological type theory and the MBTI to help them learn, noting: “[the MBTI] seems to help me climb into my own head and find insights I might not have otherwise acknowledged;” “[I] was particularly intrigued with the MBTI’s usefulness as a tool for self-correction;” and “MBTI theory . . . provides a framework for self-analysis and post-negotiation analysis.” *Forever Jung*, *supra* note 32, at 105 n.521.

⁸⁰ *Mapping, Modeling*, *supra* note 32, at 878–80; CHRIS ARGYRIS & DONALD A. SCHÖN, *THEORY IN PRACTICE: INCREASING PROFESSIONAL EFFECTIVENESS* 17–18 (6th prtg. 1980).

⁸¹ ARGYRIS & SCHÖN, *supra* note 80, at 17.

⁸² *Mapping, Modeling*, *supra* note 32, at 880. Neuroscience, however, is increasingly demonstrating that everything humans feel, think, and do starts with meanings they assign to their perceptions, and portions of these perceptions are first processed by limbic brain

support both common, existing practices in performing these professional tasks and more effective approaches to performing them.⁸³ Called action theories,⁸⁴ these constructs provide ways to act that are likely to produce specific effects.⁸⁵ These action theories underlie skills that are best understood as simply actions that produce intended outcomes.⁸⁶

Focusing on the constructed nature of behavior in this way illuminates the element of choice and emphasizes the possibilities for altering and improving future actions.⁸⁷ Action theories help students understand complex interactions, explain behaviors that worked in the past, and provide ways to analyze how these choices could be improved to achieve better future outcomes.⁸⁸ They give law “students frameworks for preparing, organizing, and evaluating experiences” as they engage “in actual and simulated lawyer situations.”⁸⁹

Action theories provide useful bases upon which to build specific learning objectives and outcomes, such as those the ABA now requires law schools to establish to help students internalize and demonstrate competence in exercising ethical responsibilities, other essential core lawyering skills, and professional identity.⁹⁰ Using action theories

systems that generate emotions. Jeremy Lack & François Bogacz, *The Neurophysiology of ADR and Process Design: A New Approach to Conflict Prevention and Resolution?*, 14 CARDOZO J. CONFLICT RESOL. 33, 38 (2012). This challenges the essentially cognitive focus that this article adopts in the many contexts where emotional responses potentially influence behavior initially until the prefrontal cortex may intervene. See Earl K. Miller & Jonathan D. Cohen, *An Integrative Theory of Prefrontal Cortex Function*, 24 ANN. REV. OF NEUROSCIENCE 167, 171 (2001).

⁸³ See ARGYRIS & SCHÖN, *supra* note 80, at 10–11.

⁸⁴ *Id.* at 3–6; DONALD A. SCHÖN, EDUCATING THE REFLECTIVE PRACTITIONER: TOWARD A NEW DESIGN FOR TEACHING AND LEARNING IN THE PROFESSIONS 255 (1987). Thus, action theories are simply generalizations about behaviors that are likely to produce intended effects and why. SCHÖN, *supra*, at 255. They “include the values and underlying assumptions that inform” objectives and actions likely to accomplish them. *Forever Jung*, *supra* note 32, at 99.

⁸⁵ *Mapping, Modeling*, *supra* note 32, at 880.

⁸⁶ ARGYRIS & SCHÖN, *supra* note 80, at 6; SCHÖN, *supra* note 84, at 255.

⁸⁷ See ARGYRIS & SCHÖN, *supra* note 80, at 17 (discussing how experiential learning focused on behavior helps students adopt new action strategies). For an examination of how neuroscience’s important discovery of the human brain’s abilities to develop new neuroconnections leading to different behaviors, called neuroplasticity, see *infra* notes 150–56 and accompanying text.

⁸⁸ *Mapping, Modeling*, *supra* note 32, at 880.

⁸⁹ *Id.*

⁹⁰ 2014–2015 ABA STANDARDS FOR APPROVAL OF LAW SCH. Standard 303(a)(3) (2014). Both authors commonly require students in their clinical and simulation-based professional skills course to record all of their interactions with clients and colleagues in role plays. Then students must listen to their recordings and chart the specific action choices they made on a document that forces them to assess what they actually did. These charts

reinforces a three step process for experiential learning.⁹¹ The ABA accreditation standards now strongly encourage this process⁹² “through purposeful, self-reflective practice.”⁹³ Law students using this process “will prepare, act, and then reflectively evaluate.”⁹⁴ Ideally, they repeat this sequence frequently in order to learn and develop competence performing the actions needed to accomplish necessary tasks.⁹⁵

Simply understanding action theories cognitively and emotionally does not necessarily create abilities to produce the behaviors the action theories endorse.⁹⁶ Skills acquisition and improvement requires individualizing pedagogy to give students opportunities to make, perform, and examine action choices and behaviors.⁹⁷ Doing this “engages both cognitive and affective [learning] dimensions and creates a sense of personal discovery” and development.⁹⁸ It requires students to engage with and create meaning from their actions and outcomes and realize potential future implications.⁹⁹ It also requires fluid response sequences that usually create “important personal insights that are not foreseen by instructors.”¹⁰⁰ Engaging repetitively in this process allows students to interpret experiences according to their own personal learning needs.¹⁰¹

Law students who are learning skills relevant to developing personal identity must develop sufficient self-awareness to recognize where they are and where they need to travel to acquire competent professional, ethical, and moral behavioral habits. Students inevitably “start at different places, possess different strengths, and find different challenges” when they journey to skill competence and professional identity.¹⁰² Combining action theories with psychological type theory can help students understand themselves and others, plan where they need to go

are then reviewed as part of students’ formative assessment, also required by a new ABA accreditation standard. 2014–2015 ABA STANDARDS Standard 314.

⁹¹ ARGYRIS & SCHÖN, *supra* note 80, at 99.

⁹² See 2014–2015 ABA STANDARDS Standard 303(a)(3).

⁹³ *Mapping, Modeling, supra* note 32, at 886.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ ARGYRIS & SCHÖN, *supra* note 80, at 12; Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284, 295 (1981).

⁹⁷ *Mapping, Modeling, supra* note 32, at 883.

⁹⁸ *Id.*

⁹⁹ See CARL R. ROGERS, FREEDOM TO LEARN 5 (1969).

¹⁰⁰ *Mapping, Modeling, supra* note 32, at 884 n.18.

¹⁰¹ Paul Bergman et al., *Learning from Experience: Nonlegally-Specific Role Plays*, 37 J. LEGAL EDUC. 535, 537–38 (1987).

¹⁰² *Mapping, Modeling, supra* note 32, at 892.

considering their strengths, develop awareness of likely challenges and obstacles, and learn.

Doing this promotes awareness of differences, and these perceptions help students understand potential variations between their own and their colleagues' approaches and behaviors.¹⁰³ It often engenders an appreciation of advantages and disadvantages of different action theories and behaviors.¹⁰⁴ It enhances opportunities for effective collaboration¹⁰⁵ and solving problems using strengths of different perspectives.¹⁰⁶ This approach is frequently recommended for resolving challenging ethical and moral dilemmas.¹⁰⁷ Awareness of the strengths and differences signaled by psychological type theory and learning to value them often permits the constructive framing of conflicts as potentially positive occurrences and counters common tendencies to negatively judge others for not acting like oneself.¹⁰⁸ Promoting better understandings of and collaborations with clients, colleagues, counterpart counsel, judges, and other legal system personnel provides important collateral benefits to using psychological type theory.¹⁰⁹

"Helping students map their way from where they are to where they want to be requires constant attention to both developing and refining action theories that guide purposeful behavioral choice."¹¹⁰ Frequent inquiries and conversations about action theories help provide knowledge for planning actions, evaluating their effectiveness, and making spontaneous revisions of earlier plans needed to respond to unexpected

¹⁰³ See *Forever Jung*, *supra* note 32, at 112.

¹⁰⁴ See *id.* at 114–15 (discussing how pairing students in teams in a negotiation class often helps students learn to value differences and identify when and how different actions are effective).

¹⁰⁵ See *infra* notes 214–26 and accompanying text for an analysis of the importance of collaborative, client-centered approaches to client relationships in forming and demonstrating professional identity.

¹⁰⁶ ROBERT F. COCHRAN, JR. ET AL., *THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING* 246 (2d ed. 2006) (arguing that effective problem solving involves all four mental functions described by psychological type theory; both sensing and intuitive approaches to perception and judging and feeling approaches to decision-making).

¹⁰⁷ See THOMAS L. SHAFFER & ROBERT F. COCHRANE, JR., *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* 52 (2d ed. 2009); MICHAEL L. SEIGEL & JAMES L. KELLEY, *LAWYERS CROSSING LINES: TEN STORIES* 217 (2d ed. 2010).

¹⁰⁸ See KROEGER & THUESEN, *supra* note 45, at 156 (explaining how psychological type theory's natural affirming quality helps user recast personality differences and provides a basis for solving problems constructively and effectively).

¹⁰⁹ See Raymond B. Marcin, *Psychological Type Theory in the Legal Profession*, 24 U. TOL. L. REV. 103, 117 (1992) (discussing how "knowledge of type . . . often . . . promote[s] understanding and tolerance" in human relations).

¹¹⁰ *Mapping, Modeling*, *supra* note 32, at 895.

situations effectively.¹¹¹ Adding psychological type theory to these inquiries and conversations stimulates the development of crucial professional identity abilities such as self-awareness¹¹² and self-evaluation.¹¹³

Psychological type theory often provides insights about preferences and their accompanying action tendencies.¹¹⁴ Gaining these insights enhances an essential step in experiential learning approaches by “investigating . . . both what was done and why it was done.”¹¹⁵ Doing this is often difficult because much of what informs common actions involved in asking questions, listening, perceiving and communicating information, and making decisions is seldom made explicit.¹¹⁶ Doing this also promotes self-illumination—Jung’s justification for his psychological type theory—by helping persons become aware of their behavioral inclinations and challenges.¹¹⁷

For students, learning psychological type theory and their preferences frequently offers them insight into what behaviors, roles, and attitudes come naturally to them when they exercise professional skills in interviewing, counseling, negotiating, mediating, and problem-solving interactions.¹¹⁸ These natural tendencies often reflect implicit action theories.¹¹⁹ Such insights into implicit action theories helps students understand many of their action theories, role choices, and resulting behaviors.¹²⁰

Identifying a preference for extraversion, for example, has helped many students in our clinical and professional skills courses become aware of “tendencies to interrupt others and talk when [feeling] uncomfortable.”¹²¹ Learning of a preference for introversion has also

¹¹¹ *Id.*

¹¹² This is one of the foundational skills needed for ethical dilemma recognition and resolution. *See infra* notes 299–306 and accompany text.

¹¹³ This is one of the professional skills mentioned by the ABA as important to include in law school instruction. 2014–2015 ABA STANDARDS FOR APPROVAL OF LAW SCH. Interpretation 302-1 (2014).

¹¹⁴ *Forever Jung, supra* note 32, at 100.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 100–01; *see also* ARGYRIS & SCHÖN, *supra* note 80, at 9–11 (examining how humans do not always manifest their psychological type in their behavior).

¹¹⁷ *See Forever Jung, supra* note 32, at 101.

¹¹⁸ *See* ARGYRIS & SCHÖN, *supra* note 80, at 12–13.

¹¹⁹ Research regarding how professionals develop competence suggests distinguishing between explicit or espoused action theories, consisting of what actors say they intend to do, and implicit or in use theories comprising what underlies how students actually behave. *See* Kreiling, *supra* note 96, at 291; *see also* ARGYRIS & SCHÖN, *supra* note 80, at viii; SCHÖN, *supra* note 84, at 255.

¹²⁰ *Forever Jung, supra* note 32, at 103.

¹²¹ *Id.*

helped many students with whom we have worked discern “why reacting quickly to unexpected comments and tactics was hard for them to do.”¹²² Students in our courses reported similar experiences in regards to the other dimensions of Jung’s psychological type theory.¹²³

Students developing essential professional identity skills need to frequently experience the importance of fitting behaviors to contexts, a process that action theories repeatedly emphasize.¹²⁴ Using psychological type theory meets this need because humans commonly use type preference-influenced behaviors produced naturally and seemingly automatically that are effective in some contexts and counterproductive in others. Effective experiential learning demands that professors help students sort which is which. This process connects directly to now ABA mandated use of formative feedback that engages students, reinforces knowledge, and identifies opportunities for corrective practice.¹²⁵

Confidence is important in education, and students can build confidence by determining when their action tendencies produce effective actions.¹²⁶ By experiencing when tendencies influence context effective actions, students are provided opportunities to receive positive formative feedback from colleagues, instructors, and themselves.¹²⁷ Research demonstrates that specific positive feedback regarding what was done effectively motivates learning more than constructive criticism.¹²⁸ Identifying effective decisions and actions also reinforces self-awareness and self-evaluation because it suggests what behaviors should be repeated in identical or similar contexts.

Experiencing contexts in which actions influenced by students’ type preference-related behavioral tendencies produce contextually ineffective behaviors also provides valuable learning experiences. This sometimes

¹²² *Id.* at 103–04.

¹²³ *See id.* at 104–05 n.519.

¹²⁴ *See id.* at 105.

¹²⁵ 2014–2015 ABA STANDARDS FOR APPROVAL OF LAW SCH. Standard 314, Interpretation 314-1 (2014).

¹²⁶ *Forever Jung*, *supra* note 32, at 106.

¹²⁷ The ABA defines formative feedback as measurements during different points of time during courses and educational experiences that provide meaningful feedback to improve student learning. 2014–2015 ABA STANDARDS Interpretation 314-1. Regular and periodic formative feedback supports students’ feelings of competence and growth. It also combats natural feelings of insecurity and occasional overconfidence that arise from lack of feedback.

¹²⁸ Joseph D. Harbaugh, *Simulation and Gaming: A Teaching/Learning Strategy for Clinical Legal Education*, in CLINICAL LEGAL EDUCATION: REPORT OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS—AMERICAN BAR ASSOCIATION COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION 191, 209 (1980); Richard K. Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 HASTINGS L.J. 725, 768 (1989); *see* EARNEST R. HILGARD & GORDON H. BOWER, THEORIES OF LEARNING 608–09 (4th ed. 1975).

occurs because students have not identified an action likely to accomplish their objective before acting.¹²⁹ Acting without a guiding theory demonstrates psychological type theory's premise that preferences frequently manifest themselves in habitual behaviors.¹³⁰

Connections between type preference influences and contextually ineffective actions are also frequently identified when students perform actions that do not coincide with their plans to use different behaviors based on selected action theories.¹³¹ "Existing behavioral tendencies strongly influence action choices" and often override initial intentions to behave differently.¹³² Habitual behavioral patterns commonly create more difficulties acting consistently with pre-selected action theories than complexities in these frameworks.¹³³ Many essential action components of the core tasks in competent questioning, listening, and organizing which undergird effective interviewing, counseling, negotiating, and advocacy, are not inherently complex.

Knowing type theory and students' behavioral tendencies linked to their preferences helps students identify when they experience "difficulty acting consistently with their intentions."¹³⁴ These situations create learning dilemmas and opportunities that strongly motivate students to seek improvement.¹³⁵ This is consistent with neuroscience discoveries that dopamine neurons in human brains "constantly generate patterns [and predictions] based on experience[s]" and distill "if this, then that" occurrences "into models of correlation that allow the brain to anticipate what will happen next."¹³⁶ Unexpected or otherwise surprising results

¹²⁹ See *Forever Jung*, *supra* note 32, at 106–07. Students must have a theory of effective action in order to learn to integrate it with behavior. See Lee Bolman, *Learning and Lawyering: An Approach to Education for Legal Practice*, in *ADVANCES IN EXPERIENTIAL SOCIAL PROCESS* 111, 131 (Cary L. Cooper & Clayton Alderfer eds., 1978). This can also occur when students have a theory that proves to be ineffective, demonstrating how experience-based learning allows professionals to test and evaluate theory. *Forever Jung*, *supra* note 32, at 107 n.531.

¹³⁰ Recent neuroscience research suggests that much of what humans do occurs without conscious thought by accessing and following scripts about how to act in specific contexts that are stored in memory. DANIEL T. WILLINGHAM, *WHY DON'T STUDENTS LIKE SCHOOL?* 6–7 (2009).

¹³¹ See *Mapping, Modeling*, *supra* note 32, at 923.

¹³² *Id.* at 924; see also ARGYRIS & SCHÖN, *supra* note 80, at 99–100; Kreiling, *supra* note 96, at 292–93.

¹³³ ARGYRIS & SCHÖN, *supra* note 80, at viii; see also ROGER FISHER ET AL., *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* 147 (Bruce Patton ed., 2d ed. 1991).

¹³⁴ *Mapping, Modeling*, *supra* note 32, at 924.

¹³⁵ *Id.*; ARGYRIS & SCHÖN, *supra* note 80, at 100 (examining dilemmas as an essential aspect of skills learning).

¹³⁶ JONAH LEHRER, *HOW WE DECIDE* 37 (2009).

motivate brains to understand what happened and what needs to be revised to adjust expectations accordingly.¹³⁷

This rapid neural activity that occurs outside conscious awareness motivates most students toward acquiring and demonstrating behavioral competence by seeking consistency between their action goals and behaviors.¹³⁸ The recent ABA amendments reinforce the critical importance of achieving skill competency and require law schools to frame learning outcomes in terms of competent exercise of professional responsibilities and other skills needed for ethical lawyering.¹³⁹ They also require that achievement of competency be central to institutional evaluation efforts law schools undertake.¹⁴⁰

Recent research demonstrates that satisfying these aspirations for behavioral competence and effectiveness substantially contributes to a sense of subjective well-being.¹⁴¹ Self-Determination Theory, a comprehensive explanation of human behavior broadly supported in psychological research over forty years,¹⁴² posits that all humans have “basic psychological needs” such as feeling “competent [and] effective.”¹⁴³ Research shows that many of the well-documented negative effects on well-being that American law students experience result from decreases in their abilities to satisfy their fundamental needs for competence along with their desires for autonomy and relatedness to others.¹⁴⁴ This scholarship also shows that experiencing competence, autonomy, and connectedness strongly predicts subjective well-being in lawyers.¹⁴⁵

¹³⁷ See *id.* at 41.

¹³⁸ See *id.*; ARYGRIS & SCHÖN, *supra* note 80, at 99–100; Kreiling, *supra* note 96, at 292 n.29 (explaining that most people value consistency, congruence, and predictability more than inconsistency, incongruity, and unpredictability).

¹³⁹ 2014–2015 ABA STANDARDS FOR APPROVAL OF LAW SCH. Standard 302 (2014).

¹⁴⁰ *Id.* Standard 315.

¹⁴¹ Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 263 (2004) [hereinafter *Undermining Effects on Law Students?*].

¹⁴² Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers*, 83 GEO. WASH. L. REV. (forthcoming 2015) [hereinafter *What Makes Lawyers Happy?*]; see *Undermining Effects on Law Students?*, *supra* note 141, at 263–64; Richard M. Ryan & Edward L. Deci, *Self-Determination Theory and the Role of Basic Psychological Needs in Personality and the Organization of Behavior*, in HANDBOOK OF PERSONALITY: THEORY AND RESEARCH 654, 660–62 (Oliver P. John et al. eds., 3d. ed. 2008).

¹⁴³ *What Makes Lawyers Happy?*, *supra* note 142.

¹⁴⁴ See *id.*; Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883, 894 (2007), available at psp.sagepub.com/content/33/6.toc.

¹⁴⁵ *What Makes Lawyers Happy?*, *supra* note 142.

Learning dilemmas stemming from ineffective behaviors also directly “challenge students to grapple with what motivates their inconsistent actions;” this usually provides a formidable task because much of what motivates human action lies obscured by mimicry of others and habitual behavioral patterns,¹⁴⁶ some of which may have been transferred to implicit procedural memory.¹⁴⁷ Once action scenarios and ways to address them are learned and stored in memory, human brains access these memories to generate actions that then happen immediately and effortlessly.¹⁴⁸ Type preference-influenced behavioral choices may facilitate this type of procedural memory creation and encoding.

Every experience changes a human brain,¹⁴⁹ and a discovery called neuroplasticity demonstrates that new neural pathways can be created by engaging in learning processes.¹⁵⁰ Learning different perspectives and action theories, and practicing them in experiential settings with formative feedback, can update brain connections and activate new behaviors or apply previously learned behaviors in new contexts.¹⁵¹ This challenging process starts with learning and then focusing on clear images of the different perceptions and actions desired.¹⁵²

These necessary clear images are supplied by combining readings, discussions, and demonstrations of action theories with psychological type theory-based insights on existing cognitive inclinations and behavioral tendencies. Psychological type insights provide value because they often reveal an underlying behavioral pattern that could be used or that is interfering with developing new, more effective action sequences. Focusing simply on trying to undo old habits entrenches them more solidly in brain connections by giving them more attention.¹⁵³ Although thinking

¹⁴⁶ *Mapping, Modeling, supra* note 32, at 924–25.

¹⁴⁷ Memories are encoded in the neural processing that results from experiences. See FRED TRAVIS, *YOUR BRAIN IS A RIVER, NOT A ROCK* 132–33 (Kindle ed. 2012). This processing includes implicit memory encompassing procedural knowledge about how to do things. See RICK HANSON, *HARDWIRING HAPPINESS: THE NEW BRAIN SCIENCE OF CONTENTMENT, CALM, AND CONFIDENCE* 25 (2013).

¹⁴⁸ WILLINGHAM, *supra* note 130, at 6–7.

¹⁴⁹ TRAVIS, *supra* note 147, at 9, 38–46 (“The pattern of connections between your neurons changes continuously. This is called *neural plasticity*, and is one of the most revolutionary findings in the past century.”).

¹⁵⁰ Jill L. Kays et al., *The Dynamic Brain: Neuroplasticity and Mental Health*, 24 *J. NEUROPSYCHIATRY & CLINICAL NEUROSCIENCE* 118, 120 (2012) (“Multiple studies have documented neuroplastic changes in healthy human brains as a result of normal processes, such as learning.”).

¹⁵¹ See TRAVIS, *supra* note 147, at 9.

¹⁵² See Sara Bernard, *Neuroplasticity: Learning Physically Changes the Brain*, *EDUTOPIA* (Dec. 1, 2010), <http://www.edutopia.org/neuroscience-brain-based-learning-neuroplasticity>.

¹⁵³ TRAVIS, *supra* note 147, at 45.

through new action theories and steps activates new brain connections, actual experience with them is needed for them to stick.¹⁵⁴ These experiences must be repeated continuously until these new theories and actions become automatic and effortless.¹⁵⁵

Psychological type theory affords a way to identify and understand habitual behavioral patterns which signal needs to change neural connections. Knowing type theory and preference-influenced behavioral tendencies may help students take an extra step beyond simply identifying inconsistencies between what they intended to do and what they actually did, and developing alternative strategies for resolving these mismatches.¹⁵⁶ Called double loop learning, this extra step examines why the inconsistent behavior occurred.¹⁵⁷ Finding connections to type preference-influenced behavioral tendencies often helps students persevere in learning how to perform important actions that they initially find difficult to produce.¹⁵⁸ It also often helps students develop strategies for modifying their contextually ineffective behavioral tendencies.¹⁵⁹

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*; see also NORMAN DOIDGE, *THE BRAIN THAT CHANGES ITSELF: STORIES OF PERSONAL TRIUMPH FROM THE FRONTIERS OF BRAIN SCIENCE* 47 (2007) (“[P]racticing a new skill, under the right conditions, can change hundreds of millions and possibly billions of [neural] connections between the nerve cells in [a human] brain.”).

¹⁵⁶ This is sometimes called single loop learning and is typically where clinical and other skills instructors stop the discussion and move on to discussing alternative actions that are likely to be more effective and consistent with intention. See Michael Moffitt & Scott R. Peppet, *Action Science and Negotiation*, 87 MARQ. L. REV. 649, 653 (2004).

¹⁵⁷ *Id.* This approach posits that humans have mental maps regarding how to act in situations, and they guide the actions regarding planning, implementing, and reviewing their behaviors more than their stated reasons for behaving. Don Peters, *Critiquing Clinical Performances*, in *A HANDBOOK ON CLINICAL LEGAL EDUCATION* 204, 205 (N.R. Madhava Menon ed., 1998). Scholars have labeled these stated reasons for behaving as implicit or theories in use as opposed to explicit or espoused theories of action. *Id.* Double loop learning challenges students to probe beyond the surface of their actions and seek to “bring ‘into consciousness the often inchoate, pre-conscious’” reasons for the inconsistent behaviors they produced. See *Mapping, Modeling*, *supra* note 32, at 890–91 n.30 (quoting Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599, 1650 (1991)).

¹⁵⁸ *Mapping, Modeling*, *supra* note 32, at 925–26 n.112.

¹⁵⁹ *Id.* at 926–27; see also *Forever Jung*, *supra* note 32, at 107, 109. Enhancing law student awareness of their individual learning preferences and challenges helps them make appropriate adjustments and enhance law school performance. See Kristine S. Knaplund & Richard H. Sander, *The Art and Science of Academic Support*, 45 J. LEGAL EDUC. 157, 159 (1995); Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449, 485–86 (1996); Paul T. Wangerin, *Learning Strategies for Law Students*, 52 ALB. L. REV. 471, 476–77 (1988). The MBTI has helped students increase their awareness of their learning processes and develop appropriate adjustments. See, e.g., *JURIS TYPES*, *supra* note 30, at xi; Vernellia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Students and Performance*, 26 CUMB. L. REV. 63, 103 (1995).

Doing the hard work to recognize and change action habits is usually essential to developing competence through knowledge of and abilities to exercise the behavioral dimensions of professional identity. Many critical tasks in interviewing, counseling, negotiating, fact-finding, advocating, problem-solving, and discerning and resolving ethical dilemmas require actions that connect to and are potentially influenced by multiple dimensions of type theory. This means that students who are learning to identify and perform each of these tasks inevitably encounter some actions that link to their type preferences and some that require behaviors that are more likely influenced by type dimensions they do not prefer. Effective problem solving, for example, requires skilled actions predictably influenced by all four perceiving and decision-making type theory preferences.¹⁶⁰ The foundational action choices and behaviors involved in asking questions¹⁶¹ and performing passive and active listening responses¹⁶² also require behaviors potentially influenced by all eight type theory dimensions.

¹⁶⁰ See McCaulley, *supra* note 45, at 45. This type-based model for solving problems incorporates all four of Jung's theorized four mental functions. It proceeds from gathering facts by using sensing perception to identify what is known in a specific, concrete way to developing potential solutions by using intuitive perceptions to generate possible alternatives and solutions. It then analyzes objectively by using thinking judgment to identify and consider the causal and logical consequences of each option. The model concludes by using feeling judgment to assess and weigh the impact of alternatives on the people involved and other relevant subjective considerations. *Id.* at 44–45.

¹⁶¹ *Maybe That's Why I Do That*, *supra* note 32, at 196. "Asking questions effectively . . . requires attending to a sensory [perception] orientation to identify the immediate situation with sufficient specificity to decide what the next response should be. If a closed question is appropriate, [sensing perception's] detailed focus . . . helps determine what specific aspect of which concrete topic [the question should] pursu[e]. The contrasting intuitive preference is needed to" ascertain whether an open question would be more appropriate and how to phrase it effectively. "[T]he thinking function allows assessment of the logical consequences of the various possib[le]" phrasing options and facilitates choosing and using logical, cause-and-effect focused language. The feeling preference allows assessing effects question phrasing options are likely to have on clients and evolving relationship dimensions with them. Extraversion stimulates "the external interaction[s] needed to pose the questions and monitor non-verbal responses to them." Intuition permits engaging in pre-act planning and post question reflecting. Judging facilitates using an organized, moderately structured questioning approaches and achieving appropriate closure. Finally, perceiving allows flexibility in structure, organization, approach, and adaptability to unexpected information and other surprising developments when they occur. *Id.*

¹⁶² *Id.* Sensing perception permits attending to immediate situations to assess what responses make the most sense and to paraphrase or summarize accurately whatever content or emotions clients communicate. Intuitive perception facilitates identifying possible meanings communicated and is particularly important when strong emotions are communicated in vague or ambiguous ways requiring identifying possibilities for acknowledging these feelings. Thinking judgment allows assessing likely information gathering consequences of listening responses while feeling judgment orients toward client agendas and eases using active listening to attend to relationship dimensions of evolving

The addition of psychological type theory insights facilitates formative assessments, which are now required by the ABA so that law schools can measure and improve student performance.¹⁶³ By requiring formative assessment, the ABA confirmed educational theorists' insistence "that feedback is essential to meaningful learning because it is extremely difficult to assess and change behavior without it."¹⁶⁴ Formative assessment "facilitates learning by encouraging [students performing professional identity relevant actions] to assess [them] against: (1) action theories predicting why the behaviors they sought to use would accomplish [appropriate] intended effects; (2) whether they acted congruently with their [chosen action] theories; (3) whether [these] theories and actions produced [effective] outcomes; and (4) [if effective outcomes did not occur,] what aspects of theories or actions [or both] should be changed" and why.¹⁶⁵

Humans are not impartial observers of their behavior and often remember it inaccurately.¹⁶⁶ Formative assessment containing specific, behavior-based feedback combats common positive illusion biases that make it difficult for humans to identify and evaluate their actions accurately.¹⁶⁷ Humans, for example, routinely see themselves as more fair, reasonable, cooperative, and competent than average.¹⁶⁸ Specific,

interactions. Extraversion provides impetus to listen by talking while introversion promotes abilities to resist interrupting clients and occasionally use silence coupled with non-verbal prompts to encourage continued client communication. A judging orientation facilitates planning and organizing while a perceiving orientation allows openness to client agendas, unexpected information, and surprising developments. *Id.* at 196–97.

¹⁶³ 2014–2015 ABA STANDARDS FOR APPROVAL OF LAW SCH. Standard 314 (2014).

¹⁶⁴ *Mapping, Modeling, supra* note 32, at 919.

¹⁶⁵ *Id.* at 920.

¹⁶⁶ WILLINGHAM, *supra* note 130, at 151. Lacking confidence, some inaccurately remember their behavior as more ineffective than it was. Far more inaccurately remember their behavior as more effective as part of general tendencies to interpret their experiences more favorably to themselves. *Id.*

¹⁶⁷ *Id.* Substantial evidence demonstrates that humans are likely to make judgments in ways that create positive presentations of self. RUSSELL KOROBKIN & CHRIS GUTHRIE, *Heuristics and Biases at the Bargaining Table*, in *THE NEGOTIATOR'S FIELDBOOK* 351, 354 (Andrea Kupfer Schneider & Christopher Honeyman eds., 2006). One of the world's top professional tennis instructors found that his extensive research did not find one top player who was "consistent in knowing and explaining exactly what he does." MALCOLM GLADWELL, *BLINK: THE POWER OF THINKING WITHOUT THINKING* 67 (2005).

¹⁶⁸ JENNIFER K. ROBBENOLT & JEAN R. STERNLIGHT, *PSYCHOLOGY FOR LAWYERS: UNDERSTANDING THE HUMAN FACTORS IN NEGOTIATION, LITIGATION, AND DECISION MAKING* 70, 387 (2012). Research shows that humans systematically express and exhibit more confidence in their abilities than is warranted objectively. RUSSELL KOROBKIN, *NEGOTIATION THEORY AND STRATEGY* 100 (2002).

behavior-based formative feedback regarding actions influenced by their tendencies helps students view themselves more objectively.¹⁶⁹

Knowledge of psychological type theory's contextual dimensions "may help students identify conflicts between what they wanted to accomplish and what they did" when discussing and developing these understandings.¹⁷⁰ This knowledge reinforces important messages that "detailed analysis, careful preparation, and reflective practice" are needed to demonstrate professional identity by competent behaviors.¹⁷¹ Blending type theory insights into formative assessment discussions also reaffirms "the value of linking preparation, presentation, and evaluation of behavior to espoused theories of competent task performance."¹⁷²

The MBTI's approach of providing only positive descriptions of different psychological type preferences and many of their common behavioral tendencies generates a nonjudgmental framework that often lessens the anxieties and defensiveness law students naturally experience when confronting contextually ineffective actions that they performed.¹⁷³ It can also help students demonstrate patience when struggling to perform important actions that seem to come easily to colleagues.¹⁷⁴ Additionally, the MBTI approach can reduce frustrations that can block learning new skills by providing insights into strengths as well as reasons for their challenges.¹⁷⁵ It can also help students view these challenges as requiring countering behavioral tendencies rather than surrendering to "unalterable parts of their personalities."¹⁷⁶

Discussing and developing these understandings help students acquire habits of reflecting on their theories and behaviors so that they can identify and correct ineffective choices on their own when they

¹⁶⁹ ROBBENNOLT & STERNLIGHT, *supra* note 168, at 82–83.

¹⁷⁰ *Forever Jung*, *supra* note 32, at 109.

¹⁷¹ *Id.*; see Kreiling, *supra* note 96, at 305.

¹⁷² See *Forever Jung*, *supra* note 32, at 107, 109.

¹⁷³ See *Mapping, Modeling*, *supra* note 32, at 922, 925–26. MBTI theory's positive tone differs markedly from major trait theories. For example, individuals scoring low on the five factors trait of conscientiousness, which parallels the JP dimensions of type theory, are described as "weak-willed" and "careless." BAYNE, *supra* note 56, at 24. This makes MBTI theory much more useful than five factor trait theory in educational and organizational contexts. Critics nonetheless attack this all positive aspect of the MBTI as "pseudoscientific variants of the newspaper horoscope" and argue that persons are "particularly likely to believe psychological test results that paint a positive picture." Redding, *supra* note 38, at 312, 323; see Bertram R. Forer, *The Fallacy of Personal Validation: A Classroom Demonstration of Gullibility*, 44 J. ABNORMAL PSYCHOL. 118, 118 (1949).

¹⁷⁴ See *Mapping, Modeling*, *supra* note 32, at 927–28.

¹⁷⁵ See *id.* at 925–27; see also Paul T. Wangerin, *Learning Strategies for Law Students*, 52 ALB. L. REV. 471, 476–77 (1988).

¹⁷⁶ See *Mapping, Modeling*, *supra* note 32, at 928.

practice.¹⁷⁷ These understandings supply “a necessary step in the process of becoming competent in taking action and simultaneously reflecting on that behavior in order to learn from it.”¹⁷⁸ These discussions and understandings also satisfy the ABA’s new requirement that all students be afforded opportunities to develop concepts underlying the professional skills they learn, that is, action theories to experience multiple performance interactions, and to engage in self-evaluation.¹⁷⁹

III. TYPE THEORY’S DECISION-MAKING PREFERENCES AND DEMONSTRATING PROFESSIONAL IDENTITY IN LAWYER-CLIENT RELATIONSHIPS

Lawyer and client relationships present many role, objective, and action challenges, and responding effectively to them contributes significantly to developing appropriate professional identity. Learning to competently exercise the behaviors that demonstrate appropriate professional identity comes to life most vividly when experiencing the multiple crucial aspects of building and maintaining relationships with and fulfilling responsibilities for clients.¹⁸⁰ These activities supply the core of lawyering.

Studies show that lawyers spend more time interacting with clients than they devote to any other set of tasks.¹⁸¹ Lawyer surveys also verify the importance of competent performance of actions required to create and sustain effective client relationships, and the belief that law schools can and should help lawyers learn these skills.¹⁸² Twenty-five ABA Model

¹⁷⁷ *See id.*

¹⁷⁸ *Forever Jung*, *supra* note 32, at 101.

¹⁷⁹ 2014–2015 ABA STANDARDS FOR APPROVAL OF LAW SCH. Standard 303(a)(3) (2014).

¹⁸⁰ CARNEGIE REPORT, *supra* note 1, at 129.

¹⁸¹ These interacting task sets include interviewing, counseling, and preparing clients. A survey of more than 1,000 lawyers practicing in five federal judicial districts in California, New Mexico, Pennsylvania, South Carolina, and Wisconsin showed lawyers typically spent 16% of their time conferring with clients, a greater percentage than they devoted to any other task set. David M. Trubek et al., *The Costs of Ordinary Litigation*, 31 UCLA L. REV. 72, 80–81, 91 tbl.3 (1983).

¹⁸² A survey of 634 California lawyers showed the following percentages listing action theories and implementing actions as essential or important: 82.9% for interviewing and 86.4% for counseling. Robert A.D. Schwartz, *The Relative Importance of Skills Used by Attorneys*, 3 GOLDEN GATE U. L. REV. 321, 324–25 tbl.4 (1973). Over 800 Chicago lawyers gave these rankings of skills as very important or important: 97.6% for oral communication; 71.6% for fact gathering; and 62% for counseling. Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469, 473 tbl.1 (1993). This same survey showed these percentages believing the theories and behaviors associated with these skill sets could be taught effectively in law schools: 77% for oral communication; 65% for fact gathering; and 57% for counseling. *Id.* at 479 tbl.4.

Rules of Professional Conduct affect lawyer-client relationship issues; this is a much larger number of regulations than are directed to any other lawyering context.¹⁸³

One psychological type preference category, judgment, measures how persons prefer to make decisions about their perceptions using one of two methods: thinking or feeling.¹⁸⁴ These preferences encompass and influence methods for evaluating information and making decisions.¹⁸⁵ Both thinking and feeling preferences influence rational ways of analyzing, prioritizing, and evaluating information in order to make decisions, but the methods are different.¹⁸⁶ Because these preferences tend to “exert the most influence on attitudes and behaviors regarding relationship issues,”¹⁸⁷ this Section examines their value in helping students learn roles and competent behaviors demonstrating appropriate professional identity in critical lawyer-client contexts.

“Thinking judgment is objective and impersonal.”¹⁸⁸ A thinking preference often influences actions that analyze and evaluate information, situations, and tasks by considering objective factors first and giving them highest priority.¹⁸⁹ Thinking preference-influenced actions frequently encompass stepping away from situations to make impersonal

¹⁸³ See MODEL RULES OF PROF'L CONDUCT RR. 1.1–1.18, 2.1, 2.3, 3.2, 4.2–4.4, 6.4 (2013).

¹⁸⁴ *Maybe That's Why I Do That*, *supra* note 32, at 176.

¹⁸⁵ JURIS TYPES, *supra* note 30, at 17.

¹⁸⁶ *Id.* The labels used for these concepts, “thinking” and “feeling,” are terms of art and are intended to convey different meanings from connotations given them in other contexts. *Maybe That's Why I Do That*, *supra* note 32, at 176 n.27. Both thinking and feeling in Jungian type theory describe rational, non-emotional approaches to analyzing and evaluating perceptions and making decisions regarding them. *Id.* at 176. A feeling preference does not connote the use of emotions in making decisions, but rather describes a subjective, value-based approach “which is neither exclusively nor necessarily based on emotion.” *Id.* at 176 n.27.

¹⁸⁷ *Forever Jung*, *supra* note 32, at 51. Many behavioral influences flowing from this thinking-feeling dimension of psychological type theory are more subtle than those stemming from other dimensions. *Id.* “This preference does not influence easily observable behaviors such as an emphasis on facts or possibilities” when perceiving or communicating, demonstrating external or internal energy direction, and acting in planned, decision or spontaneous, flexible ways. *Id.* These behavioral influences often “must be discerned . . . from verbal communications . . . that provide clues about how [lawyers and clients] have made decisions about data, situations, and approaches to tasks.” *Id.* at 51–52. They also often surface in oral and written comments on and reactions to and formative assessment feedback regarding interpersonal encounters. *Id.* at 52.

¹⁸⁸ JURIS TYPES, *supra* note 30, at 17; see also 3D MBTI MANUAL, *supra* note 29, at 24 (explaining that thinking decision-making relies on cause and effect principles and tends to apply reason objectively and impersonally).

¹⁸⁹ 3D MBTI MANUAL, *supra* note 29, at 24 (“Thinking judgment relies on impartiality and neutrality with respect to the personal desires and values of both the decision maker and the people who may be affected by the decision.”).

judgments.¹⁹⁰ These actions emphasize critical analysis and criticism.¹⁹¹ These behaviors also tend to disregard relational concerns, de-emphasize or ignore emotions, and express empathy rarely.¹⁹² A thinking preference usually influences actions that emphasize logical consequences and objective connections.¹⁹³

Feeling judgment, on the other hand, is “subjective and personal.”¹⁹⁴ A feeling preference tends to influence actions that analyze, evaluate, and make decisions about information, tasks, and approaches by considering subjective factors first and giving them highest priority.¹⁹⁵ It influences a process that steps into situations, identifies with the people involved, and uses “subjective, values-based standards” to discern and assess options.¹⁹⁶ Feeling preference-influenced actions frequently express appreciation, communicate positive feedback, and avoid criticism.¹⁹⁷ These actions tend to emphasize relational concerns, acknowledge emotions, and express empathy frequently.¹⁹⁸ A feeling preference often influences a decision-making process that attends to what matters to the people who are involved in situations, emphasizes “human as opposed to the technical aspects of problems,” and seeks to create and preserve “harmonious relationships.”¹⁹⁹

Although it is estimated that the general U.S. population divides equally with half preferring thinking and half indicating a feeling preference, this psychological type measure is the only one “that shows significant gender differences.”²⁰⁰ Research suggests that 60 to 65% of men indicate a preference for thinking decision-making while 60 to 65% of

¹⁹⁰ See COCHRAN ET AL., *supra* note 106, at 240; BAYNE, *supra* note 56, at 23.

¹⁹¹ 3D MBTI MANUAL, *supra* note 29, at 24 (explaining that thinking decision-making tends to reflect “analytical inclination, objectivity, [a primary] concern with principles of justice and fairness, criticality, an impassive and dispassionate demeanor, and an orientation to time that is linear”).

¹⁹² See *id.*

¹⁹³ *Maybe That’s Why I Do That*, *supra* note 32, at 176.

¹⁹⁴ JURIS TYPES, *supra* note 30, at 17.

¹⁹⁵ See 3D MBTI MANUAL, *supra* note 29, at 24 (explaining that feeling decision-making relies on understandings of personal and group values).

¹⁹⁶ JURIS TYPES, *supra* note 30, at 17–18.

¹⁹⁷ See *Maybe That’s Why I Do That*, *supra* note 32, at 176. See generally 3D MBTI MANUAL, *supra* note 29, at 24 (describing characteristics of feeling preferring people).

¹⁹⁸ 3D MBTI MANUAL, *supra* note 29, at 24–25 (explaining that feeling decision-making reflects more attunement to feelings and values of others and desires for “affiliation, warmth, and harmony”).

¹⁹⁹ *Id.*; *Maybe That’s Why I Do That*, *supra* note 32, at 176.

²⁰⁰ *Forever Jung*, *supra* note 32, at 17.

women show a feeling preference.²⁰¹ MBTI samples of lawyers²⁰² and law students,²⁰³ however, show an overwhelming preference for thinking judgment regardless of gender.²⁰⁴

American lawyers and law students frequently manifest this disproportionate thinking judgment type preference by displaying abstract, impersonal, and analytical approaches to persons and problems in law practice.²⁰⁵ An estimated ninety percent of American law students and lawyers are “left brain dominant,” indicating impersonal, analytical decision-making inclinations.²⁰⁶ Researchers often use lawyers when measuring an occupational group that is analytical and objective in its typical behaviors regarding perceiving, deciding, and acting.²⁰⁷ As noted in the *MacCrate Report*, these tendencies are extensively reinforced by contemporary American legal education.²⁰⁸

The *Carnegie Report* specifically encourages law schools to introduce students to nuances of the complex roles lawyers play with their clients

²⁰¹ Compare 2D MBTI MANUAL, *supra* note 48, at 45 (estimating that 60% of men in the United States show a preference for thinking and 65% of women in the United States show a preference for feeling), with JEFFRIES, *supra* note 65, at 48–49 (noting that the Center for Applications of Psychological Type has consistently found that 60–66% of men prefer the thinking type, and 60–66% of women prefer the feeling type).

²⁰² A 1992 survey of 3014 practicing attorneys showed 78% preferring thinking, and this total included 81% of the males and 66% of the females measured. Larry Richard, *The Lawyer Types: How Your Personality Affects Your Practice*, A.B.A. J., July 1993, at 74–76.

²⁰³ Frank L. Natter, *The Human Factor: Psychological Type in Legal Education*, 3 RES. PSYCHOL. TYPE 55, 55–56 (1981) (reporting data gathered by P.V.R. Miller in 1965 and 1967).

²⁰⁴ Seventy-eight percent of University of Florida law students surveyed in the 1980s indicated a thinking preference, and this included 82% of the men and 70% of the women. *Forever Jung*, *supra* note 32, at 17. This was very similar to the 73% of 2248 law students surveyed in the 1960s expressed a thinking preference. Natter, *supra* note 203, at 56.

²⁰⁵ Chris Guthrie, *The Lawyer’s Philosophical Map and the Disputant’s Perceptual Map: Impediments to Facilitative Mediation and Lawyering*, 6 HARV. NEGOT. L. REV. 145, 156 (2001).

²⁰⁶ *Id.* One lawyer described legal education “as a process in which the left brain circles around the right brain and eats it.” David A. Hoffman, *Paradoxes of Mediation*, DISP. RESOL. MAG., Fall 2002, at 23, 23. This perspective draws on generalizations regarding human brains which feature an “analytical, verbal left hemisphere” and an “intuitive, creative right hemisphere.” WINIFRED GALLAGHER, RAPT: ATTENTION AND THE FOCUSED LIFE 71 (2009). The left hemisphere “has many small, well-defined [neural] connections that process the details of experience” and support “math, speech, analysis, and logic.” TRAVIS, *supra* note 147, at 54. The right hemisphere has more global circuits composed of long-range connections that integrate larger contexts of experiences and “support[s] insight, aesthetics . . . and imagination.” *Id.* Recent neuroscience research suggests that performing challenging tasks, like those appropriate professional identity demands, involve both brain hemispheres and effective neural harmony between them; this allows analysis and synthesis to support and enrich both hemispheres. *See id.* at 55–56.

²⁰⁷ Guthrie, *supra* note 205, at 156.

²⁰⁸ *See MacCrate Report*, *supra* note 5, at 239–41.

as students develop a professional identity and the relevant competence in interviewing, counseling, and exercising other client-focused behaviors.²⁰⁹ Thinking-feeling preferences potentially influence both broad role choices and specific action decisions in lawyer-client interactions.

For example, strong, unrestrained thinking influences may lead to adopting leading and controlling as the most appropriate roles for lawyers to play in their client interactions.²¹⁰ These influences may incline law students and lawyers to view recommending best options and telling clients what to decide as their primary role when helping clients make decisions.²¹¹ These influences may also impact tendencies to view substantive legal knowledge, relevant facts, and likely legal outcomes as the most important factors that should drive client decisions.²¹²

Extreme forms of these behaviors resulting from these roles are unprofessional and violate the collaborative, client-centered approach that the ABA Model Rules of Professional Conduct mandate.²¹³ Model Rule 1.4 requires that lawyers help clients make decisions by providing sufficient information to allow them to produce informed choices.²¹⁴ Model Rule 1.0(e) explains that the information required for making informed decisions encompasses providing adequate information explaining proposed conduct options along with their material risks and reasonably available alternatives and their risks.²¹⁵

These role conceptions also facilitate unprofessionally extending the authority Model Rule 1.2 gives to lawyers to decide means of representation issues while respecting client autonomy to decide the ends and objectives of legal representation.²¹⁶ A comment to Model Rule 1.2 requires lawyers to consult with clients regarding means of representation

²⁰⁹ See CARNEGIE REPORT, *supra* note 1, at 128.

²¹⁰ See COCHRAN ET AL., *supra* note 106, at 2 (explaining that lawyers embracing an authoritarian approach to counseling assume that they are able to be disinterested and make objective decisions).

²¹¹ See THOMAS L. SHAFFER ET AL., LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL 54, 56 (4th ed. 2005). These roles flow from carrying legal knowledge and expertise to their logical extremes and concluding that the reasons clients hire them is to do what they are told. These roles encompass deciding what clients should do and insisting on rigid client compliance with these commands. *Id.* at 57. They also frequently include sharing “unsolicited advice,” making “grandiose claims and arguments,” and frequently referring to legal aspects that are beyond their clients’ understanding. *Id.*

²¹² See COCHRAN ET AL., *supra* note 106, at 2–3 (discussing how authoritarian lawyers assume solutions are primarily technical and lawyers are experts in the technical information needed to arrive at correct decisions).

²¹³ See *id.* at 4.

²¹⁴ MODEL RULES OF PROF’L CONDUCT R. 1.4 (2013).

²¹⁵ *Id.* R. 1.0(e).

²¹⁶ *Id.* R. 1.2.

decisions regarding expense issues and impacts on others not actually involved.²¹⁷

This ends-means distinction in Model Rule 1.2 has been criticized as not realistically reflecting the majority of decisions that lawyers help clients make in multi-issue deal-making and dispute-resolving situations.²¹⁸ These multi-issue contexts are seldom sufficiently linear to draw clear ends-means distinctions. Instead, most decisions lawyers must help clients make inevitably require weighing consequences and choosing between differing sets of advantages and disadvantages presented by multiple pertinent options.²¹⁹

This reality has led many scholars to recommend a collaborative, client-centered role, which gives clients autonomy to make all decisions that have a substantial legal and non-legal impact on them and their situations.²²⁰ This approach best respects the neuroscience research showing that human brains are wired to need autonomy, and that persons are motivated to possess and exercise the ability to make decisions affecting them.²²¹ It also reflects the reality that clients are better situated to identify and assess non-legal consequences, which usually contribute more to their personal satisfaction regarding outcomes than legal consequences do.²²² Substantial uncertainties invariably exist, and clients, not lawyers, should decide acceptable risk levels regarding them.²²³ In addition, different and potentially conflicting interests between lawyers and their clients regarding economic and reputation issues exist in most,

²¹⁷ *Id.* cmt. 2.

²¹⁸ See DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 322 (3d ed. 2012) (noting that using an ends-means distinction is unworkable).

²¹⁹ See *id.* at 328; COCHRAN ET AL., *supra* note 106, at 110.

²²⁰ See, e.g., ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, *INTERVIEWING, COUNSELING, AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION* 255–56 (1990); BINDER ET AL., *supra* note 218, at 323–24; COCHRAN ET AL., *supra* note 105, at 6. This approach “focuses on the likely impacts on individual clients, rather than on fuzzy distinctions between ‘ends’ and ‘means.’” BINDER ET AL., *supra* note 218, at 325.

²²¹ See Lack & Bogacz, *supra* note 82, at 46. “There is a broad consensus within Western ethical systems . . . [that] individuals should control decisions that affect them.” COCHRAN ET AL., *supra* note 106, at 3. “[T]he intrinsic desirability of exercising the capacity for self-determination” links autonomy to activity, and the “higher forms of consciousness . . . are distinctive of human potential.” *Id.* (quoting GERALD DWORKIN, *THE THEORY AND PRACTICE OF AUTONOMY* 112 (1988)).

²²² BINDER ET AL., *supra* note 218, at 5 (explaining that crucial “non-legal ramifications are typically embedded in solutions to legal problems”). Clients possessing similar legal problems often have very different non-legal interests because of variations in “circumstances, values and personalities.” *Id.* at 6.

²²³ *Id.* at 7 (noting that most decisions needed to resolve legal problems exist under “conditions of uncertainty”). Clients, as owners of legal problems, should determine how great a risk they are willing to accept regarding possibilities that potential consequences will occur as predicted instead of unforeseen outcomes. *Id.*

if not all, difficult decisions.²²⁴ These potentially conflicting interests provide another justification for lawyers to defer regarding all choices carrying substantial legal or non-legal impacts.²²⁵

Typical feeling preference action inclinations may help law students learn and exercise behaviors that better demonstrate this collaborative client-centered role perspective regarding lawyer-client decision making. These behavioral tendencies may influence adopting and performing actions that consistently empower and appropriately follow client leadership regarding all decisions having substantial non-legal and legal impacts. They may help law students adopt a primary role that emphasizes informing clients and facilitating decisions that best maximize client satisfaction. These inclinations also may help law students understand that subjective, non-legal factors are usually equally or more important than predicted legal outcomes in achieving maximum client satisfaction.

Beyond fundamental role adoptions and actions demonstrating them, developing professional identity in client relationships requires competent performance of many specific behaviors pursuing two goals simultaneously. Legal interviewing scholars suggest that these objectives are: “(1) building and maintaining an effective working relationship with clients; and (2) acquiring complete and accurate information about their situations and desires.”²²⁶ Psychological type’s thinking and feeling preferences influence behavioral tendencies, potentially encouraging both effective and ineffective actions that pursue these objectives.

A preference for thinking, for example, may influence generally ineffective actions that result in dominating topic selection and

²²⁴ See Lisa G. Lerman, *Lying to Clients*, 138 U. PA. L. REV. 659, 662 (1990).

²²⁵ BINDER ET AL., *supra* note 218, at 321 (explaining that lawyers and clients often have conflicting interests, creating strong temptations for lawyers to influence decisions that advance their personal interests); see ROBERT H. MNOOKIN, SCOTT R. PEPPET, & ANDREW S. TULUMELLO, *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES* 10, 74–76 (2000) (arguing that potential conflicting interests exist by virtue of inevitable differences in information and incentives when clients delegate tasks to lawyers). Research suggests that all too often lawyers put their own self interests ahead of their client’s concerns. See, e.g., Lerman, *supra* note 224, at 662; Kevin McMunigal, *Rethinking Attorney Conflict of Interest Doctrine*, 5 GEO. J. LEGAL ETHICS 823, 831 (1992).

²²⁶ *Maybe That’s Why I Do That*, *supra* note 32, at 171; see also BASTRESS & HARBAUGH, *supra* note 220, at 62; *Organizing Matrimonial Interviews*, *supra* note 31, at 259. The primary value advocated in clinical interviewing and counseling literature is that lawyers conducting interviews should act in ways that build effective relationships with their clients. *Organizing Matrimonial Interviews*, *supra* note 31, at 260. Relationship goals include building “an interactive dynamic that facilitates the development of mutual trust, confidence, and respect between client and lawyer.” *Id.* at 260–61; see also MARK K. SCHOENFIELD & BARBARA PEARLMAN SCHOENFIELD, *INTERVIEWING AND COUNSELING* 1 (1981); SHAFFER ET AL., *supra* note 211, at 77.

conversation agendas.²²⁷ It can influence choosing to phrase questions and comments as initiatives to persuade and control rather than as efforts to inform and motivate.²²⁸ A psychological type preference for thinking may also influence ineffective actions that emphasize expertise, authority, and insider status²²⁹ and diminish or ignore non-legal factors and interests.²³⁰

²²⁷ Lawyers often begin controlling their representation of clients by dominating their interviews with them. COCHRAN ET AL., *supra* note 106, at 14. This control encompasses the topics discussed and the sequence in which they are explored. *Id.* Research suggests that this frequently occurs in practice. *See, e.g., id.* at 16 (“Lawyers, particularly those unaware of their own cognitive tendencies, [often channel] conversation into areas of the law that are more familiar to and more comfortable for the lawyer.”); Carl J. Hosticka, *We Don’t Care About What Happened, We Only Care About What Is Going to Happen: Lawyer-Client Negotiations of Reality*, 26 SOC. PROBS. 599, 600–01, 604 (1979) (explaining that legal services lawyers often exercised control by selecting topics, changing topics, and initiating who should speak); Gary Neustadter, *When Lawyer and Client Meet: Observations of Interviewing and Counseling Behavior in the Consumer Bankruptcy Law Office*, 35 BUFF. L. REV. 177, 207 (1986) (discussing how lawyers often demonstrated a predisposition for one form of bankruptcy and did not even explore other forms).

²²⁸ Questions may be used to dominate and control. *See* BASTRESS & HARBAUGH, *supra* note 220, at 288 (noting that lawyers often view their role as gathering facts toward their selection of the most advantageous option, which typically reflects what best enhances the lawyer’s profit and status). Questions that are phrased narrowly to seek only a specific detail in a particular context or suggestively by containing the answer they seek are most commonly used to control and persuade. Research suggests a tendency of lawyers to control interviews by primarily using closed inquiry. *See, e.g.,* Gary Bellow, *Turning Solutions into Problems: The Legal Aid Experience*, 34 NLADA BRIEFCASE 106, 112–13 (1977); Hosticka, *supra* note 227, at 606; Neustadter, *supra* note 227, at 229. Extensive use of closed questions diminishes client engagement in “identifying problems and actively participating in their resolution.” BINDER ET AL., *supra* note 218, at 71. Hosticka’s study of legal services interviews showed that over 90% of the lawyers’ statements were instances of topic control and 21.8% were leading questions that suggested desired answers. Hosticka, *supra* note 227, at 605.

²²⁹ COCHRAN ET AL., *supra* note 106, at 17 (suggesting that lawyers often steer interviewing conversations toward their status as legal system insiders and sell this insider status rather than their legal knowledge); *see* Austin Sarat & William L.F. Felstiner, *Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer’s Office*, 98 YALE L.J. 1663, 1664 (1989).

²³⁰ American legal education strongly influences law students and practicing lawyers to perceive and act through “law-based, rights-oriented lenses.” Don Peters, *It Takes Two to Tango, and to Mediate: Legal Cultural and Other Factors Influencing United States and Latin American Lawyers’ Resistance to Mediating Commercial Disputes*, 9 RICH. J. GLOBAL L. & BUS. 381, 406 (2010) [hereinafter *Two to Tango*]; *see* Guthrie, *supra* note 205, at 160. These lenses translate complex, multi-factor situations into manageable frames for adjudicatory resolution. *See* Guthrie, *supra* note 205, at 158, 174–75. They encourage interviews focused on legally-authorized causes of action; facts which substantiate or refute them; and key damage, evidence, and proof matters. *See id.* at 174–75. They also tend to discourage interviewing regarding interests, non-monetary considerations, and relational issues, such as reorienting parties to each other and promoting respect, affinity, and autonomy. *See id.*; Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and their Clients*, 7 HARV. NEGOT. L. REV. 1, 16 (2002).

A feeling preference, on the other hand, can influence generally effective actions that encourage clients to select conversation agendas and topics.²³¹ It may influence actions and the phrasing of comments and questions in efforts to empower and inform.²³² It can also influence actions that emphasize clients' situational expertise and non-legal concerns and interests.²³³

Demonstrating that type inferences may often influence effective as well as ineffective behavioral inclinations, a thinking preference may influence necessary actions that fully explore topics that clients are likely to experience as difficult or uncomfortable.²³⁴ Thinking judgment likely helps law students and lawyers inform clients fully regarding potential disadvantages of decision options and give other forms of bad news.²³⁵ The natural impersonal stance a thinking judgment preference encourages helps maintain appropriately objective perspectives and avoid over-identifying with clients or their situations in counterproductive ways. Finally, tendencies to criticize rather than appreciate are likely to help law students and lawyers share constructive feedback regarding client actions that are ineffective or contextually inappropriate.

Similarly, a feeling preference may influence ineffective behavioral inclinations that lead law students and lawyers to over-identify with clients or their situations and lose necessary objective perspectives.²³⁶ The influences of feeling judgment may challenge law students and lawyers to explore difficult, potentially uncomfortable topics fully and to provide complete information regarding potential disadvantages.²³⁷ A feeling preference may also influence reluctance and discomfort creating less than effective actions giving bad news, confronting clients appropriately, and providing warranted constructive feedback.²³⁸

Thinking or feeling psychological type preferences potentially influence core actions dealing with and responding to communicated

²³¹ See *Forever Jung*, *supra* note 32, at 64–65 (“Significant correlations exist between a feeling preference and the use of cooperative behaviors”).

²³² See *id.* at 65.

²³³ See COCHRAN ET AL., *supra* note 106, at 240 (noting that students and lawyers preferring feeling tend to look for solutions that fully meet all the needs of their clients).

²³⁴ See *id.* (discussing how law students and lawyers preferring thinking have natural tendencies to question case strengths and push their clients to shore up potential weaknesses).

²³⁵ See *id.*

²³⁶ *Id.* (explaining that law students and lawyers preferring feeling run risks of over-identifying with their clients).

²³⁷ See *id.* (noting that law students and lawyers preferring feeling “can have difficulty standing back and objectively critiquing the case or challenging the client on difficult issues or inconsistent facts”).

²³⁸ See *id.*

feelings, and emotions comprise an essential aspect of all relationships, including those between attorneys and clients. All human decisions are influenced by emotions.²³⁹ Neuroscience demonstrates that all human cognitive, emotional, and behavioral activities start with perception.²⁴⁰ Consequently, everything felt, thought, and done starts with meanings humans attribute to their perceptions.²⁴¹ Substantial portions of these perceptions are first processed by limbic brain systems, which generate emotions.²⁴² These initial emotion-based assessments operate quickly and independently of prefrontal cortex systems.²⁴³ They also provide interpretations that influence immediate behaviors or subsequent cognitive assessments and resulting actions in complex ways.²⁴⁴

Contemporary neuroscience's insight that suppressing emotions during lawyer-client interactions is neither possible nor productive encourages action theories and behaviors that are likely to engender positive rather than negative emotional reactions. Humans possess core concerns that are present in all interactive contexts and that usually "stimulate positive emotions," if met, and negative feelings, if ignored.²⁴⁵ These concerns reflect basic human needs and reflect how humans want to be treated.²⁴⁶ How humans assess others' responses to these core concerns usually manifests as emotions, and these feelings often influence subsequent behaviors.²⁴⁷

Action theories underlying many of the specific effective and ineffective behaviors described earlier²⁴⁸ are designed to demonstrate sensitivity to these core concerns. They enhance likelihoods that resulting emotions will be positive and influence productive, non-defensive behaviors.²⁴⁹ Three of these important concerns are appreciation, affiliation, and autonomy.²⁵⁰

²³⁹ LEHRER, *supra* note 136, at xv (stating that whenever a human makes decisions, "the brain is awash in feeling" and even when she tries to be rational and logical, "these emotional impulses . . . influence judgment").

²⁴⁰ Lack & Bogacz, *supra* note 82, at 38.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.* at 39–40.

²⁴⁴ See Miller & Cohen, *supra* note 82, at 171; Donald C. Peters, *Neuroscience Justifications for Collaborative Mediation Advocacy*, 2014 ASIAN J. MEDIATION 82, 84 [hereinafter *Neuroscience Justifications*].

²⁴⁵ ROGER FISHER & DANIEL SHAPIRO, BEYOND REASON: USING EMOTIONS AS YOU NEGOTIATE 15–18 (2005).

²⁴⁶ *Id.* at 15–16.

²⁴⁷ See *id.* at 18.

²⁴⁸ See *supra* notes 183–85, 192, 198–208 and accompanying text.

²⁴⁹ See FISHER & SHAPIRO, *supra* note 245, at 18, 20.

²⁵⁰ *Id.* at 15–21.

A concern for feeling appreciated encompasses experiencing that one's emotions are acknowledged and one's interests, perspectives, and comments are perceived to have merit.²⁵¹ "Being heard and understood [usually] makes speakers feel better both about the person with whom they are communicating and the process of talking with him or her."²⁵² These experiences also typically motivate further information sharing.²⁵³

A concern for affiliation incorporates a sense of connectedness with others and makes working together easier.²⁵⁴ Recent neuroscience discoveries demonstrate that humans are neurally wired to connect, making connecting one of the human brain's capacities.²⁵⁵ Neuroscience research also shows that humans manifest increased abilities to trust and empathize with others with whom they affiliate genuinely.²⁵⁶ The core concern of autonomy was described earlier.²⁵⁷

Needs to respond positively to core concerns of appreciation, affiliation, and autonomy are encountered in all lawyer-client interactions, and listening usually supplies the most effective actions to accomplish these objectives.²⁵⁸ Two approaches to listening are passive and active.²⁵⁹ Passive listening requires remaining silent and encouraging others to talk without interruption.²⁶⁰ Active listening requires making verbal responses that paraphrase or summarize the content of what speakers say or that acknowledge communicated emotions without judgment, analysis, or reassurance.²⁶¹

Using active listening responses by making statements that acknowledge emotions communicated demonstrates understanding and merit by recognizing and valuing the sharing of these intimate human

²⁵¹ *Id.* at 15, 17.

²⁵² BINDER ET AL., *supra* note 218, at 27–28; see CARL R. ROGERS, COUNSELING AND PSYCHOTHERAPY 131–33 (1942); John L. Barkai & Virginia O. Fine, *Empathy Training for Lawyers and Law Students*, 13 SW. U. L. REV. 505, 507 n.13, 515 (1983); *Organizing Matrimonial Interviews*, *supra* note 31, at 279.

²⁵³ *Organizing Matrimonial Interviews*, *supra* note 31, at 279.

²⁵⁴ *Id.*

²⁵⁵ DANIEL GOLEMAN, SOCIAL INTELLIGENCE: THE NEW SCIENCE OF HUMAN RELATIONSHIPS 4–5 (2006) [hereinafter SOCIAL INTELLIGENCE].

²⁵⁶ Lack & Bogacz, *supra* note 82, at 44.

²⁵⁷ See *supra* notes 143–44, 214–26 and accompanying text.

²⁵⁸ See FISHER & SHAPIRO, *supra* note 245, at 28–29, 33–35, 57–58, 84–89.

²⁵⁹ *Organizing Matrimonial Interviews*, *supra* note 31, at 277.

²⁶⁰ *Id.* Effective passive listening actions also encompass "maintaining attentive [and culturally appropriate] eye contact" and providing quasi-verbal and "non-verbal encouragement to communicate." *Id.*

²⁶¹ BINDER ET AL., *supra* note 218, at 46–47, 50, 55, 57. Described as "the 'most effective talk tool that exists for demonstrating understanding and reducing misunderstanding,'" active listening is the "process of picking up [speakers'] messages and sending them back in reflective statements." *Id.* at 46–47.

experiences.²⁶² When made in response to strong emotional communications, these statements may calm amygdala-stimulated fight or flight response tendencies and actions, activate pre-frontal cortex neural paths, engage cortical inhibitory systems, and ameliorate further negative emotion-influenced actions.²⁶³ Making active listening statements that neutrally paraphrase or summarize the non-emotional content of what clients communicate expresses merit by valuing others sufficiently to demonstrate hearing and understanding what they said.²⁶⁴ They also decrease misperceptions and misunderstandings by giving clients opportunities to correct them.²⁶⁵

These active listening responses supply the most effective ways lawyers can experience and express empathy.²⁶⁶ Empathy involves understanding the experiences, views, behaviors and feelings of others and expressing these understandings neutrally without judgment or analysis.²⁶⁷ Perhaps because emotions reflect core limbic brain responses stimulating intimate, often intense universal human experiences of fear, anger, sadness, surprise, happiness, and disgust,²⁶⁸ genuine statements acknowledging these emotions express empathy powerfully. Making

²⁶² See BINDER ET AL., *supra* note 218, at 28.

²⁶³ See RICHARD J. DAVIDSON, *THE EMOTIONAL LIFE OF YOUR BRAIN* 71 (2012). Acknowledging strong emotions stimulates prefrontal cortex consideration of the existence and accuracy of feelings identified. This may afford opportunities for prefrontal activity talking back to and analyzing negativity bias-influenced action tendencies and amygdala hijacking impulses. It may create prefrontal influences resulting in different ways to react, and may also lessen the need to express negative emotions further because they have been heard and understood. It may produce a form of resilience that is reflected in more productive future actions. See *id.* at 243–44.

²⁶⁴ BINDER ET AL., *supra* note 218, at 27–28.

²⁶⁵ *Id.* at 46, 51.

²⁶⁶ *Id.* at 47–48; see Barkai & Fine, *supra* note 252, at 506–07; *Organizing Matrimonial Interviews*, *supra* note 31, at 280. Closely focusing on and attending to non-verbal and verbal communications sufficient to permit responses that paraphrase and summarize the non-emotional dimensions and acknowledge the feeling components provides the optimal way for lawyers to set aside their agendas, assumptions, and expectations in order to understand another's experiences, views, behaviors, and feelings. See BINDER ET AL., *supra* note 218, at 47–48.

²⁶⁷ Steven Hartwell, *Moral Development, Ethical Conduct, and Clinical Education*, 35 N.Y.L. SCH. L. REV. 131, 150 n.116 (1990) (defining empathy as “accurately identifying and sensitively responding to the feelings and the ideas of another person”) [hereinafter *Moral Development, Ethical Conduct*]; Lauren Wispé, *The Distinction Between Sympathy and Empathy: To Call Forth a Concept, a Word is Needed*, 50 J. PERSONALITY & SOC. PSYCHOL. 314, 314 (1986) (defining empathy as “the attempt of one self-aware self to understand the subjective experiences of another self”).

²⁶⁸ Research shows that these are basic emotions found in all humans even though individuals differ in how they experienced and are strongly influenced by cultural rules regarding displaying them. PAUL EKMAN, *EMOTIONS REVEALED: RECOGNIZING FACES AND FEELINGS TO IMPROVE COMMUNICATION AND EMOTIONAL LIFE* 15, 213–16 (2003).

statements acknowledging the emotional content of a speaker's communication accurately and non-judgmentally demonstrates that law students and lawyers can enter their clients' world and see it from their perspectives.²⁶⁹ It proves that these law students and lawyers are, in a powerful sense, feeling with, not for, their clients. This is the crucial distinction between empathy and sympathy.²⁷⁰

Even though research shows that professional "success in law [practice] correlates significantly more with relationship skills than it does with knowledge of substantive law,"²⁷¹ American law schools are not doing much to teach their students how to properly recognize and deal with emotions.²⁷² Reflecting the overwhelming predominance of thinking over feeling preferences, studies show that American law students and lawyers have relatively underdeveloped interpersonal and emotional capacities.²⁷³ Not surprisingly, research also shows that many lawyers seldom express empathy in their client interactions.²⁷⁴

²⁶⁹ Humans usually "want and need to have their feelings heard and understood[,] rather than analyzed, judged or minimized." *Organizing Matrimonial Interviews*, *supra* note 31, at 281. The message clients usually receive when their lawyers do not listen actively to acknowledge their feelings is that their emotions "are not important." *Id.* at 281–82. This unfortunate message directly contradicts the crucial importance of emotions to humans, which are critical to humans' decision making processes. *See* LEHRER, *supra* note 136, at 15–17.

²⁷⁰ While the concept of empathy traces back to Plato, the current word derives from a translation of "*Einführung*, a German word meaning 'feeling into' in an aesthetic sense." *Organizing Matrimonial Interviews*, *supra* note 31, at 280 n.74.

²⁷¹ Nancy A. Welsh, *Looking Down the Road Less Traveled: Challenges to Persuading the Legal Profession to Define Problems More Humanistically*, 2008 J. DISP. RESOL. 45, 56. Empirical data suggests that clients are most satisfied with lawyers who possess the best personal skills. Stephen Feldman & Kent Wilson, *The Value of Interpersonal Skills in Lawyering*, 5 LAW & HUM. BEHAV. 311, 311 (1981).

²⁷² *Two to Tango*, *supra* note 230, at 411.

²⁷³ Guthrie, *supra* note 205, at 156. American lawyers and law students are "less interested in people, in emotions, and interpersonal concerns." Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1405 (1997). For example, limited empirical research suggests relatively infrequent use of active listening responses during initial interviews. In an analysis of 23 actual interviews in a clinic representing low-income clients seeking to end their marriages, "the average use of active listening responses . . . , compared to all inquiry and other listening responses, was seventeen percent." *Maybe That's Why I Do That*, *supra* note 32, at 191–92 (citation omitted).

²⁷⁴ BINDER ET AL., *supra* note 218, at 48 (noting lawyers generally "pay too little attention to clients' feelings"). Lawyers and law students "are prone to seeing themselves as rational fact-gatherers and decision-makers" and "tend to perceive feelings as either irrelevant or as unwelcome impediments to what should ideally be . . . completely rational" processes and interactions. *Id.*; *see also* ROWAN BAYNE, IDEAS AND EVIDENCE: CRITICAL REFLECTIONS ON MBTI THEORY AND PRACTICE 55 (2005) [hereinafter IDEAS AND EVIDENCE] (noting persons preferring thinking decision-making tend to believe that emotions interfere with good decisions, cloud effective judgments, and should be kept in their place).

Although more empirical knowledge about how lawyers actually behave in client interactions is needed, indications exist that these underdeveloped interpersonal and emotional capacities influence behaviors that fail to demonstrate appropriate professional identity.²⁷⁵ Research suggests that lawyers routinely have difficulty giving up control, listening, not interrupting, and empathizing.²⁷⁶ Many lawyers often tell clients what to do.²⁷⁷ Many also commonly over-emphasize expertise, insider status, and legal rights-based inquiry and de-emphasize or ignore exploring non-legal interests.²⁷⁸ Less than competent communication skills often appear as the basis of client complaints about attorneys.²⁷⁹ These complaints encompass failing to solicit or listen to client concerns before proceeding and handling legal matters without fully informing clients of risks.²⁸⁰

Insights derived from type theory's thinking-feeling dimension may help law students develop more competent action habits regarding general relational and specific empathy challenges. Skilled active listening and empathizing require actions generally more influenced by feeling than thinking behavioral tendencies. These skills require giving up control, stepping into rather than away from situations, valuing speakers' emotional and content agendas, and avoiding forming and expressing logical, impersonal analysis and judgment.

A common behavioral tendency influenced by a feeling preference is greater initial sensitivity to the subjective relational aspects than to the objective task dimensions of interpersonal interactions.²⁸¹ The

²⁷⁵ Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 PSYCHOL. PUB. POL'Y. & L. 1173, 1182 (1999).

²⁷⁶ See *supra* notes 228–29, 274 and accompanying text.

²⁷⁷ Stephen Ellmann, *Lawyers and Clients*, 34 UCLA L. REV. 717, 718 (1987). For example, a study of 699 public defenders from 5 different jurisdictions showed a majority advocated a lawyer-centered rather than client-centered approach to decision making, and most agreed that only 4 of 12 strategic decisions they repeatedly confronted required client consent. Rodney J. Uphoff & Peter B. Wood, *The Allocation of Decisionmaking Between Defense Counsel and Criminal Defendant: An Empirical Study of Attorney-Client Decisionmaking*, 47 U. KAN. L. REV. 1, 31–34, 38 (1998); see also Bastress & Harbaugh, *supra* note 220, at 288 (stating lawyers often organize interviews and counseling conferences to influence clients to select options that best enhance their profit and status).

²⁷⁸ See *supra* notes 230–31 and accompanying text.

²⁷⁹ Stephen E. Schemenauer, Comment, *What We've Got Here . . . Is a Failure . . . to Communicate: A Statistical Analysis of the Nation's Most Common Ethical Complaint*, 30 HAMLINE L. REV. 629, 632 (2007).

²⁸⁰ *Id.*; Lisa G. Lerman, *Lying to Clients*, 138 U. PA. L. REV. 659, 670–71 (1990).

²⁸¹ See, e.g., BARR & BARR, *supra* note 47, at 104 (suggesting persons preferring feeling judgment tend to focus “first with the agreeable-disagreeableness of an interaction” and then focus on specific tasks); HIRSH & KUMMEROW, *supra* note 58, at 46–47 (noting that persons preferring feeling judgment typically consider “underlying values and human needs when making work-related decisions”); KROEGER & THUESEN, *supra* note 45, at 74 (observing that

comparatively small number of law students and lawyers who prefer feeling decision-making are likely to experience more behavioral tendencies to use active listening responses because doing this requires valuing others.²⁸² Because of their probable heightened sensitivity to others' affective agendas, they are also likely to be drawn to and more comfortable making active listening responses that acknowledge strong emotional expressions.²⁸³ Research in a law school family law clinic setting found that law students who prefer thinking judgment missed twice as many opportunities to acknowledge emotions during interviews with clients seeking to end their marriage than did students preferring feeling judgment.²⁸⁴

Research suggests that following the recommendations from the Carnegie Foundation and the ABA Accreditation Standards for more instruction and practice to develop competent skills in lawyer-client contexts will produce more knowledge and effective actions in these contexts.²⁸⁵ With appropriate instruction and practice opportunities, law students have improved their active listening, emotion recognition, and acknowledgment skills in clinical courses.²⁸⁶ They also have improved their questioning skills.²⁸⁷

persons preferring feeling judgment want work goals that reflect concern for everyone involved).

²⁸² *Forever Jung*, *supra* note 32, at 65; *see* IDEAS AND EVIDENCE, *supra* note 274, at 55 (stating that persons preferring feeling judgment often perceive that logic misses main points and that emotions are central to effective decisions because they signal what matters most).

²⁸³ *Forever Jung*, *supra* note 32, at 66.

²⁸⁴ *Maybe That's Why I Do That*, *supra* note 32, at 170, 174–75, 195 & n.91 (reflecting on analysis of data taken from transcriptions of twenty-three actual interviews with clients seeking representation in the Virgil Hawkins Civil Clinic at the University of Florida College of Law). Demonstrating the unreliability of using type theory to predict behavior, the twelve students preferring thinking in the study averaged three feeling acknowledgement responses per interview, one more than the eleven students preferring feeling. *Id.* at 194 n.89.

²⁸⁵ *See infra* notes 286–87 and accompanying text.

²⁸⁶ Barkai & Fine, *supra* note 252, at 508, 526–27 & nn.63–64 (observing that students increased empathy scale measurements from a pretest mean of 2.46 to a 4.91 on the Truax Accurate Empathy Scale after four hours of instruction); *Maybe That's Why I Do That*, *supra* note 32, at 192 (noting that students increased their use of active listening from an average of 7% of total responses on a pretest simulated interview to 17% during their actual interviews); *see also* BENJAMIN POPE, THE MENTAL HEALTH INTERVIEW: RESEARCH AND APPLICATION 358 (1979) (concluding that empathy is teachable).

²⁸⁷ Students have increased their use of open inquiry, using questions phrased to invite broad, minimally restricted responses to instructional units emphasizing the value of these actions in interviewing contexts. *Organizing Matrimonial Interviews*, *supra* note 31, at 264, 284 & nn.23 & 84 (finding that students used an average of 7% open inquiry in actual client interviews after 20 hours of instruction, as compared to 2% before); Paula L. Stillman et al., *Use of Client Instructors to Teach Interviewing Skills to Law Students*, 32 J. LEGAL

Substantial neuroscience evidence suggests that human brains possess neural circuitry that potentially operates in social interactions and facilitates experiencing and expressing empathy.²⁸⁸ Mirror neurons “sense both the move another person is about to make and their feelings, and instantaneously prepare us to imitate that movement” and empathize with these emotions.²⁸⁹ Mirror neurons also “prime circuitry that connects the [brain’s] insula and premotor cortex with the limbic system” and facilitates reading and responding to emotional messages in another person’s tone of voice.²⁹⁰ Different neurons in the fusiform area of a brain’s temporal lobe help humans recognize and interpret emotions from facial expressions.²⁹¹ Simply learning of this existing brain circuitry may help students start to counter non-empathic action inclinations potentially influenced by their thinking judgment preference with more empathic behaviors.

The large percentage of law students who prefer thinking judgment are likely to benefit from instruction and practice that identifies and challenges their potentially type-influenced behavioral tendencies to avoid or deemphasize recognizing and acknowledging emotions when interviewing clients and helping them make decisions. Providing opportunities to see more relationship and emotion-sensitive behaviors demonstrated by colleagues who prefer feeling and instructors who have acquired these action habits often helps students who prefer thinking see their value.²⁹² It helps them perceive acquiring these action habits as necessary, though admittedly often difficult, challenges to embrace and overcome.²⁹³

EDUC. 395, 400–01 (1982) (finding that law students increased their use of open questions after receiving simulation-based instruction).

²⁸⁸ See MARCO IACOBONI, MIRRORING PEOPLE 118–19 (2008); CHRISTIAN KEYSERS, THE EMPATHIC BRAIN: HOW THE DISCOVERY OF MIRROR NEURONS CHANGES OUR UNDERSTANDING OF HUMAN NATURE 221–22 (2011). Many prominent neuroscientists, however, express uncertainty regarding whether mirror neurons exist. See Richard Birke, *Neuroscience and Settlement: An Examination of Scientific Innovations and Practical Applications*, 25 OHIO ST. J. ON DISP. RESOL. 477, 482 (2010).

²⁸⁹ SOCIAL INTELLIGENCE, *supra* note 255, at 9, 324.

²⁹⁰ *Id.* at 324–25.

²⁹¹ *Id.* at 325.

²⁹² For example, one of co-Author Don Peters’s students who preferred thinking wrote at the end of a negotiation course: “At first, these tools [active listening and process comments] seemed like little more than time wasters employed to stroke a counterpart’s ego, which shouldn’t need stroking. In the end, though, I began to understand a few things: People’s egos need occasional stroking regardless of whether they should.” *Forever Jung*, *supra* note 32, at 66 n.316 (alteration in original).

²⁹³ See *Forever Jung*, *supra* note 32, at 111. Another thinking-preferring student with whom Don Peters worked in a negotiation course wrote: “I found [active listening] difficult to implement as a deliberate planned response [because it required] fighting against my

Experiencing and receiving formative assessment-feedback regarding these core relationship-relevant actions from colleagues, instructors, and themselves in journaling, action-based rubrics, and other self-reflection contexts increase likelihoods that these students will change their professional identity stories. These educational processes increase chances that students will tell themselves professional identity stories that include collaboration, connection, and empathy. These experiences and formative assessments also will make it harder for students to continue telling themselves professional identity stories that emphasize the emotional detachment assumed to be essential to acting exclusively as professional technicians who handle files impersonally.

CONCLUSION

Change, like the modifications advocated by the *Carnegie Report* and mandated by the 2014 amendments to the ABA Accreditation Standards, is never easy.²⁹⁴ Replacing existing perceptions, patterns, practices, and structures requires time, determination, perseverance, and continuous experimentation, reflection, and assessment.

Making progress implementing the recommendations of both the *Carnegie Report* and the 2014 amendments to increase emphasis on and support for developing professional identity will require adding more experiential learning opportunities to existing curriculums. Research demonstrates that using effective experiential teaching approaches frequently employed to develop skill competence essential to ethical practice may “influence the moral development of [law] students.”²⁹⁵ These experiential learning processes work best when they emphasize extensive engagement and role taking, cooperative, student-centered instruction, supportive small groups, and encouragement of free expressions of emotions.²⁹⁶

This Article advocates that adding psychological type theory knowledge and insights to these learning efforts facilitates critical objectives regarding developing and enhancing self-awareness generally and empathy specifically. Self-awareness or self-knowledge supplies a foundational basis upon which law students can build professional skill

established responses to stimuli that are ingrained and emerge . . . when I react instinctively in the moment.” *Id.* at 111 n.545 (alterations in original).

²⁹⁴ See *supra* note 5 and accompanying text.

²⁹⁵ *Moral Development, Ethical Conduct*, *supra* note 267, at 167.

²⁹⁶ Steven Hartwell, *Promoting Moral Development Through Experiential Teaching*, 1 CLINICAL L. REV. 505, 505, 531–32 & n.90 (1995) [hereinafter *Promoting Moral Development*]. Carl Rogers argued persuasively that the only important learning is that which significantly influences behavior and results from efforts that are self-discovered and self-appropriated. CARL R. ROGERS, ON BECOMING A PERSON: A THERAPIST’S VIEW OF PSYCHOTHERAPY 276 (1961).

competence and identity.²⁹⁷ Preceding sections explained how self-knowledge of cognitive patterns and tendencies during learning activities enhances developing “behavioral interventions leading to new [action] habits that improve [law] study approaches and understandings.”²⁹⁸ Law students also gain valuable insights about their values and identity by learning their behavioral inclinations. They become aware of their strengths, challenges, and needs for contextually modifying their actions to achieve identified objectives.²⁹⁹ This form of self-awareness also aids students in developing skill competence essential to professional identity by helping them connect their behaviors to explicit action theories. This helps them discern action theories that they might otherwise dismiss or avoid because the recommendations require behaviors influenced by psychological type dimensions they seldom use. It also enhances developing contextual adaptations necessary to perform effectively and useful responses to unique situations where theoretical knowledge is neither sufficient nor easily accessible.³⁰⁰

Psychological type theory’s underlying premise that individuals commonly display significantly different approaches to conceptualizing and performing central interactive behaviors helps students understand their behavioral inclinations.³⁰¹ These understandings give students insights into their implicit theories of action, which drive their customary, often virtually automatic behaviors.³⁰² Developing and using behaviors based on these insights facilitates competence in performing actions while simultaneously reflecting on these behaviors to learn from them.³⁰³ This critical step in learning to learn from experience begins with self-awareness and leads directly to self-evaluation.³⁰⁴ It also enhances

²⁹⁷ See STEVEN PINKER, *HOW THE MIND WORKS* 134 (1997) (noting that self-knowledge, while important, “is no more mysterious than any other topic in perception and memory”).

²⁹⁸ See JURIS TYPES, *supra* note 30, at 5.

²⁹⁹ See ROBBENOLT & STERNLIGHT, *supra* note 168, at 387.

³⁰⁰ See *Forever Jung*, *supra* note 32, at 106–07.

³⁰¹ See *id.* at 101.

³⁰² *Id.*

³⁰³ See ARGYRIS & SCHÖN, *supra* note 80, at 18–19.

³⁰⁴ Changing legal education in response to the Carnegie and ABA accreditation amendment recommendations should improve student abilities to learn from experience. Important social science research from scholars investigating how professions learn competence shows that the most common general sets of behaviors displayed by lawyers, business executives, industrial managers, and public administrators reflect actions and implicit action theories that inhibit abilities to learn from experience. See *id.* at 68–69, 73, 81, 83–84; SCHÖN, *supra* note 84, at 256–59. These behaviors and implicit action theories orient interpersonal actions toward achieving unilaterally defined objectives, defining situations as exclusively win-lose, consistently seeking to win and avoid losing, and minimizing the open expression of feelings. SCHÖN, *supra* note 84, at 256. These implicit

learning to appreciate clients and colleagues who customarily behave differently.³⁰⁵

Taking this step significantly contributes to developing and demonstrating intrinsic values of self-understanding, appreciation of others, and self-improvement that contribute to a lawyer's well-being.³⁰⁶ These intrinsic values logically lead to actions that promote introspection, honesty, and cooperation with and respect for others.³⁰⁷ They also encourage behaviors consistent with ethical professional identity that promote integrity, candor, and, because they have developed more appreciation for different perspectives, attitudes, and behaviors others naturally possess, respectful interactions with clients, counterpart counsel and clients, and others.³⁰⁸

Self-awareness, demonstrated by recognizing feelings as they happen, supplies "the keystone of emotional intelligence,"³⁰⁹ which enhances empathic abilities and behaviors.³¹⁰ Psychological type insights often help students learn to value and exercise empathy, which, in addition to building effective lawyer-client relationships,³¹¹ also underlies ethical sensitivity and supplies a core component of professional identity.³¹² The roots of morality lie in empathy because the capacity to put oneself in another's place motivates helping actions and decisions to follow moral principles.³¹³

action theories and resulting behaviors typically create "defensive and mistrustful relationships, ineffectiveness of relationship and human systems, and long-term deterioration of problem-solving processes." Bolman, *supra* note 129, at 115; see Kreiling, *supra* note 96, at 295–96. Many aspects of these findings suggest a predominance of thinking judgment influencing implicit action theories and behaviors, and a relative absence of more relationship-oriented action theories and actions helped by influences from feeling judgment.

³⁰⁵ See *supra* notes 109–10 and accompanying text.

³⁰⁶ See *Undermining Effects on Law Students?*, *supra* note 141, at 264; see also *supra* notes 144–45 and accompanying text.

³⁰⁷ *What Makes Lawyers Happy?*, *supra* note 142.

³⁰⁸ *Id.*

³⁰⁹ DANIEL GOLEMAN, EMOTIONAL INTELLIGENCE 43 (1995) [hereinafter EMOTIONAL INTELLIGENCE].

³¹⁰ Emotional intelligence has been defined as abilities to (1) "perceive accurately, appraise, and express emotion;" (2) "access . . . feelings when they facilitate thought;" (3) "understand emotion and emotional knowledge;" and (4) "regulate emotions to promote emotional and intellectual growth." EMOTIONAL INTELLIGENCE: KEY READINGS ON THE MAYER AND SALOVEY MODEL 35 (Peter Salovey et al. eds., 2004).

³¹¹ See *supra* notes 263–71 and accompanying text.

³¹² See EMOTIONAL INTELLIGENCE, *supra* note 309, at 104–05 (arguing that to feel for another is to care for another).

³¹³ *Id.* at 105; Martin L. Hoffman, *Empathy, Social Cognition, and Moral Action*, in HANDBOOK OF MORAL BEHAVIOR AND DEVELOPMENT 275, 276 (William M. Kurtines & Jacob L. Gewirtz eds., 1991).

Empathy influences lawyers to appreciate that their representational actions affect not only themselves and their clients but others as well. This stimulates assessing actions by considering consequences to everyone while also integrating their personal needs to act consistently with internal principles.³¹⁴ This empathy-influenced approach tends to resolve ethical dilemmas in ways that avoid unnecessary harms to others. It also reflects a post-conventional stage five of moral reasoning articulated by Lawrence Kohlberg³¹⁵ because it demonstrates capacities “to differentiate and integrate conflicting ethical [and moral] responsibilities.”³¹⁶

As explained earlier, influences from a feeling judgment preference naturally produce behavioral inclinations toward empathic understandings and actions.³¹⁷ On the other hand, influences from a thinking judgment preference produce behavioral tendencies that resist forming subjective, situational understandings and encourage performing actions that are objective, impersonal, and non-empathic.³¹⁸ Students and lawyers performing actions influenced by their thinking preference may be more likely to resolve ethical dilemmas by using Kohlberg’s stage four of conventional reasoning. Stage four reflects tendencies to comply with literal text of formal ethical rules because they are impartial, impersonal guidelines.³¹⁹ “Most lawyers probably reason . . . [morally] at Stage Four.”³²⁰

Using psychological type theory effectively to develop and improve behavioral competence demonstrating professional identity requires ethical application of this knowledge. Ethical use of psychological type theory requires providing frequent reminders that everyone is an individual, that their type preferences are important elements in their individuality, and that these preferences often influence but certainly do not mandate, restrict, or limit future behaviors.³²¹ Psychological type theory preferences should be used only to provide potential explanations of, not rationalizations for, past behavior. Understanding psychological type theory and MBTI results offers valuable possibilities of drawing into conscious awareness reasons why students acted the ways they did and permits modifying future behaviors appropriately. Affording brief

³¹⁴ See Darcia Narvaez, *Integrative Educational Education*, in HANDBOOK OF MORAL DEVELOPMENT 703, 718–19 (Melanie Killen & Judith Smetana eds., 2006).

³¹⁵ See LAWRENCE KOHLBERG, *THE PHILOSOPHY OF MORAL DEVELOPMENT: MORAL STAGES AND THE IDEA OF JUSTICE* 411–12 (1981).

³¹⁶ See *Promoting Moral Development*, *supra* note 296, at 539.

³¹⁷ See *supra* notes 282–86 and accompanying text.

³¹⁸ See *supra* notes 273–75 and accompanying text.

³¹⁹ See *Promoting Moral Development*, *supra* note 296, at 510.

³²⁰ *Id.*

³²¹ BAYNE, *supra* note 56, at 5.

glimpses of some personality elements and how people often differ regarding them, psychological type theory also can help law students and lawyers better understand other's past behaviors and facilitate more effective future communication with persons who seem to perceive and act differently.

Working ethically with psychological type theory to develop professional identity and related skill competence requires honoring Jung's insistence not to use any aspect of this knowledge in restrictive or heavy-handed ways.³²² Using psychological type theory to predict specific future behavior applies this useful knowledge rigidly and unethically. It stereotypes individuals, insulting them by denying them their individual autonomy to behave as they desire.³²³ It turns psychological type theory into an inflexible form of behaviorism totally inconsistent with Jung's objective to promote awareness and self-growth. Jung embraced a wide variety of behavioral inclinations within his typology and emphasized that every individual was an exception to, as well as a reflection of, their type preferences.³²⁴

Because human brains are designed to avoid the slow, hard, uncertain tasks thinking carefully requires,³²⁵ they prefer and frequently use mental shortcuts based on their memory.³²⁶ This often makes it relatively easy for persons encountering and understanding psychological type theory superficially to overgeneralize and stereotype others by assuming how they will behave in the future and making decisions based on these assumptions.³²⁷ Jung warned future users of these risks by

³²² See SPOTO, *supra* note 38, at 4, 13, 125.

³²³ See FISHER ET AL., *supra* note 133, at 167. Beyond unethical stereotyping, future predictions based on type preferences are not likely to be reliable for several reasons. Type is only one of many factors that influence human behavior. Gilchrist, *supra* note 71, at 603 (noting that the MBTI does not explain all the complexities of human behavior); KROEGER & THUESSEN, *supra* note 45, at 48–49 (explaining that gender, ethnicity, socioeconomic factors, and many other factors contribute besides type preferences). Assuming type preferences are known or predicted accurately, people differ broadly in the degree to which they have developed effective behaviors influenced by their non-preferences. Moreover, most important lawyering tasks are complex and require effective exercise of actions potentially influenced by most, if not all, type preferences. See *supra* notes 161–63 and accompanying text.

³²⁴ Jung, *supra* note 38, at 516. Explaining the psychological type theory that underlies the MBTI, Jung wrote:

[E]very individual is an exception to the rule. Hence one can never give a description of a type, no matter how complete, that would apply to more than one individual, despite the fact that in some ways it aptly characterizes thousands of others. Conformity is one side of a man, uniqueness is the other. *Id.*

³²⁵ WILLINGHAM, *supra* note 130, at 4.

³²⁶ *Id.* at 5, 7.

³²⁷ See Marcini, *supra* note 109, at 104 (arguing that superficial understandings and inept uses of type theory generate stereotyping “that can cause and exacerbate social and individual wounds”).

acknowledging that “[t]heories in psychology are the very devil.”³²⁸ Jung gave this warning to ensure that psychological type theory should be used to promote awareness and self-growth, not to limit or stereotype others.³²⁹

Although these risks of psychological type theory’s misuse lead critics of its use in legal education to unjustifiably assume that using the MBTI will “unavoidably . . . pigeonhole and stereotype students” and faculty,³³⁰ these dangers need to be balanced against the demonstrable value of self-awareness and self-evaluation that effective, ethical use of this knowledge generates.³³¹ Proper, ethical use coupled with frequent reminders also reinforces the role purposeful thought and design can play in producing effective behavior. This belief that law students and lawyers can design and exercise effective behaviors and change less effective actions underlies existing, well-accepted, and successful approaches to developing skills competence and professional identity already in wide use in contemporary clinical legal education.

According to cognitive learning theory, skills learning, defined as a change in human behavioral ability which persists over time,³³² begins with constructs containing knowledge and suggestions regarding what actions will be effective and why. Then learning continues with activities that encourage students to confront, apply, modify, interpret and assess these constructs in the contexts of their role played and actual experiences performing these actions.³³³ Making these journeys effectively requires learning about self and others. Psychological type theory makes useful contributions to these critical steps and enhances successful journeys to competence and professional identity.

³²⁸ SPOTO, *supra* note 38, at 1 (quoting Carl G. Jung, *Psychological Types*, in THE COLLECTED WORKS OF CARL J. JUNG 7 (Herbert Read et al. eds., H.G. Baynes trans., 1971)).

³²⁹ Jung saw psychological type theory as a way of engaging persons with conscious, active participation with attitudinal, perceptual, and behavioral aspects of their personalities. *See id.* at 25.

³³⁰ Redding, *supra* note 38, at 324.

³³¹ *See* BAYNE, *supra* note 56, at 3.

³³² ROBERT M. GAGNÉ, THE CONDITIONS OF LEARNING AND THEORY OF INSTRUCTION 2 (1985).

³³³ *See* MICHAEL HUNTER SCHWARTZ ET. AL., TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM 5 (2009).