Cultural Competency Session

Thursday, September 15, 2016

Albany Marriott

CLE Course Materials and NotePad®

Complete course materials distributed in electronic format online in advance of the program.

Sponsored by the

New York State Bar Association and the Committee on Legal Aid

This program is offered for education purposes. The views and opinions of the faculty expressed during this program are those of the presenters and authors of the materials. Further, the statements made by the faculty during this program do not constitute legal advice.

Lawyer Assistance Program 800.255.0569

NYSBA

Q. What is LAP?

A. The Lawyer Assistance Program is a program of the New York State Bar Association established to help attorneys, judges, and law students in New York State (NYSBA members and non-members) who are affected by alcoholism, drug abuse, gambling, depression, other mental health issues, or debilitating stress.

Q. What services does LAP provide?

A. Services are **free** and include:

- Early identification of impairment
- Intervention and motivation to seek help
- Assessment, evaluation and development of an appropriate treatment plan
- Referral to community resources, self-help groups, inpatient treatment, outpatient counseling, and rehabilitation services
- Referral to a trained peer assistant – attorneys who have faced their own difficulties and volunteer to assist a struggling colleague by providing support, understanding, guidance, and good listening
- Information and consultation for those (family, firm, and judges) concerned about an attorney
- Training programs on recognizing, preventing, and dealing with addiction, stress, depression, and other mental health issues

Q. Are LAP services confidential?

A. Absolutely, this wouldn't work any other way. In fact your confidentiality is guaranteed and protected under Section 499 of the Judiciary Law. Confidentiality is the hallmark of the program and the reason it has remained viable for almost 20 years.

Judiciary Law Section 499 Lawyer Assistance Committees Chapter 327 of the Laws of 1993

Confidential information privileged. The confidential relations and communications between a member or authorized agent of a lawyer assistance committee sponsored by a state or local bar association and any person, firm or corporation communicating with such a committee, its members or authorized agents shall be deemed to be privileged on the same basis as those provided by law between attorney and client. Such privileges may be waived only by the person, firm or corporation who has furnished information to the committee.

Q. How do I access LAP services?

A. LAP services are accessed voluntarily by calling **800.255.0569** or connecting to our website **www.nysba.org/lap**

Q. What can I expect when I contact LAP?

A. You can expect to speak to a Lawyer Assistance professional who has extensive experience with the issues and with the lawyer population. You can expect the undivided attention you deserve to share what's on your mind and to explore options for addressing your concerns. You will receive referrals, suggestions, and support. The LAP professional will ask your permission to check in with you in the weeks following your initial call to the LAP office.

Q. Can I expect resolution of my problem?

A. The LAP instills hope through the peer assistant volunteers, many of whom have triumphed over their own significant personal problems. Also there is evidence that appropriate treatment and support is effective in most cases of mental health problems. For example, a combination of medication and therapy effectively treats depression in 85% of the cases.

Personal Inventory

Personal problems such as alcoholism, substance abuse, depression and stress affect one's ability to practice law. Take time to review the following questions and consider whether you or a colleague would benefit from the available Lawyer Assistance Program services. If you answer "yes" to any of these questions, you may need help.

1. **Are my associates, clients or family saying that my behavior has changed or that I don't seem myself?**
2. **Is it difficult for me to maintain a routine and stay on top of responsibilities?**
3. **Have I experienced memory problems or an inability to concentrate?**
4. **Am I having difficulty managing emotions such as anger and sadness?**
5. **Have I missed appointments or appearances or failed to return phone calls? Am I keeping up with correspondence?**
6. **Have my sleeping and eating habits changed?**
7. **Am I experiencing a pattern of relationship problems with significant people in my life (spouse/parent, children, partners/associates)?**
8. **Does my family have a history of alcoholism, substance abuse or depression?**
9. **Do I drink or take drugs to deal with my problems?**
10. **In the last few months, have I had more drinks or drugs than I intended, or felt that I should cut back or quit, but could not?**
11. **Is gambling making me careless of my financial responsibilities?**
12. **Do I feel so stressed, burned out and depressed that I have thoughts of suicide?**

There Is Hope

CONTACT LAP TODAY FOR FREE CONFIDENTIAL ASSISTANCE AND SUPPORT

The sooner the better!

Patricia Spataro, LAP Director

1.800.255.0569

New York State Bar Association

FORM FOR VERIFICATION OF PRESENCE AT THIS PROGRAM

Pursuant to the Rules pertaining to the Mandatory Continuing Legal Education Program for Attorneys in the State of New York, as an Accredited Provider of CLE programs, we are required to carefully monitor attendance at our programs to ensure that certificates of attendance are issued for the correct number of credit hours in relation to each attendee's actual presence during the program. Each person may only turn in his or her form-you may not turn in a form for someone else. Also, if you leave the program at some point prior to its conclusion, you should check out at the registration desk. Unless you do so, we may have to assume that you were absent for a longer period than you may have been, and you will not receive the proper number of credits.

Speakers, moderators, panelists and attendees are required to complete attendance verification forms in order to receive MCLE credit for programs. Faculty members and attendees: please complete, sign and return this form along with your evaluation, to the registration staff **before you leave** the program.

You MUST turn in this form at the end of the program for your MCLE credit.

Cultural Competency Session
Thursday, September 15, 2016 | New York State Bar Association's Committee on Legal Aid, Albany Marriott, Albany, NY

Name:
(Please print)

I certify that I was present for the entire presentation of this program

Signature: Date:

Speaking Credit: In order to obtain MCLE credit for speaking at today's program, please complete and return this form to the registration staff before you leave. **Speakers** and **Panelists** receive three (3) MCLE credits for each 50 minutes of presenting or participating on a panel. **Moderators** earn one (1) MCLE credit for each 50 minutes moderating a panel segment. Faculty members receive regular MCLE credit for attending other portions of the program.

NEW YORK STATE BAR ASSOCIATION

Live Program Evaluation (Attending In Person)
Please complete the following program evaluation. We rely on your assessment to strengthen teaching methods and improve the programs we provide. The New York State Bar Association is committed to providing high quality continuing legal education courses and your feedback is important to us.

Program Name: Cultural Competency Session

Program Code: THPBONOB1

Program Location: Albany Marriott - Albany, NY

Program Date: September 15th 2016

1. What is your overall evaluation of this program? Please include any additional comments.
☐ Excellent ☐ Good ☐ Fair ☐ Poor

Additional Comments____

____

2. Please rate each Speaker's Presentation based on **CONTENT** and **ABILITY** and include any additional comments.

	CONTENT				ABILITY			
	Excellent	Good	Fair	Poor	Excellent	Good	Fair	Poor
Kelly Louise Anderson	☐	☐	☐	☐	☐	☐	☐	☐
Samantha Howell	☐	☐	☐	☐	☐	☐	☐	☐
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(please turn over)

Additional comments (CONTENT)

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_____

Additional comments (ABILITY)

_____

_____

3. Please rate the program materials and include any additional comments.
☐ Excellent ☐ Good ☐ Fair ☐ Poor

Additional comments

_____

_____

4. Do you think any portions of the program should be **EXPANDED** or **SHORTENED**? Please include any additional comments.
☐ Yes – Expanded ☐ Yes – Shortened ☐ No – Fine as is

Additional comments

_____

_____

5. Please rate the following aspects of the program: **REGISTRATION**; **ORGANIZATION**; **ADMINISTRATION**; **MEETING SITE** (if applicable), and include any additional comments.

	Please rate the following:				
	Excellent	Good	Fair	Poor	N/A
Registration	☐	☐	☐	☐	☐
Organization	☐	☐	☐	☐	☐
Administration	☐	☐	☐	☐	☐
Meeting Site (if applicable)	☐	☐	☐	☐	☐

Additional comments

_____

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6. How did you learn about this program?
☐ Ad in legal publication ☐ NYSBA web site ☐ Brochure or Postcard
☐ Social Media (Facebook / Google) ☐ Email ☐ Word of mouth

7. Please give us your suggestions for new programs or topics you would like to see offered

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NEW YORK STATE BAR ASSOCIATION
One Elk Street, Albany, NY 12207
Phone: 518-463-3200 | Secure Fax: 518.463.5993

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2016 NYSBA Partnership Conference Cultural Competency Session

1.5 MCLE credits in Law Practice Management for experienced and newly-admitted attorneys

Presenters:

Samantha Howell, Esq., Director of Pro Bono & Outreach, Prisoners' Legal Services of New York

Kelly Anderson, Esq., Senior Immigration Attorney, Prisoners' Legal Services of New York

Overview: Cultural competency has become increasingly important in today's legal community. With clients from diverse backgrounds, it is essential that practitioners have a comprehensive understanding of what it means to be culturally competent, how to seek cultural competence, and what the benefits of cultural competence are. This session will introduce participants to a variety of areas in which cultural competency may be needed, explore means for becoming culturally competent, and address the benefits of such competency in both communicating with your client and presenting his/her case to the court or other advocates.

I. Discussion by Panelists
   a. What is Cultural Competency?
      1) Breakout Activity – Identifying Cultures
      2) Types of Competency (UW-Bothell)
         1. Cognitive
         2. Affective
         3. Behavioral
      3) Four Stages of Cultural Competency
      4) Why is it important?
         1. Access to Justice

5) How/Why/When Does Cultural Competency Effect Representation
    1. Understanding and Effectively Communicating with Your Client
        a. Client Needs and Concerns
        b. Zealous Representation
    2. Studies
        a. Brown Eyes and Blue Eyes
6) Areas of Cultural Competency to be Familiar with
    1. Mental Illness/Mental Health
    2. Disabilities – Cognitive, Learning, Physical
    3. Reading Level
    4. LGBTQIA
    5. Religion
    6. Race
    7. Sex
    8. Gender
    9. Age
    10. Language
    11. Ethnicity
    12. Geographic Differences
    13. Economic
    14. Life Experiences

b. How to Effectively Deal with Diverse Client Populations
    1) Different Approaches Based on Type of Communication in Use
    2) Listening Skills
    3) Redirection
    4) Vicarious Trauma
    5) Work/Life Balance

c. Creating a Culturally Competent Work Environment
d. Exercise – Cultural Competency Scavenger Hunt

II. Interactive Breakout/Exercises

a. Throughout the session, participants will engage in several interactive activities, designed to help identify and understand biases as well as how to integrate that knowledge into client interactions.

III. Resources

a. National Center for Cultural Competence
b. http://iteslj.org/Articles/Pratt-Johnson-CrossCultural.html
c. http://dtui.com/diversityblog/tag/managing-diversity/
d. Building Cultural Competence: Innovative Activities and Models, Kate Berardo and Darla K. Deardorff
e. Cultural Competence: A Lifelong Journey to Cultural Proficiency, Ronnie Leavitt PhD MPH
f. Interviewing Clients Across Cultures: A Practitioner's Guide, Lisa Aronson Fontes
g. Cross Cultural Developmental Education Services (www.crosscultured.com)
h. Teaching Tolerance – Implicit Bias Testing
i. "Beyond Bias – Cultural Competence as a Lawyer Skill," Nelson P. Miller, June 2008, https://www.fd.org/docs/training-materials/2015/race2015/culturally-competing-lawyer.pdf
j. "Embracing Diversity and Being Culturally Competent is No Longer Optional," Blanca Banuelos, et al., March 2012, http://www.americanbar.org/content/dam/aba/events/labor_law/2012/03/ethics_professional_responsibility_committee_midwinter_meeting/mw2012_cultural_compentancy.authcheckdam.pdf
k. "Working with Pro Bono Clients," Delaney and Russell, 2005,

l. NY Rules of Professional Conduct (effective April 1, 2009) - https://www.nysba.org/DownloadAsset.aspx?id=50671
    1) NY Rules of Professional Conduct – Rule 1.1 Competence
    2) NY Rules of Professional Conduct – Rule 1.4 Communication
    3) NY Rules of Professional Conduct – Rule 1.6 Confidentiality of Information
    4) NY Rules of Professional Conduct – Rule 2.1 Advisor
    5) NY Rules of Professional Conduct – Rule 6.1 Voluntary Pro Bono Service
    6) NY Rules of Professional Conduct – Rule 6.5 Participation in Limited Pro Bono Legal Service Programs

m. ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means (adopted August 2013) - http://www.americanbar.org/content/dam/aba/images/news/PDF/109.pdf
    1) Standard 2.1 (Infrastructure – Program Personnel)
    2) Standard 2.2 (Infrastructure – Attorney Supervision of Non-Attorney Staff)
    3) Standard 2.6 (Program Effectiveness – Relations with Others)
    4) Standard 2.8 (Program Effectiveness – Identification of Client's Needs)
    5) Standard 2.9 (Service Delivery Systems – Program Priorities)
    6) Standard 2.11 (Service Delivery Design – Client Community Access)
    7) Standard 3.1 (The Initial Contact – Establishment of an Effective Relationship)
    8) Standard 3.2 (The Initial Contact – Communication with Clients)
    9) Standards 3.5 (Establishing the Relationship – Non-Discrimination and Diversity)

10) Standard 4.2 (The Initial Interaction – Non-Discrimination and Diversity)
11) Standard 4.4 (Building a Strong Relationship with Volunteers – Establishment of Relationships)

Cultural Competency Session

Exploring and Understanding Cultural Competency

Samantha Howell, Esq.
Director of Pro Bono & Outreach

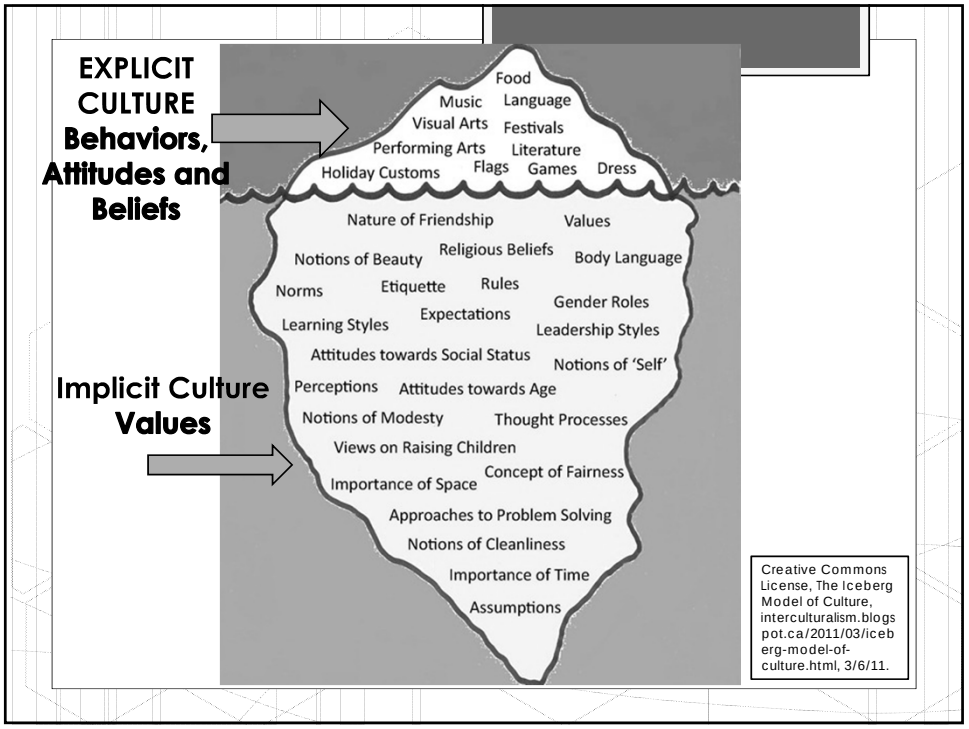
Kelly Anderson, Esq.
Senior Immigration Attorney

Prisoners' Legal Services of New York

What is Cultural Competency?

To be free is not merely to cast off one's chains, but to live in a way that respects and enhances the freedom of others.

- Nelson Mandela -


EXPLICIT CULTURE
Behaviors, Attitudes and Beliefs
Implicit Culture
Values
Food
Music
Language
Visual Arts
Festivals
Performing Arts
Literature
Holiday Customs
Flags
Games
Dress
Nature of Friendship
Values
Religious Beliefs
Notions of Beauty
Body Language
Norms
Etiquette
Rules
Gender Roles
Learning Styles
Expectations
Leadership Styles
Attitudes towards Social Status
Notions of 'Self'
Perceptions
Attitudes towards Age
Notions of Modesty
Thought Processes
Views on Raising Children
Concept of Fairness
Importance of Space
Approaches to Problem Solving
Notions of Cleanliness
Importance of Time
Assumptions
Creative Commons License, The Iceberg Model of Culture, interculturalism.blogspot.ca/2011/03/iceberg-model-of-culture.html, 3/6/11.


Areas of Cultural Competency
Age
ETHNICITY
Mental Health/Illness
Gender
Race
Economic
Religion
Language
Sex
Disabilities
Life Experiences
LGBTQIA
Geographic Differences

ACTIVITY #1: Cultures to Which I Belong

Name of Culture	Shared Practices and Beliefs

Why Is This Important?

NY Rules of Professional Conduct

- Rule 1.1 – Competence
- Rule 1.4 – Communication
- Rule 1.6 – Confidentiality of Information
- Rule 1.14 – Client with Diminished Capacity
- Rule 2.1 – Advisor

ABA Standards for Civil Pro Bono Programs

- Standard 2.1 – Infrastructure – Program Personnel
- Standard 2.2 – Attorney Supervision of Non-Attorney Staff
- Standard 2.6 – Program Effectiveness – Relations with Others
- Standard 2.8 – Program Effectiveness – Identification of Client's Needs
- Standard 2.9 – Service Delivery Systems – Program Priorities
- Standard 2.11 – Service Delivery Design – Client Community Access
- Standard 3.1 – The Initial Contact – Establishment of an Effective Relationship
- Standard 3.2 – The Initial Contact – Communication with Clients
- Standard 3.5 – Establishing the Relationship – Non-Discrimination and Diversity
- Standard 4.2 – The Initial Interaction – Non-Discrimination and Diversity
- Standard 4.4. – Building a Strong Relationship with Volunteers

http://www.americanbar.org/content/dam/aba/images/news/PDF/109.pdf

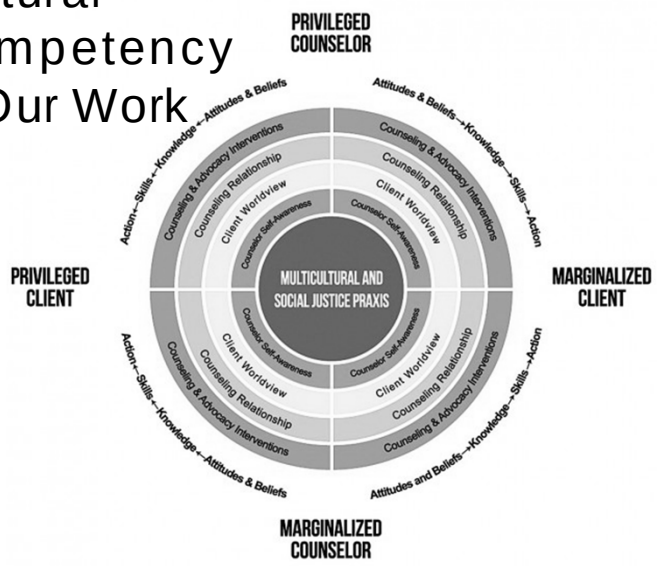
Working with Diverse Client Populations

- Requires …
  - The Utilization of Different Approaches Based on Type of Communication in Use
  - Active Listening Skills
  - Redirection

ACTIVITY #2: Four Stages of Cultural Competence

Stage 1: Unconscious Incompetence	**Stage 2: Conscious Incompetence**
Stage 3: Conscious Competence	Stage 4: Unconscious Competence

Cultural Competency in Our Work



Cultural Competency in Our Work

- Integrate Multicultural and Social Justice Counseling Competencies (MSJCC)
  - Developmental Domains:
    - Counselor Self-Awareness
    - Client Worldview
    - Counseling Relationship
    - Counseling and Advocacy Interventions

Developed by The Multicultural Counseling Competencies Revision Committee, Endorsed by the American Counseling Association Governing Council on July 20, 2015.

Vicarious Trauma

- AKA Compassion Fatigue, can result from:
  - Working with clients in crisis
  - Dealing with the client's past trauma (immigration, DV, etc.)
  - Responding to and respecting crisis/trauma experienced by co-workers

https://www.counseling.org/docs/trauma-disaster/fact-sheet-9---vicarious-trauma.pdf?sfvrsn=2

ACTIVITY #3: Scavenger Hunt

Take-Aways

Importance of Understanding Personal Biases/Perspectives

Appreciation for Your Client's Story

Role of Cultural Competency in the Law

Learn how to best represent your clients with compassion and empathy

Cultural Competency Session

Biographies

Kelly Anderson

Kelly Louise Anderson is the Immigration Staff Attorney at Prisoners' Legal Services of New York. She graduated from the University of Washington School of Social Work in 2011, where she was a Facilitator in the Intergroup Dialogue (IGD) program, a course designed to open conversation about the intersections of race, class, and gender and how the intersections arise in the context of helping professions. She then graduated from the Seattle University School of Law in 2015, where she focused her field work and writing on immigration and naturalization law, criminal defense, and civil rights.

At PLS, she represents noncitizens who are completing their criminal sentences in New York State custody and who are simultaneously facing deportation in immigration court. Her work involves traversing language and cultural barriers that highly impact the legal representation of incarcerated individuals.

Samantha Howell

Samantha Howell is the Director of Pro Bono & Outreach of Prisoners' Legal Services of New York (PLS). She is a graduate of Whitman College and Albany Law School. She previously worked as the Pro Bono Coordinator at the Albany County Bar Association and, while in law school, helped to redevelop the school's Pro Bono Program. Ms. Howell has presented at three Equal Justice Conferences and conducted numerous webinars and trainings on prisoners' rights and the development and management of *pro bono* programs.

Ms. Howell serves on the New York Civil Liberties Union – Capital Region Chapter Board of Directors and legal committee and is a member of the National Lawyers Guild, and president of the Albany chapter. Ms. Howell is also a member of the New York State Bar Association's President's Committee on Access to Justice, the National Association of Pro Bono Professionals, the NYS Pro Bono Coordinators Network, the Capital Region Pro Bono Committee, the American Bar Association and the New York State Bar Association.

Ms. Howell was the 2014 recipient of Albany Law School's Pro Bono Service Award for a Supervising Attorney.

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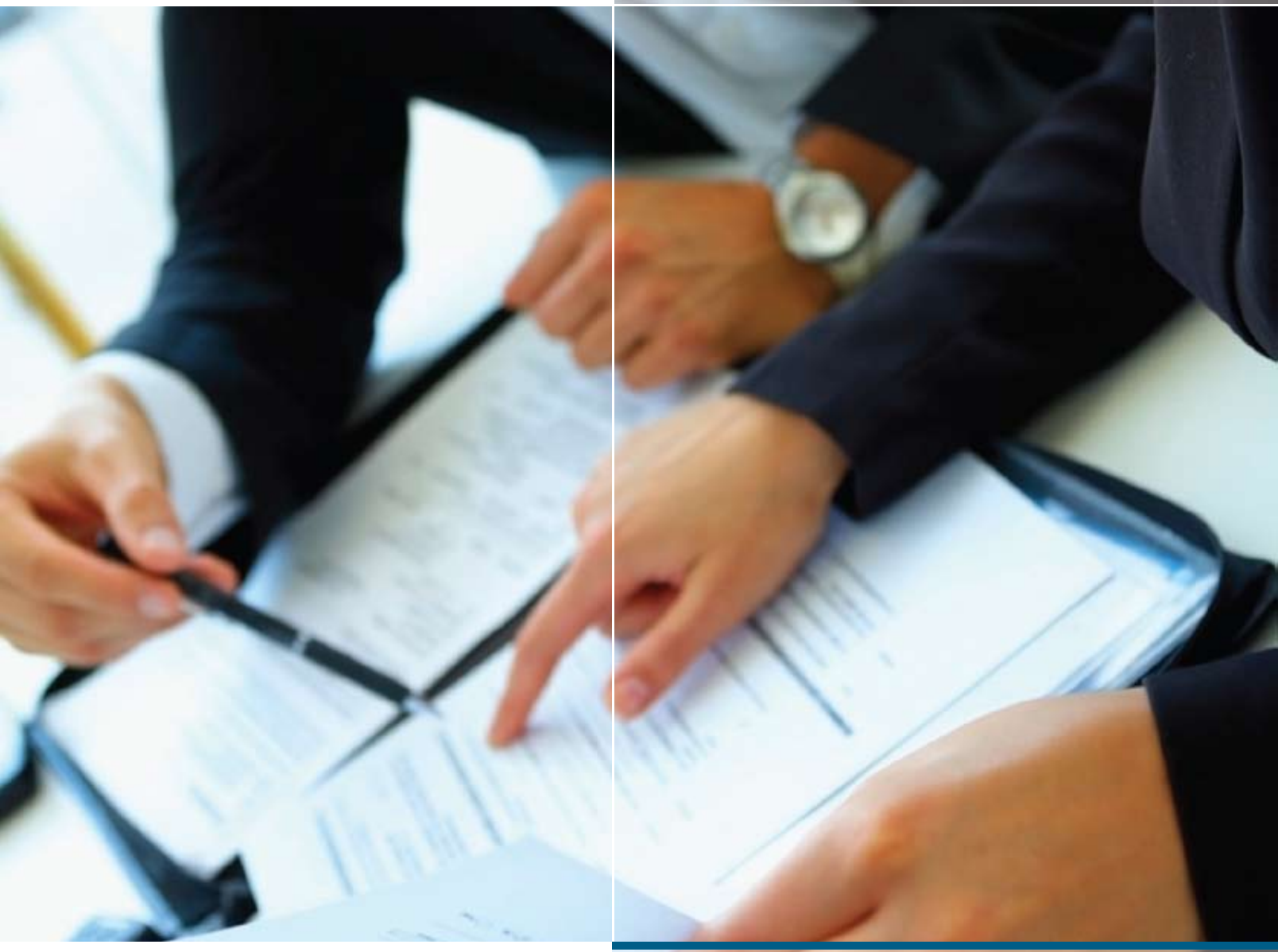
Beyond Bias—
Cultural Competence as a Lawyer Skill

By Nelson P. Miller



Fast Facts:

A lawyer's cultural competence goes beyond avoiding bias. To serve diverse clients, lawyers should have special communication and interpersonal skills. Those skills can be taught and learned.

Reprinted with permission from
the June 2008 issue of the
Michigan Bar Journal

American popular culture judges in terms of "bias" the quality of relationships between cultures and classes. A good person is defined to be one who is free of cultural, ethnic, and class bias. A bad person exhibits bias—perhaps a Don Imus against African Americans or an Al Sharpton or Mel Gibson against Jews (to take celebrated recent examples).

The problem for lawyers is that the bias model is one of purity, not performance. The litmus test of bias allows us to draw comfort from simply not saying the wrong thing. It has nothing to do with how we actually perform as professionals in complex interactions with individuals of diverse cultures and classes. The comfort we draw in not exhibiting bias is an obstacle to real lawyer skill. It tells us that as long as we have not said anything wrong, we are acceptably professional. In truth, good lawyers—culturally sensitive and aware lawyers—employ considerable skill. Cultural competencies can be taught. Indeed, they are taught to educators, translators, social workers, nurses, missionaries, and a host of others who deal with diverse populations. By and large, they are not taught to lawyers.

Cultural competencies cover a wide range of areas. Communication is primary. It is important how we speak and listen. Communication varies. What is understood and appreciated in one household will not be understood and may instead be offensive in another household. And it is not only communication that varies. So, too, do individual cognition, individual and family resources, cultural references, and relationships.

Lawyers should possess cultural competencies in at least those five areas. Lawyers who possess and exercise these skills are able to meaningfully serve diverse populations. They can serve black and white, rich and poor, educated and uneducated, helping each to draw on their available skills and resources without mistakenly misjudging any to be uncommunicative or unintelligent. Lawyers who do not possess and exercise these skills cannot serve diverse populations effectively.

Take as an example the different language registers clients of different cultures may employ. A language "register" is the form or level of language (intimate, casual, consultative, formal, or frozen) that a speaker uses, indirectly indicating preferences in the way the speaker wishes to treat the relationship with the listener. Lawyers ordinarily speak in a consultative register, but many clients do not. An effective lawyer adjusts to the client's register, not the other way around, because register is closely connected to hidden rules and cognitive practices within various cultures.

Thus, in some pro bono work at a local Hispanic center, the lawyer spoke only English. The client was a shy Guatemalan woman whose first language was a dialect, but who also spoke just enough Spanish to communicate in that second language. The translator was a pert Mexican Spanish-speaker who spoke English as a second language, but did not speak the Guatemalan dialect. Although he could not understand the Guatemalan client's Spanish, the lawyer quickly discerned from her hesitancy and tearfulness that she was probably communicating only in an intimate (child to parent) or at best casual (close friend to close friend) register. The lawyer quickly adjusted accordingly, speaking much more like a parent or friend than the lawyer would have when using the typical consultative register with which all lawyers are familiar. Lawyers typically render legal advice in a consultative, not intimate or casual, register.

The problem was that the Mexican translator had not recognized the shift in registers, or if she had recognized it, was unwilling to accommodate the shy Guatemalan client. This much the lawyer could tell from the client's confusion and the air of superiority the translator was exhibiting. The translator was (as the observing translator-trainer explained it later) dressing up the lawyer's words into flowery and important-sounding messages that the client was unable to grasp and process. The observing translator-trainer had to intervene and employ the appropriate intimate and casual register to successfully salvage the consultation. Competence in cultural communication, of course, does not mean being able to work with translators. The incident simply shows how important language register is and how roles and expectations can interfere with sensitive communication.

Take another example from the area of cultural reference. The narrator of the *Planet Earth* television series makes an important cultural reference when she intones (in that dry seriousness typical of the genre) that it is a matter of "luck" that the Sun/Earth relationship has remained so stable over billions of years. A lawyer making a similar comment about the "luck" involved in some event would already have appeared foolish and insensitive to what some low-income clients would more reasonably regard as extremely improbable but clearly providential events.

Thus, listen carefully to a client's answer to the greeting, "How are you?" The response "I am blessed" is a low-income, minority client's clearly intentional deviation from the majority culture's standard answer of "fine" or "good." It is a hint to the finely attuned ear, or in some cases a declaration against the obstinate dominant culture, that the client is a person not of fate but of faith. It would be insensitive for the lawyer to think the response weird or unintelligent, when instead it is a reflection of a highly developed ethic having potentially important consequences to the consultation.

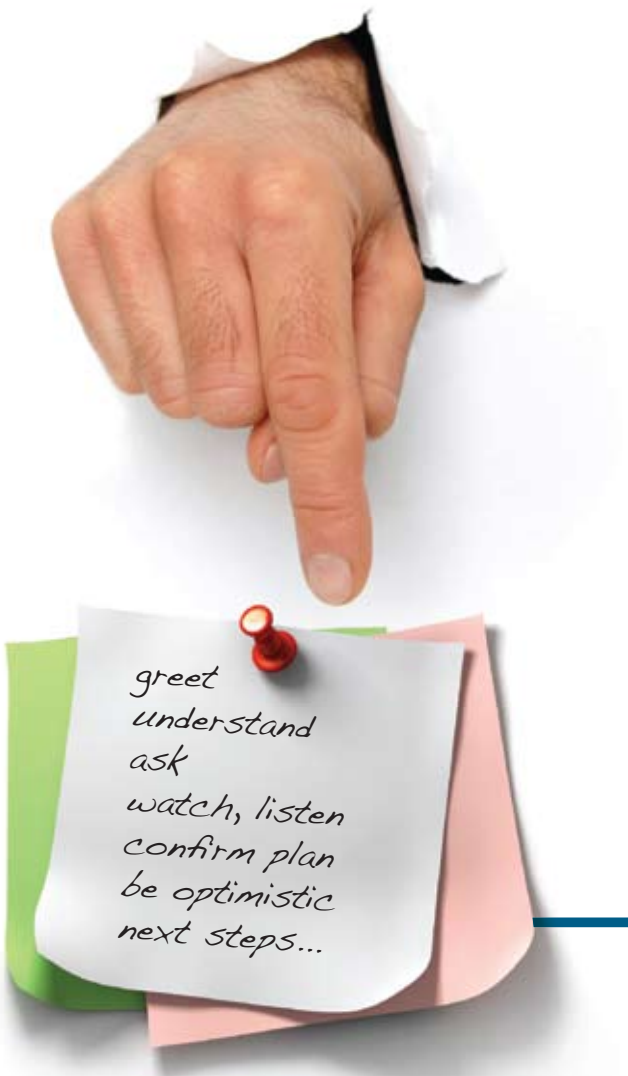
Listen carefully to a client's answer to the greeting, "How are you?" The response "I am blessed" is a low-income, minority client's clearly intentional deviation from the majority culture's standard answer of "fine" or "good." It is a hint to the finely attuned ear that the client is a person not of fate but of faith.

Is it indeed significant that we notice these differences about our clients? It was significant to one. The lawyer met the pro bono client in a cubicle off the soup kitchen's day room, where patrons could get identification, a locker, a haircut, and mail, shower, and use a washer-dryer. The homeless client, a middle-aged and quite weary African-American male,

nonetheless responded to the lawyer's greeting with "I'm blessed. How are you?" The consultation then ensued about child support that had accumulated while the client was incarcerated for better than a decade. At its conclusion, the client rose appreciatively but wearily, saying that, in the end, he was concerned about the drugs and prostitutes tempting him on the streets. It was not a complaint, but an almost-silent plea without expectation of response.

But the lawyer then remembered the client's faith expressed in the greeting. So as the client turned to leave, the lawyer said simply: "Ah. There is no temptation except that which…." The client stopped, turned back, brightened noticeably, and completed the verse, saying he had not thought of it (powerful advice for anyone in the client's situation) since his release from prison 10 weeks before. There now seemed little doubt that the client would stay sober another night—a greater victory for the client and community, perhaps, than anything else the lawyer and client might have accomplished that day.

Here, then, are some tips on cultural competence. Although the examples have been in pro bono settings and with elderly clients, these competencies can be just as important in law-firm settings with paying clients. Please keep in mind, though, that if you are serving a client who is from a culture different from your own, you have already demonstrated the first cultural competency, which is willingness. Consider the following recommendations to increase your cultural competency:



- ***Introduce yourself*** in a manner that puts the client at ease. Always say your name. Anonymity appears aloof, insular, uncaring, and arrogant. Make eye contact, unless the client studiously avoids eye contact, and smile. If the client appears ready to offer a handshake, offer a handshake first. If the client is reluctant to offer a handshake, do not embarrass the client with an extended hand. Accept that there are hidden rules of interaction you do not know.
- ***Understand intimate and casual register*** and communicate accordingly. Not all clients share your verbal skills and interests. They may speak in indirect and generalized fashion and using frequent nonverbal assists. Participate with frequent verbal acknowledgments ("mm-hmm," "yeah, I know," etc.), behavioral prompts (nodding, smiling, etc.), and emotional responses (shared interest, sorrow, satisfaction, etc.). Do not force a client to say something the client wishes to avoid saying. Respect the circular nature of casual register. Avoid power struggles over language. Use calm, nonjudgmental, adult voice, never commanding or scolding in parent voice, and never defensive or emotional in child voice. Appreciate the client's humor. Use metaphor and story as a guide. Draw diagrams. Recognize cultural references. Accept and employ them to contextualize and communicate solutions.
- ***Ask why the client is here*** before making any assumptions. Ask open-ended questions, like "What worries you?" or "What do you want to happen?" Respect the client's freedom and personality. Be wary of assuming that the client has purely legal goals. Legal goals may be enmeshed in social, political, moral, financial, familial, ethical, personal, and spiritual goals, or legal goals may be absent. Assist with more than purely legal goals when your life experience enables you. Refer the client for other help with nonlegal goals. Think in terms of broad, team solutions while helping the client avoid negative influences. Legal solutions are not the only solutions.
- ***Listen to the client*** rather than your own judgment about what is important. Let the client decide. Do not dismiss the client's hopes, goals, expectations, and objectives, even when you would choose different objectives. Active pursuit of an unrealistic but safe goal can serve the client by indirectly achieving more useful objectives. Listen for words that seem out of place to you. They may be clues to a resource, habit, or understanding on which the client can draw for solutions. Develop a context for the client's situation—whether personal, medical, legal, family, or social.

prepared to pick up on a small parting comment to address new legal issues at what you thought the conclusion of the session.

Develop factual content when you see a legal issue that you can help address. Clients may express emotions and opinions, leaving it to you to prompt for relevant facts.

- ***Watch the client*** with an eye sensitive to the client's reactions. Summarize the client's goals and your advice on how to achieve them. If the client does not share your confidence in the solution you proposed, you may not have understood the client properly, or you may have assumed that the client has capabilities and resources that the client does not have. Continue to listen, ask, summarize, suggest, and generate other options until the client appears satisfied with your advice. What seems to you to be readily achievable may in fact not be for reasons only the client can appreciate. Suggest and teach coping strategies. Gently let the client know that you are offering bridges out of negative situations.

- ***Break down steps*** into manageable components. Think of each step that a larger task requires and then explain those steps for the client. Clients of poverty may lack the ability to break larger tasks down into manageable components. Help the client do so. When the steps become too many, stop, return to the first step that the client can understand and follow, and then plan another consultation for the rest of the steps. Watch for signs that the client is overwhelmed or frustrated. Assign to the client only those tasks that the client believes are clearly manageable. Model self-talking through procedures, but also propose role models. Clients of poverty can benefit more through mentors and relationships than through systems and actions. Be a coach, not a commander, judge, or taskmaster. Speak about choices and consequences. Help the client identify cause and effect (impulse and consequence) relationships.

- ***Confirm the plan*** that you have developed. Ask the client if the client would like you to write it down. If you do write it down, print in a clearly legible handwriting and number the steps. Clients may lack the planning and initiating skills that you possess. Help them prioritize and plan. Then help them record the plan in a manner that they can understand and use. Help them confirm that the plan will lead them toward their objective. Ensure throughout that they believe that they have the resources available to follow the plan. Do not plan anything for which the client lacks the resources. Solutions are not systems. They are relationships leading to small steps in the right direction. But also limit your responsibility. Be responsible *to* them for the steps you accept that you will perform. Make it clear to them what you are and are not going to do for them. But do not be responsible *for* them.

- ***Express hope and optimism*** about the client's situation, no matter how dire it may seem to you. Building and maintaining hope is essential for clients who have few resources. You may indeed have a client whose legal situation cannot be addressed. But through your discussion of it and your continuing relationship with the client, the client may develop other objectives that are achievable. Be frank in your advice, but do not destroy the client's confidence. Stress the client's internal assets—perhaps the client's perseverance and tenacity, or the client's knowledge of truth, or the client's faith and ethics.

- ***Listen for a parting request*** from the client. The consultation does not end until the client has left. Just because you think it is over does not mean it is over. Some clients will use the consultation time simply to develop trust and understanding and only introduce the important matter when you think the consultation is over. It is not always about what you think it is about. Be prepared to pick up on a small parting comment and to address new legal issues at what you thought was the conclusion of the session. Be sure to elicit any lingering concerns with a question like, "Is there anything else we should talk about?"

- ***Tell the client when you are next available*** for further consultation, especially if time did not permit you to answer all of the client's questions and address all of the client's legal issues. To clients with limited resources, the relationship with you is more important than the service you rendered. Clients get out of poverty not through service, but through relationship. Letting the client know that you value the relationship may contribute more to the client's situation than any legal service you are able to provide. If you cannot be a mentor, then think of and offer one. ■

Sources and Suggested Reading: Payne & Krabill, *Hidden Rules of Class at Work* (Aha Process, Inc, 2002); Payne, *Understanding Learning: The How, the Why, the What* (Aha Process, Inc, 2001); Payne, DeVol & Smith, *Bridges Out of Poverty: Strategies for Professionals and Communities* (Aha Process, Inc, 2001); Payne, *A Framework: Understanding and Working with Students and Adults from Poverty* (Texas: RFT Pub, 1995); Bryant, *The five habits: Building cross-cultural competence in lawyers,* 8 Clin L R 33 (2001); *Initial Interview Protocol,* Thomas M. Cooley Law School Clinics.

Nelson Miller, associate dean and associate professor at Thomas M. Cooley Law School, is the 2005 winner of the State Bar John W. Cummiskey Award for pro bono service. The above article draws on his pro bono experience, service on the State Bar Equal Access Initiative Committee, service as president of the Grand Rapids Bar Association's Legal Assistance Center, and instruction and mentoring at Cooley Law School.

The author acknowledges the support of the Center for Ethics, Service, and Professionalism and Cooley colleagues Amy Timmer, Kim O'Leary, Tracey Brame, and Dale Iverson.

Oregon State Bar Bulletin — JANUARY 2009

January Issue

Bar Counsel

Cultural Competency

Is There an Ethical Duty

By *Sylvia Stevens*

"Cultural competency is one of the main ingredients in closing the disparities gap in health care. It's the way patients and doctors can come together and talk about health concerns without cultural differences hindering the conversation, but enhancing it. Quite simply, health care services that are respectful of and responsive to the health beliefs, practices and cultural and linguistic needs of diverse patients can help bring about positive health outcomes."[1]

Cultural competency is an established part of modern health care education and training and recognized as a critical component of effective health practice. If you substitute "legal services" for "health care" in the above statement, it rings equally true, yet the legal profession has been much slower to recognize the importance of cultural competency within the profession.

What is Cultural Competency?

Cultural competency is more than embracing diversity and promoting inclusion. Cultural competency is the ability to adapt, work and manage successfully in new and unfamiliar cultural settings. Culturally competent people can "grasp, reason and behave effectively" when faced with culturally diverse situations, where assumptions, values and traditions differ from those to which they are accustomed. They recognize that culture may impact the way people from different backgrounds perceive the same facts. When several competing interpretations of a situation may be valid, they can place apparent contradictions in cultural contexts and deal with the ambiguity.[2]

Being culturally competent does not mean fully understanding the cultural norms and dynamics of every person with whom a lawyer interacts. It also isn't about adopting a particular set of beliefs. Rather, cultural competence is a way of approaching any new and different cultural situation. People who are culturally competent are aware of their own cultural backgrounds; they also recognize that culture influences behaviors, thoughts, ways of communicating, values, traditions and institutions. Culturally competent professionals know that the choices that people make are powerfully affected by culture and that every person is subject to may cultural influences.

Why is Cultural Competency Important to Lawyers?

If one step to cultural competency is understanding our own culture, it is worthwhile to recognize that the legal profession is a cultural institution. It is comprised predominantly of individuals who are privileged in American society: white, male, able-bodied and middle-class.[3] We are thus not generally representative of the larger American society and may not share the life experiences of our clients who are women, minorities, gay, lesbian, poor, unemployed or disabled.

Some of the writing on cultural competency for lawyers focuses on the competitive edge a culturally competent law firm will have over those that are not.[4] Other articles discuss it in the context of equal access to justice issues,[5] while yet others focus on the importance of cultural competency in delivering high quality service to clients:

The challenge is for lawyers to properly read culturally relevant behavior and communication as a means of delivering the highest quality of service to clients. The failure to properly read and respond to cultural issues and difference can create serious problems in maintaining a successful relationship with a client. [6]

When cultural competency is viewed as a matter of justice or effective client representation, it is not a huge leap to think that there may be an ethical obligation to be culturally competent in order to meet our responsibilities as lawyers.

We need look only as far as the preamble to the ABA Model Rules for our obligation to promote access to justice and respect for the rule of law: "A lawyer, as a member of the legal profession, is … a public citizen having special responsibility for the quality of justice…. (A) lawyer should further the public's … confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to

maintain their authority...."[7]

Nothing in the Oregon Rules of Professional Conduct explicitly addresses cultural competency. Nevertheless, cultural incompetence might well implicates three inter-related rules:

The duty to provide competent representation

The duty to pursue the client's objectives

The duty to communicate

Oregon RPC 1.1 requires lawyers to provide competent representation to a client. "Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Oregon RPC 1.2 requires a lawyer to abide by a client's decisions concerning the objectives of the representation and to consult with the client as to the means by which those objectives are to be pursued. These rules reflect the agency nature of the lawyer-client relationship in which the client is the principal and the lawyer is the agent. Oregon RPC 1.4(b) requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed choices about the representation.

A lawyer who doesn't recognize cultural differences may be insensitive to a client's cultural taboos, expectations, family norms or communication and conflict-resolution styles. The lawyer will be less effective in establishing a relationship of trust and confidence with clients from other cultures, and the failure to understand the significance of cultural differences and misinterpretation of client behavior may lead the lawyer to implement ineffective case strategies.

Reasonable communication between lawyer and client is necessary for the client to participate effectively in the representation. Inability to communicate effectively interferes with the lawyer's ability to understand and pursue the client's objectives. One of the greatest barriers to cultural competency among lawyers is our training as "problem-solvers." We think we know what needs to be done in a particular situation, and we want to get to it. We speak "legalese" and assume our clients understand it. This desire to be efficient sometimes gets in the way of listening to and communicating effectively with clients who do not share our cultural experience. It is compounded when we are oblivious to the fact that the client's cultural experience and values, as well as the approach to resolving issues, may differ from our own.

Cultural competency is not about conforming one's personal beliefs or opinions to a politically correct external standard. Rather, it is about actions. It means recognizing that our clients are not fungible and that every one of them brings to the representation a set of values, beliefs and other cultural norms that affect the client's view of their problems and how they should be addressed. Whether or not there is an ethical obligation of culturally competence, it is a practical necessity in modern law practice if we are committed to equal justice and high-quality client service.

Endnotes

1. U.S. Dept of Health & Human Services, Office of Minority Health (www.omhrc.gov).

2. Abbott, I., "Fostering Cultural Competence Is Necessary — And Profitable," The Complete Lawyer, Vol. 4, No. 6 (2008) citing Soon Ang et al., "Cultural Intelligence: Its Measurement and Effects on Cultural Judgment and Decision Making, Cultural Adaptation, and Task Performance," Management and Organization Review, November 2007.

3. In Oregon, 67 percent of OSB members are male and 49 percent identify as Caucasian. No statistics are available on disability or economic status.

4. Abbott, supra.

5. "Partner Courts: Diversity, The Superior Court of Arizona in Maricopa County, Phoenix, AZ, " Center for Court Solutions (*solutions.ncsconline.org*).

6. Jatrine Bentsi-Enchill, Esq. (*esqdevelopmentinstitute.blogspot.com*).

7. ABA Model Rules of Professional Conduct, Preamble (1) & (6).

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Ethics opinions are published and updated on the bar's website here.

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Cultural Competency in Capital Mitigation

Scharlette Holdman
Center for Capital Assistance

Christopher Seeds
New York University (NYU)

Hofstra Law Review, Vol. 36, No. 3, 2008

Abstract:
Cultural factors so pervasively influence the interactions of the client with other people - including all of those with whom he comes into contact at significant times in his life (e.g. in educational, medical, and correctional institutions), those surrounding him in the community in which he develops, and, critically, the members of the defense team - that it is imperative for the defense team to have the talents necessary to conduct a mitigation investigation that is culturally competent. The investigation must recognize and surmount an array of barriers, overt and subtle, to obtaining information from people of variegated backgrounds. As the courts have long recognized, in the context of mitigation, culturally competent investigation is more than an admirable and desirable skill. It is a standard of performance. Building on the framework provided by the ABA's Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases reprinted in 31 Hofstra L. Rev. 913 (2003) and the Supplementary Guidelines that are the subject of this issue, this article details what capital defense counsel needs to do in order to (a) meet that standard and (b) of equal importance, utilize the fruits of the investigation to construct a persuasive narrative of the client's life course that emerges authentically from his culture. Counsel must comprehend the world from the client's viewpoint and be able to present his life story from the inside out.

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Focal Point Summer 1994, Vol. 8 No. 2

CULTURAL COMPETENCE AND THE JUVENILE JUSTICE SYSTEM: IRRECONCILABLE DIFFERENCES?

There are many professionals of color who look with increasing alarm and dread at recent developments in the juvenile justice system in this country. It seems that, more and more, justice simply means "just us," as the overrepresentation of youth of color in juvenile confinement continues to soar in direct proportion to the fears of violence and crime that grip the minds of those dominant culture Americans who are least likely to be its victims.

In response to the overwhelming confinement of youngsters of color, the Office for Juvenile Justice Delinquency and Prevention (OJJDP), in 1989, issued regulations requiring states that participated in their Formula Grants Program to determine the existence of disproportionate minority confinement and to design strategies to reduce the problem where it exists. As of February 1993, 42 states had completed the required data analyses, with all but one determining that juveniles of color were over-represented in secure facilities (Federal Register, Vol. 59, No. 134, July 14, 1994, p. 35993). Despite these data collection activities, the problem continues to worsen and few, if any, states have developed comprehensive strategies to reduce or counteract this trend.

Thus, it is an accepted fact that most juvenile justice systems tend to be culturally biased from the initial assessment through the course of placement disposition. These systems have proven to be inflexible when assessing or serving youth of different racial and cultural orientations. Their programs and staffing seldom reflect any real commitment to cultural competence or diversity.

In the cultural competence model developed by Cross et al., (1989) in *Towards a Culturally Competent System of ID Care: A Monograph on Effective Services for Minority Children who are Severely Emotionally Disturbed* (Vol.1), the authors state that cultural competency is a developmental process and, as such, propose a cultural competence continuum as a useful tool to illustrate the possible ways organizations (and individuals) can respond to cultural differences. They identified six points along this continuum that describe characteristics that might be and are often exhibited by agencies-from those that are least culturally competent to those that are highly developed in the cultural competence context.

The least culturally competent points of the continuum are cultural destructiveness and cultural incapacity. Culturally destructive agencies are those at the most negative end of the continuum that exhibit attitudes, policies and practices that are destructive to cultures and consequently to members within the culture. A system that adheres to this extreme assumes that one race is "superior" to the other and has the right to eradicate "lesser" races or cultures because of their perceived subhuman position. Bigotry, coupled with vast power differentials, allows the dominant group to disenfranchise, control, exploit, or systematically destroy the minority group and its culture. At the next step of the continuum is cultural incapacity. At this level, the system or organizations do not intentionally or consciously seek to be culturally destructive; rather, they lack the capacity to help persons or communities of color. The organization remains extremely biased, believes in the racial superiority of the dominant group, and assumes a paternal posture towards "lesser" races and cultures. These agencies may disproportionately apply resources, discriminate against people of color on the basis of whether they "know their place" and believe in the supremacy of dominant culture helpers. Such agencies may overtly or covertly support segregation as a desirable policy. They may act as agents of oppression by enforcing racist policies and maintaining stereotypes (Cross, et al., 1989).

From the perspective of this author, most juvenile justice agencies currently fall within these two levels of the continuum. The very attitudes, policies, structures and practices of these organizations devalue

individuals and cultural diversity. For example, there are problems with the fact that:

• One is most likely to be a "client", of this system if African American, male and poor (race/class biases);
• Once in the system, there is a significantly lower probability that the individual will go to college or find a decent job; in fact, there is a greater probability that the individual will graduate into the adult criminal justice system (the juvenile justice system becomes a feeder for adult jails and prisons);
• Despite well-documented and high correlations between juvenile justice and emotional disabilities, substance abuse, child abuse and learning disabilities, one is unlikely to receive adequate assessment or treatment for these problems upon entering the system;
• The attitudes and knowledge that discretionary decision-makers within the juvenile justice system hold about people of color (i.e., police officers, probation officers, prosecutors, etc.) are often based upon strong and deeply embedded racial biases and stereotypes;
• There is little room for input and little respect for parents, family members, members of communities of color, or for the youth themselves;
• There are consistent and pervasive power differentials within the system and that those with power and authority are almost always dominant culture persons (i.e., police officers, judges, attorneys, government law enforcement agents, etc.) since the justice system has notoriously poor records when it comes to affirmative action and equal opportunity for advancement; and
• Juvenile justice is increasingly becoming a system of punishment (control agent) and not treatment/ rehabilitation.

Thus, some of the most salient characteristics of juvenile justice agencies lead to a level of cultural incompetence and insensitivity that is having devastating impact on youth of color, their families and their communities.

The growing question is whether there are ways to redirect current trends in the juvenile justice system so that it can fulfill its mission without destroying cultures of color or whether there are truly irreconcilable differences between the concept of justice and cultural competence. It seems that the solution lies in reversing many of the characteristics that plague the current system. Attitudes and knowledge need to be addressed through cultural competency training and practice; families and communities of color need to have a greater voice and greater mechanisms for being heard and respected within the system; the discretionary and arbitrary decision-making processes of those with power and authority need to be limited and closely monitored; and, cultural competence action plans and strategies need to be developed and implemented throughout all aspects of the system.

Although the current $600,000 appropriation for developing strategies directed at reducing minority confinement available through OJJDP is a small part, there has to be a greater "will" and commitment among those who have the power and authority to change the current incentives within the system. There must be greater recognition that juvenile justice is failing children and adolescents of color through an inability to recognize, understand, or provide adequate prevention, assessment, treatment and rehabilitation due to the lack of culturally appropriate and competent policies, staff, and programs-and not because children and adolescents are inherently "bad" or undeserving of humane approaches. We have to reverse the fact that: "(R)ace emerges as the single best predictor of arrest, incarceration, and release, even when the influence of other variables are controlled ....This is not only true for Black youth, but also Hispanic youth, Native Americans and Japanese Americans" (Krisberg et al., 1987, pp. 174-175).

Mareasa Isaacs-Shockley, Ph.D., *Partner, Human Service Collaborative; Washington, D.C.*

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ARTICLE:THE FIVE HABITS: BUILDING CROSS-CULTURAL COMPETENCE IN LAWYERS

Fall, 2001

Reporter
8 Clinical L. Rev. 33

Length: 29857 words

Author: Susan Bryant*

* Associate Professor, City University of New York School of Law (CUNY). As described in the epilogue, this article grows out of a collaborative project with Jean Koh Peters, to whom I am deeply grateful. In our work on developing the Habits and the teaching module to teach the Habits, Jean and I were aided by many wonderful colleagues, students, and staff. I want to thank those colleagues who first worked with me on issues of diversity in AALS presentations, including Victor Goode, Isabelle Gunning, Steve Hardwell, and Jennifer Rockow. Jean and I have wonderful colleagues who have taught cross-cultural lawyering using these materials or watched us use them and given us feedback on the Habits and these materials. They include my colleagues at CUNY: Beryl Blaustone, Rhonda Copelon, Sam Dulberg, Ellen Fried, Gail Gray, Pamela Goldberg, Sharon Hom, Ron Lindeman, Steve Loffredo, Joe Rosenberg, and Susan Taylor; and Jean's colleagues at Yale: Carroll Lucht, Michael Pinard, Jay Pottenger, and Steve Wizner. Jean's colleague and our friend, Kathleen Sullivan, passed away before this article was published. She was an enthusiastic supporter and contributor to our work. She is missed deeply. I am especially grateful to Maria Arias, my co-teacher for ten years at CUNY, for her insights and conversations about teaching in general and about cross-cultural issues, and to my colleagues, Bob Seibel and Alice Morey, and to Harvey Weinig for their careful reading and suggestions. I also thank the following students from Yale and CUNY whose research, thoughtful feedback, and support made this work possible: Sonia Cardia, D. Scott Carlton, Melissa Chiang, Alexandra Joncas, Judith Karpatkin, Cary Berkeley Kaye, Pavita Krishnaswamy, Leondra Kruger, Judy Lee, Nicola Mrazek, Sharmila Rampersaud, and Anjan Sahni. Two friends of Jean's, Karen Johnson and Jim Lynch, listened and commented on the habits at two critical early moments. I thank the staff of the Yale's Jerome N. Frank Legal Services Organization, in particular Kathleen Driscoll, Maureen Furtak, and Linda McMahon, and the staff of CUNY's clinical program, in particular Bernice Cohn, Lillian Gonzalez, Verleatha Hill, and Dorothy Matthew. The Open Society Institute, Emma Lazarus Fund, provided support for the conference, our work and the publication of the student materials on which this article is based. I thank OSI for recognizing that law schools have a role to play in serving immigrant communities, Dean Kristin Glen of CUNY for her creative energy in proposing the idea to OSI and bringing it to fruition at the CUNY School of Law, and Alizabeth Newman, Director of CUNY's Immigrant's Initiatives, for her work in organizing and publishing the teaching modules. Jean's work was also funded through the generosity of Dean Anthony Kronman and the Yale Law School. Finally, I thank my husband Larry and my children, Alison and Zach, and Jean's children, Lizzie and Chris, who made trips to New Haven even more fun.

LexisNexis Summary

… By describing classroom discussions and exercises used to teach the Habits, the article illustrates methods that clinical teachers can use to have more inclusive classroom conversations while building cross-cultural skills. … Habit Two asks the student first to identify the differences and similarities between the client and the legal system and between the lawyer and the legal system. … If helpful, students can use diagrams to chart the differences and similarities as they did in Habit One to visualize different dyads - lawyer/client, client/legal system, lawyer/legal system. … Habit Four encourages conscious attention to the process of communication - a skill and perspective that clinical teachers have used to improve interviewing skills in all attorney-client interactions. … Although Habit Four is a habit that can be done in the moment, beginning lawyers often have difficulty paying attention to both the process and content of an interview at the same time. … Finally, if the client has come from another country, Habit

Four encourages students to gather information about expectations the client may have about the lawyer and the legal system by learning about how the legal system works in the client's country of origin. … Habit Two develops skills of analyzing the effects of similarities and differences among the client, legal system and the lawyer. …

Text

[*33]

"Yet the challenge confronts us: Build a unified society without uniformity." [1]

This article describes a process called "the Habits" that was developed by Professors Bryant and Jean Koh Peters that can be used by lawyers to increase their cross-cultural competence. By outlining [*34] and giving examples of the role that culture plays in decision making, communication, problem solving, and rapport building, the article demonstrates the importance of lawyers learning cross-cultural concepts and skills. The article shows how developing the Five Habits increases cross-cultural competence. By describing classroom discussions and exercises used to teach the Habits, the article illustrates methods that clinical teachers can use to have more inclusive classroom conversations while building cross-cultural skills. In the epilogue to the article, Professors Bryant and Peters describe the collaborative process they used to develop the Habits.

Introduction

A lawyer and translator approach the reception area to greet a client and the following dialogue occurs:

Reception Area

[SEE DIALOGUE IN ORIGINAL]

How does the lawyer proceed with the interview at this point? Does she bring the brother into the interview? Does she explain to the brother that, for confidentiality reasons, she must interview the sister alone? Does she view the brother as connected to the dispute with the landlord? What assumptions does the lawyer have about why the brother is there and what the potential benefits and costs are for including or excluding the brother? To what extent are the lawyer's assumptions and responses to the situation based on the lawyer's experiences [*35] and culture? How can lawyers correctly attribute meaning to their clients' behavior and thereby make better lawyering decisions?

This article explores ways in which lawyers might answer these questions by focusing on the role culture plays in lawyering. The article presents a process, referred to as "the Habits," which lawyers can use to avoid cultural blinders and recover from cultural blunders when they occur. It also explores ideas that clinical teachers can use in teaching about issues of difference, identity, bias and stereotyping. [2] The Habits, which Jean Koh Peters and I

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[1] R.W. Terry, Authenticity: Unity Without Uniformity, in The Promise of Diversity: Over 40 Voices Discuss the Strategies for Eliminating Discrimination in Organizations 113-14 (E.Y. Cross, J.H. Katz, F. A. Miller, & E. W. Seashore eds., 1994).

[2] The Habits are described in Section Three of this article. Materials designed to be used in teaching the Habits were published by the CUNY Immigrant's Initiatives Project, Integrating Immigrant's Perspectives Across the Curriculum, and can be downloaded from <http://clinic.law.cuny.edu/clea/multiculture>. These materials are part of a larger project which is designed to integrate immigrants' perspectives throughout the curriculum and which includes modules in seven other subjects. As a later section of the article will explain, Jean and I encourage you to use the teaching materials in any way that seems useful. I have sometimes used articles to develop outlines for students. I hope you will feel free to edit these materials and make them useful for your students. Although this article's examples focus on the contexts of civil and administrative litigation, teachers in other areas can use the materials by including or substituting their own stories in the materials. In changing the materials, Jean and I ask that you note that "The materials being distributed are based on materials written by Susan Bryant and Jean Koh Peters. They have been edited (and /or added to) by x." If you would like to put your changed materials on the web site for others to use, please contact me and I will arrange to do that. If you develop an interesting case study or simulation or video for use, please

developed in a process described in the epilogue, are still a "work in progress." [3] We continue to study the efficacy of the Habits for our students as they explore their own development of cross-cultural skills.

Many clinical teachers have recognized the importance of teaching diversity issues in the clinic. [4] A number of presentations at AALS [*36] Clinical Teachers Conferences and entire conferences sponsored by AALS and by SALT have been devoted to exploring ways in which diversity can be taught in the clinic and classroom. [5] This article focuses on teaching diversity through use of a framework of cross-cultural lawyering. In deciding how to teach cross-cultural lawyering, clinical teachers need to identify how to integrate it into the overall goals of their clinics and to set specific goals for student competence in this area.

Each clinic may answer this inquiry slightly differently, depending on the faculty, students and clients, and on the level of change that the clinic wants to accomplish. On the micro level, a clinic may teach cross-cultural lawyering to improve representation of clients and to introduce students to cross-cultural theory that they will be able to apply to practice in an ever increasingly diverse legal profession. On the macro level, a clinic may teach cross-cultural perspectives and skills to enable students to help build a more just legal system. [6] [*37] Often, the priority given

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send it along and we can post it. New teaching ideas can also be placed on the site. In that way, we do not have to wait for a new law review article to spread ideas about teaching about issues of difference and similarity.

[3] We recognize that, as Margaret Montoya noted, "engaging in public dialogue about difference … requires practice because we so often can, and do get things wrong." We constantly revise vocabularies and theories and employ "provisional pedagogical and interactive strategies." Margaret Montoya, Voicing Difference, 4 Clin. L. Rev. 147, 152 (1997).

[4] See Jane Harris Aiken, Striving to Teach Justice, Fairness and Morality, 4 Clin. L. Rev. 1 (1997); David Dominguez, Beyond Zero-Sum Games: Multiculturalism As Enriched Law Training For All Students, 44 J. Legal Educ. 175 (1994); Leslie G. Espinoza, Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender, 95 Mich. L. Rev. 901 (1997); Melissa Harrison & Margaret E. Montoya, Voices/Voce in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces, 6 Colum. J. Gender & Law 387 (1996); Bill Ong Hing, Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Classes, 45 Stan. L. Rev. 1807, 1810 (1993); Michelle Jacobs, People From the Footnotes: The Missing Element in Client-Centered Counseling, 27 Golden Gate U. L. Rev. 345, 372 (1997); Kimberly O'Leary, Using Difference Analysis to Teach Problem-Solving, 4 Clin. L. Rev. 65, 72 (1997); Suellyn Scarnecchia, End Gender and Race Bias Against Lawyers: A Classroom Response, 23 U. Mich. J. L. Reform 319 (1990), Christine Zuni Cruz, [On the] Road Back In: Community Lawyering In Indigenous Communities, 5 Clin. L. Rev. 557 (1999). See also Robert F. Cochran, Jr., John M.A. DiPippa & Martha M. Peters, The Counselor-at-law: A Collaborative Approach to Client Interviewing and Counseling, Teacher's Manual 163 (1999). New works that advocate this kind of teaching include: Marjorie A. Silver, Emotional Competence, Multicultural Lawyering and Race (paper presented at the Second International Conference on Therapeutic Jurisprudence, Cincinnati, Ohio, May 4, 2001); and Shin Imai, Thoughts on Community, Critical Race Praxis, and Clinical Pedagogy or, "What I Teach in My Students" (paper presented at the New York Law School Clinical Theory Workshop, April 27, 2001).

[5] Presentations at AALS conferences, workshops and annual meetings have become so frequent and valuable that I hesitate to name one for fear of omitting some. Over the years, as our teaching has gotten more sophisticated on these topics, the presentations have gotten better and challenged our thinking. The AALS Clinical Workshop in Washington in 1991 was the first clinical workshop devoted to these issues and it was a good beginning. The recent 2000 AALS Clinical Conference in Albuquerque on culture and the AALS Clinical Section Annual Meeting program on diversity issues in hiring stand out for me as recent, wonderful examples of our progress. See Jon Dubin, Faculty Diversity as a Clinical Legal Education Imperative, 51 Hastings L.J. 445 (2000), for a description of the annual program. SALT teaching conferences have also been useful in presenting examples of teaching about diversity and building a more just society through structuring classroom conversations in traditional courses and devising action projects for those courses. By sharing teaching strategies and presenting conceptual frameworks, colleagues in SALT and the clinical community empower those who care about these issues by teaching us how to teach and reflect about culture, discrimination, bias and justice.

[6] Whatever the specific goals, adult learning theory tells us that perspective transformation can occur "from efforts to understand a different culture with customs that contradict our previously accepted suppositions." Fran Quigley, Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics, 2 Clin. L. Rev. 37, 72 n.55 (1995), citing Jack Mezirow, Transformative Dimensions Of Adult Learning 211 (1991). In conducting a needs assessment prior to designing training, cross-cultural trainers ask, for example, whether the goal is to develop skills for employees or other

to these micro and macro objectives will influence teachers to structure the learning to give greater weight to one goal over the other. [7]

I hope this article helps clarify some of the choices that we as teachers make in teaching about culture. Often, in planning classes, we think about the topics we want to teach and put together materials without a clear articulation of specific learning goals or an explicit conversation with ourselves about the implicit pedagogical assumptions regarding how our students learn. In developing the Habits, articulating materials that described them, and designing different ways to teach them, Jean and I kept questioning ourselves about two core issues: (1) what is effective cross-cultural lawyering and (2) how can we help ourselves and our students learn to be effective cross-cultural lawyers? This article attempts to answer these questions and to describe the process we went through in developing our answers.

Section One identifies the significance of culture to the lawyering process. In this section, I hope to answer the critics who think that good lawyering is "culture-neutral" and that therefore any attention to the study of cross-cultural skills and perspectives is unnecessary or not an important enough aspect of lawyering to be highlighted in our teaching. Section Two describes our theory of cross-cultural lawyering competence and identifies choices that teachers can make in setting competency goals for their students. Section Two also lays out the pedagogical theory that underlies the Habits and the resistance that we can expect from both students and ourselves. Section Three summarizes the Habits [8] and Section Four identifies ways to teach the Habits. Through application of the Habits, students will learn the perspectives and skills described in Section Two so as to become effective cross-cultural lawyers.

[*38]

I. Teaching Skills Of Cross-Cultural Lawyering As An Important Part Of Teaching Good Lawyering

For many years, companies choosing employees for overseas work and schools selecting students for overseas study gave personality tests to explore who would make good travelers, adjust more readily to cross-cultural encounters and respond appropriately in culturally sensitive ways. Generally, people who were flexible, less judgmental and more reflective were viewed as having the right personality to work in cross-cultural environments. [9] This notion that success is dependent on personality has been replaced by the idea that cross-cultural competence is a skill that can be taught. [10] As with learning of most skills, there are those who seem to have some natural talent and others who, as a result of experience, have developed special insights into cross-cultural work. However, everyone has the capacity to become more proficient at cross-cultural interaction and communication skills.

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trainees or whether changing the organizational culture and systems or the community and society are goals for the training. The overall goals affect the amount of time allocated to the training, the curriculum and the measurement of success.

[7] For example, Jane Aiken's goal of teaching justice presents a focus on teaching one core difference that is a framework for others: privilege. Aiken, supra note 4. This lens and goal are slightly different in emphasis than a goal of teaching students to use a difference analysis for their lawyering, see O'Leary, supra note 4, or teaching empathy, see Stephen Ellmann, Empathy and Approval, 43 Hastings L.J. 991 (1992). Like those described in this article, the methods outlined in these articles, and the others in note 4 supra, teach students important skills for good cross-cultural lawyering and for social change. How the students use these skills and insights within the lawyering context are part of the conversations that teachers and students can have once they are aware of the insights that all of these methods raise for students.

[8] A full set of materials and accompanying worksheets is available. See supra note 2. For those who teach in family or child protective clinics, Jean has a chapter on the Habits in her book. See Jean Koh Peters, Representing Children In Child Protective Proceedings: Ethical and Practical Dimension (Supp. 2000).

[9] See Improving Intercultural Interactions: Modules for Cross-Cultural Training Programs (Kenneth Cusher & Richard W. Brislin eds., 1997) (hereinafter "Improving Intercultural Interactions").

[10] Koh Peters, supra note 8.

Almost all professions and businesses now recognize the importance of building cross-cultural skills. [11] The United States is increasingly a multi-cultural country with a greater understanding that the "melting pot" did not happen. [12] Materials have been developed and [*39] courses offered for training teachers, doctors, social workers, psychologists and psychiatrists about cross-cultural issues in their professions. [13] As our world becomes more interactive, lawyers and clients inevitably will interact with those who are culturally different. Those whom we assume to be just like us may turn out not to be in some important ways while those whom we assume to be different may, in fact, not be so different. [14]

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[11] For example, businesses recognize that, with improved skills, they will be more competitive, increase retention, improve performance, and be better prepared to work in a multi-cultural business world. The American Medical Association has developed a broad-based initiative to establish cultural competence as the "Fifth Physician Competence," and has produced a collection of resources for physicians to advance this effort called The Cultural Competence Compendium (1999), available at http://www.ama-assn.org/ama/pub/category/2661.html. See also Assuring Cultural Competence in Health Care: Recommendations for National Standards and Outcomes-Focused Research Agenda, at http://www.omhrc.gov/clas/ds.htm; Diversity RX, at http://www.diversityrx.org/gucdc.georgetown.edu/nccc/cultural.html, home page for the National Center for Cultural Competence, which was designed to improve medical care through linguistic and culturally competent services. Some legal organizations have begun to pay attention to these issues as well. This includes, e.g., the Legal Language Access Project (LLAP), a project that grew out of the joint work of the East Bay Asian Consortium and the Alameda County Bar Association Volunteer Legal Services Corporation. They have developed an instrument entitled, "Self-assessment Check-list for Those Providing Services to Culturally Diverse Communities," to increase awareness and change attitudes and practices (on file with author). The LLAP has additional materials that are used to train translators and staff for cultural competence.

[12] Regardless of the parameters chosen, data from the 2000 Census of the U.S. and associated studies and analyses reveal increasing diversity in all fifty states. From more conventional indices, such as race and ethnicity, to languages spoken in households and percentage increases in unmarried partner households or same-sex households, the last decade has witnessed a significant change in the demographic makeup of the population of the United States. For example, more than 10.5 million people reported in a national survey conducted in conjunction with the 2000 Census that they primarily spoke a language other than English, up from 6.5 million in 1990. See D'Vera Cohn & Sarah Cohen, Census Sees Vast Change in Language, Employment, Washington Post, Aug. 6, 2001, at A01. So also, a number of gay and lesbian organizations across the nation have compiled statistics based on the number of unmarried partner or same-sex partner households reported in census data, and their unanimous conclusion has been that the number of such households has increased dramatically. See, e.g., the websites of the National Gay and Lesbian Task Force and the Human Rights Campaign at <http://www.ngltf.org> and <http://www. hrc.org>, respectively. Data from the Census Bureau (available at <http://www.census.gov/population/cen2000/phc-t1/tab04.pdf>) itself reveals increasing racial and ethnic diversity, with a 21.5% reported difference in Black or African-American respondents between 1990-2000, and a 57.95 difference in Latino or Hispanic respondents in the same time period. The conclusion is irrefutable: Americans are more likely to be racially, linguistically, and sexually diverse than they were a decade ago.

[13] A wealth of literature exists in the field of cross-cultural training. I encourage those of you who want to deepen your understanding of culture, cross-cultural competence and how to teach it to read this literature. Sage Publications in Thousands Oaks, California has published a number of books on cross-cultural training. Some recommendations include: Handbook of Intercultural Training (Dan Landis & Rabi S. Bhagat eds., 2d ed. 1996); Intercultural Interactions: A Practical Guide (Kenneth Cusher & Richard W. Brislin eds., 1996) (hereinafter "Intercultural Interactions"); and Improving Intercultural Interactions, supra note 9.

[14] We might have thought about this change as us or them assimilating and losing the sameness or difference. Now we see that it is more complicated and recognize that people can cross borders and at times be different and at other times remain the same. Margaret Montoya has used the idea of border crossing to explore the contingent nature of outsider and insiderness, Montoya, supra note 3. By applying the concept of borderlands used by Gloria Anzaldua, D. Emily Hicks, and Peter Laren, Professors Montoya and Harrison teach a way to develop empathy and connection through identities that are both self and the Other. These identities borrow from the experience of border crossers who live in "bilingual, bicultural, biconceptual reality." Harrison & Montoya, supra note 4, at 398.

As our profession becomes increasingly diverse, [15] the tensions created by difference offer great potential for creative change. [16] These same tensions, however, could result in negative judgments and [*40] misunderstanding. By teaching students how to recognize the influence of culture in their work and to understand, if not accept, the viewpoint of others, we provide students with skills that are necessary to communicate and work positively with future clients and colleagues.

To become good cross-cultural lawyers, students must first become aware of the significance of culture on themselves. Culture is like the air we breathe - it is largely invisible and yet we are dependent on it for our very being. Culture is the logic by which we give order to the world. [17] Culture gives us our values, attitudes and norms of behavior. We are constantly attaching culturally-based meaning to what we see and hear, often without being aware that we are doing so. [18] Through our invisible cultural lens, we judge people to be truthful, rude, intelligent or superstitious based on the attributions we make about the meaning of their behavior.

By teaching students cross-cultural lawyering skills and perspectives, we make the invisible more visible and thus help students understand the reactions that they and the legal system may have towards clients and that clients may have towards them. When two people (such as two student co-counsels or a student and a clinical teacher) working on the same case differ, we have the opportunity to explore why we are giving different meaning to the same behavior and words. By teaching the students about the influence of culture on their practice of law, we give them a framework for analyzing the changes that have resulted in their thinking and values as a result of their legal education. The law, as well as the legal system within which it operates, is a culture with strong professional norms that gives meaning to and reinforces behavior. How legal education influences the choices that students do or do not see is an important part of the cross-cultural analysis. [19]

Cross-cultural lawyering occurs when lawyers and clients have different ethnic or cultural heritages and when they are socialized by [*41] different subsets within ethnic groups. By this definition, everyone is multi-cultural to some degree. [20] Cultural groups and cultural norms can be based on ethnicity, race, gender, nationality, age, economic status, social status, language, sexual orientation, physical characteristics, marital status, role in family, birth order, immigration status, religion, accent, skin color or a variety of other characteristics. [21]

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[15] See <http://www.abanet.org/legaled/statistics/>, showing increasing numbers of women and minority students enrolled in J.D. programs between 1984-2000. For example, the number of minority students enrolled in full-time J.D. programs more than doubled in the period between 1984 and 2000, going from 11,917 to 25,753, and the number of women in law school went up from 46,897 to 60,633 in the same time period.

[16] In an earlier article, I discussed the benefits of joint work that lawyers with diverse perspectives can bring to their work. In the article, I argued that joint work could take advantage of the increasing diversity of the bar. Lawyers who plan for and appreciate difference in work style, communication styles and processing values will be able to collaborate more effectively. See Susan Bryant, Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession, 17 Vt. L. Rev. 459 (1993).

[17] Raymonde Carroll, Cultural Misunderstandings: The French-American Experience 2 (1988). Objective culture includes that which we observe, including artifacts, food, clothing, names. It is relatively easy to analyze and identify its use. Subjective culture refers to the invisible, less tangible aspects of behavior. People's values, attitudes, beliefs are kept in people's minds. Most cross-cultural misunderstandings occur at the subjective culture level. Intercultural Interactions, supra note 13, at 6.

[18] Ethnocentrism occurs when a person uses his or her own value system and experiences as the only reference point from which to interpret and judge behavior. Because socialization is such a powerful process, we are hardly aware that different realities can exist and we therefore make ethnocentric judgments about others all the time, believing the judgment is right rather than just a viewpoint. Intercultural Interactions, supra note 13, at 5.

[19] See infra notes 174-79 and accompanying text.

[20] Intercultural Interactions, supra note 13, at 10.

[21] See Habit One, discussed infra notes 121-32 and accompanying text.

In teaching about the importance of culture to lawyering, we want to avoid reinforcing stereotypes. By using a broad definition of culture, we hope to teach students that no single characteristic will completely define the lawyer's or client's culture. [22] For example, if we think about birth order alone as a cultural characteristic, we may not see any significance to this factor. Yet, if the client (or lawyer) comes from a society where "oldest son" has special meaning in terms of responsibility and privilege, identification of the ethnicity, gender or birth order alone will not be enough to alert the lawyer to the set of norms and expectations for how the "oldest son" is expected to behave. Instead, the lawyer needs to appreciate the significance of the combination of ethnicity, birth order, and gender to fully understand this aspect of the client's culture. A woman from the same culture may understand these responsibilities and privileges better than an outsider and yet, because her experiences are different, still may not fully understand.

A broad definition of culture recognizes that no two people can have exactly the same experiences and thus no two people will interpret or predict in precisely the same ways. Culture is enough of an abstraction that people can be part of the same culture, yet make different decisions in the particular. [23] People can also reject norms and values from their culture. As we recognize these individual differences, we also know that sharing a common cultural heritage with a client tends to improve our predictions and interpretations and to reduce the likelihood of misunderstandings.

When lawyers and clients come from different cultures, several aspects of the attorney-client interaction may be implicated. The capacity **[*42]** to form trusting relationships, to evaluate credibility, to develop client-centered case strategies and solutions, to gather information and to attribute the intended meaning from behavior and expressions are all affected by cultural experiences. By using the framework of cross-cultural interaction, students can learn how to anticipate and name some of the difficulties they or their clients may be experiencing. By asking students as part of the cross-cultural analysis to identify ways in which they are similar to clients, we identify the strengths of connection. We also alert students who see themselves as "the same" as the client to be mindful of differences so that they do not substitute their own judgment for the client's as a result of over-identification or transference. [24]

Lawyers and clients who do not share the same culture face special challenges in developing a trusting relationship in which genuine and accurate communication can occur. [25] By teaching students concepts like "insider" and "outsider" status, we educate students as to why some lawyers and clients may experience great difficulties in building a relationship in which advice is accepted and information is exchanged freely. When the client's culture fosters a significant distrust of outsiders [26] or of the lawyer's particular culture, the lawyer must work

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[22] Critical race feminist theorists have pointed out the importance of intersectionality in recognizing, for example, that women of color have different issues than white women or men of color. The intersectionality of race and gender gives women of color a different vantage point and life experience. See Kimberle Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, 43 Stan. L. Rev. 1241, 1249 n.29 (1991); Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 Stan. L. Rev. 581 (1990); see also Harrison & Montoya, supra note 4. Professors Montoya and Harrison discuss the importance of seeing multiple and changing identities.

[23] Carroll, supra note 17, at 3. See also David B. Wilkins, Essay: Identities and Roles: Race, Recognition, and Professional Responsibility, 57 Md. L. Rev. 1502, 1533 (1998).

[24] See discussion of difference and sameness, infra notes 121-32 and accompanying text.

[25] Hing, supra note 4, at 1809 (describing impact on rapport of 27-year-old male Chinese American Lawyer representing a 30-year-old African-American and pointing out the value of developing sensitivity to personal identity issues for building rapport with clients).

[26] The insider/outsider group distinction is one of the core themes in cross-cultural interactions. Handbook of Intercultural Training, supra note 13, at 189. Historical struggles between native countries of the lawyer and client or situations in which the lawyer's or client's native countries have dominated the other's country can create difficult power dynamics between lawyer and client. Racial discrimination, both historical and current, by Anglo-Americans against African-Americans can have significant influences on the lawyer-client relationship.

especially hard to earn trust in a culturally sensitive way. By teaching the concept of "insider" and "outsider" status, before students form a view of clients as "holding back," "lying," or "being unhelpful," we allow students to have a more nuanced hypothesis about what is occurring in these relationships. [27]

Even in situations in which trust is established, students may experience cultural differences that significantly interfere with lawyers' and clients' capacities to understand one another's goals, behaviors and communications. Cultural differences often cause us to attribute different meaning to the same set of facts. One important goal of [*43] cross-cultural training is to help students make isomorphic attributions, i.e., to attribute to behavior and communication that which is intended by the actor or speaker. [28] Students who are taught about the potential for misattribution can develop strategies for checking themselves and their interpretations. [29]

Inaccurate attributions can cause lawyers to make significant errors in their representation of clients. Imagine a lawyer saying to a client, "If there is anything that you do not understand, please just ask me to explain" or "If I am not being clear, please just ask me any questions." The lawyer might assume that a client who does not then ask for clarification surely understands what the lawyer is saying. However, many cultural differences may explain a client's reluctance to either blame the lawyer for poor communication (the second question) or blame himself or herself for lack of understanding (the first question). [30] Indeed, clients from some cultures might find one or the other of these results to be rude and, therefore, will feel reluctant to ask for clarification for fear of offending the lawyer or embarrassing himself. [31]

Cultural differences may also cause lawyers and clients to misperceive body language and judge each other incorrectly. [32] For an everyday example, take nodding while someone is speaking. In some cultures, this gesture indicates agreement with the speaker; in others, however, it simply indicates that the listener is hearing the speaker. Another common example involves eye contact. In some cultures, looking someone straight in the eye is a statement of open and honest communication while a diversion of eyes signals dishonesty. In other cultures, however, a diversion of eyes is a sign of respect. Students need to recognize these differences and plan for a representation strategy that takes them into account.

More generally, students need to be taught that concepts of credibility are very culturally determined. In examining the credibility of a story, lawyers and judges often ask whether the story makes "sense" [*44] as if "sense" were neutral. [33] Consider, for example, a client who explains that the reason that she left her native country was that God

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[27] Professor Jacobs identifies how an African-American client can be erroneously labeled "difficult" by a white lawyer who fails to understand the significance of racial differences. The lawyer may be sending signals to the client that reinforce racial stereotypes, may be interpreting behavior incorrectly, and, therefore, may be unconsciously failing to provide full advocacy. Jacobs, supra note 4, at 345.

[28] Dharm P.S. Bhawuk & Harry C. Triandis, The Role of Culture Theory in The Study of Culture and Intercultural Training, in Handbook of Intercultural Training, supra note 13, at 17.

[29] See Habits One, Two, and Three, infra notes 121-39 and accompanying text.

[30] People in cultures that are self-effacing tend to blame problems on themselves and not the other whereas those in self-aggrandizing cultures tend to blame problems on others. An individual from a face-saving, collectivist culture would hesitate to challenge the lawyer so as to cause them to lose face. See Richard Brislin & Tomoko Yoshida, Intercultural Communication Training: An Introduction 95 (1994).

[31] What's a lawyer to do if she cannot just tell the client to "feel free to ask me questions"? Habit Four, infra notes 140-54 and accompanying text, identifies ways that lawyers can "test" comprehension by clients.

[32] See Brislin & Yoshida, supra note 30, at 91.

[33] As Professor Hing recognized in one of the first articles written about the influence on lawyering of what he called "personal identification issues," "common sense, without training, is dangerously fashioned by our own class, race, ethnicity/culture, gender and sexual background." Hing, supra note 4, at 1810. See also Carolyn Grose, A Field Trip to Benetton and Beyond: Some Thoughts On 'Outsider Narrative' in the Law School Clinic, 4 Clin. L. Rev. 109, 116 (1997). "The supposedly objective

appeared to her in a dream and told her it was time to leave. If the time of departure is critical to the credibility of her story, how will the fact-finder evaluate the client's credibility? Does the fact-finder come from a culture where dreams are valued, [34] where an interventionist God is expected, or where major life decisions would be based on these expectations or values? Will the fact-finder, as a result of differences, find the story incredible or indicative of a disturbed thought process or, alternatively, as a result of similarities, find the client credible? [35]

Categorization differences may cause lawyers and clients to view different information as relevant. [36] Students who describe clients as "wandering all over the place" may be working with clients who categorize information differently than the students or the legal system. Lawyers and clients who have different time and space orientations may have difficulty understanding and believing each other. [37] If a **[*45]** lawyer whose culture is oriented to hour, day, month, and year tries to get a time-line from a client whose culture is not oriented that way, she may incorrectly interpret the client's failure to provide the information as uncooperative, lacking intelligence, or, worse, lying. [38] Clients who are unable to tell a linear time-related story may also experience the same reaction from judges and juries if the client's culture is unknown to the fact finders.

In other settings, the distinction between individual and collective cultures has been called the most important concept to grasp in cross-cultural encounters. [39] Understanding this distinction and the differences that flow from it are also critically important for lawyers to understand. Teaching students to recognize some of the differences between individual and collective cultures will help them see how clients and lawyers define problems, identify

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standard of truth on which the criticisms rely is in fact just one <elip> point of view… . Insiders refuse to hear and/or believe outsiders' stories because they often conflict with the insider's understanding of the outsider." Id at 118. See also Naomi R. Cahn, Inconsistent Stories, 81 Geo. L.J. 2475, 2515 (1993), as quoted in Harrison & Montoya, supra note 4, at 426. I am not suggesting that the student refrain from assessing whether the story would make sense to the fact-finder. Obviously, an important part of case preparation is identifying differences between the fact-finder and client that may inhibit a fact-finder's capacity to understand the client and her worldview. Habit Two is designed to get the student to think through those issues. See infra notes 133-136 and accompanying text.

[34] Different cultures view rituals and superstitions differently. Rituals and Superstitions are among the eighteen categories of knowledge about cultures that cross-cultural trainers have identified. See Handbook of Intercultural Training, supra note 13, at 189. One group's ritual is viewed by another as superstition.

[35] My colleague Sharon Hom shared this vignette with me as well as her students' different reactions to it. See also Marc A. Fajer, Authority, Credibility, and Pre-Understanding: A Defense of Outsider Narratives in Legal Scholarship, 82 Geo. L.J. 1845, 1856 (1994) ("Faced with a conflict between deep-seated beliefs and a contradicting story, some people may adjust their beliefs, but others are likely to reject the story as untrue."); Jane E. Baron, Resistance to Stories, 67 S. Cal. L. Rev. 255, 256, 263 (1994) ("Background assumptions determine, in great measure, whether a particular account will be heard as a … persuasive or believable story").

[36] Just as credibility is very culturally driven, so is relevancy. When we say that one fact proves another and therefore is relevant to show a particular proposition, we are relying on implicit assumptions. See David A. Binder & Paul Bergman, Fact Investigation: From Hypothesis to Proof 178 (1984). Usually these assumptions are embedded with cultural norms, beliefs, and values.

[37] Similarly, the lawyer who insists that clients come on time may be surprised to learn that her client considers herself to be on time when the client arrives "late" according to the lawyer's time orientation to minutes and hours. Once a lawyer knows that a client has this relationship to time, the lawyer can schedule appointments to coincide with the client's sense of time by blocking out interview time later than that agreed upon with the client. Other suggestions include talking to the client about the importance of coming at the precise time rather than "on time."

[38] Professor Montoya reinforces this point in describing a class on translation given by Professor Zuni Cruz. Professor Zuni Cruz invited a federally-certified Navajo translator to assist in teaching students how to work with translators. "Ms. Yazzie's presentation debunked for all of us the idea that languages are transparent or that representations of reality somehow exist apart from language. One of several examples cited by Ms. Yazzie involved different conceptualizations of time: 'February' translated into Navajo as "the time when the baby eagles are born. Certainly, this is a temporal concept more connected to nature and to place than a word such as 'February' and, as such, is a different construct." Montoya, supra note 3, at 160.

[39] Intercultural Interactions, supra note 13, at 302.

solutions, and determine who are important players in a decision. [40] For example, in analyzing the scenario described at the beginning of this article, students have very different interpretations as to why the brother might be there, based in part on whether the student sees the brother and sister as a unit or as separate individuals, one of whom has a legal problem. This assessment is very much related to the student's culture and family experience. [41]

Students who explore differences in individual and collective cultures may come to appreciate different communication styles, values and views of the roles of the lawyer and client. In an individualistic culture, people are socialized to have individual goals and are praised for achieving these goals. They are encouraged to make their own [*46] plans and "do their own thing." [42] Individualists need to assert themselves and do not find competition threatening. By contrast, in a collective culture, people are socialized to think in terms of the group, to work for the betterment of the group, and to integrate individual and group goals. Collectivists use group membership to predict behavior. Because collectivists are accepted for who they are and accordingly feel less need to talk, silence plays a more important role in their communication style.

Majority culture in the United States has been identified as the most individualistic culture in the world. [43] Our legal culture reflects this commitment to individualism. For example, ethical rules of confidentiality and conflict of interests often require a lawyer to communicate with an individual client in private and may prohibit the lawyer from representing the group or taking group concerns into account. [44] In addition, the Anglo-American legal system creates substantive laws that reflect a highly individualistic model of rights and responsibilities. [45] Students trained under this system need to be alert to potential conflicts that may arise between a client's culture and the legal strategy designed for an adversarial, individualistic system. Students who understand this are better able to address the problems it creates for those clients who come from or embrace a more collective culture. [46] [*47]

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[40] Zuni Cruz, supra note 4, at 580-84, tells a number of stories illustrating difference in individualistic and community-focused lawyering and how culture influences the choices that lawyers make.

[41] See infra notes 196-99 and accompanying text for a classroom discussion of this scenario.

[42] Intercultural Interactions, supra note 13, at 302.

[43] G. Hofstede, Culture's Consequences: International Differences in Work Related Values (1980); G. Hofstede, Cultures and Organizations: Software of the Mind, in Intercultural Interactions, supra note 13, at 302. Other nations that rank high in this dimension are Australia, Canada, Great Britain, the Netherlands, and New Zealand. Nations that score high on collectivism are primarily those in Asia and South America.

[44] See also O'Leary, supra note 4, at 72. Professor O'Leary points to both the ethical rules and concepts of standing as limiting lawyers' conceptions about who is involved in a dispute. Following Jean's and my presentation at the 2000 AALS Clinical Teacher's conference, Professor Peter Joy alerted us to a contemplated change in California professional responsibility rules on confidentiality, which would allow the privilege to be maintained when family members or others are part of the interview process.

[45] In her article, Professor Zuni Cruz identifies the differences in an adversarial system and a traditional indigenous system. Zuni Cruz, supra note 4, at 594. Professor Zuni Cruz's article identifies the different role choices that lawyers who practice in more collective societies may make. She encourages an approach that views the client and her legal problems in the context of the client's own community. This framework (as opposed to the client-centered individualistic framework) allows the lawyer to gather different kinds of information, id. at 575, and to counsel clients differently, id. at 577.

[46] In developing more culturally appropriate services, professional training often addresses the need to assess the impact of an individualistic culture: "The relentless focus on the self provided by most existing services may be alien and disquieting to persons with cultural values that define the self only in concert with others and perceive autonomy and individualism as undesirable or unnecessary." See R.H. Dana, Multicultural Assessment Perspectives For Professional Psychology 16 (1993). See also Derald Wing Sue, Counseling the Culturally Different 78-81 (1981). Sue points out the problems for counselors who incorrectly assume that all clients will respond to a belief that they are responsible for their own actions and can improve their lot in life through their own efforts. In some cultures, "to be actively self-assertive forecasts adjustment difficulties." Id. at 83.

Students who come from more collectivist cultures may themselves experience some of the cultural dissonance that such clients face. [47]

Here is an example of how a result that appeared successful can nevertheless be unacceptable when viewed within the context of the client's collective culture. In this case, lawyers negotiated a plea to a misdemeanor assault with probation for a battered Chinese woman who had killed her husband and who faced a 25-year sentence if convicted of murder. The client, who had a strong self-defense claim, refused to plead to the misdemeanor charge because she did not want to humiliate herself, her ancestors, her children and their children by acknowledging responsibility for the killing. Her attorneys did not fully comprehend the concept of shame that the client would experience from such a plea until the client was able to explain that the possibility of 25 years in jail was far less offensive than the certain shame that would be experienced by her family (past, present and future) if she pled guilty. These negative reactions to what the lawyers initially viewed as an excellent result allowed the lawyers to examine the meaning of pleas, family, responsibility and consequences within a collective cultural context that was far different than their own. [48]

In another case, lawyers had to change their strategy for presentation of evidence to make a claim that honored the cultural and religious norms of their client. In this case, lawyers arguing for political asylum for a female client wanted to present evidence of persecution by showing an injury to an area of her body that the client was committed, by religion and culture, to keeping private. Ultimately, the client developed a strategy of showing the injury to the INS lawyer who was also female. [49] This strategy, challenging conventional legal **[*48]** advocacy and violating cultural norms of the adversarial system, allowed the client to present the case in a way that honored her values and norms. [50]

Each of these cases presented stark cultural contrasts with clear connections to lawyering choices. In hindsight, it is easy to see the cultural contrasts and their effects on the clients' and lawyers' perceptions of what actions were appropriate and what accommodations were acceptable. In the heat of the moment, however, cases are more difficult, and the differences and similarities are more subtle and, at times, invisible. As clinical teachers, our job is to develop ways to make the invisible less so. The next section identifies some critical cross-cultural frameworks and vocabulary for giving our students a way of talking about differences and similarities, so that students will leave our programs better prepared to be lawyers in a multi-cultural world.

II. Developing Cross-Cultural Competence By Articulating Cross-Cultural And Learning Theories

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[47] One wonders, for example, what conflicts students who are raised in cultures that value avoiding confrontation and maintaining harmonious relationships face when dealing with an American legal system that fosters competition and zealous advocacy with a winner-take-all ethic.

[48] This scenario was told to me by Professor Holly Maguigan who for years has represented battered women in criminal cases. In this case, her students worked with a lawyer from the Legal Aid Society. These lawyers were significantly aided by the advocates of the New York Asian Women's Center who perform both language and cultural translations. The Center is a community-based organization that works with a diverse group of Asian women in assisting them to deal with issues of intimate violence. For a more detailed analysis of the difference between individualism and collectivism, see note 45 supra and accompanying text, as well as Handbook of Intercultural Training, supra note 13, at 19.

[49] Peter Margulies, Re-Framing Empathy in Clinical Legal Education, 5 Clin. L. Rev. 605 (1999). Peter also presented this case at the 1999 CUNY Conference, "Enriching Legal Education for the 21[su'st'] Century, Integrating Immigrant's Perspectives Throughout the Curriculum and Connecting with Immigrant Communities."

[50] The actual fact finder, the judge, never saw the evidence. The adversary learned about the evidence not from the lawyer, but from the client; the adversary, not the advocate, presented the evidence to the court.

A starting point for faculty who are designing cross-cultural learning curricula is to ask what students already know and what we want students to learn. [51] Cross-cultural learning takes place in three different spheres: the cognitive, behavioral and emotional. In planning a class, teachers need to set goals for each of these spheres. We need to question our students' cognitive knowledge and awareness so as to determine what they need to know about cultural style differences, the dynamics of prejudice, and the nature of oppression. [52] We need to evaluate the skills that our students have or need to acquire in order to be competent. And lastly, we need to gauge students' motivation to learn and emotional resistance to change and assess what we can do to open students up to learning in this area.

The teaching choices to be made to accomplish change in each of these spheres depends in large part on the assessments we make about **[*49]** our students, about our capacity to teach these perspectives and skills, and about the connection of these skills to our vision of good lawyering. In addition, we need an explicit theory about what we mean by cross-cultural lawyering competence and an explicit pedagogical theory about how students can learn to be competent.

The Habits, the student materials and the teaching suggestions that are developed in Sections Three and Four are based on Jean's and my theories about cross-cultural competence and learning theory. In the student materials, we lay out the following four guiding principles about the Habits that express some underlying assumptions about good lawyering and learning:

. all lawyering is cross cultural; [53]

. a non-judgmental approach towards yourself and client promotes learning [54] and good lawyering;

. remaining present with the individual client is an essential part of cross-cultural competence; [55] and

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[51] In the training world, this would be called a needs assessment. In conducting such an assessment, a teacher should strive to avoid viewing the students as a monolith, and to keep in mind that differences exist even in the most seemingly homogeneous classrooms.

[52] For example, a clinic that placed greater emphasis on changing the legal system would devote greater attention to teaching about the nature of oppression whereas one focused on improving representation might focus on cultural style differences. Of course, the two go together, but the focus or emphasis might be different depending on the primary goal. Bernardo M. Ferdman & Sari Einy Brody, Models of Diversity Training, in Handbook of Intercultural Training, supra note 13, at 292.

[53] Lawyering is often cross-cultural and therefore all lawyers need cross-cultural skills. Lawyers who explicitly examine the cross-cultural issues in a case will increase client trust, improve communication and enhance problem solving on behalf of clients." Jean Koh Peters & Susan Bryant, Cross/Cultural Lawyering Materials (2001) (on file with author).

[54] Refraining from judgments and being open to difference is an essential skill for effective cross-cultural lawyers. We believe that openness is a skill that can be learned and applied towards clients and ourselves. Inevitably, we will continue to interpret behavior through our cultural lens. To honestly unearth our own cultural assumptions, stereotypes and biases and examine them, we need to view them without shame or judgment or self-condemnation, but with an eye towards understanding them and, where necessary, rectifying or eradicating them. To understand our clients, we need to use the same kind of non-judgmental approach. Id.

[55] Remaining present with the individual client, ever respecting her dignity, voice and story allows lawyers to avoid stereotyping. This principle, a goal of all lawyering, is especially difficult to attain in high-pressure, high-volume practices, where the "efficiency" of categorizing and generalizing, and severe time and resource constraints can lead the lawyer away from an individualized understanding of each client. Especially when we are studying culture and the ways our clients may be socialized by their cultures, we need to remember that although we are all influenced by culture, we are also individuals who may or may not embrace all of the cultural values of our socialization process. Id.

. knowing yourself as a cultural being is an on-going and necessary process for cross-cultural competence. [56]

In the following section, I identify other ideas about cross-cultural competence and learning theory that inform our work.

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A. Cross-Cultural Competence

1. Cross-Cultural Theory

To increase cross-cultural competence, teachers need to plan classes and supervision that teach cross-cultural theory as well as skills. In terms of cognitive goals, teachers should identify concretely the awareness and knowledge goals that build cross-cultural competence. For example, goals might include increasing students' awareness of the significant role culture plays in: [57]

. giving meaning to behavior and words;

. developing values and judgments;

. forming relationships with others; [58] and

. developing biases and stereotypes. [59]

In setting knowledge goals, the teacher should identify culture-general and culture-specific information that is important to the students' clinical work and future learning. Culture-general knowledge helps the lawyer understand differences and similarities by means of concepts and experiences that are likely to occur in any culture. [60] These concepts will also help students gather specific information on the individual cultures about which they are learning. For example, many of the categories discussed in Section One illustrate cultural concepts that reflect culture-general information related to our work as lawyers. The concepts that seem particularly key include:

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[56] Knowing ourselves as cultural beings is key to being able to identify when we are using biases or stereotypes, when we are misinterpreting or filling in, and why we are judging people who are different. The lawyer must also accept that his or her culture may create roadblocks to understanding others. Our experiences and our cultures create strong categories of in-group and out-group and cause us to stereotype the "other." By accepting the blinders that shape our understandings of others, we can feel less frustrated by setbacks and not judge ourselves too harshly for having prejudices and biases, as long as we are committed to growth and change. Over time, a lawyer can learn to befriend herself as a cultural being, through self-understanding. Lawyering is an ongoing, lifelong process. Id.

[57] Students need to understand that "crossing cultural boundaries is a two-way process." See Zuni Cruz, supra note 4, at 567-68. The lawyer must consider his own and the client's world views, understanding the client's goals as well as how the lawyer's perspective influences the way the lawyer views the other culture. See also Jacobs, supra note 4, at 405-07, reporting that the cross-culturally competent therapist should be aware of his/her biases and values, and how these might affect clients of color. In terms of knowledge, the counselor should know the role that cultural racism plays in the identity and world views among minority groups. Id., citing Sue et al., Cross-Cultural Counseling Competencies, in 10:2 The Counseling Psychologist 45-51 (1982).

[58] elip>becoming effective overseas involved a heavy measure of self-understanding and awareness." Intercultural Sourcebook 3-5 (D.S. Hoopes & Venturas eds., 1979).

[59] See Isabelle Gunning, Diversity Issues in Mediation: Controlling Negative Cultural Myths, 1995 J. Disp. Resol. 55. To show how cultural myths can change the way we interpret narratives, Professor Gunning uses a process of race-shifting to illustrate how, if we assign different races to the participants, we view the participant's stories differently. She points out that the cultural myths that will be applied to minority and disadvantaged group members will almost always be negative and rely upon taboos inculcated during childhood and affirmed by media rather than based on personal experience. Id. at 79.

[60] Id. at 86.

. collective and individualistic cultures; [61]

. time; [62]

[*51] . direct and indirect communication;

. social role and hierarchy;

. insider-outsider;

. categorization; and

. attribution. [63]

In identifying culture-specific cognitive goals, the teacher should start by identifying differences and similarities between a student and the client group in the particular culture that the student is learning. The teacher should identify culture-specific knowledge, politics, geography, and history, [64] especially information that might shed light on the clients' legal issues. [65]

In addition to culture-general and culture-specific knowledge, [*52] cognitive goals for students should include understanding two key concepts that will affect their work: (1) the importance of understanding similarities as well

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[61] Professor Zuni Cruz details the many difficulties that arise when considerations of community clash with a profession "long cast in terms of individuality." Zuni Cruz, supra note 4, at 568.

[62] Majority culture in the United States is monochronic; punctuality and adherence to schedule are important. Other cultures (including some within the United States) are polychronic, stressing the completion of tasks and involvement of people rather than strict adherence to schedule. See Kenneth Shipley, Working with Linguistically and Culturally Diverse Clients, in Kenneth B. Shipley, Interviewing and Counseling in Communicative Disorders: Principles and Procedures (2d ed. 1996).

[63] Kenneth Cushner & Dan Landis, The Intercultural Sensitizer, in Handbook of Intercultural Training, supra note 13, at 189, provide an extensive list of concepts that reflect culture general information that is relevant to our work as lawyers. They divide these concepts into three categories: people's experiences that engage the emotions, knowledge areas that people learn as a result of being socialized within a culture, and bases of cultural differences influencing how people learn to process information. Within the first category are anxiety about appropriate behavior, disconfirmed expectations, outsider status, tolerance of ambiguity, and confrontation of one's own prejudices. Within the second category fall communication and language use, individualism versus collectivism, rituals versus superstitions, social hierarchies, values, differences in work, and differences in time and spatial orientation. Finally, the last category encompasses the ways in which people categorize information, the differentiations they make between categories, ingroup-outgroup distinctions, learning styles, and attributions.

Several of the cross-cultural training books have 3-4 page descriptions of these cultural concepts that could be used to teach them. Also, teachers can lecture or use students' cases to teach concepts. See Montoya, supra note 4. Obviously language difference is a significant difference that affects our concepts of insider-outsider, categorization and attribution. For example, Sharon Hom describes the genesis of her English-Chinese Lexicon on Women and the Law as a response to the difficulty of translating concepts such as empowerment, sex, gender, feminism, and affirmative action into Chinese. See Sharon K. Hom, Lexicon Dreams and Chinese Rock and Roll: Thoughts on Culture, Language, and Translation as Strategies of Resistance and Reconstruction, 53 U. Miami L. Rev. 1003, 1009-11 (1999). The materials and this article do not address the impact of language difference and how to teach about it. Although this is a very significant difference (and one to which I devote at least one class session per semester), everyone has to stop somewhere. Other clinical faculty have focused on these issues. See Ileana Dominguez-Urban, The Messenger as the Medium of Communication: The Use of Interpreters in Mediation, 1997 J. Disp. Resol. 1; Angela McCaffrey, Don't Get Lost in Translation: Teaching Law Students To Work With Language Interpreters, 6 Clin. L. Rev. 347 (2000).

[64] Intercultural Interactions, supra note 13, at 3. Even if the teacher is not teaching culture-specific information, the student should be encouraged to do some of that learning on her own.

[65] Zuni Cruz, supra note 4, at 593, identifies a number of classes that are focused on culture-specific instruction in native culture and its relationship to lawyering skills and perspectives.

as difference and (2) the recognition that not all similarities and differences have equal significance. The insight about the importance of similarities focused our early work as we recognized the importance of students seeing themselves connected to clients by their similarities. [66] If students are encouraged to articulate the similarities in their clients and themselves, in their clients' choices and their own, and in their clients' values and their own, the students may be better able to understand their clients [67] and less likely to judge clients harshly. For example, in one class in which students were asked to identify similarities and differences, one student noted that he had been able to list many differences and only one similarity, but that prior to this exercise, he had not seen the similarity. The similarity that he noted was that both he and his client loved their mothers and were very attached to them. This insight was an important connection for the student, who was having difficulty understanding his client, a child in a child protective case. [68]

We also recognized that students who saw themselves as very similar to their clients often missed differences and made assumptions about client motivations and goals. For example, a student whose parents came from the Dominican Republic, in describing a Dominican client with whom she was working, stated that she saw the client exactly like herself except for differences in their educational backgrounds. The student had spent significant time with the client telling her that she needed to go back to school. This exercise gave the student **[*53]** insight into why she was giving her client that advice. [69]

In teaching students some theory about the importance of culture in their interactions and in their attribution of meaning, we wanted students to see that people raised in different cultures can share similarities that are manifested differently. Assumptions of similarity can also create difficulties for students if shades of difference are ignored. For example, all societies have some form of social hierarchy. In one culture, this may be demonstrated by the person of lower rank kissing the feet of a superior; in another culture, this might be accomplished through bowing. In the United States, we frequently acknowledge social status through titles. Although all students have experienced some sort of hierarchy in their own culture, they do not necessarily have a full understanding of ways in which hierarchy is manifested in another culture. By acknowledging both similarity and difference, a student is more likely to explore the client's concept of hierarchy and understand the client's reaction to issues of hierarchy in the attorney-client relationship as well as the client's relationship with others. [70]

Although the Habits and materials ask students to identify a range of similarities and differences, an important component of cross-cultural competence is to recognize that not all similarities and differences have the same

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[66] This insight has been the subject of presentations at clinical teachers' conferences as well. For example, I recall Katherine Klein's and Margaret Barry's presentation at an AALS annual meeting demonstrating a method of establishing connection and lessening judgments of clients by getting students to identify situations where they reacted similarly to clients. In our battered women's clinic, during one session on teaching empathy, we asked each student to identify a situation she or he thought was bad but stayed in anyway. We also asked each student to identify a situation where she or he was hurtful to someone she or he cared about. By doing this exercise early in the semester, we were trying to create connections to battered women who often make choices to stay for all the reasons that the students articulated in the class session, and to foster students' understanding of why they stayed, and of why women may be abusive to their children.

[67] Professor Judy Scales-Trent describes the importance of recognizing sameness as moving toward a capacity to see the world from multiple perspectives. Judy Scales-Trent, Sameness and Difference In the Law School Classroom: Working at the Crossroads, 4 Yale J. L. & Feminism 415 (1992). Citing Gloria Anzaldua, the focus on sameness as well as difference allows the student to "at once see through serpent and eagle eyes." Id. at 417 n.3. This capacity may encourage students to represent clients who "earlier they had considered unsympathetic (too different)" in a different way with a greater capacity to understand and believe their stories. As a result, students may be more willing and able to investigate and spot issues. Id. at 436.

[68] See also Aiken, supra note 4, at 39-40.

[69] This prompted a wonderful and interesting classroom conversation about whether greater distance was necessary in order to be helpful. Was a lawyer even supposed to talk about education? A student who had spent a year working in Guatemala talked about how legal workers in that country doubled as job counselors because of the absence of job counselors. This caused the students to ask if the situation is any different in this country when lawyers are working in under-resourced communities.

[70] Bhawuk & Triandis, supra note 28, at 23. Cross cultural trainers refer to this kind of similarity and difference as etics and emics. An etic is a principle or generalization that cuts across cultures. For example, hierarchy can be found in all cultures and

degree of importance in all settings. Some similarities and differences might trigger stereotyped thinking that could harm clients. As Michelle Jacobs warned in her article, People from the Footnotes: The Missing Element in Client-Centered Counseling, [71] the legal profession's failure to address issues of race may result in clients of color being further marginalized by white lawyers. Professor Jacobs identifies ways in which bias and stereotyping may cause [*54] lawyers to misinterpret clients [72] or, worse, to provide less service to the poor and clients of color. [73]

Similarly, as Jane Aiken recognized in her article, Striving To Teach Justice, Fairness and Morality, [74] students need to learn about the concepts of power and privilege and their influence on the attorney-client relationship and the legal system. In an article commenting on Professor Aiken's, Margaret Montoya points out that the analysis of the significance of similarity and difference changes in different contexts. [75] Without denying the power of racism, homophobia, sexism and other "isms," Professor Montoya points out that allocations of [*55] "power" and "privilege" can turn on relationships and audience. For example, the importance of similarities and differences will vary depending on, among other factors, the client, lawyer, judge, and kind of case. [76]

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therefore is an etic. By focusing on etics, trainers establish similarities between cultures. An emic is the manifestation of the etic in the individual culture. For example the etic of hierarchy is manifested in India by kissing feet, in Japan by bowing, and in the United States by giving someone a title. Some anthropologists suggest that cultural general training is invalid, that each culture has to be studied for its own uniqueness, and that etics are not valuable. Id. at 23.

[71] Jacobs, supra note 4. "Caution not to stereotype by attributing group preferences to individuals" is one of four key requirements of communication across cultures. Cochran et al., supra note 4, at 204.

[72] For example, Professor Jacobs identifies ways that a client might be perceived as difficult when instead, the client is reacting to body language from the attorney, or the client is using tactics of resistance to the lawyer's unconscious racism or to an unfair legal system. Jacobs, supra note 4.

[73] In analogizing research done in the medical field showing disparate treatment by doctors for African-American patients, Professor Jacobs explores whether lawyers may also unknowingly be engaging in disparate advocacy. Jacobs, supra note 4, at 381 n.144, citing Ditto & Hilton, Expectancy Process in the Health Care Interaction Sequence, 46 J. Social Issues 97, 97-124 (1990). See also Medical School Students Produce Different Diagnoses of White and Black Patients, 29 J. Blacks in Higher Education 38 (2000), citing Saif S. Rathore et al., The Effects of Patient Sex and Race on Medical Students' Ratings of Quality of Life, Am. J. Medicine (2000), concluding that a patient's race and gender influenced medical students' diagnoses. A recent report of racial disparities in sentencing of juveniles lends credence to Jacobs' analysis that lawyers may be engaging in disparate treatment of clients of color. See Fox Butterfield, Racial Disparities Seen as Pervasive in Juvenile Justice, N.Y. Times, April 26, 2000, at A1, summarizing a Justice Department-sponsored study, showing that Black and Hispanic youths are treated with more severity than white youths charged with comparable crimes at each stage of the juvenile justice system. According to the study, black youth make up only 15% of the total population under 18 years of age. However, 26% of black youth are arrested, 31% are referred to juvenile court, 44% are detained prior to trial, 34% are formally processed by juvenile courts, 32% are found guilty, 46% are waived to adult criminal court, 40% are placed in juvenile prisons, and 58% are placed in adult state prisons. See And Justice For Some: A report prepared by National Council on Crime and Delinquency researchers for the Building Block for Youth Project, available at http://www.buildingblocksforyouth.org. Another study of the child neglect system in New York City shows that African-American children are twice as likely to be removed following confirmed reports of abuse and neglect than white children and once in foster care they are significantly more likely to remain in care for longer periods. See Race, Bias & Power in Child Welfare, 3 Child Welfare Watch 1, Spring/Summer 1998. See also Karen Howze, The Cultural Context in Abuse and Neglect Practice for Judges and Attorneys (1996) for a presentation of the ways that cultural context may influences judges and lawyers. Finally, Professor Jacobs points to studies which detail the effect of race on black students with high cultural mistrust who are more likely to drop out of counseling and less likely to share confidential information. This has analogous implications for the attorney-client relationship. See Jacobs, supra note 4, at 345.

[74] By focusing on teaching students about privilege, Professor Aiken gives students a lens for examining racism and other biases and stereotyped thinking and actions that address these social injustices. Aiken, supra note 4.

[75] Professor Jacobs also recognizes that power differentials can affect the degree of trust that clients have in lawyers who can use the power differential to manipulate clients. Jacobs, supra note 4.

[76] Habit Two illustrates a way that students can identify the relevant players for focus on difference and similarity. Habit Two recognizes that understanding the cultural context of all the players is necessary for the lawyer to assess the impact of culture on the case.

Thus, a competent cross-cultural lawyer acknowledges racism, power, privilege and stereotyped thinking as influencing her interactions with clients and case planning, and works to lessen the effect of these pernicious influences. A cross-cultural framework that asks students to look at a variety of similarities and differences allows those students to examine the "isms" and power issues from a different perspective. The cross-cultural perspective helps explain why we use stereotypes and think in ethnocentric ways as well as identifying new ways of thinking and behaving.

2. Cross-Cultural Lawyering Skills

In addition to awareness and knowledge, students need analytical and communication skills to allow them to engage in cross-cultural interactions competently. [77] Intercultural communication skills include deep listening skills [78] and capacities to focus on content rather than style, [79] the ability to read verbal and non-verbal behavior, and the ability to adapt conversation management behaviors and style. These are communication skills that lawyers need in every situation and more so in cross-cultural situations. Students may also want to focus on skills that are valued in the client's culture. [80]

[*56] Cross-cultural analytical skills require capacities to identify assumptions and to make judgments based on facts rather than stereotypes and bias. [81] Of course, all good lawyering requires the capacity to identify assumptions and recognize those situations in which one is merely filling in the blanks. In the cross-cultural context, this capacity is even more important because the meaning we attribute to client behavior and words is often based on ethnocentric interpretations and, therefore, will often be incorrect. A cross-cultural training theorist has identified the primary goal of effective cross-cultural interaction as developing the capacity to make "isomorphic attributions," i.e., to attribute the same meaning to behavior and words that the person intended to convey. [82] A capacity to make isomorphic attributions requires an antenna focused on the differing connotations a word or act may have in the different worlds inhabited by the student and the client. To attribute meaning correctly, students need to be able to imagine multiple possible meanings for behavior and to be flexible and adaptable.

Most importantly, non-judgmental thinking is required to develop connection to and understanding of clients. A cross-cultural anthropologist has referred to this as the capacity to enter the cultural imagination of another, or as "perceiving as normal things that at first seem bizarre or strange." [83] Remaining non-judgmental is a core cross-cultural skill and one that is particularly difficult for lawyers. Our training includes being called upon in

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[77] Norman G. Dinges & Kathleen D. Baldwin, Intercultural Competence: A Research Perspective, in Handbook Of Intercultural Training, supra note 13, at 115. A list of skills that are necessary for effective cross-cultural communication include dealing effectively with conflict, being flexible and adaptable, possessing the skills that support the change process and the courage to speak out, working to remove barriers, and setting challenging but realistic expectations.

[78] Enhanced listening skills are one of fourteen cross-cultural skills identified by J.H. Katz & F.A. Miller, Skills for Working in Culturally Diverse Organizations, in OD Practitioner 25, 32-33 (1993), cited in Handbook Of Intercultural Training, supra note 13, at 293.

[79] To improve listening skills, cross-cultural trainers advise a focus on content rather than style of speech. Id. Professor Peters also points out that voice quality, tone, and loudness are culturally influenced verbal cues that we use for interpretation of meaning and evaluation of credibility. See Cochran et al., supra note 4, at 212. Thus, a capacity to separate content from style helps the listener hear and judge differently.

[80] The students may not be able to acquire all the skills fully, but being able to identify them and work on acquiring them is an important aspect of cross-cultural awareness. For example, awareness that the skill valued by the culture includes listening or facilitating more than dynamic speaking might well cause a lawyer working within this culture to focus on developing these skills.

[81] Characteristics for cross-cultural competency for psychotherapists included avoiding prejudices, labeling and stereotyping and steering clear of limiting notions about minority clients. Jacobs, supra note 4, at 345 n.294.

[82] Harry Charalambos Triandis, Interpersonal Behavior (1977).

[83] Carroll, supra note 17, at 2.

classroom discussion to judge a case based on limited, digested casebook facts. Early in most representations, lawyers begin to assess clients' stories and the likely result in the case. Students are often taught that assessing client credibility is a critical piece of the lawyers' role that begins in the initial interview. [84] Although assessing the viability of a case is an important lawyering skill, cultural differences or incorrect assumptions of similarity may lead to ethnocentric distortion of the lawyer's assessments.

The capacity for reflection and debriefing is an essential skill for exploring cross-cultural difficulties and learning cross-cultural knowledge and skills. Effective cross-cultural interaction depends on the lawyer's capacity to self-monitor his or her interactions in order to compensate for bias or stereotyped thinking and to learn from mistakes. Students with a capacity to talk about issues of difference will **[*57]** be better able to reflect with and learn from others.

Finally, in addition to identifying the cognitive and skill goals, teachers need to take into account the emotional needs of cross-cultural learners. Students need motivation to learn cross-cultural competence, capacity to live with conflict, [85] and coping skills to manage the stress that comes from intercultural interactions. [86] Positive educational experiences in law school should promote a willingness to continue to explore and learn about similarities and differences and to seek assistance from others to continue to learn. The teacher's structure of the learning environment will influence the student's motivation and capacity to learn these skills and to gain the knowledge and awareness to become a competent cross-cultural lawyer.

B. Pedagogical Theory

Early in our development and teaching of the Habits, we tried to address some of the problems we had seen in prior diversity training sessions that we had attended or given. Jean called these problems "The Three Ghosts of Diversity Past." The first ghost that we wanted to exorcise was the ghost of designing training exclusively for white students. We recognized that intercultural learning was important for all students. Although students of color and white students who have lived a bi-cultural life certainly have a much deeper understanding of the role that culture plays in their lives, even these students often need to learn how to translate the insights gained from living a bi-cultural existence into lawyering skills for a multi-cultural world.

The second ghost that we wanted to address was the tendency to create unfair burdens on students of color to educate white students in diversity training programs. These programs often create stress for students of color and waste their precious educational resources by making them "teachers" without the authority and planning opportunities that faculty normally have. Finally, we wanted to eliminate the ghost of judgment that often resulted in naming and blaming or the fear of such occurrences during a diversity training.

Thus, with the Habits, we endeavor to create learning opportunities and approaches to help all students be better cross-cultural lawyers. Cross-cultural theory explains why we think in ethnocentric **[*58]** ways and thus gives students an understanding of how racism, sexism and other bias and stereotyped thinking develop. [87] With this understanding, students can begin to develop habits of mind and skills for interacting that encourage them to address the cross-cultural issues in their lawyering. We use a teaching approach that asks students to be

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[84] David A. Binder, Paul Bergman & Susan C. Price, Lawyers as Counselors 192-95 (1991).

[85] In identifying what skills are needed for working effectively in cross-cultural environments, trainers note the importance of a capacity to deal effectively with conflict and to become more flexible and adaptable. Anthony Patrick Carnevale & Susan C. Stone, The American Mosaic: An In-Depth Report on the Future of Diversity at Work (1995).

[86] William B. Gudykunst, Ruth M. Guzley & Mitchell R. Hammer, Designing Intercultural Training, in Handbook of Intercultural Training, supra note 13, at 65; Jacobs, supra note 4, at 345.

[87] Concepts of intercultural communication provide a framework for understanding how and why racism, sexism and other forms of prejudice and discrimination occur; the cultural origins of these patterns, and the ways these are manifested in daily communication and interaction, as well as their more institutionalized forms." R. Michael Paige & Judith N. Martin, Ethics in Intercultural Training, in Handbook of Intercultural Training, supra note 13, at 51.

non-judgmental towards themselves, as they inevitably will make mistakes, yet at the same time stresses the importance of lawyering in a way that addresses stereotypes and biases.

We recognized early on that, if we were to educate students to be less judgmental about their clients, we needed to create an environment that was less judgmental towards the students. [88] Cross-cultural training theorists have noted the importance of creating supportive learning environments that challenge the learners to address issues of bias and power. The "support/challenge" components are both critical pieces of the overall goals of cross-cultural training. [89] Support is important because it lowers resistance to learning and helps students deal with what can often be a very challenging experience. [90] Challenge [*59] is important because, as teachers preparing lawyers for practice, we must be careful to educate our students to do no harm. If we allow unchallenged racist, sexist or ethnocentric comments to go unchallenged, our students may in fact do harm to their clients. In addition, in ethnically and racially mixed educational groups, students who are members of oppressed groups may not comfortably accept a learning environment that does not include challenge. [91]

One of the difficulties faced by teachers planning a class or supervision designed to teach cross-cultural topics is the ability to strike the appropriate support/challenge balance for the class as a whole. Teachers have to recognize that different students have different needs and that, as teachers, we also have different needs. [92] In planning, teachers can begin to identify the risks to the students and the potential resistance that might occur. Teachers can also plan for challenge.

In thinking about the risks that we ask students to take, we need to acknowledge that intercultural learning is often stressful precisely because it is change-oriented. We are training students to be non-judgmental and to develop

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[88] Many clinical teachers have recognized the importance of creating symmetry between the teacher-student relationship and the student-client relationship. See, e.g., Peter Margulies, The Mother With Poor Judgment and Other Tales of the Unexpected: A Civic Republican View Of Difference and Clinical Legal Education, 88 Nw. U. L. Rev. 695 (1994). Cross-cultural trainers recognize the importance of supportive leaders for the creation of a good learning environment. See Paige & Martin, supra note 87, at 53. Other requirements for good learning include: high degree of structure, affiliation among participants and between participants and teachers, task orientation, challenging lessons for learners, learner involvement, and appropriate pace of learning. Id. at 53.

[89] The support/challenge approach represents new thinking in the cross-cultural training field. See id. at 40-45. The authors trace the history of intercultural training, describing the 60's as employing cognitive university training methodologies; the 70's as using confrontation and "T" group human relations model; and the 80's and 90's as using an Integrated Alternative Learning Model that employs both experiential and cognitive learning approaches. There is a growing interest in looking at power differentials as an important component in intercultural interactions including interactions between the trainer and learners. The support/challenge model has been described as an ethical foundation for training. The ethics of practice in this field are concerned with both the welfare of learners and the welfare of those with whom the learner will come in contact. Id. at 38.

[90] Professor Okianer Christian Dark recommends a caring relationship with students as the best way to cope with the issues that result from raising diversity issues in the classroom. In responding to a long list of identifiable risks, Professor Dark notes, "The most important point, … is that the teacher pay attention to his or her relationships with individual students and the class. Investing time and energy into developing a solid, respectful, and approachable relationship with the students in the classroom will put the teacher in the best position to learn." Okianer Christian Dark, Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability Into Law School Teaching, 32 Willamette L. Rev. 541 (1996). By working on positive, respectful, and open relationships, the teacher creates a classroom environment in which people will take risks. Professor Montoya suggests that because "voicing difference can be difficult, [we should search] for new metaphors and images" and permit "ourselves and others to get it wrong within the commitment of trying it again." Montoya, supra note 3, at 162. This thought is core to the Habits, especially Habit Five.

[91] See Dark, supra note 90, at 559 n.64. Students of color or women who listen to racist or sexist comments that are not challenged may feel further marginalized by the conversation. Id. at 559.

[92] In encouraging professors to integrate diversity issues into the classroom, Professor Dark recognizes that teachers without tenure may face greater risks as some students may negatively evaluate teachers raising these issues. Dark, supra note 90, at 557 n.58.

new levels of tolerance, new modes of thinking [93] and valuing as well as new behavior. [94] Students may experience this as a threat to their cultural identity. In addition, some students may experience stress because classmates articulate world views that are painful. [95] Other students may experience stress because they [*60] have done something that exposed biases that they are embarrassed to acknowledge.

Reduction of the risks associated with cross-cultural learning requires the creation of a supportive environment in which an atmosphere of trust exists among the students and between the teacher and the students. An atmosphere of trust allows students and teachers to lessen resistance, take more risks, and increase learning. An atmosphere of blame and judgment often leads to learner withdrawal, avoidance and ultimately hostility.

To manage risk and encourage learning, teachers can introduce cross-cultural lawyering issues after the group has established itself as a learning unit. [96] Teachers can start with aspects of cross-cultural learning that involve lower risks before moving to more experiential learning situations (such as role plays and simulations) that involve greater potential for exposure. [97] Also, teachers can have different conversations in supervision than they have in the classroom. Teachers who try to manage the support/challenge balance suggest that supportive challenge should occur when a student says something that is distasteful, insensitive, or biased. [98]

Even with a supportive environment and an attention to building incremental learning opportunities, teachers need to take into account [*61] - and plan for - the likelihood of resistance. Resistance occurs when students fail to see

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[93] Additional stress occurs when learning how to learn is substituted for learning facts. Because a student of new cultures cannot learn it all at once, they need a process for incorporating information as part of building cultural competence.

[94] This way of thinking is a paradigm shift. Intercultural training is change-oriented, requiring new modes of thinking, valuing, and behaving, such as new qualities of tolerance of ambiguities, non-judgmentalism, ethnorelativism regarding cultural differences, both cognitive and behavioral. Human beings are usually ethnocentric; it is not normal to be ethnorelative. Paige & Martin, supra note 87, at 46.

[95] See Peggy Cooper Davis, Law as Microaggression, 98 Yale L.J. 1559, 1565 (1989). Professor Davis describes the effects of what social science researchers refer to as 'microaggression,' a phenomenon she describes as "subtle, stunning, often automatic, and non-verbal exchanges which are 'put downs' of blacks" by people who often consider themselves non-racist. The cumulative effect of such encounters in the recipients is lowered self-esteem, feelings of incompetence, and unrelieved psychological stress. Id. Analogizing this theory to classroom interactions, students from the dominant culture may articulate world-views that in their opinion are both justifiable and non-discriminatory, but which may nonetheless be perceived by their colleagues as the latest in an endless series of "microaggressions."

[96] A group that has strong respectful relationships with each other will have a greater ability to listen to each other and to hesitate before making judgments. See Dark, supra note 90, at 14. Some faculty use cross-cultural themes as part of the introduction of the students to one another and introduce the less threatening aspects of cross-cultural learning early in the semester. See Zuni Cruz, supra note 4. Others consciously teach students methods for dealing with differing views such as repeating what their colleague has said before objecting as a method to ensure listening. See Hing, supra note 4, at 1833. In our diversity circle discussion groups at CUNY School of Law which take place once a year with students, staff, and faculty, we tell participants to say "ouch" when the speaker says something offensive and allow the speaker to fully finish before commenting on offensive remarks.

[97] Professor Pusch emphasizes that "trainers must decide how the participants can be encouraged to take greater … risks, moving from the less difficult intellectual and emotional demands … to exploring their own attitudes and behaviors in greater depth." Paige & Martin, supra note 87, at 48, citing M. Pusch, Cross-cultural Training, in Learning Across Cultures 121 (1994); see Hing, supra note 4, at 1831-33, for descriptions of simulations that can be used to introduce students to verbal and non-verbal interactions in cross-cultural settings.

[98] Professor Hing suggests: "What you said made me uncomfortable. Although you didn't mean it, it could be interpreted a saying… ." Hing, supra note 4, at 1833. When a personal attack arises during class discussion, Professor Dark takes the opportunity to point out the underlying assumptions on which the remark is made. See Dark, supra note 90, at 568.

the relevance of cross-cultural instruction or ascribe greater value to learning other skills. [99] Some students are able to discuss cross-cultural issues generally, but have difficulty applying them to their own actions or resist seeing cross-cultural issues in their own work. [100] Finally, some students may express hostility to having to discuss these issues at all. [101]

Although we can try to reduce risk by using safer pedagogies, cross-cultural trainers confirm what we know as clinical teachers - that didactic teaching alone will not develop new skills. Experiential learning is necessary. [102] Cross-cultural trainers recommend sequencing that starts with cognitive development by means of lectures and discussions and then moves through group problem-solving, critical incidents, [103] case studies, and ultimately, experiential learning.

[*62] Like the learning of other lawyering skills, learning cross-cultural lawyering skills occurs through incremental learning and by practice and reflection. [104] Learning is enhanced with the teaching of cross-cultural theory. [105] Thus, the students who follow the Habits without understanding the underlying rationales will generally be less skillful. A framework and vocabulary will allow students to analyze and discuss possible problems. Theory

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[99] As discussed infra notes 162-65 and accompanying text, a lawyering focus is critical to students' motivation to learning these skills and perspectives.

[100] We all have experienced raising an issue of race or gender difference and receiving a response from a student that denies even the possibility that race or gender differences may be an explanation for different views. At a New York Law School clinical theory workshop, Maria Arias, my colleague at CUNY who is Latina, told about a supervisory session in which two white women students were talking about the need to tell the client to dress differently for court. Maria, who had not thought about raising this issue with the client, asked the students if they thought their differences were related to "race." The students rejected Maria's analysis and became very uncomfortable. Maria recounted the story to illustrate how hard these conversations are even with students who are progressive and with whom the supervisor has a good relationship.

[101] Although it is important to try to reach every student and to show respect for all students, a teacher should guard against devoting too much of class time to persuading a hostile student of the relevance of the skills and knowledge. Instead, I try to answer concerns or get others to answer them, move on and offer to discuss issues after class. If the teacher uses a pervasive approach, the student will have many opportunities to see relevance or to be hostile over the course of the semester. Thankfully, I have never had to deal with students with significant and sustained hostile reactions.

[102] Gudykunst, Guzley & Hammer, supra note 86, at 65.

[103] Critical incidents are short case studies (a couple of paragraphs at most) involving a cross-cultural interaction that results in a culture clash. The behavior in the case study can be interpreted in a variety of ways. Students are given multiple choice alternatives of what the behavior might signify. Explanations follow these critical incidents. See Kenneth Cushner & Richard Brislin, Intercultural Interaction, A Practical Guide 22 (1996). The brother and sister story told at the beginning of the article and discussed infra notes 201-03, 218-20 and accompanying text, is an example of a critical incident. Cross-cultural trainers use critical incidents as ways to engage students in attribution training to teach the lesson that behavior is interpreted through cultural lenses and to teach specific cultural norms of another culture. The Intercultural Interactions book has numerous critical incidents organized around cultural themes. Intercultural Interactions, supra note 13. The "disorienting event" described by Quigley, supra note 6, at 53, and Aiken, supra note 4, at 132, is a kind of critical incident challenging the student's framework and providing alternative explanations for why things occur. Constructing critical incidents that can be used for discussion purposes is a less threatening way to build understanding and can be followed by simulation exercises or real-life experiences.

[104] Reflection is a core part of adult learning, especially for helping students examine their perspectives and experiences that challenge these perspectives. See Quigley, supra note 6, at 55.

[105] Bhawak & Triandis, supra note 28, at 19. In analyzing the difference between novices and experts in intercultural competence, the authors point out that novices have some experience without theory whereas experts have lots of cross-cultural experience and organize information and experiences by theory. Novices learn procedures and follow procedures. As students have more experiences and learn theory, they move from a procedural stage through stages of development until they are at an autonomous stage and are able to perform without following each procedural step. Sophisticated users of cross-cultural knowledge use broad principles to categorize and solve problems.

enhances observation, causing students to gather different data, and gives students techniques for processing that data in a manner that permits new types of problem-solving. [106]

Cross-cultural trainers identify stages of developing cross-cultural competence. [107] Howell has identified four stages of growth for cross-cultural competence. [108] The first stage is one of "unconscious incompetence." In this stage, students are not aware of what they do not know. Students are insufficiently aware of the impact of culture, fail to recognize difference when they see it, and often overlook cross-cultural blunders when they happen and therefore do not avoid or try to rectify them. In the second stage, referred to as one of "conscious incompetence," students are aware that culture affects the way they attribute meaning and practice law, but they are unable to use culture theory and skills to develop competent interaction with others. In this stage, students are able to recognize blunders but are not able to avoid them. They are aware that they may not be connecting with clients, but do not have the range of skills that are necessary to build a trusting relationship with the client.

The third stage is one of "conscious competence." Students in **[*63]** this stage function competently in the range of skills necessary for cross-cultural lawyering, but only after they have adopted a mindful approach to using the skills. The Habits are a conscious approach that creates steps that students can follow to explicitly address issues of similarities and difference. By practicing the Habits, students learn skills that can be consciously applied to their interactions with clients. The final stage of development is one of "unconscious competence," in which students unconsciously incorporate the cross-cultural skills and perspectives as in their interactions with clients.

In planning classes and supervisions, we need to assess our students' - and our own - stage of development. We need to determine where we want and expect to end up at the end of our teaching, and how best to get there. Lectures and discussions may suffice for fostering "conscious incompetence," the second stage of development, but more experiential learning is needed in order to proceed to "conscious competence," the third stage, and finally to "unconscious competence," the fourth and final stage.

How much time should a teacher allocate to the skills and knowledge of cross-cultural competence? [109] Each teacher will answer this question differently depending on the overall goals of that teacher's specific clinic. Cross-cultural trainers are clear that a one-class session may raise awareness of cultural differences, but that true cultural sensitivity can only take place with practice and reflection over time. [110] The Habits described below can be introduced in two classes, but the skills that are needed to fully implement them must be practiced and honed throughout the students' clinical work and professional life after law school. [111] Such a pervasive approach generally is favored by those clinicians who have worked on developing these competencies in their students. [112]

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[106] See Intercultural Interactions, supra note 13, at 7; Bhawuk & Triandis, supra note 28, at 19. See also Quigley, supra note 6, at 63, alerting the reader to the danger of generalizing from one experience and suggesting class discussions as a way to avoid that. Teaching theory and giving students concrete information about specific cultures is another way to counteract the inaccurate generalization process.

[107] See Paul Pederson, Developing Interculturally Skilled Counselors (1986), describing a developmental model designed by the staff of a National Institute of Mental Health Training Project at the University of Hawaii which uses a three-stage sequence of moving people from awareness to knowledge to skill.

[108] Bryan Adamson introduced Howell's concepts to the clinical community as part of his presentation at the 2000 AALS Clinical Teachers Conference.

[109] See O'Leary, supra note 4. O'Leary advocates making difference analysis a part of the problem solving process that is taught and used throughout the semester rather than relegating it to one or two classes on difference analysis. See also Jacobs, supra note 4, at 406 (recommending that issues of race, gender, class and ethnicity be taught pervasively, including in classes on theory, application and reflection).

[110] See Gudykunst et al., supra note 86, at 62.

[111] Jean and I most often devoted one class to teaching the Habits. We never got through all five. With the exception of Habit Three, we have found that unless we raise the Habits in supervision, students are unlikely to engage in this kind of thinking as a routine matter even after they have had had the class. Our experience confirms that of cross-cultural trainers and what we

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III. The Five Habits of Cross-Cultural Lawyering

In this section, I summarize the Habits that are described more fully in materials and worksheets written for students. I have placed these materials on a web site that allows the materials to be downloaded and adapted to fit different teachers' teaching goals. The materials are written with a litigation focus because that is the setting in which Jean and I work and our examples come from our clinical and lawyering work.

A. Habit One: Degrees Of Separation And Connection

Mary, an Irish-Catholic thirty-year old student in a domestic violence clinic, submits two client-intake memos. In one she describes an intake interview that she had with Razia, [113] a recent immigrant from Pakistan. Razia has been subjected to spousal abuse and is preparing to leave the marital home. The memo provides a detailed description of Razia's family and reports that she has intentionally isolated herself from her large extended family which does not support her decision to leave her husband. Razia cannot rely on family members to attend court proceedings with her or to provide any assistance. In another memo which describes an interview with another client, Maureen, who is a recent immigrant from Ireland, Mary reports little information about Maureen's family, other than to report that she has moved in with her sister to escape spousal abuse.

Why does the student have extensive information about one client's family and little about another's? Is it the influence of the questions the lawyer asked or the story the client volunteered?

Habit One gives students a framework within which to analyze these questions regarding how similarities and differences between the lawyer and client may influence lawyer-client interactions, especially information gathering. Habit One first asks students to list and diagram similarities and differences between themselves and their clients and then to explore the significance of these similarities and differences. By asking students to identify differences, we focus them consciously on the possibility that cultural misunderstanding, bias and stereotyping may occur. [114] By focusing on similarities, we make conscious [*65] the connections that students have with clients. [115]

We ask students to brainstorm long lists that will enable students to see their clients as individuals who have personal, cultural and social experiences that shape their behavior and communications. [116] We encourage students to make lists honestly and non-judgmentally, thinking about what similarities and differences might affect

know as clinical teachers: learning requires practice, supervision and reflection. See also Jacobs, supra note 4, at 409 (referring to the American Psychological Association's recommendations for cross-cultural competence: "The culturally skilled counselor was one who monitored his functioning through consultation, supervision, and continued education.").

[112] Zuni Cruz, supra note 4; O'Leary, supra note 4; Montoya, supra note 4; Quigley, supra note 6; Hing, supra note 4, at 1812; Aiken, supra note 4.

[113] The stories of students and clients introducing the Habits are fictional and based on composites of students and clients.

[114] With each client, students may identify different categories that will influence the case and the lawyer-client relationship. These lists will change as the relationship with the client and the client's case changes. Examples of some generic categories include: Ethnicity, Economic Status, Marital Status, Race, Social Status, Role in Family, Gender, Language, Immigration Nationality, Sexual Orientation, Religion, Age, Physical Characteristics, Education, Time Orientation, Individualistic/Collective, Direct or Indirect Communication Style.

[115] Articulation of similarities also allows the student and teacher to examine whether assumptions of similarity are accurate and to explore issues of transference.

[116] In creating long lists, we do not mean to suggest that all similarities and differences have the same order of importance for students and your clients. For example, in interactions involving people of color and whites, race will likely play a significant role in the interaction. Professor Michelle Jacobs has detailed the importance of recognizing the contextual experience of race

their ability to hear and understand their clients' stories as well as what similarities and differences might affect the clients' willingness to form relationships with them as lawyers.

Another way we teach students to illustrate the degrees of connection and separation between themselves and their clients is through the use of a simple Venn diagram. The graphical representation of Habit One asks students to imagine impressionistically the worlds of lawyer and client as two circles, overlapping broadly if the worlds of the client and lawyer largely coincide and overlapping narrowly if they largely diverge. The diagram often stimulates insights distinct from those gained by making lists. For example, a list of similarities may be small and yet a student may feel very similar to the client because of one shared similarity or, alternatively, the student may have many similarities and yet, for other reasons, find herself feeling very distant from the client. [117]

Habit One asks students to look at two effects that may flow from the identification of similarities and differences: first, at the effect on professional distance and second, at the effect on information gathering. [118] Although no perfect degree of separation or connection exists between lawyer and client, teachers often assess relationships between students and clients as "too close" or "too far." [119] Habit One encourages **[*66]** students who have long lists of similarities or whose circles overlap broadly to ask themselves what, if any, differences they may be overlooking. By pondering this question, students can recognize that even though similarities promote understanding, misunderstanding may flow from an assumption of precise congruence.

Habit One also encourages students who have long lists of differences to question if there are any similarities that they may be overlooking. Negative judgments are more likely to occur when a client or lawyer sees the other as an "outsider." If students identify similarities, they will be less likely to judge their clients negatively. [120] Even if negative judgments persist, students can identify their source and ask themselves how to bridge the huge gap between the clients' experiences and their own. Finally, in analyzing the effect of similarities and differences, Habit One allows students to examine ways in which these factors affect clients' senses of closeness and distance to their lawyers.

Habit One also asks students to explore the effects of similarities and differences or assumptions about similarities on questioning and case theory. One example of information gathering occurs when lawyers probe for clarification in interviews. Lawyers usually ask questions based on differences that they perceive between themselves and their clients. [121] Thus, lawyers tend to ask questions when clients make choices that the lawyers would not have made or when the lawyers perceive an inconsistency between what the clients are saying and doing. Lawyers tend not to ask questions about choices that clients have made when the lawyers would have made the same choices;

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and how the failure to do so can impede a lawyer's capacity to understand the client's story or assist other legal decision makers in understanding the client's story. Jacobs, supra note 4, at 372.

[117] This allows us to reinforce the point that all similarities and differences are not equal nor are they fixed. See infra notes 158-65 and accompanying text.

[118] Habits Four and Five examine other effects that may flow from similarities and differences. Jean and I think of the Habits as a "work in progress" because as we collectively focus on identification and analysis of the effect of differences and similarities, through the use of the Habits, we learn and revise.

[119] Distance is itself a cultural concept and its value is culturally determined. The appropriate professional distance is often contested. As teachers, we need to recognize and make conscious our own cultural assumptions about the value and limitations of distance. Although we might draw different lines for appropriate distance, we might all agree that when we speak for the client rather than trying to understand the client or when we judge the client without understanding the client, we lack the requisite degree of professional distance or attachment.

[120] See supra notes 25-27 and accompanying text on the link between negative judgments and lack of connections.

[121] Cross-cultural trainers explain that the primary way that people with a direct style of communication use to lessen uncertainty in cross-cultural situations is to question where they see differences. Although not attributing it to cross-cultural theory, Professors Isabelle Gunning, Steve Hardwell and I demonstrated this observation in a mock class on interviewing and difference at the AALS Clinical Teachers Conference in 1992. See also O'Leary, supra note 4.

in such a situation, the lawyer usually assumes that the clients' thought processes and reasoning are the same as his or her own.

By introducing students to the effects of culture on our view of what we perceive as normal and how it drives questioning, we give students additional tools for evaluating the thoroughness and accuracy of their interviews. For example, perhaps Mary, the student in the introductory example, has different information about each client because she explored the family issues with Razia but left them unexplored [*67] with Maureen. If this occurred, a Habit One analysis could show Mary that these different approaches may be tied to issues of similarity and difference. Mary may have probed the first client about her failure to seek family support because Mary believes that her own family would support her decision to leave an abusive relationship. These differences may arise out of cultural differences in family relationships, assessment of appropriate uses of the law or outsiders to resolve problems, responses to violence, or a number of other explanations. [122] Mary leaves unexplored the report that Maureen has moved in with her sister to escape the spousal abuse because Mary imagines taking similar steps if she were in such a situation and implicitly makes a host of assumptions about cultural values that relate to Maureen's family, her family values and her sister and their relationship. The fact that Maureen shares a common ethnic background with Mary may contribute to these assumptions of similarity.

Assumptions of similarity that mask difference can lead the lawyer to solutions and legal theories that may not further the client's goals. Mary may, for example, assume incorrectly that Maureen's sister is supportive of the client's decisions and shares the client's view that moving out is appropriate. This erroneous assumption about family support may cause Mary to neglect to explore other necessary housing arrangements or supportive environments. [123]

To identify the unexplored cultural assumptions, Habit One encourages students to reflect on the attorney-client interview and identify areas in which they may have missed relevant explanations of behavior. It asks the students to critically evaluate the choices they have made about subjects to explore. Habit One introduces students to a systematic way to name similarities and differences, to examine some of the known effects on the attorney-client interaction from these similarities and differences, and to develop their own insights into the effects of culture on their lawyering. Finally, Habit One cautions students to avoid seeing their clients or themselves or their relationship as fixed by the charts or lists. Culture is dynamic and the importance of different identities change as the situation changes. [124]

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B. Habit Two: The Three Rings

Habit Two asks students to identify and analyze the possible effects of similarities and differences on the interaction between the client, the legal decision-maker and the lawyer - the three rings. Habit Two asks the student first to identify the differences and similarities between the client and the legal system and between the lawyer and the legal system. After identifying and analyzing this information, Habit Two links this analysis to the Habit One analysis to explore all the ways in which culture may influence a case.

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[122] The parallel universe thinking that is evident here is described more fully in Habit Three. See infra notes 129-31 and accompanying text.

[123] Family relationships are incredibly rich areas for cultural misunderstanding and therefore, assumptions of similarity are perhaps even more problematic when issues of family are involved. See Lundy Langston, Political and Social Construction of Families Through Pedagogy in Family Law Classrooms, 73 Denv. U. L. Rev. 179 (1995).

[124] See Paul P. Petersen & Allen Ivey, Culture-Centered Counseling and Interviewing Skills (1993), describing the self as dialogical, emphasizing cultural relationships, and explaining that one must be aware of the changing patterns in one's culture in relation to others. "Different Aspects become salient at different times<elip> . Culture-centered training is an attempt to develop the capability to manage cultural complexity and respond appropriately to dynamic changes in cultural salience." Id. at 13.

In pinpointing and recording similarities and differences in the legal system-client dyad, students are asked to identify the cultural differences that may lead to different values or biases, causing legal decision-makers [125] to negatively judge the client and the similarities that may establish connections and understanding. What does a successful client look like to this decision-maker? How similar or different is the client from this prototype of a successful client? What are the cultural values and norms implicit in the law that will be applied to the client? Does the client share these values and norms or do differences exist?

In focusing on the lawyer-legal system dyad, the student is asked to compare himself or herself to the legal system. To what extent does the student share the values and norms of the law and legal decision-makers? What are the similarities and differences between the student and these decision-makers? To what extent has the student become acculturated to the law and legal culture? How much overlap is there between the student's view of the "successful" client and the views of the law and legal decision-makers?

If helpful, students can use diagrams to chart the differences and similarities as they did in Habit One to visualize different dyads - lawyer/client, client/legal system, lawyer/legal system. [126]

After preparing the diagrams and/or making lists of the three different **[*69]** dyads, the students are encouraged to search the information for insights about the impact of culture on the attorney-client relationship, the case, and potential successful strategies. In this process students may identify influences that may be invisible, and yet nonetheless affect the case.

To enhance this analysis, students are encouraged to ask the following questions:

Assessing the legal claim: How large is the area of overlap between the client and the law? Do I feel that my client has a relatively weak or a relatively strong claim? In what ways does the legal culture embrace the values and assumptions of my client's culture, her understanding of the problem and the possible solutions? How can I bridge any existing gaps? What additional facts can I use to strengthen the case?

Assessing Credibility: How credible is my client's story? Does it make "sense"? To what extent is knowledge of the client, her values and culture necessary for the story to make sense? How credible is my client? Are there cultural factors in the way the client tells the story that will affect a decision maker's evaluation of my client's credibility? What can I do if those exist?

Legal strategies: Can I shift the law's perspective to encompass more of the client's claim? [127] Do my current strategies in the client's case require the law or the client to adjust perspectives? What additional facts or characteristics are needed to strengthen the case? Even if we prevail, will I do harm to my client's larger interests? [128]

Bones to pick with the law: How large is the area of overlap between the law and myself? Are there points on which I strongly agree or disagree with the law in this area? Do I have an agenda that the client does not have?

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[125] We use the term "legal decision maker" rather than judge because there are many players in a legal system who make decisions that will have a significant influence on what happens in a case. For example, a prosecutor, a pre-sentence probation officer, and a judge may all make decisions that influence how the client charged with a crime will be judged and sentenced. Therefore, at various points in the representation, they should be included in the diagram of similarities and differences.

[126] Because Habit Two requires the exploration of three frames of reference, Jean came up with the rings as a way to assess the perspectives and analyze where there was overlap of all three perspectives and where there were differences. Not everyone comfortably uses the diagrams or thinks in the visual ways that diagramming encourages. Habit Two can be done with lists, filled in Venn-diagrams or other imaginative ways that help the lawyer concretely examine the cultural differences and similarities that are involved in a case. The materials for students have samples to assist students in using the diagrams.

[127] See, e.g., Taryn Goldstein, Should the American Criminal Justice System Recognize a Cultural Defense?, 99 Dick. L. Rev. 141 (1994) (analyzing cases that integrated "cultural defenses" into traditional defenses of insanity, mistake of fact, diminished capacity, and self-defense).

[128] Montoya, supra note 3, at 161.

Questions based on assumptions about similarity and difference: How large is the area of overlap between all three circles? Are there areas of inquiry that are important to the legal system but missed by the lawyer? Does my client have a plausible claim that is difficult for me to see because of these differences or similarities? Am I probing for clarity by using three frames of reference - the client's, the legal system's and mine - or am I focused mostly on my own frame?

Hot button issues: Of all the characteristics and perspectives listed on the rings, which loom largest for me? Are they the same ones that **[*70]** loom largest for the client? For the law?

We have found Habit Two particularly helpful when the students or we are troubled by a case or client. Habit Two analysis helps identify why a focus on a particular aspect of a case can assume preeminence even though that aspect may not be critical to the success of the case. The student can gain insight into why a judge is bothered by a particular issue, or why a client is resisting the lawyer's advice. Students might also begin to understand why clients are prone to view the lawyer as part of a hostile legal system when there is a high degree of overlap between the lawyer and the legal system but only a small degree of overlap between the client and legal system.

The challenge for our students and us is to use these insights to help clients. Lawyers can ask whether the law and legal culture can be changed to legitimate the client, her perspective and her claim. Lawyers can examine whether the current strategies in the client's case require the law or the client to adjust perspectives and to explore whether other choices exist. Can the lawyer push the law or must she persuade the client to adapt? Hopefully, by gaining some of these insights, the lawyer may be better able to translate the client to the legal system and the legal system to the client.

C. Habit Three: Parallel Universes

Mary, a 40-year-old Polish-American, is seeking custody of her 8-year-old child, Alison. Mary has been the primary caretaker for Alison and has not worked outside the home since her oldest daughter was born 15 years ago. Mary's husband George, works as a factory worker in a local plant. Mary's student lawyer, Annette, is a 40-year-old immigrant from the Dominican Republic who came to the United States at age 10. Annette advises Mary that she should seek counseling for her 8-year-old daughter as recommended by the court. Annette has her 12-year-old son in counseling and has found it very useful. Annette tells Mary that the court believes that therapy is necessary to help Alison adjust to the separation of her parents and to improve Alison's relationship with her father. Mary agrees to seek counseling. One month later, Annette learns that Mary has not set up an appointment for Alison with a therapist. Angry, Annette believes that Mary either does not care enough about her case or that she does not credit Annette's assessment that Mary's case will improve if she arranges counseling for Alison.

Habit Three teaches students a method for exploring alternative explanations for clients' behaviors. [129] The habit of "parallel universes" **[*71]** thinking invites students to look for multiple interpretations, especially at times when the student is judging the client negatively. Often when our interpretation of client behavior differs from a student's view of the matter, we ask the student to examine whether there are alternative explanations for the behavior. Habit Three teaches students to ask themselves this question and gives them a cultural framework for analyzing possible explanations for their judgments. [130]

Students are taught that in a matter of minutes, the lawyer can explore multiple parallel universes to explain any given behavior. In the above example, one can imagine many different explanations for the client's behavior: the

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[129] Parallel universes is a concept from science fiction, which suggests that every reality has multiple alternatives. See, e.g., James P. Hogan, The Proteus Operation (1985); Michael P. Kube-McDowell, Alternities (1988).

[130] Frequently, if we ask students to brainstorm theories from the perspective of different roles, we see students developing alternative explanatory theories. See, e.g., Nancy Cook, Legal Fictions: Clinical Experiences, Lace Collars and Boundless Stories, 1 Clin. L. Rev. 41 (1994). The cross-cultural framework is one of many frameworks that push students to look for alternative explanatory theories. The value of the perspective of culture is that it alerts students to possible explanations that they may not have recognized and alerts them that they may be using ethnocentric analysis. For example, if the student considers the possibility that the client thinks of time differently and then explores theories that might explain what appear to be

client has never gone to a therapist and is frightened; in the client's experience, only people who are crazy see therapists; the client has no insurance and is unable to pay for therapy; the client cannot accept that the court will ever grant custody to the husband, given that he was not the primary caretaker; or the client did not think that she needed to get her child into therapy immediately, etc. Race and class differences between the lawyer and client may account for Mary's failure to follow her attorney's advice, or her inaction may simply be the product of a tendency to procrastinate.

In another example, the student-lawyer of a client who fails to keep appointments can explore parallel universe explanations for the student's initial judgment that: "My client does not care about the case." Encouraged to think of alternatives, the student may attribute the behavior to a lack of carfare, failure to receive the letter scheduling the appointment, or losing her way to the office. Maybe the client had not done what she promised the lawyer to do before the next appointment or simply forgot about the appointment because of a busy life.

The point of the parallel universe habit is to become accustomed to challenging oneself to identify the many alternatives to the interpretations to which we may be tempted to leap, on insufficient information. By engaging in parallel universe thinking, lawyers are less likely to assume - usually on the basis of limited information - that **[*72]** they understand the reasons for clients' behavior. Parallel universe thinking also allows the lawyer to follow the advice of cross-cultural trainers that one way to reduce the stress in cross-cultural interactions is to ask "I wonder if there is another piece of information that, if I had it, would help me interpret what is going on?" [131]

D. Habit Four: Pitfalls, Red Flags And Remedies

Jeff, an experienced lawyer who is Jewish and fourth generation Austrian-American interviews his client Charles, an 8-year-old African-American, the subject of a child-neglect proceeding. Charles, who lives in a low-income housing project, has been described by social workers as "a bright, verbal boy." In their first meeting, Jeff gives Charles his standard explanations of "protective hearings," "pleas," and "neglect." In his interactions with Jeff, Charles is subdued and reticent to talk other than saying, "I did not do anything wrong." Thinking of the many children who blame themselves for neglect proceedings against their parents, Jeff explains that neglect proceedings are brought by the state against his parents and not against him.

After a court proceeding that occurs later in the representation, Charles asks Jeff why there were no police in the courtroom. In response to Jeff's question about why Charles thought there would be police, Charles replies, "You only get a lawyer if you've done something wrong." He explains that everyone whom he knows who had a lawyer was put in jail.

How do we encourage students to recognize problem conversations in the moment and plan for corrective steps that avoid some of the problems Jeff and Charles had in this encounter?

The first three habits focus on ways to think like a lawyer, incorporating cross-cultural knowledge into analyzing how we think about cases, our clients and the usefulness of the legal system. Habit Four focuses on cross-cultural communication, identifying some tasks in normal attorney-client interaction that may be particularly problematic in cross-cultural encounters as well as alerting students to signs of communication problems. Habit Four encourages conscious attention to the process of communication - a skill and perspective that clinical teachers have used to improve interviewing skills in all attorney-client interactions. By identifying potential cross-cultural pitfalls and attending to these issues, students will likely perceive aspects of the interaction that they may have missed even if they were paying attention to the process of communication.

[*73] Although Habit Four is a habit that can be done in the moment, beginning lawyers often have difficulty paying attention to both the process and content of an interview at the same time. Habit Four helps them plan for the

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temporal inconsistencies, the student may perceive new avenues for investigation. See Binder & Bergman, supra note 36, at 163-65.

131 Richard Brislin & Tomoko Yoshida, Intercultural Communication Training: An Introduction (1994).

interview. The student will be better able to focus on both content and process by identifying, in advance, indications of good communication as well as "red flags" that show that accurate, genuine communication is probably not occurring.

Habit Four encourages culturally sensitive exchanges with clients, by identifying four areas on which students should focus carefully: (1) scripts, especially those describing the legal process, (2) introductory rituals, (3) client's understanding and (4) culturally specific information about the client's problem.

Habit Four encourages students to use scripts carefully. The more we engage in a particular activity, the more likely we are to have a "script." For lawyers, this often develops into scripts for the opening of interviews, explaining confidentiality, building rapport, explaining the legal system and other topics common to the lawyer's practice. In preparing for interviews, students are encouraged to think about how they will explain some of these concepts. Early in their work as lawyers, students begin to develop the scripts for explanation. Habit Four encourages the student, especially in cross-cultural encounters, to develop a variety of communication strategies to replace scripts. The example of Jeff and Charles demonstrates the problems of relying on scripts and stereotypes. In delivering scripted responses to Charles, Jeff assumes he knows what is bothering Charles because other children have had this reaction. [132]

What did Charles mean by "I did not do anything wrong?" Habit Four encourages the student to gather culture-sensitive information through use of a narrative mode. Habit Four asks students to engage in "attentive listening" to the client's story and voice. [133] Habit Four orients the conversation to the client's world, the client's understandings, the client's priorities, and the client's narrative. [134] Students are encouraged to ask questions that explore how others who are close to the client might view the problem and how they or she might resolve **[*74]** it. [135] For example, had Jeff explored even briefly the client's response to the situation, Jeff may have learned the source of the client's apprehensions. [136] These questions help the lawyer understand the context within which the client sees the problem. [137]

Finally, if the client has come from another country, Habit Four encourages students to gather information about expectations the client may have about the lawyer and the legal system by learning about how the legal system works in the client's country of origin. These questions also give the student some information about the client's

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[132] Knowledge about other children's reactions may be helpful to Jeff in identifying facts and feelings to explore with clients but using that knowledge to make assumptions about how the client is feeling is very risky. Cross-cultural trainers warn that we should not apply generalizations to the individual without confirming their applicability. See Sue, supra note 46, at 43-44.

[133] For discussion of the dangers of question mode identified in Habit One, see infra notes 113-24 and accompanying text.

[134] Although narrative mode may be very useful for the lawyer, this mode may be difficult for people in some cultures. In certain cultures, for example, conversation space is expected to be shared equally and monologues are considered rude or boring. See Carroll, supra note 17, at 23.

[135] These questions may, for example, help the lawyer appreciate that what she views as an individual concern is, from the client's perspective, a matter involving various other people in the client's life.

[136] Questions that focus on how the client sees the situation include: What are the client's ideas about the problem? Who else has the client talked to and what advice did they give? What would a good solution look like? What are the most important results? Will anyone other than the client be affected? Consulted? Are there other problems caused by the current problem? Does the client know anybody else who had this problem? How did they solve it? Does the client consider that effective? The potential dangers of question mode are identified in Habit One. However, questions designed to develop a better understanding of how the client sees the situation will assist the lawyer in understanding clients and their objectives.

[137] I was reminded of the importance of exploring this information in a casual conversation that occurred with a client after the formal legal counseling session was over and we were waiting together while the student went to xerox papers. The client, whose year-long divorce case was coming to a close, nervously asked me whether she would have to live with her husband for 3 months before the divorce could become final - which, she explained, was the way it worked in her home country.

expectations of the legal system and the lawyer. For example, in many legal cultures, the lawyer is the "fixer" or the person-in-charge. [138] In contrast, most law students in the United States are taught a model of client-centered lawyering that calls for a partnership and our ethical rules define a relationship in which the client makes decisions about resolving the case.

Habit Four also encourages a student in a cross-cultural encounter to pay special attention to the beginnings of communications with the client. [139] Each culture has introduction rituals or scripts as well as [*75] trust-building exchanges that build rapport and promote conversation. Students are encouraged to consult translators and to pay careful attention to cues from the client in the beginning stages of the interview. For example, students are encouraged to think about what kind of exchange of information early in an interview is likely to build confidence and connection. Students are also asked to explore the different cultural perceptions that lawyers and clients may have about "getting down to business." [140]

Habit Four teaches the student that cross-cultural encounters can generate anxiety for the lawyer and/or the client. One cause for such anxiety is the concern that the other will not understand. Thus, concrete evidence of understanding will lessen that anxiety. [141] Habit Four suggests that students can lessen client anxiety by using the active listening technique of providing feedback to the client. [142] Habit Four alerts the student to look for culturally sensitive feedback from the client that the client understands the lawyer or is willing to ask questions about matters that are unclear to the client. Many students are amazed or hurt that a client is unwilling to seek information or clarification. Students may attribute this to a failure of the relationship rather than to a client's communication style.

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[138] In one cross-cultural lawyering class's discussion of clients' expectations for lawyers, a student from the Ivory Coast told the class that in his country the lawyer was the fixer who would solve the problem as the lawyer saw fit whereas here he was being taught to think of the client as a partner and decision-maker. We had a very interesting discussion about the appropriate choice of model for representing clients from the Ivory Coast who have these kinds of expectations. The student who gave the illustration argued that people in this country should be expected to work with lawyers in an American style while others talked about trying to meet the clients' expectations and eschewing a fixed style. We considered how one would find out the client's expectations about the lawyer's legal system without having the client think that we did not know what to do. Another complication was dealing with the client's belief that the lawyer could "fix" the situation in contrast to a situation where a judge would decide.

[139] Research on initial interviews suggests "the importance of listening well, and with attention for subtle embedded messages, at the very start of an interview, with the expectation that the client will reveal key information." Gay Gellhorn, Law and Language: An Empirically-Based Model for the Opening Moments of Client Interview, 4 Clin. L. Rev. 321, 335 (1998).

[140] In a conversation I had with Margaret Montoya about this point, she told a story of a videotape she uses with a client named Montoya in which the client and Margaret spend the first part of the interview exploring where her husband's family, the Montoyas, are from and whether there is any family connection between the client and lawyer. In analyzing the tape, her students had very different views about the beginning of the interview. Some students saw this as a waste of time, other students saw it as trust building and the appropriate conversation to have at that point of the interview. Professor Montoya attributed the students' responses to cultural differences in introductory rituals and the importance of building personal connection as well as professional connection. Cross-cultural trainers note the differences in cultures on rituals for beginning conversations. For some cultures, a person who gets right down to business and eliminates the informal and friendly interaction is considered rude or abrupt. See M.E. Zuniga, Families with Latino Roots, in Developing Cross-Cultural Competence: A Guide to Working With Young Children and their Families 151-79 (E.W. Lynch & M.J. Hanson eds., 1998).

[141] The connection between uncertainty and anxiety is especially close in cultures that engage in uncertainty avoidance as a part of culture. See Brislin & Yoshida, supra note 131, at 22.

[142] Feedback should include both the facts and reasoning. It is less clear how the active listening ideal of identifying the emotional content of the client's communication should be applied to clients from more indirect cultures. One might hypothesize that a client who would be reluctant to directly name the way she is feeling may feel uncomfortable with the lawyer giving feedback on the emotional content of the message.

The lessons of Habit Four ask the student to develop a broader repertoire for determining [*76] client understanding. [143]

In addition to identifying some potential hot spots in cross-cultural interactions, Habit Four encourages the student to plan for "red flags" and culturally sensitive correctives that will assist the student in paying attention to the process as well as the content of the interview. [144] These red flags include indications that clients are disengaged, angry, [145] actively uncomfortable or using the lawyer's terminology. For example, in analyzing Jeff's conduct, students can recognize Charles' reaction during the initial interview of remaining quiet as a possible red flag. Other warning signals include: the student dominates the conversation, has not taken any notes for many minutes, is judging the client negatively or is distracted and bored.

In exploring corrective measures, the main mistake that we often make is to use the same approach to correct the problem that may have caused the problem in the first instance. Habit Four alerts students to the importance of trying a different approach. For example, if the client is not responding to a direct approach, the student might try an indirect approach. If the call for a narrative is not working, the client can be asked some specific questions or asked for a narrative on a different topic. Often the cause of the red flag will be difficult for the student to decipher. By developing a list of corrective measures, [146] the student will acquire some remedial strategies.

E. Habit Five: The Camel's Back

A woman client, with a horrible story of torture, whom the lawyer had very limited time to prepare for trial (because the client lived out of [*77] town), was talking in a rambling fashion. The lawyer, who was just back from vacation, was thinking angry thoughts about the client. Under the extreme stress caused by time pressure and by listening to the client tell about some horrible rapes that she had suffered, the lawyer was falling back on very disturbing old conditioning: against people who are of a different race, people who are overweight, people who "talk too much." What is the lawyer to do with these reactions?

Many faculty who have looked at the Habits wonder why we do not start with Habit Five which involves exploring oneself as a cultural being. We leave it until last because this Habit can be the most difficult in that it asks the student to face the sometimes ugly side of cultural blinders - bias and stereotype. [147] Moreover, the other Habits give insight and understanding that may ultimately help students recognize bias. Habit Five proposes two ways to work with bias and stereotype. First, to prevent these factors from affecting the relationship or decisions, Habit Five

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[143] A classic technique that lawyers use to confirm accurate understanding is to ask the listener to translate back what the speaker said. See John Barkai, Teaching Negotiation and ADR: The Savvy Samurai Meets the Devil, 75 Nev. L. Rev 704, 737 (1996). Another method used to confirm accurate understanding is role-play. See Mary Marsh Zulack, Rediscovering Client Decision Making: The Impact of Role-playing, 1 Clin. L. Rev. 593 (1995). Zulack argues that role-playing is a powerful technique that "opens a window to important decision making material for individual clients… ." Id. at 615.

[144] Cross-cultural trainers have talked about these red flags as "uncomfortable moments in interviews." Researchers found fewer uncomfortable moments when counselors and clients shared common cultural membership. See Pedersen & Ivey, supra note 124, at 106.

[145] Whether the client is in fact angry or the lawyer is misinterpreting the anger, the lawyer should respond by employing correctives such as asking herself whether there is something the lawyer has done or whether there are factors that cause the lawyer to judge the client in a negative light. See Jacobs, supra note 4, at 361, 379.

[146] Student materials describing Habit Four suggest a variety of strategies including: turn the conversation back to the client's stated priority; seek greater detail about the client's priority; give the client a chance to explain her concerns in greater depth; ask for examples of critical encounters in the client's life that illustrate the problem area; explore one example in some depth; ask the client to describe in some detail what a solution would look like; and use the client's own words.

[147] This analysis is critical if we are to begin to work on some troubling trends that Jacobs has identified. See note 73.

encourages the student to create settings in which bias and stereotype are less likely to govern. Second, the Habit promotes reflection and change of perspectives with a goal of eliminating bias. [148]

Like the proverbial straw that breaks the camel's back, Habit Five recognizes innumerable factors that interact with bias and stereotype to negatively influence an attorney-client interaction. A lawyer who proactively addresses some of these factors may prevent a problematic interaction from reaching the breaking point. [149] In giving the students the vignette of the asylum lawyer, we hope to communicate that this lawyer, like all others, brings biases and stereotypes to the attorney-client interaction but could take certain steps to lessen the impact of these biases. For most of us, when experiencing the anger that the asylum lawyer feels, the hard part is recognizing that our reaction to the client stems from bias rather than justified anger. Habit [*78] Five [150] asks the student to acknowledge his every thought, including the ugly ones, and find a way to investigate and control for those factors that influence lawyering in unacceptable ways.

Research indicates that we are more likely to fall prey to stereotype when we are feeling stress and unable to monitor ourselves for bias. Thus, Habit Five suggests that students take simple proactive steps to lessen stress, including the type of stress the lawyer in the above example probably feels - taking a break, having food and drink and identifying what is interfering with his interaction with the client before the interview resumes. By taking these simple steps, the student will gain a greater capacity to monitor and hopefully avoid a biased reaction.

Habit Five thinking asks the student to engage in self-analysis rather than self-judgment. By engaging in this reflective process, the lawyer is more likely to respond to and respect the individual client.

IV. Teaching The Habits To Develop Cross-CulturalCompetence

In planning a cross-cultural class, a teacher should strive to develop awareness, knowledge, skill and motivation for learning in her students. The Habits are a way to gain greater knowledge and awareness as well as develop skills essential to cross-cultural lawyering. They raise our awareness by causing us to pay attention to the significance of differences and similarities and increase knowledge by gathering culture-specific information. The Habits also encourage the development of skills that are needed to gather and process information about clients and their culture. The selection of Habits on which a teacher focuses and the manner in which a teacher develops the concepts of cross-cultural lawyering are highly dependent on the teacher's background and skills and her students' background and skills. In this section, I describe teaching techniques that Jean and I and my clinical colleagues at CUNY have used to build cross-cultural competence by teaching the Habits. [151]

A. Developing Motivation

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[148] By tying this work to legal work and by showing the impact on lawyering, the other Habits hopefully encourage students to explore bias and stereotypes. Stereotypes and bias are significant barriers that limit the capacity of lawyers to establish relationships, to explore facts related to the individual, and discover suitable solutions for the client. See Earlene Baggett, Cross-Cultural Legal Counseling, 18 Creighton L. Rev. 1475 (1985).

[149] Habit Five derives from a theory of car accident prevention called final factor analysis. We've all heard of drunk drivers who miraculously made it home without killing themselves or anyone else, and also know that even the most careful drivers are not immune from car accidents. People reconstructing car accidents use final factor analysis to explain that a confluence of variables cause accidents when enough factors come together to form a critical mass. Thus, being drunk might not be enough in itself to cause an accident, but if the radio is blaring, the kids are fighting in the backseat, the driver is preoccupied with work, sleep deprived, and driving into the sun, one or more of these factors may combine with the driver's intoxicated state to cause an accident.

[150] Over time, we hope that students will learn to coordinate final factor analysis with Habit One to ensure the identification of factors about the client that may cause the lawyer to be more likely to stereotype and less likely to see the client within her own context.

[151] Throughout this section of the article, I mostly talk about teaching ideas that "we" have tried. I have never taught these Habits alone, instead always having the benefit of the collaborative teaching that is part of clinical teaching at CUNY and also co-teaching with Jean at CUNY and at Yale.

Whether the teacher's goal is developing awareness of the impact [*79] of culture or skill in cross-cultural interactions, a lawyering focus will increase the likelihood of student receptivity to the material. [152] If the teacher uses primarily materials that contain examples of lawyering issues, students will be less likely to think that they are simply being asked to be a different (better) person. If the students see these skills as important to good lawyering, they will be more open to including them in their repertoire of skills. As I discussed earlier, resistance to this subject is to be expected [153] and may arise for different reasons. Identifying the potential resistance and ways to address it are important aspects of planning classes and supervision.

On one occasion after teaching Habit One, I asked my students whether this Habit makes sense and I received two different and polar reactions. One student, a white feminist, female student in her late twenties, said, "This is CUNY, we do not really need to talk about differences and similarities. We do this kind of analysis all the time." The other student, a white male in his mid-twenties committed to becoming a public defender, commented that it was counter to the way he thought. He thought that by focusing on differences at all, we were denying the equality of all people. He did not think of people in terms of identity and culture, he said. Instead, he argued, all people are the same.

Both of these students were expressing a resistance to the teaching, but it was coming from different vantage points. The second student was articulating a view held by many students that, in a society with a history of discrimination and a current articulated commitment to equality, acknowledgment of difference violates that commitment. This student had little experience assessing the current impact of discrimination and lack of privilege of his clients in the criminal justice system. He also had little understanding of his clients' lives and how lack of understanding might impact his relationship with clients. Overcoming resistance of this sort requires teaching models that will allow the student to appreciate that equality is not inconsistent with difference and that will nourish the student's commitment to commonality [*80] with his clients. By explicitly addressing his concerns over time, we could hopefully help the student see that a failure to address issues of difference may in fact result in inequality or at the very least in misunderstanding. [154]

The first student may have been raising several different points of resistance in her comments. The first was that cross-cultural training was not necessary for progressive, well-meaning people. The teacher was, in a sense, "preaching to the choir." Or, secondly, if the student did need this information, the instruction was too elementary for her. If the material for instruction is only designed to develop awareness and is targeted to a specific group, some students may view the instruction as unnecessary. However, if the material is designed to focus on teaching multicultural analysis and skill and on helping each student identify their ethnocentrism, then all students have

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[152] Dark, supra note 90, at 16. Also, as Fran Quigley pointed out in his article on integrating adult learning theory in the teaching of social justice, adult learners find educational activities to be most meaningful when they are directly connected to students' concerns of becoming a lawyer, and if currently applicable, to representing a client. See Quigley, supra note 6, at 49.

[153] K. Cushner & R. Brislin, Key Concepts in the Field of Cross-Cultural Training: An Introduction, in Improving Intercultural Interactions 1-17 (K. Cusher & R. Brislin, eds. 1997). Brislin and Cushner begin their book by recognizing that intercultural interaction among human populations has typically been accompanied by violence and aggression. The authors note that even where people do not exhibit intense prejudices, interactions with those who are culturally different may provoke anxiety. Understanding this anxiety should help students understand the difficulties their clients face.

[154] The first part of the student materials with examples demonstrating the relevance of culture theory to lawyering were added in part to address the perspectives of students such as this second student. Clinical teachers who have heard a description of the Habits occasionally raise concerns about whether focusing on difference causes students to stereotype. Because Jean and I saw stereotyping occurring in lawyers and judges, we hope that a method that acknowledges it and consciously engages ourselves and students to compensate for our stereotypes would make the stereotyping less pernicious. See supra note 73 for examples of studies that show discriminatory treatment in the legal system.

something to learn. Finally, the student's comment reveals an assumption of similarity that all of her classmates think like she does, which itself reveals possible learning opportunities. [155]

Although these exchanges signified resistance, neither student was hostile to the class. Hostility can be expected from some of the students, especially if they feel targeted and judged by the instruction. I recall early teaching experiences in which I tried to raise issues of racism and privilege and white male students felt targeted and reacted with hostility. [156] These early classes accomplished few of the goals that I had for them. They did not help all students prepare for the racism they would face in the legal profession; they did not help students relate better to clients; and they reinforced what some students already understood about the world without really teaching skills for translating their knowledge.

[*81] Teaching the Habits and using a cross-cultural framework has worked better for the most part. In every class that we have taught, we have asked students for feedback. Mostly we get positive feedback from a broad range of students. Students of color and immigrant students generally say that they feel that their experiences are validated. Most students report that they have a better idea about how culture influences their lawyering. As teachers, we know that a single class on the Habits does not significantly influence the students' work at the skill level. However, with the vocabulary and framework taught in that class and in the materials, students are able to reflect in supervision on cross-cultural issues in their interaction with clients and the legal system and to learn from their experiences.

B. Raising Awareness Of the Significance of Culture

Introducing the Habits through classes and using supervision to encourage students to use the Habits will help students appreciate the significance of cultural similarities and difference for lawyering. Even after one class on the Habits, most students report an increased awareness of how culture might influence their lawyering. [157] Teaching Habit One is a good starting place for raising awareness about the influence of culture because it asks students to articulate similarities and differences between lawyers and clients and begins a conversation about the effects of these factors on lawyering.

In class, we have used a variety of starting points to teach Habit One, including commencing with a focus on the cultural identity of the student or by asking students to apply Habit One to themselves and a student with whom they are paired or to themselves and their client. [158] When students apply Habit One, we ask them to do both the Venn Diagrams and lists in less than five minutes. [159]

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[155] In this class, after hearing these two reactions, I asked the students to assess the differences between these two positions and to consider what implications for lawyering might grow out of them. We discussed the differences for a few minutes and then I asked the students to hold their thoughts about these two positions until the end of class to assess whether there was anything new that they learned that would be helpful to their lawyering.

[156] Generally, this was the one class in the semester devoted exclusively to "diversity" issues. Visiting lawyers talked about racism, sexism and homophobia in the profession and its impact on clients. Professor O'Leary recalls a similar class focused on race in which an African-American student expressed outrage about the way the subject was presented and his fellow students' reactions to it. O'Leary, supra note 4.

[157] We gave students a written feedback form that asked among other questions: "what's one thing you learned from this class?" The most common comment was a report of increased awareness of the potential effects of culture.

[158] I have never done all three together, but it occurs to me that, if I allocated the time for this exercise, the students would learn different things from each of the lists and diagrams.

[159] Sometimes we have started by first asking for Venn Diagrams - also known as circles - so that the student is able to get an overview of the relationship and the lists to give the student insight into her thinking about the client. For example, if a student shows very little overlap with the client in drawing circles but is able to come up with a long list of similarities, perhaps the student has learned the important lesson that similarities and differences are not equal. Perhaps the student sees the bottom

In one class that we started by asking students to articulate their [*82] own identities, [160] we got a list of what looked more like personality traits than cultural identities. Students answered the question asking for three characteristics that described themselves by responding with adjectives like "friendly," "assertive," "independent," "disciplined," etc. [161] After I wrote these on the board, I asked students to list three cultural characteristics, which I then also wrote on the board. Finally, I asked students to comment on the relationship between these lists. Was one list personal and the other list cultural, or were they connected?

We started with "friendly" and explored its cultural significance. The first student I asked to define "friendly" explained that she was from a small town in the Dominican Republic and that "friendly" means taking care of your neighbors. Because the government provided very few services in that region of the country, the student explained, people depended heavily on their friends for assistance - ranging from clearing hurricane debris to providing child care. When I asked the student who had listed "friendly" if that was what she meant by the term, the student explained that she was Italian and that, to her, "friendly" meant warm expressions of greeting, hugging, kissing, and so forth. [162] We explored what we could do to make sure we understand what a client means by "friendly." From there we moved on to whether characteristics like "assertive" or "independent" were related to culture and, if so, how. Students from more traditionally collective cultures explained that these traits were not as valued by their culture and that they would not normally list these traits even if they actually applied. Again, we asked how these differences might play out in the lawyer/client/legal system. [163]

[*83] In other classes, we asked students to apply Habit One to each other in pairs, listing all of the differences and similarities and then categorizing the differences and comparing the resulting roster with the list in the materials. In response to a "what did you learn?" question, one pair offered an example from their exchange. The first student listed economic differences because the other student was using an expensive pen. When the second student revealed that she had found the pen in the subway on her way to school that day, the students recognized the basic lesson that assumptions of similarity and difference can be inaccurate if based on unexplored facts.

After identifying differences and similarities between students, we ask students to apply Habit One to their relationship with a client. This application of the Habit serves to illustrate that we have different identities depending

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line differently after the lists. By doing the exercise relatively quickly, the students will often list items that they hesitate to list if they were to devote substantial time to it.

[160] In her article on lawyering for native communities, Professor Zuni Cruz describes an exercise that is designed to focus the student on her own identity through use of a cultural chart outlining major cultural influences over time in the student's life. Zuni Cruz, supra note 4. Professor Hing describes a beginning exercise in his Lawyering Process class in which students interview one another to develop biographical sketches. Hing, supra note 4, at 1812. Professor Aiken notes that the differences among the students can be the best teacher of observing and valuing differences. Aiken, supra note 4, at 49.

[161] Of course, these were not the characteristics I thought I would hear. My question did not specifically ask for cultural characteristics, but this was a class on cross-cultural lawyering and I assumed that the students therefore would focus on cultural characteristics. Perhaps, the students had not read the materials or perhaps they were resisting thinking about themselves in that way. As I scrambled to see whether there were notes in the margins of students' materials on their desks, I asked the more specific and direct question about culture.

[162] Friendly" can be shown by polite and listening behavior; formal behavior; verbal and disclosing; physical and loud. See Pederson, supra note 107, at 114.

[163] No doubt when some of you read these stories you will note the cultural richness of the classroom exchanges at CUNY and at Yale. Jean and I are fortunate to teach in law school classrooms that are enriched by immigrants and children of immigrants, by diversity of sexual orientation, age, race, class and ethnicity as well as many other differences. Because we typically have a critical mass of students in these categories, students feel less like token representatives in the classroom. One significant way to enrich law school classrooms is working through admission and hiring committees to create a better learning environment for all students. See also Gary Orfield & Dean Whitla, Diversity and Legal Education: Student Experiences in Leading Law Schools (August 1999) at <http://www. law.harvard.edu/groups/civilrights/publications/lawsurvey.html> (reporting that in diverse educational environments 67-72% of students experience moderate or more enhancement in how they and others think about problems and solutions in classes and in learning and in their ability to work more effectively or get along better with members of other races).

on the individual with whom we are interacting and that we notice different things about ourselves when the reference point changes. [164] Clients may also have different identities depending on the interaction and players.

In focusing on the client-student circles and lists, we often ask questions that are directed yet open-ended. Are there large or small overlaps? What are the relative lengths of the lists of similarities or differences? What's the connection between these two? We have asked students to compare the lists in the materials with the lists they have created and to consider whether there are differences. Students sometimes recognize that they have omitted something. For example, occasionally white students have noted that they omitted race as a difference when dealing with a client of color. [165] Often, students have listed commonalties that are very specific to the case.

With open-ended discussion, we ask the students to begin to analyze the lists and diagrams and consider how these might affect their lawyering. Did they learn anything new or gain a useful insight into the case or client by making the lists? What might cause us to omit a [*84] characteristic like race that another lawyer or the client might list? Inevitably, we get a few good examples that foster awareness of the importance of culture to the attorney-client relationship. Since our ultimate goal is to build awareness, a wide range of examples can be used to convey the lessons the session is designed to teach. [166]

C. Developing Knowledge - Specific and General

One way to acquire general knowledge about the nature of culture is to identify the ways in which the law itself is a culture. Students learn essential aspects of culture theory, including the components of culture and the role it plays in determining meaning and shaping values and behavior. Students come to realize that law has its own language, [167] values, ways of thinking, hierarchy, categories, rules and professional norms. [168] The culture of argument and [*85] competition predominate and time is measured in precise terms.

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[164] Mari J. Matsuda, When the First Quail Calls: Multiple Consciousness as Jurisprudential Method, 14 Women's Rts. L. Rep. 297, 298 (1992).

[165] Harrison & Montoya, supra note 4, at 410 (noting that part of white privilege is not having to notice one's race): Aiken, supra note 4, at 14 & n. 48 (noting the transparency of whiteness).

[166] Other teachers have used alternative methods for raising cultural awareness. Some have asked students to watch videos or listen to closing arguments while paired with people who are racially or culturally different and to compare notes or reactions. Professor Margelynn Armstrong presented the idea of watching movies and comparing notes at a SALT conference and Professor Martha Rayner described the closing argument exercise to me. Marty Peters describes using a scene from the movie "The Joy Luck Club" in which the story teller is explaining how her Caucasian American boyfriend misinterprets conversation by using literal rather than the subtle cultural meaning from the Chinese American context. Cochran et al., supra note 4, at 166. Other teachers have used books like Spirit Catches You and You Fall Down to raise awareness of how difference can create dilemmas for professionals in cross-cultural interactions. Anne Fadiman, Spirit Catches You and You Fall Down: A Hmong Child, Her American Doctors, and the Collision of Two Cultures (1997). This is a powerful and compelling story of a clash in the professional culture of medicine and the Hmong culture. Because the clash is so clearly identified by the author, it is easy to see it in a way that the people at the time did not. Professor Kathleen Sullivan assigned this to her first-year professional responsibility class at Yale.

[167] See Elizabeth Mertz, Teaching Lawyers The Language of Law: Legal and Anthropological Translations, 34 J. Marshall L. Rev. 91, 94-102 (2000). After studying contracts classes at eight law schools, Professor Mertz concluded that legal language and socratic dialogue are linked to the development of the capacity to "think like a lawyer." In the process of learning this new way of thinking, law students are taught to think in ways that decontextualize conflict and to view the conflict only within a legal framework. In the process, students are expected to abandon ethical contexts and replace them with relevant precedential categories. "Students thus begin to learn a process of translation that they will eventually take for granted." Id. at 110.

[168] Of course, the legal culture mirrors the majoritarian culture in many significant ways. See Richard K. Sherwin, When Law Goes Pop: The Vanishing Line Between Law and Pop Culture (2000). Despite law's connection to majoritarian culture, all law students experience some adjustment to the legal culture. Mertz, supra note 167. See Kimberle W. Crenshaw, Toward a Race Conscious Pedagogy in Legal Education (Foreword: Voting Rights: Strategies for Legal and Community Action), 11 Nat'l Black L.J. 1, 3 (1989) on reactions of students to color to the neutrality of law school teaching that masks the values and perspectives reflected in law. "Few professionals fully understand what a citizen experiences; the very process of becoming a professional

We have asked students to identify examples of the changes in thinking, communicating, and valuing that they have experienced over the course of two years of law school. Even if students did not themselves detect transformations of the content and style of their communications, undoubtedly friends and family did, and we ask students to talk about those reactions. [169] This discussion facilitates an exploration of students' reactions to the legal culture and the existence of any culture clashes.

We ask students to think about the stress they feel upon entering a courtroom to represent clients and to connect this experience to the stress of entering a culture in which the cultural rules are hidden and one does not know how to predict the responses of others. [170] For example, the introductory rituals of the courtroom are not clear and comfortable for the students. Because the legal culture is not quite as hidden to students as the cultures in which they have been raised, exploring the legal culture presents an opportunity for them to learn about culture generally.

Other ways to teach the general topic of culture is to look at the chart of cross-cultural themes in the materials and to ask students to identify how the particular theme might play out in law practice. By telling a story about their own client interaction or other lawyering they have observed, or by using examples from the material, students can explore cultural themes and their relationship to lawyering. [171]

Both Jean and I work in clinics that have clients from many different cultural groups. Accordingly, we are less likely to focus on a particular culture as part of our cross-cultural lawyering classes. However, if the clinic works with clients from a particular culture, the teacher will want to introduce the students to that culture. Fiction, **[*86]** movies, history, geography, food, customs and language are all roads into the client's culture. [172] If the clinic works with clients from different cultures, each student should be encouraged to learn about his or her client's specific culture and background. I have found that recent immigrants particularly appreciate a demonstrated interest in and knowledge about their country of origin. [173]

Conversations with clients are often a good way to develop or test culture-specific information. In simulated interviews and planning for client interviews, students should be encouraged to identify the ways they have or will

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often extracts from us some measure of ability to relate to the perspective of people without this training." Margulies, supra note 88, at 727 n.160.

[169] To explore the impact of legal culture, Professor Hing uses a case study of the redress movement for Japanese Americans who were interned in World War II. He compares lawyers' and organizers' differing views of the possibility of success and questions whether legal training changes the individual's culture and class such that he or she is no longer the same as the ethnic or racial community of origin. Hing, supra note 4, at 1821.

[170] A connection can be made between the stress the students feel upon entering the courtroom and the stress their clients must feel. While the legal culture of the courtroom is not fully known to the student, it is truly foreign to most clients.

[171] If the stories in the materials are edited to include some of your own, the students will appreciate how cultural themes arise in the context of the cases on they are working. In addition, teachers can design critical incidents that highlight a particular theme. For example, if we want to teach the cultural theme of time, we might show the students an interview in which the lawyer is trying to build a time line as recommended in Binder & Bergman, supra note 36, with a client for whom time is measured very differently and ask the students what is happening. Or we might show how different cultures use silence by presenting an interview in which the client was silent to a degree that would make most lawyers uncomfortable.

[172] Many other professions have materials focused on particular groups with chapters on different ethnic groups and suggestions about how to interact with members of the particular group. See, e.g., Freddy Paniagua, Assessing and Treating Culturally Diverse Clients (1998); Elizabeth Randall-David, Strategies for Working With Culturally Diverse Communities and Clients (1989); Derald Sue, Counseling the Culturally Different (1981).

[173] The Internet makes this kind of information easily accessible. Students can look at maps of their client's home country, read U.S. State department literature on the country and find relevant stories in international newspapers.

gather culture-specific information. [174] A series of questions that can be used for this purpose are described in Habit Four in the materials. [175]

Because culture is very complex, students should be encouraged to gingerly use the new knowledge they are acquiring. [176] When we [*87] learn "specific cultural rules," we have to be careful to apply them correctly and to guard against substituting them for information about the client. Significantly, the client may or may not follow the "rules." Thus, the student who has worked with two or three clients from a particular group should scrupulously avoid generalizing from this experience to conclude that all people from this group are (you can fill in the blank).

What is the proper use of the student's knowledge about the specific cultures and about culture-general themes? The student can use this new information to develop different hypotheses about client behavior based on greater cultural awareness and can explore these with the clients. [177] The more the student knows, the more the student's antennae to difference and similarity will be raised. Being attuned in this way is a critical cross-cultural skill.

Students who work with clients from a particular client group should also be encouraged to learn the client's language, if different from their own, especially if they plan on practicing law with this client group. [178] Culture and language are connected to each other and many concepts are hard to translate because they have no direct corollary - and therefore no specific term - in the other culture.

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[174] Peter Margulies suggests that we use narrative and counter narratives to create opportunities to engage one another's perspectives. Margulies, supra note 88.

[175] Anne Fadiman gives a list of questions developed by Arthur Kleinmen, the Dean of the Department of Social Medicine at the Harvard Medical School to address cultural differences. Fadiman, supra note 166. Fadiman uses this set of questions to show the contrast between the Doctor's assessment that the child in the book is suffering from Epilepsy and the parents' assessment. She hypothesizes how the parents might have answered the questions if they had been asked:

"What do you call the problem? Qaug dah peg. That Means the Spirit Grabs You and You Fall Down.

What do you think caused the problem? Soul Loss.

Why do you think it started when it did? Lia's sister, Yer, slammed the door and Lia's soul was frightened out of her body."

"<elip>What is the most important result you hope she receives from this treatment?" "<elip>We hope Lia will be healthy, but we are not sure we want her to stop shaking forever because it makes her noble in our culture, and when she grows up she might become a shaman."

Id. at 260.

Other questions included: What are the chief problems of the illness? What do you fear most? What do you think the illness does? How does it work? With these questions, the doctor is able to elicit culturally-relevant information about the nature of the illness and treatment.

[176] When I have read these chapters in the cross-cultural books, I find myself feeling wary of using the information. As an outsider, I have no way to evaluate the information. I do not know what changes have taken place in the culture since the chapters were written. They often seem a little too sweeping or general and not necessarily applicable to the individual. On the other hand, the chapters often present different ways of looking at a problem and can be used to create awareness of different approaches. The key to proper use of this material is to make sure that we do not apply it unconsciously. All of these books start with caveats that each patient, client, student is different and may not reflect the culture being described in the chapter.

[177] Jacobs, supra note 4, at 401, 409 n.294, citing Sue et al., supra note 57.

[178] There is a variety of language-related issues that should be considered. First, a shared language will result in a better relationship with clients. In fact a capacity to communicate in the client's language may be more important than ethnicity for forming a connection with clients. Hing, supra note 4, at 1818. In addition, language can shape the story told by clients. For example, native French speakers who are bilingual in English will tell a far more romantic and emotional narrative in French than when telling the same story in English. Students in Hong Kong express more traditional Chinese values when taking a values test in Cantonese. Even if students speak the client's language, they do not know how to express the legal concepts. We have offered a class at the law school in Spanish for Lawyers for Spanish speakers to learn how to express in Spanish the legal concepts that they learned in English. I did not always appreciate the difficulty for students who had to not only think about the legal concept in "plain English" but also "plainly" in some other language and culture linking it to some concepts that the client

D. Developing Cross-Cultural Skills

The Habits are designed to help develop analytical and interaction skills. Many of these skills have been taught in the context of other legal work. By furnishing a cross-cultural context, we enhance the students' capacity to employ the skills by focusing attention on why the skills are needed and how they might be used to address potential [*88] problems in client interaction.

1. Raising Antennae To Recognize Ethnocentric Thinking

a. Habit One: Similarities and Differences

The evolution from being able to talk the talk of "cross-cultural" to walking the walk of "cross-cultural" requires a capacity to recognize when we are making assumptions and judgments about our clients that grow out of our own cultural blinders. If students can attain this heightened awareness, they can begin to develop competence. Habits One and Two encourage students to focus on difference and similarity and their effects on lawyering. By using these habits, students will begin asking themselves questions such as: Why am I judging this client negatively? Is it because we have different values, experiences, or opportunities? Sometimes, as teachers, we have difficulty raising these questions. [179] Students can also use Habit One to reflect on interviews and identify areas that are left unexplored because of assumed similarities. [180]

b. Habit Two: The Three Rings

Habit Two develops skills of analyzing the effects of similarities and differences among the client, legal system and the lawyer. Because of the complexity of these factors and their interactions, Habit Two needs a detailed concrete illustration to have it come alive for students. To teach Habit Two, we have used a simulation developed by Jean for her Children and Families clinic. Teachers should tailor these materials to their particular setting, using a simulation or case to develop the circles and lists of Habit Two. In each subject area and local region, there are cultural norms and values that will be specific to the law and legal system in which the students are working.

Because students need the practice of applying the framework of culture to analyze a case, Habit Two is one that we also often teach and reinforce in supervision. We have found it especially useful when we or the students are troubled by a case. Often, it helps the lawyer move away from irrelevant facts or issues about the client or the case that are bothering the lawyer and to focus instead on facts and issues [*89] that will be relevant to the fact finder.

Habit Two analysis can help the student spot weaknesses and brainstorm possible ways to explain the client's behavior or statements to a court that may be unfamiliar with the client's culture. The student may identify similarities between the court and client and build an explicit connection to the fact finder with these similarities. [181]

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understands. Students can prepare for this complication by thinking about how they will describe the concepts to the client in their non-legal language.

[179] When I first started teaching collaboration skills, I noticed that the conversation with students about issues they were having with their co-counsel shifted from blaming comments about how their co-counsel was "screwing up" to brainstorming and questioning why difficulties were occurring. See Bryant, supra note 16.

[180] Professor Hing describes a video involving interviews and other legal work in which students explore the effects of similarities and differences between lawyer and client. Using their cases in the clinic, students discuss whether a lawyer who shares a cultural heritage with a client has an advantage and what students who lack such a commonality of culture can do to develop a trusting relationship. Hing, supra note 4.

[181] If we recognize that seeing similarity causes us to be less judgmental about our clients, we need to think creatively about how to make connections between clients and fact finders so that they too can be less judgmental. See Marc A. Fajer, Can Two Real Men Eat Quiche Together? Storytelling, Gender-Role Stereotypes, and Legal Protection For Lesbians and Gay Men, 46 U. Miami L. Rev. 512 (1992), for a thoughtful analysis of the benefits of identifying similarities to correct incorrect "pre-understandings," and the limitations of not recognizing difference, especially the difference that grows out of the effects of discrimination. Id. at 528.

If the client is resisting the attorney's advice, the lawyer should try to identify the reasons for the client's behavior. Is there something in the client's background or culture that causes this resistance? The student should consider whether she is asking the client to do something that violates the client's norms and, if so, whether there are other possible approaches that might resolve the case. As Kimberly O'Leary recognizes, the identification of difference is a starting point for creative legal thinking; [182] so too is the recognition of similarities between client and court and lawyer.

Like the conversations suggested by Habit One, a regular dialogue between supervisor and student on issues of difference and similarity can make the conversations less loaded because they are not limited to occasions when the student has done or said something that is ethnocentric.

c. Habit Five: The Camel's Back

In classroom teaching of Habit One, a teacher can also introduce Habit Five. Habit Five depends on the analysis of similarities and differences from Habit One and on recognizing some of the more pernicious effects of bias and stereotyped thinking. Once the framework for Habit Five is laid in the classroom, Habit Five conversations are more insightful for students when they are applied to the student's fieldwork. This exploration might be accomplished by discussing whether the student's behavior or thinking would be different if the characteristics of the client changed. [183] The challenge here is to strike **[*90]** the right balance of support and challenge in the conversation with the student. The goal is to provide the students with sufficient support and information [184] so that they can challenge themselves. One way to do so is to acknowledge our own assumptions and biases when they occur.

2. Remaining Flexible and Making Isomorphic Attributions

a. Habit Three: Parallel Universes

Teaching Habit Three is easy. [185] Students grasp the concept readily and its use reinforces the critical skill of remaining flexible and making isomorphic attributions. We usually introduce the Habit by connecting it to the concept of attribution, explaining that cross-cultural interactions often result in lawyer and client ascribing different meaning to the same behaviors. Habit Three invites students to imagine alternative explanations for the client's behavior.

We have taught Habit Three by using videotape and the students' cases. One of our video scenarios is the one transcribed at the beginning of this article. We show this short passage on tape and ask, "Why is the brother here? n186" We ask students to ponder this question a[d] then to brainstorm possibilities other than the one that initially occurred to them. Then, we list all the different explanations of the behavior on the board. Some possible explanations include that he is the driver; interpreter for language and/or culture; supporter; fellow tenant, in possession of relevant facts; the censor, to make sure she does not say something she shouldn't; an aid in

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[182] O'Leary, supra note 4.

[183] Professor Gunning uses a dispute between a child and a bus driver to portray one possible method of assessing how cultural myths would change if the race, age or ethnicity of the participants changed. This technique, as illustrated in Professor Gunning's article, is a way of exploring cultural myths without owning them and thus, allowing the student to acknowledge stereotyped thinking without subjecting themselves to shame. Gunning, supra note 4.

[184] As Professors Jacobs and Aiken point out, students often fail to see privilege and bias, and the challenge for us as teachers is to give the students experiences and knowledge to allow them to appreciate the effects of bias on their own thinking. See Jacobs, supra note 4, and Aiken, supra note 4.

[185] Applying it on a regular basis is of course a different matter. If students begin to make it a Habit, they will usually say before I have to - "I guess I should do some parallel thinking here."

[d] Jean and I demonstrated this part of the class at the clinical teachers' conference in Albuquerque, in May 2000. This tape segment can also be used to teach Habit One.

decisionmaking or the intended decisionmaker (by her or his choice); and so forth. After we identify the various possibilities, we ask how our answer to that question influences our lawyering choices.

We then return to the tape and show a segment in which the lawyer explains to the brother that she is going to speak to his sister alone.

[*91] Attorney: Maybe what we'll do if it is OK with you is we will start the interview in the office just with your sister and then if we need some information from you we'll call you in afterwards. Is that OK?

Translator:[Spanish: The translator translates this to the client asking the client (not the brother) if it is OK with her.]

Client: [Spanish]

Translator: If you think it will be more convenient for her to do, but this is the person that always helps her.

Attorney: Do you prefer for him to be in with us?

Translator: [Spanish]

Client: [Spanish]

Translator: If you think it is going to help her.

Attorney: Well, why don't we start just with you and then if it turns out that we need him, we'll have your brother come in later.

We ask the students to look at the long list of explanations for the brother's presence and to connect the lawyer's actions to the list. Given what the lawyer did, what were her assumptions about the brother's reason for being there? We ask the students to identify other choices that the lawyer made in structuring the interview. We also ask the students to identify the potential benefits and costs of inviting the brother into the interview room.

Students typically identify a number of possible benefits of the brother's coming into the interview room, including providing support for the client, furnishing additional facts and language and cultural translation. We discuss the possible advantages of using him as a translator rather than the office translator. Students also usually identify several possible problems, including confidentiality issues; that his voice may dominate; he may translate and change the meaning; or he may silence the client. Students often have definitive positions about whether the sister is more likely to give the lawyer information if her brother is with her than if she is alone. Often these positions are tied to their own experiences and cultural background. For example, students from more collective cultures and immigrant cultures often explain that the brother is an essential part of the way in which the client interacts with the English-speaking world. Women students with strong feminist perspectives argue that the client should be interviewed alone to ensure that it is her voice that the lawyer hears.

Parallel universe thinking allows students to see that there are many possible interpretations of the brother's and sister's behavior. By interpreting the behavior and responding to it, students can begin to appreciate that they are substituting their own cultural explanations **[*92]** and norms for the behavior and are making lawyering choices based on these explanations. [187] We usually end with a suggestion that parallel universe thinking alerts us to the possibility that we need additional information to develop a culturally appropriate response. [188]

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[187] This scenario also provides an opportunity to teach the legal norms as culture. Most confidentiality rules are based on a highly individualistic norm.

[188] Exactly how we get this information may be tricky. Directly asking the client will not work if she does not feel free to say she wants her brother excluded, but additional information will help the lawyer assess this issue.

Including a cautionary note in teaching Habit One and the other Habits allows a teacher to identify the limitations of lists and charts and of culture-centered training. In addition to understanding that we are constantly changing identities, we also need to acknowledge that we may move quickly to sort and order to lessen ambiguity. This may result in our ignoring the complexity of the situation and the relationship, and perhaps contributing to a different kind of misunderstanding. Thus, such situations require flexibility and the ability to be comfortable with not knowing or changing the lists and diagrams to incorporate more and different information.

3. Remaining Non-Judgmental

In our classes, we explicitly address the importance of remaining non-judgmental towards clients and ourselves as learners. We talk about the highly judgmental nature of the legal culture and the special difficulty that lawyers may experience in cross-cultural encounters as a result of our training. To teach the skill of remaining non-judgmental, we use Habits Three, One and Five.

a. Habit Three

In one class, we asked the students to recall a negative judgment that they made about a client's behavior. We asked them to write down the behavior and their interpretation of the behavior. Then, we asked them to use parallel universe thinking to identify at least three other possible explanations of the behavior. When we asked for volunteers, one student identified an instance in which she assumed that her client was no longer interested in a housing eviction case because the client did not respond to the student's phone call and letter. We wrote the behavior on the board and asked the student and her classmates for alternative explanations. We stopped after approximately twenty different interpretations had surfaced. Then, we asked about the sources of the interpretations and how they connected to our experiences and culture. [189]

[*93] This technique of exploring alternative explanations is commonly used in clinical teaching to expose students to the limitations of relying on their own experiences to interpret client behavior. [190] By teaching the technique as a cross-cultural lawyering skill, students learn the importance of searching for alternative explanations. [191] They learn to hold off making judgments until they have considered what additional information may be needed to make sense of the behavior. [192]

b. Habit One

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[189] This conversation, which occurred in Jean's Families and Children Clinic class, was enriched by the experiences of her students and was an example of how classroom conversation can sometimes be richer than discussion in supervision because of the involvement of the entire class. As might be expected, students who had experienced loss of housing themselves as well as students who had worked in prior careers as social workers and community organizers involved with public housing tenants and poor people were able to add perspectives based on their experiences.

[190] See Quigley, supra note 6, at 57; Lois Johnson & Louise Trubek, Developing A Poverty Law Course: A Case Study, 42 Wash. U. LJ. Urb. & Contemp. L. 185, 199 (1992) and Aiken, supra note 4, at 29 for other examples of classroom conversations that led to students identifying multiple explanations for client behavior. Mary Zulack and Conrad Johnson at Columbia conduct an exercise at the beginning of their clinic program that involves a similar scenario in which they ask the students to come up with multiple reasons for the client behavior. This exercise is described in detail in Aiken, supra note 4, at 28.

[191] This is an example of an instance in which teaching the theory behind the skill enhances the likelihood that the skill will be learned and used. See supra notes 57-76 and accompanying text.

[192] This is a good example of how a personality trait - tendency not to judge - that is valuable to cross-cultural interactions can be developed as a skill. By teaching students the questions to ask and methods for analyzing situations, we teach the skill of suspending judgment. Professor Jacobs recommends that before students inaccurately classify clients as difficult, students should ask themselves: "Is there something I said, did or thought which prevented the interview from concluding more positively? Can I detect any factors that have motivated me to evaluate my client in a negative light? Are there gaps in my understanding of my client's experiences and world view that prevent me from fully understanding what my client's needs are?" Jacobs, supra note 4, at 361.

In addition to Habit Three reasoning, students can learn to use Habit One thinking when they are feeling judgmental towards a client or client's behavior. Searching for similarities, an integral part of Habit One, is another useful way to counter negative judgments about clients. [193]

c. Habit Five

An essential component of Habit Five is to address one's bias and [*94] stereotyping in a non-judgmental way. In teaching the Habits, a teacher needs to set a similarly non-judgmental tone in the classroom. I often start with canned video, and if I am not careful, I can inadvertently create a judgmental atmosphere by critiquing videotapes harshly. I am much less likely to pay attention to positive aspects of a performance or to framing criticism in a positive manner when the performers on the tape are not students in the class. Yet, students often see themselves in the tape and respond to the criticism as if it were them. [194] Thus, it is important to build an atmosphere of support and challenge that includes the person on the videotape as well.

4. Cross-Cultural Communication Skills

The practice of Habit Four increases students' skills at cross-cultural communication. We have taught Habit Four primarily through watching and interpreting videotapes, conducting simulated role plays in class and engaging in reflection in supervision of meetings with clients. These methods of teaching mirror the ones I use to teach interviewing skills. I design short exercises, simulations or videos to focus on parts of an interview for demonstration and analysis. For example, focusing on the beginning of the interview, we can identify the different introductory rituals that cultures use and we can role play the integration of these into the attorney-client interview.

To help students acquire the deep listening skills that cross-cultural interaction requires, we expose students to exercises that help the student become mindful of the interviewing process. [195] Deep listening is difficult for students to master because many western cultures undervalue listening. Most students who were encouraged in their childhood to pursue a legal career probably received this advice because they displayed a tendency to argue, not because they were good listeners.

In watching videotapes or reflecting on case interviewing, we ask whether we are correctly interpreting the client and she us. Especially when we are using translators or working cross-culturally, the lawyer must prepare for the possibility of some misunderstanding. We ask questions designed to surface the cues the students are using to understand the client. These include: What evidence do we have for our interpretation? What non-verbal cues are we using and is our interpretation [*95] correct? [196] Is the client's style different from our own and can we separate

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[193] At a faculty forum at CUNY, I presented my work by asking the faculty to identify a student about whom they were feeling very negative and to apply Habit One to the student and themselves, identifying similarities and differences. In our conversations about what they noticed as a result of the lists and circles, teachers talked about searching for similarities and how the exercise had made them think differently about their relationship with the student. Some said they needed to know more about the student because they could only list differences; others said it helped them focus on what it was about the student that caused them to have the negative reaction.

[194] One student gave this feedback to us following a conversation about a tape that we had used in class. See supra notes 86-102 and accompanying text for a discussion of the importance of establishing an appropriate mixture of support and challenge.

[195] Professors Harrison and Montoya have suggested a process similar to deep listening skills, which they call "slow-motion" reading, to capture a similar idea that we need to listen on many different levels and to make explicit the multiple layers of communication. See Harrison & Montoya, supra note 4, at 433.

[196] In the counseling field, trainers recommend noting and using the client's preference of eye contact and paying attention to the client's body language as well as testing whether the counselor's body language and verbal language are consistent with the client's. See Pederson, supra note 107, at 105. Lawyers interviewing clients can follow these same tips to establish rapport with clients.

content from style when the style is so different from our own? [197] What other steps could we take to confirm that our interpretation is the correct one? [198] How many times did we change the topic and what was the result? [199]

Learning deep listening skills proves difficult for students because they are trying to put together many different tasks and sub-tasks in client interactions. Thus, one key piece of the deep listening of Habit Four is to alert students to look for red flags - clues that something is going wrong in the interview. By teaching students this, we implicitly acknowledge that these interviews are difficult and that we often can make mistakes. Recognizing and responding to red flags, which is a complicated task in any interview, requires even greater attention and skill in a cross-cultural interview. Students can be taught to look for red flags by reviewing simulated interviews and by making flag notations in their client interview notes. [200]

In talking with students about their red flag analyses of tapes of cross-cultural interviews, the teacher can encourage the kind of reflection that Professor Jacobs suggests for effective client-centered lawyering. For example, Professor Jacobs encourages students to reflect on their role in the interview and the non-verbal cues they may be sending if they find themselves labeling the client as difficult or uncooperative. [201] **[*96]** Reflection on the means available to improve the communication may also allow the student to consider how their clients' experiences with other lawyers or others from the lawyer's cultural group may complicate the interviewing process.

As part of developing the skill of debriefing an interview, students should be asked to examine what they followed up on and what they left unexplored. To teach the connection between Habit One and communication skills, I have used two different videotape segments from the same videotape we use for Habit Three. One segment involves a non-payment of rent issue:

The landlord is saying that she doesn't pay her rent, but she does pay her rent. She doesn't know why he is saying that.
Attorney:Who do you live with in your house?
Client: [Spanish]
Translator:She lives with her brother, her husband and her two children. Attorney: Whose name is on the lease?
Translator:[Spanish]
Client: [Spanish]
Translator: Her husband and her name.
Attorney: Who's the person that usually pays the rent?
Translator: [Spanish]

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[197] Determining meaning from clients' tone and speech rate is complicated especially when the counselor or client is not using a native language or translation is used. Pederson, supra note 107, at 106. If possible, clients should be allowed to communicate in their language of choice to mitigate some of these problems.

[198] Some of the suggestions we use include asking the client to tell us what we have told her; using active listening techniques to replay for the client what she has told us; and engaging in role plays of the sort suggested by Professor Mary Zulack in Rediscovering Client Decision-making: The Impact of Role Playing, supra note 143, at 618. Perhaps one of the reasons for the efficiency of the role play approach is that clients with an indirect communication style may be more forthcoming in role than if questioned.

[199] In a text prepared for teaching culture-centered counseling, Professor Paul Pederson recommends staying on the client's topic as long as possible as a way of seeing the client's problem within a cultural context. Pederson, supra note 107, at 106. A similar approach makes sense for lawyers. Facts and stories may not make sense to the lawyer, but it is important for the lawyer to understand why and how they make sense to the client.

[200] One of the difficulties in teaching students this skill of deep listening is that it is a skill that we must observe the student employ if we are to give the student feedback. If the bulk of the student's interviews are not observed or videotaped, feedback on the non-verbal communication and interpretation of client behavior is difficult to provide. Therefore, a teacher interested in teaching her students this skill has to provide multiple opportunities for observation and feedback.

[201] Jacobs, supra note 4, at 17.

Client: [Spanish]
Translator: Who writes the check? Or who is the one who gives the money? Attorney:Both.
Translator: [Spanish]
Client:[Spanish]
Translator:Her husband works, but she is the one who writes the check out. Attorney: Is that how you pay the rent, by check?
Translator: [Spanish]
Client: Si.
Translator: Yes.
Attorney: How do you usually give the check to the landlord? Do you hand it to him? Do you mail it in?
Translator: [Spanish]
Client: [Spanish]
Translator: She sends it by mail. [*97] Attorney: I imagine that you did not bring them today, but you have your cancelled checks from the other times that you paid?
Translator: [Spanish]
Client: [Spanish]
Translator:Yes, she has them. Attorney:From what you are saying, you have been paying your rent?
Translator: [Spanish]
Client: [Spanish]
Translator: Yes, she pays it. Attorney:Is there a date when you have to pay it by every month?
Translator: [Spanish]
Client: [Spanish]
Translator: She usually pays before the end of the month.
Attorney: Before the end of the month. Did the landlord ever tell you the day that he wants the check by?
Translator: [Spanish]
Client: [Spanish]
Translator: Sometimes she pays at the beginning of the month. Sometimes at the end of the month. There are 30 days to pay the rent. She pays between those 30 days.
Attorney: Have you ever had to pay your rent late?

We use this segment to show how difference may influence questioning. I ask the students why the lawyer is exploring time and payment. Presumably, something does not make sense to the lawyer. The lawyer knows that a defense to non-payment will require a showing of payment of the rent. The lawyer is exploring when rent is paid and continues exploring this subject because the story strikes the lawyer as odd. A lease would have a date, but it seems as if the client does not pay on a certain date. Time is a culturally bound concept that may not have the same meaning for lawyer and client. What does "late" mean? Legal definition? Cultural? How do the lawyer and client view the landlord-tenant relationship?

This segment also shows assumptions of similarity. Asking "whose name is on the lease" rather than "do you have a lease" or "who pays the rent" reveals assumptions of similarity by the lawyer. Fortunately, the client saves the lawyer from one of the ambiguous questions by asking the lawyer what does she mean by pay. In one class, a student pointed to the question about who pays the rent as one that revealed a cultural assumption. In the student's immigrant family, bills were placed in a bowl at the entrance to the home and were [*98] paid by whoever had enough money to pay the bill that month. Generally, a different person paid the rent each month.

To acquire culturally diverse conversation management skills, students need to learn to be less rigid about the structuring of an interview. The issue of who is supposed to talk and for how long and about what are very much related to culture. Direct and indirect acquisition of information may occur and students who remain flexible and listen deeply will achieve better client interactions.

The other segment that I use to teach the connections between questioning and culture is one in which the lawyer learns that domestic violence may be a factor in the client's landlord-tenant issue:

Attorney: Would you like to talk a little bit more about different issues around the immigration situation of your husband and perhaps about the battering situation? Do you think that that might be helpful for you?
Translator: [Spanish]
Client: [Spanish]
Translator: If you want to continue to talk about it. She has been speaking to her pastor at church and he has been giving her advice.
Attorney: This office, this legal services office, we do have some people who specialize in issues of immigration and also in problems in the home, in domestic violence problems.
Translator: [Spanish]
Client: [Spanish]
Translator: My sister was here before and she was helped. That's why she came. Attorney:We can begin to perhaps talk about some of these different issues. Translator: [Spanish]
Attorney: But that does not mean that … you should definitely keep talking with your pastor and if your brother is a good person to talk to - continue getting support from other places as well.
Translator: [Spanish]

The lawyer does not ask questions about the pastor and whether the client has found the pastor's advice useful or supportive. Most likely, the lawyer assumes that the client has a relationship with the pastor that mirrors such a relationship in the lawyer's life and thus, does not pursue the questioning because the client's actions make sense. Contrast for example the presumption that the pastor is helpful **[*99]** but that the brother might not be. Perhaps the lawyer simply assumes that conversations with the pastor are private and not to be discussed. In addition to illustrating the connection between assumption of similarity and failure to question, the lawyer's behavior can be used to illustrate parallel universe thinking by asking students to imagine all the reasons why the lawyer responded in the way she did.

Conclusion

If we can make the subject of cross-cultural lawyering one that our students and we can talk about, our collective capacity to practice law in non-discriminatory and culturally-sensitive ways will increase access and substantive justice for our clients. By developing a framework and vocabulary for cross-cultural lawyering, Jean and I hope to increase our students' and our own capacities to talk and think about difference and similarities in a more complex manner. If we lessen the anxiety of interacting with others whom we perceive as different, we promote an openness to learning more about our clients and ourselves.

By thinking about this work as creating Habits, we enable students and ourselves to explore issues of difference in a routine way that, we hope, makes conversations less loaded. This spares the teacher the difficulty of figuring out how and when to raise issues like race or gender, stereotyping, bias or others. Instead, the conversation takes place on a regular basis within the framework of the Habits.

Our work on the Habits and learning about cross-cultural teaching in other fields has been among the most stimulating work I have done as a clinical teacher. There are many good resources out there from which we can learn, and we need to continue to create paths to greater cultural competence for ourselves and our students. I agree with Professors Montoya and Harrison that

cross-cultural learning is possible only in tandem with others. It is a journey that cannot be taken alone. The borderlands are places of collaboration, of interactivity, of shared as well as opposing values, of exposed and juxtaposed weakness, and of ignorance, unmasked and remasked. Borderlands beckon to risk takers, meaning awakers, and vision makers. [202]

Thus, I end where I began: by thanking colleagues, staff, students and Jean, who have been learners and teachers and who have made this project an enriching journey. As clinical teachers, we have an enormous contribution to

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[202] Harrison & Montoya, supra note 4, at 441.

make to our profession and the clients it serves if we can build cross-cultural competence in our students and in [*100] ourselves. [203] By using the multi-cultural resources and starting the conversations, we start or continue an important journey for ourselves and our students.

Epilogue

by Sue Bryant and Jean Koh Peters When Jon Dubin, Sue's editor for this article, asked us to write about our collaborative experience in an Epilogue, we said yes because the process of working together to develop the habits of cross-cultural lawyering was fun and enriching for both of us. We wanted to record, for the benefit of our colleagues, some of our ideas about long-distance collaboration on a project. Although we used a process geared to our particular work styles and learning styles, we hope that it sparks some ideas for collaborations by others.

I. The Process

A. Collaborating in Conversation

Our core process was to converse regularly to yield the classes, the class materials and writing that have become the Habits of cross-cultural lawyering. From the day we began, we started with a weekly hour-long phone conversation that continued throughout the years of the project. Typically, one of us, usually the one who was in the office as opposed to working at home, called the other, at a prearranged time that we had set aside.

We scheduled phone conversations (which we usually called meetings) into our weekly semester-long schedules, trying to be mindful of the need to work around traditionally busy court time. Because the meetings were regular, we were flexible about starting late when needed or canceling when needed due to the inevitable clinic case emergencies. But if a meeting was canceled, we tried whenever possible to reschedule it for the same week.

The conversations themselves were very free flowing. We often shared conversations that we had with students in supervision about their cases and our own observations about the ways in which cross-cultural issues were arising in our work. We shared stories of our own cultural blunders and of applications of the Habits that seemed useful in helping students deal with issues. We moved quickly back and forth between clients, students and our families as we tried to look for examples [*101] in our lives that confirmed or challenged what we were reading and thinking. Because we are good friends - and became better friends through the process - there was often initial sharing of personal events, vacations, family news, and other such matters which initially seemed off topic.

Although the conversations flowed freely, we generally had clear ideas about what we wanted to accomplish in a given phone call and meeting. If we had a pressing agenda - an upcoming class, or supporting the other in a presentation later in the week, we got right down to it. Jean, a consummate planner (says Sue), was usually the one to ask before the end of our allotted time for talking: "So what are we going to talk about next week?" If we didn't have enough time to finish planning, we communicated by e-mail.

We were also very free in bumping the Habits from the agenda if one of us wanted the other's feedback on a different project. We also used e-mail to organize ourselves, schedule our talks, reschedule our talks, trade drafts and exchange quick ideas during the week. While we didn't view e-mail as a medium for a lot of substantive virtual discussion, it was a very useful place for instant feedback or getting a thought or two down on paper and moving drafts back and forth. Others may find it to be a more reflective mode than we did.

These weekly conversations were supplemented in a number of ways. As a goal, we tried to get together in person once a month either at Sue's apartment in Manhattan or at Jean's house in North Haven, Connecticut. Typically the traveler would set aside the whole day and get an early start. Often without expectation the traveler was able to use

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[203] I think it is very important that we translate our law review articles and presentations into training materials for the bar and students. There is a void that we can fill and we have unique opportunities to collaborate with the bar to create greater access for clients.

the train time as reading or writing time and arrived at the host's house full of ideas and thoughts or maybe even moments of integration. Again the face-to-face time was loosely structured, allowing conversation in many avenues - sitting in front of a fire, taking a walk around the city or the neighborhood, cooking a meal and eating it. On a few occasions, Jean's student research assistants participated in some of the get-together. Again, the traveler often used the train ride back to write down some ideas or do some additional reading. (Both Sue and Jean found train time to be particularly fertile working time, almost justifying the trip in itself.)

In addition to using the insights that developed as we talked about our thinking and experiences and engaged in conversations with students and colleagues, we each spent time "teaching the other" about books, articles and materials we were reading. Sue spent her time reading scholarly and practical cross-cultural communication literature, materials for trainers and teachers who were developing cross-cultural materials and programs, and cross-cultural training [*102] materials for other professionals. Jean's specialty was to read off-point, finding parallels to what we were doing in her recreational reading. For several months, we discussed the parallels between the Habits and a book Jean had just read, The Inner Game of Tennis, [204] which focused on issues of mindfulness, non-judgmentalism and fact-based living. Jean also dubbed Habit Three "parallel universes" based on her avid interest in Star Trek and Star Wars. At another point, the experience of reading Marion Zimmer Bradley's Mists of Avalon [205] infused many conversations in which we talked about the ways in which stories could be viewed differently by different players. Jean also watched the Japanese classic, Rashomon, [206] and showed it to Sue, to explore the multiple stories/parallel universe concept. A chance encounter with a family member also exposed Jean to the Empathic Communicator, [207] which became the focus of our writing about conscious and unconscious competence and incompetence.

Sue used research assistants in a traditional way to locate cross-cultural material. Jean included her research assistants, Anjan Sahni, Cary Berkeley Kaye, and Leondra Kruger, in an ongoing conversation, which greatly enriched the process for the project and us. All three of the students had worked in the clinic, and two of them had been Jean's supervisees; in fact, throughout the process, our casework was an essential database for critical incidents for the Habits.

Typically, Jean would have both Sue and the research assistants on her schedule for one hour a week, so even if one was lost in client emergencies, the other would proceed. Jean kept her research assistants up to date on her conversations and work with Sue. They read and commented on drafts, road-tested the Habits, and suggested connections and ideas for research. Usually, one of the research assistants in each conversation would write up the conversation and e-mail it to all present, and to Sue. We often referred to our file of "minutes" later to look for trends and remember loose ends. On a number of occasions, Sue responded by e-mail with her reactions to the minutes and continued the conversation.

Later, as the project took shape, Jean structured the weekly meetings with Anjan, Cary and Leondra around refining each Habit, one at a time. Because Jean was on leave, the meetings took place at her house and could go for more than an hour. Sue planned two of her visits to North Haven to coincide with these meetings. Jean and [*103] Sue met in the morning; the five of us had lunch, and then discussed one of the Habits for two hours in the afternoon. There was something very rich about conversations that lasted for more than an hour. We were extremely lucky to have regular interlocutors who understood our lingo, lived with the ideas, edited our writing, tried them on in their daily lives, gave us frank feedback about them, advised us about the student perspective as we tried to plan teaching materials, and were extremely generous in giving us their time and ideas.

Sue's colleagues at CUNY agreed to teach the materials in cross-clinic classes that placed the students from each of the clinics into small groups. Sue used her sessions preparing her colleagues to use the materials as a starting

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[204] W. Timothy Gallwey, The Inner Game of Tennis (rev. ed. 1997).

[205] Marion Zimmer Bradley, Mists of Avalon (1983).

[206] Rashomon (1950) (directed by Akira Kurosawa; based on Ryunosuke Akutagawa et. al., Rashomon and Other Stories (reissue ed. 1999)).

[207] William Smiley Howell, Empathic Communicator (1982).

point for the teaching section of the article. The last time the CUNY faculty taught the Habits, they videotaped the sessions for viewing and analysis. Sue consulted with Jean on planning these preparatory sessions and we both benefited from the feedback from faculty and students about how the methods worked.

Both the CUNY and Yale students were given quick writes at the end of each session asking them what worked and what they would change. We used a similar quick write at the AALS Clinical Teacher's Conference in Albuquerque and at a training session that Jean did for the Juvenile Rights Division of the New York Legal Aid Society. This feedback from colleagues and students encouraged us to pursue the project, gave us additional teaching ideas, and pointed out where we needed to elaborate our thinking.

B. Getting It on Paper

We have very different writing styles that complemented each other throughout this process. Sue is a careful note taker of reading, and note taker in discussions, and regularly reads back through her notes to find trends of ideas over time. Jean has a fascination for "one pagers": documents that can, on a single page, convey the large structure and some of the micro concepts of an idea. Jean was constantly fiddling with graphs, charts, and diagrams of the Habits throughout the process. At various points, when it came time to get something down on paper, Jean was often the person who did the sloppy first draft (either in the Internet chats described above, in a quickly dictated few pages, even once in a one pager prepared on a train ride on the way to a class taught at Sue's clinic at CUNY). Jean's writing style was more "stellar cartography," [208] in which she would use small periods of time (5 to 40 minutes) to advance a project by using dictation and collaborating with a research assistant.

[*104] At one point in the process, Jean used the Internet chat process with another friend to try to explain the Habits to an eager listener; the e-mail message turned into an early draft of the materials. Clearly technology offers many ways to have conversations that may be useful to the collaborative writing process.

Sue's writing took longer than Jean's, so she usually worked by adding to Jean's initial drafts, creating categories within the Habits. Because Sue was reading the cross-cultural literature, she found useful frameworks for describing the analysis that we were seeing in our work with students and clients. Each time we offered a class or gave a presentation, we added to the materials. By May 2000, we had a set of student materials for the Habits that we had used for several different classes. These materials were used for the demonstration at the 2000 AALS Clinical Teacher's Conference in Albuquerque, which by wonderful coincidence was all about culture.

Jean was able to use the conceptual work on the Habits and the student materials describing the Habits for a chapter on the Habits in her book. [209] Sue used her leave in 2000 and 2001 to do additional work on the materials and to write a more scholarly exposition of the Habits, which evolved into the article that appears in this issue of the Review.

II. Observations on the Process

No matter where we started and how far we got off track, our hour-long conversations invariably generated a number of insights about the Habits and our concerns about difference in our teaching and practice. Put in another way, the things that we shared with each other often had a kernel of something we had been talking about before, be it parallel universes, the camel's back analysis, or questions of differences and similarities.

We both comfortably move back and forth between the personal and the professional and view the personal as connected to our work. Thus, we never had "getting down to business" issues that can frustrate collaborators who have very different orientations to work and home.

In fact, it was fascinating and helpful to link the Habits to many parts of our lives. A regular pattern of going off on tangents or going off topic that happened naturally worked because we seemed to naturally find ourselves back on

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[208] Koh Peters, supra note 8 (Supp. 1998).

[209] Koh Peters, supra note 8.

topic without any clear transitions being made. It also confirmed for us what we hoped was the daily usefulness of these concepts, since we were finding them applicable in many [*105] parts of our lives as we were trying to articulate them.

Our work styles and process values were similar enough that we worked well together. Both of us value collaborative work. Unlike people who get up from a meeting commenting about "getting back to work," as if the meeting was not work, both of us viewed the work we did together as "work."

We did not do identical amounts or kinds of work to advance the project. We had different opportunities at different times to put more or less work into the project and we accepted one another's contributions and limitations. We both learned from the on target/off target reading. Sue's openness to hear what many would have considered a tangent helped Jean make the connections that were actually there and contributed a great deal to both the fun and richness of our collaboration.

We both tended to use time rather than task as the main limitation on what we could accomplish when deadlines approached and so we got "as much done as we could in the time allotted" and were comfortable with an imperfect product. This allowed us to give classes and presentations before we had finished and to describe our work as a "work in progress."

Our process tended to be very story-centric. Very often our conversations would begin with a story from our recent week of work which turned out to have a natural connection to the Habits. In fact, throughout the process, our casework was an important database for critical incidents for the Habits. In conveying the Habits in our presentations and writing, stories have played a major part. We freely elicited stories from each other, dug for them, and had no concerns about making time for them because they tended to be very rich mines of critical incidents to examine.

In the course of our busy lives, spending fifty minutes a week on the phone together was very useful. These times were always oases of time when we had no agenda except to be in the moment together, trying to understand our project as well as possible. Jean often felt very refreshed after a conversation with Sue because it had been a fifty-minute period she had spent in the moment with someone else rather than planning for the future or debriefing the past. This process, which we grew to trust increasingly over time, kept the energy of the project alive as well. Staying in the moment, which of course is the core of many of the Habits, particularly Habit Four, turned out to be the most efficient as well as the most enjoyable working mode.

We really enjoyed teaching with each other and learned a number of lessons from these experiences. One of the benefits of this joint teaching was that we often saw different things in the classroom dynamics, [*106] yet shared a common database of experience and easily understood what the other had observed. One of us was an outsider, the other an insider to the class; that difference of perspective alone created different experiences for us. Interestingly, when we visited each other's schools, the home team teacher felt more anxiety about the class than did the visitor. In trying to think about the reason, we wonder whether knowledge of the students causes us to anticipate difficulties that a visitor could blissfully ignore? We wanted our students to embrace the Habits and the home teacher would see what the students had actually learned long after the blissful visitor departed? Or was it simply that we were inviting a friend to our home and we wanted her to like our family?

Finally, critical to the writing process was a spirit of playfulness and low risk of judgment by each other. Jean found the one-pagers easier to produce because she knew that Sue would feel totally comfortable trying out ideas in a class and then ditching them before the next presentation if they didn't work. Both of us knew that we could try stories or try out text in the writing and flag them in an e-mail to each other and get feedback on their appropriateness. Especially when time was of the essence in creating some written project for a conference presentation or a class, a spirit of forgiveness by the collaborator often helped things hit paper faster and easier.

III. A Parallel Process Between the Habits and the Process of Our Collaboration

The values of the Habits played a key role throughout the collaboration. Number one on the list was non-judgment. We each felt that our stories were heard and received gently and kindly even when, as in Habit Five analysis, they detailed stories of huge failures and even shame. The long-term process created a sense that any given encounter between us did not need to yield pay dirt because we would reap the benefits when we least expected it. The spirit of non-judgmentalism and playfulness in the process led naturally to a growing trust in which vulnerable and fragile matters could be shared more easily.

Similarly, looking at facts as opposed to judgments was a critical part of our process. For instance, in debriefing classes, inevitably one of us would feel concerned about a moment in class. Using Habit Five methodology, we were able to look at those less successful moments and move forward to determine how to avoid them in the future by looking at them carefully and dissecting them. It was a delight to be able to do that with each other, unafraid of judgment to come.

The mindfulness explored in Habit Four characterized our best discussions. Jean particularly remembers a phone conversation in **[*107]** which she was too distracted by a case emergency to pay proper attention and frequently had to ask Sue to repeat points and stories. It reminded Jean of one of our central points, which is that being present in the moment is not only more fulfilling but more efficient. Jean recognized that if she did not feel like she had time to have to have that conversation once, she certainly did not have the time to have it twice! Mindfulness throughout the process was also a wonderful counterpoint to other parts of our life which seemed very active and on the move at all times. Although we worked extremely hard by any standards during the meetings that we had, we looked forward to them as refreshingly quiet times in the midst of our busy lives.

Conclusion

Whether or not you develop a collaboration process that has features in common with ours, the most important piece of the process seems to be an ongoing trust in the process and in each other. There will be inevitable dry spells, periods like the beginning of the semester when not much work gets done on the project. Remember the principles of incubation and you may discover in the next conversation that things are all put together. The chart that first put down the habits was created on a train ride going to a class at CUNY and had followed a number of weeks of conversation that might have seemed somewhat diffuse to an outside observer.

For us, the combination of regular contact over a long period of time with interim deadlines but no final endpoint gave us a sense of abundance of time and resources which sped the process along. We wish for all of you who collaborate with others as rich a partnership as we've been fortunate to start, and urge you to create a process as idiosyncratic and eccentric as it needs to be to meet your needs and to make it fully enjoyable.

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Islamaphobia, Neo-Orientalism, And The Specter Of Jihad: Problems Facing Muslim Litigants In U.S. Courts

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ISLAMAPHOBIA, NEO-ORIENTALISM, AND THE SPECTER OF JIHAD: PROBLEMS FACING MUSLIM LITIGANTS IN U.S. COURTS

AGATHA KOPROWSKI*

INTRODUCTION

Islam is one of the fastest growing religions in the United States. Although estimates of the number of Muslims living in the United States vary, many scholars believe that Islam will soon surpass Judaism as the second largest religion in the country, if it has not already.[1] Muslims have primarily immigrated to America from the Middle East, Africa, and Asia. Groups of these immigrants started arriving in the United States as early as the 1870s, and the number of Muslim immigrants has increased significantly since 1960, when Congress adjusted immigration laws concerning national quotas.[2] The significant proportion of African-Americans and native-born Muslims who are first-generation, second-generation, or third-generation Americans augment the American Muslim immigrant community.

Muslims have long played an active role in Western imagination. Since as early as the Crusades and the Moorish rule of Spain, Christian Europe has seen Muslims as foreign, exotic, and potentially dangerous to Christian society. From Bernard Lewis' work to Edward Said's, there is no dearth of scholarship devoted to the perceived dichotomy of the Islamic East and the Judeo-Christian West.[3] Muslims living in North America and Western Europe are, of course, not immune to such generalizations about their faith, which have affected the ways in which Muslim communities function in these countries and their relationships with their Christian, Jewish, or other compatriots.[4]

Since the end of the Cold War, Islam has been increasingly seen as the "new enemy" (or the revived old enemy) of the West.[5] Terrorist attacks, such as the 1993 bombing at the World

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1 KATHLEEN M. MOORE, AL-MUGHTARIBUN: AMERICAN LAW AND THE TRANSFORMATION OF MUSLIM LIFE IN THE UNITED STATES 2 (1995).

2 *Id*. at 7-8.

3 *See, e.g.*, BERNARD LEWIS, ISLAM AND THE WEST (1993); EDWARD SAID, ORIENTALISM (2003).

4 Media skepticsm of the intentions of Muslims affects Muslims and non-Muslims alike. Asra Nomani, a Muslim author, characterized this as a social problem in a recent interview on National Public Radio concerning the station's firing of a journalist for admitting that people wearing Islamic clothing on airplanes made him nervous. "I am Muslim. . . . What [the journalist] expressed, I believe, is the sentiment of many people, including Muslims. Muslims profile each other all the time. When you walk into a mosque and you see other Muslims you say, 'Oh, look. He looks like a jihadi.' or 'That's a niqabi,' a woman who wears a full-face veil." *Tell Me More: NPR Fires Juan Williams, Journalists React* (National Public Radio Oct. 22, 2010) (downloaded using iTunes).

5 *See, e.g.*, Daniel Pipes, *The Muslims are Coming! The Muslims are Coming!*, NAT'L REV., Nov. 19, 1990, at 28 (outlining both historical and contemporary Muslimphobia and asserting that it may not be an unfounded concern); Oliver Revell, *Protecting America: Law Enforcement Views Radical Islam*, MIDDLE E. Q., March 1995, at 3, *available at* http://www.meforum.org/article/235 (urging Americans to face the threat of Islamic extremists particularly in light of the 1993 World Trade Center bombing).

Trade Center, the attacks on the U.S. Embassies in Kenya and Tanzania, and, in particular, the September 11, 2001 ("September 11") attacks exacerbated these fears and brought the image of a radical Islam in opposition to American values to the national forefront. Muslims, especially Arab Muslims, have been demonized through laws, foreign policy, and popular media. As Susan Akram and Kevin Johnson point out, "[s]ince at least the 1970s, U.S. laws and policies have been founded on the assumption that Arab and Muslim noncitizens are potential terrorists and have targeted them for special treatment under the law."[6] This special treatment has fostered an environment in which Muslims, or those who are thought to be Muslims (like Sikhs), have become the targets for hate crimes and race-based discrimination.[7] Furthermore, private harassment and discriminatory treatment against Muslims is on the rise. The Council on American-Islamic Relations (CAIR), which helps Muslims manage civil rights complaints, has seen an increase in the number of complaints it receives every year since it began tracking them in 1995.[8] The increase has been dramatic, from eighty reported complaints in 1995-1996 to 2,652 in 2007.[9]

Judicial opinions concerning Muslim parties often rely on and reinforce popular stereotypes. There may be ways in which this is unavoidable. Lawyers must function in a world of concrete answers. Opinions that contemplate nuanced understandings of complicated relationships, such as those between Muslims and Christians or among Muslims in various communities, would set precedents that might be difficult or impossible for subsequent courts to follow. As anthropologist Anthony Good points out, "legal proceedings must produce definite outcomes . . . within quite short time spans. Judges do not enjoy the same luxury as scholars of being able to refine their views on particular matters throughout lifetimes of research and scholarship, and existential doubt is incompatible with the need to decide there and then."[10] Judges and advocates end up relying on a mix of expert opinion—as presented in court—and generalizations about foreign concepts. This is often intensified by the legal fiction that juries can and should make their own conclusions about evidence without the aid of cultural contextualization.[11] Nonetheless, the reinforcement of particularly negative generalizations about Muslim litigants is not inevitable. Even if judges and advocates must present arguments pragmatically, one need not assume that the representations of Muslims and Islam need to take the form that they do in many court cases.

Attorneys representing Muslim clients might find it useful to investigate the ways in which judicial language and legal action perpetuate negative stereotypes about Muslims. A better understanding of how courts employ negative views about Islam could help lawyers advocating for Muslim clients frame their arguments in ways that seek to counteract, rather than reinforce, misperceptions about Islam and Muslims. This article will consider post-September 11 court

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6 Susan M. Akram & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. AM. L. 295, 302 (2001-2003).

7 *Id*. at 295-96.

8 In 2003, after a sharp increase in complaints following September 11, the number of claims that CAIR received did drop, but then rose quickly every year since. COUNCIL ON AMERICAN-ISLAMIC RELATIONS, THE STATUS OF MUSLIM CIVIL RIGHTS IN THE UNITED STATES 2008 8 (2008), *available at* http://www.cair.com/Portals/0 /pdf/civilrights2008.pdf.

9 *Id*.

10 Anthony Good, *Cultural Evidence in Courts of Law*, 14 J. ROYAL ANTHROPOLOGICAL INST. S47, S57 (2008).

11 *See id*. at S55-56.

cases in four areas of law—immigration, criminal, family, and civil rights—with the purpose of highlighting how the language of the courts sustains popular misconceptions about Islam and often negatively affects Muslims parties in U.S. courts.

I. ISLAM AS INTOLERANT: OBSTACLES FACED BY ASYLUM SEEKERS

In order to qualify for asylum under U.S. law, an applicant must show that he or she has a genuine fear of persecution based on his or her religious or political beliefs, race, national origin, or membership in a particular social group.[12] In order to assert a successful affirmative claim for asylum, an applicant is first interviewed by an asylum officer, who is a federal employee.[13] If the officer feels that the applicant has shown a genuine fear of persecution because of a particular belief or membership in a particular group, the applicant is granted asylum and receives legal residency status based on asylum.[14] If the asylum officer feels that the applicant has not met the legal burden for asylum, the officer refers the applicant to an immigration judge, who schedules a hearing and comes to a conclusion based on the same criteria.[15]

If the immigration judge is also not convinced, the applicant will usually be put into removal proceedings.[16] The applicant can appeal the decision of the immigration judge to the Board of Immigration Appeals (BIA) and further to a federal circuit court.[17] This final step rarely occurs, but it is the only widely available source for asylee opinions. The decisions of immigration courts and the BIA are rarely, if ever, published and are persuasive, but not binding, on other tribunals. Moreover, by the time the decision reaches a federal circuit court (or even more extraordinarily the United States Supreme Court), the issues on appeal have been very narrowly tailored. These court opinions do not examine every detail of the case, which may have been discussed at length at other points in the judicial process.

Consequently, available opinions deciding many asylum claims from Muslims based on religious persecution often lack in-depth discussions of religious beliefs because the courts did not reach the merits due to procedural or other reasons. Nevertheless, a survey of some recent asylum cases may help illuminate the ways in which U.S. immigration courts perpetuate a monolithic image of Islam that is generally fanatical, foreign, and intolerant, and simultaneously deny asylum seekers the opportunity to escape persecution associated with a government or a populace that adopts or tacitly accepts a violent interpretation of the Islamic faith.

A. Ramadan v. Gonzales[18]

Neama El Sayed Ramadan, an Egyptian native, sought asylum based on her non-conformist Islamic beliefs, which, according to Ramadan, led to beatings by her male relatives, harassment from "other Islamic men," and phone threats from Muslim groups while she was

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12 8 U.S.C.A. § 1158(b)(1)(A)-(b)(1)(B)(i) (2006).

13 *Obtaining Asylum in the United States: Two Paths*, UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES, http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid= e3f2613 8f898d010VgnVCM10000048f3d6a1RCRD (last visited Dec. 1, 2010).

14 *Id*.

15 *Id*.

16 *Id*.

17 *Id*.

18 Ramadan v. Gonzales, 427 F.3d 1218 (9th Cir. 2005).

living in Alexandria.[19] Although she reported an incident to the local police, the police did not pursue an investigation.[20] Ramadan testified that in 1999, a group of individuals threatened to kidnap her children because of the way that she talked and dressed.[21] At this point, Ramadan decided to flee to the United States, where her other children were living, and to remain there.[22] She received a phone call from relatives in Egypt who had been threatened after Ramadan had had a conversation at a friend's house in San Francisco about the role of women in Egypt. In June 2001, Ramadan applied for asylum. [23]

The court described Ramadan as dressing "in western attire, such as mini-skirts" and as someone who "believed 'a woman should have her own opinion and should have her own way of living.'"[24] Ramadan's views and mode of dress are presented as non-conforming with Islamic custom.[25] Islamic custom, the court's opinion implies, is implicit in the behavior of the men who beat and harassed Ramadan and who believed that she should behave more like a "typical Muslim woman," who, apparently, should not have her own opinion or own way of living.[26] The court did not investigate Ramadan's own religious beliefs and faith. Ramadan never denies being Muslim, but the court seems to assume that a woman who does not wear the *hijab*[27] and has adopted other Western ideas could not possibly be a *true* Muslim. By presenting Ramadan's views as non-conformist, the court implies that there is one, true interpretation of Islam, a religion that is inherently violent and intolerant of alternate beliefs. By not investigating her beliefs, the court paints a picture of Egypt in which the fanatical (Muslim) majority preys on the liberalized (Western) minority, corresponding with widespread generalizations and popular notions about Islamic fundamentalists.

In spite of the court's suggestion that Ramadan's Egyptian harassers are religious fanatics and its de-emphasis of Ramadan's own religious opinions, Ramadan's asylum case was ultimately dismissed because she failed to submit her asylum application within one year of her arrival in the United States. On appeal, she requested Withholding of Removal.[28] The requirements for Withholding of Removal are essentially the same as those for asylum, except the applicant must show that there is a greater than fifty percent chance that she will face persecution if she returns to her home country (as opposed to an asylee, who only needs to show a significant, usually about one in ten, chance that he or she will face persecution).[29] Again, the Ninth Circuit denied Ramadan's Withholding of Removal request because the court did not feel that Ramadan met the burden of showing that she would "more likely than not" face persecution if returned to Egypt, irrespective of the evidence of threats, beatings, and harassment Ramadan presented at

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19 *Id*. at 1220.

20 *Id*.

21 *Id*.

22 *Id*.

23 *Id*. at 1220-21.

24 Ramadan, 427 F.3d at 1220.

25 *Id*. at 1223.

26 *Id*. at 1220.

27 The *hijab* is a headdress worn by some Muslim women. The term often refers to many different styles of hair and face covering, but is most commonly understood to be a scarf or veil worn around the head, covering a woman's hair, but leaving her face uncovered. *See infra* Part IV.

28 *Ramadan*, 427 F.3d at 1221.

29 *See* 8 C.F.R. § 208.16(a); *Ramadan*, 427 F.3d at 1222.

trial.[30]

B. Kane v. Gonzales[31]

Like Ramadan, Nafissatou Kane sought asylum based on her status as a "westernized woman."[32] Kane's fear of persecution was based on the persecution she had faced previously when she underwent female genital cutting as an infant in her native Mali.[33] Although the immigration judge was convinced that Kane deserved asylum, the BIA overturned the lower court's decision, claiming that Kane's circumcision could not have been *on account of* her membership in the group of "westernized women" opposed to the practice, since she was only one or two weeks old at the time of the ceremony.[34]

Also, like Ramadan, the court's opinion evidently does not consider Kane Muslim. The court describes her father, on the other hand, as a "religiously fanatical" Imam, who arranged her marriage at the age of eleven to a man three decades her senior.[35] Although Kane eventually escaped her marriage and fled to Saudi Arabia, she often returned to Mali, where, according to the court, her community and family shunned her because of "her inability to accept the traditional, oppressed role of a *Muslim* woman in a *Muslim* society."[36] This statement suggests that a Muslim woman's role in a Muslim society is unquestionably subjugated. Women in Muslim society are oppressed because Islamic custom dictates it. However, the court's description is not accurate. Kane's religious beliefs conflict with the allegedly radical Islam of her father, but that conflict does not make her beliefs any less Islamic. The Third Circuit, like the Ninth in Ramadan's case, sees Islam as inherently oppressive of women, rather than seeing the women's subordination in Mali and elsewhere as the result of these societies' patriarchal interpretations of religion, culture, and history. Ironically, the court's interpretation is not enough to constitute persecution in either *Ramadan* or *Kane*. This interpretation separates Ramadan's and Kane's struggles from a religious conflict and casts Ramadan and Kane as the victims of a particular culture, increasing the difficulty of finding relief through the asylum process.

A close reading of the two cases presents a picture of Islam that is inherently opposed to the liberal values that are treasured in America, specifically, and in the West, more generally. If the courts' interpretations are to be taken seriously, women in Islamic societies will, by definition, face oppression and live in subordinated positions to men. "True" Muslims will be apt to react violently when the West threatens their values. Ironically, although the courts have painted such a grim future for Ramadan and Kane, they, nevertheless, deny them relief.

C. Mohammed v. Keisler[37]

The interpretation of Islam as violent and monolithic is not limited to Islam's treatment

30 *Ramadan*, 427 F.3d at 1223.

31 Kane v. Gonzales, 123 Fed. App'x 518 (3d Cir. 2005).

32 *Id*. at 519.

33 *Id*.

34 *Id*.

35 *Id*.

36 *Id*. (emphasis added).

37 Mohammed v. Keisler, 507 F.3d 369 (6th Cir. 2007).

of women. A Shia Muslim from Pakistan, Aftab Mohammed, sought asylum based on his religious beliefs after a group of men at a Sunni mosque beat him.[38] After the beating, the local police incarcerated Mohammed, and released him only after receiving a bribe, whereupon they confiscated his passport.[39] The immigration judge and the Sixth Circuit on appeal weighed affidavits, which two experts wrote on Mohammed's behalf and a report from the United Kingdom Home Office, which the government presented as evidence.[40] The British report found that "Shias do not face systematic discrimination, are found at all levels of society, and have their own social, political, and cultural organizations."[41]

Although Mohammed had only been targeted and attacked at the mosque after he had been identified as Shia, the appellate court felt that since "Mohammed voluntarily walked into a Sunni mosque, it is impossible to say he was targeted for abuse."[42] The court also pointed to the conclusion in the U.K. report that "Shias are generally protected by the government."[43] It is not clear that the court had a solid understanding of the differences between Sunni and Shia Muslims, nor that it was interested in one. The court initially accepted Mohammed's testimony that he was beaten *because* he was Shia, then stated in its analysis that he could not have been targeted for his religious beliefs: "During a visit to his sister in Pakistan in 1992, [Mohammed] entered a Sunni Mosque, prayed there, and when recognized as a Shia, he was beaten and chased out of the mosque."[44] This conclusion is truly baffling. The only way to really understand the court's deduction is to assume that no real differences exist between Muslim groups in Pakistan (or perhaps in general) and that Mohammed must have *personally* riled the group of Sunnis as well as the local police. The court's lack of concern about the roots of the group's violent behavior is not surprising if Islam itself *is* violent and its people irrational, as many Americans understand it to be.

D. Akhtar v. Attorney General of the United States of America[45]

Like Ramadan and Kane, Syed Atif Akhtar sought asylum in the United States from persecution based on his "liberal, pro-American" beliefs.[46] Akhtar was from Pakistan and practiced a minority religion, Sufism, in a country he described as "increasingly fundamentalist and intolerant since the attacks of September 11, 2001."[47] Akhtar's primary evidence consisted of threats made to him and his family members and several robberies of his parents' house. Akhtar also supported his claims with statements of various witnesses about general country conditions in Pakistan.[48] However, the Third Circuit found this evidence unpersuasive.

The court ignored any analysis of the differences or tensions between Sunni-Wahhabi

38 *Id*. at 370

39 *Id*.

40 *Id*.

41 *Id*.

42 *Id*. at 371.

43 Mohammed v. Keisler, 507 F.3d 369, 371 (6th Cir. 2007).

44 *Id*. at 370.

45 Akhtar v. Att'y Gen., 138 Fed. App'x 481 (3d Cir. 2005).

46 *Id*. at 482.

47 *Id*.

48 *Id*. at 482-83.

Muslims and Sufis in Pakistan. Likening Akhtar's case to a 2005 case concerning an ethnic Chinese Christian seeking asylum from Indonesia, the court suggested that general economic (or perhaps even ethnic) tensions, and not religious differences, led to the robberies.[49] Therefore, the persecution that Akhtar suffered could not constitute persecution *on account of* his Sufi beliefs or practices.[50] However, the court offered no discussion of what Akhtar's religious differences might be or how those differences could be regarded as threatening to the Pakistani majority elite.

Following the themes present in *Ramadan* and *Kane*, the courts seem to make the same assumption in both Akhtar's and Mohammed's cases. There are no real differences between Muslim groups, so there must have been another reason (economic, ethnic) that led to the harassment of the two men. The fear that all Muslims are potential terrorists is only possible in a world in which difference between Muslim ideas cannot exist. If, by chance, a Muslim does disagree with the established version of Islam, the court represents him or her as westernized or pro-American. The individual has ceased to be Muslim in the understanding of the socio-legal imagination.

Through the decisions of these asylum courts, one may conclude that Islam is represented most accurately and most innately by the most repressive regimes. Judges, who, after all, are not immune to social prejudices, reinforce widespread American stereotypes about Muslims. By framing many claims in terms of membership in "pro-liberal" or "westernized" groups, advocates for asylum applicants do little to help dispel the same myths about Islam. Instead, they bolster Americans' underlying fear about Muslims: "they" hate "us" because of our freedoms, because of our values, because "they" are primitive and bigoted and "we" are tolerant and enlightened.

In her discussion of asylum and refugee claims that took place in the 1990s, Susan Akram refers to this phenomenon as "neo-Orientalism," alluding to Edward Said's seminal work.[51] Akram explains how advocates perpetuate Western stereotypes about Muslim and Middle Eastern society, in particular, the belief that there "are still such things as *an* Islamic society, *an* Arab mind, *an* Oriental psyche."[52] Moreover, the identified "sources of persecution," according to neo-Orientalist critics, are "Islamic law" and "Muslim mores."[53] Many of the themes that Akram identifies have continued in the asylum cases of the last decade. Courts now cite the same cases she criticized, using the same interpretations of Muslim conditions she identified as problematic.[54] While the events of September 11 do not seem to have worsened the stereotyping that courts employ, neither have those events diminished it. The asylum system depends on extremely subjective judicial interpretations. It seems that Muslims seeking relief based on their religious views will continue to encounter these generalizations, which distort the image of their home societies.

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[49] *Id*. at 483 (citing Lie v. Ashcroft, 396 F.3d 530 (3d Cir.2005)).

[50] *Id*.

[51] Susan Musarrat Akram, *Orientalism Revisited in Asylum and Refugee Claims*, 12 INT'L J. REFUGEE L. 7, 7 (2000).

[52] *Id*. (emphasis in original).

[53] *Id*. at 18.

[54] *See, e.g.*, Yadegar-Sargis v. INS, 297 F.3d 596, 603 (7th Cir. 2002) (citing Fatin v. INS, 12 F.3d 1233 (3d Cir. 1993) and Safaie v. INS, 25 F.3d 636 (8th Cir. 1994), two of the cases Akram finds particularly problematic).

II. DISTINGUISHING MUSLIM CRIMINALS FROM RADICAL TERRORISTS

One of the most widely discussed topics in American media over the last decade is the link between radical Islam and terrorism. Although many groups work tirelessly to expel the idea that all Muslims are terrorists, there is a general sense in American culture that so-called Islamic fundamentalists (or perhaps Islamo-fascists) are incessantly conspiring to harm "us." Criminal courts often must determine whether to admit evidence concerning radical Islam and its links to terrorism. Courts seem to recognize the risk that defense lawyers could try to present a violent interpretation of Islam as a "cultural defense" against serious crimes. This form of defense, which immigrant and ethnic minority defendants are using more frequently, posits that courts should apply leniency to defendants whose cultures do not recognize actions as crimes in the same manner as the adjudicating culture.[55]

Cultural defense is controversial for many reasons. Courts are concerned that criminals could be exculpated for crimes they intended to commit. Others fear that proposing "culture" as an excuse, or at least a mitigating circumstance, might lead some to believe that certain criminal behavior is inevitable within individual cultural groups.[56] Some judges are hesitant to admit any contextualization of a defendant's culture to avoid risking the consequences of a cultural defense. However, the risk is equally great that without any context in which to understand a party's motivations, juries will associate *all* Muslims who are indicted for crimes with radical Islamic terrorists, especially considering the popular propaganda against Muslims and general misunderstandings of Islam.

A. United States v. Amawi[57]

In the spring of 2008, Mohammed Zaki Amawi, Marwan El-Hindi, and Wassim Mazloum were put on trial for conspiring to kill United States service personnel in Iraq and providing material support for terrorism.[58] During the trial, the defense proffered several expert witnesses whom they intended, inter alia, to explain to the jury the cultural context for the defendants' beliefs and, in particular, the roots of the modern jihad movement.[59] The United States District Court for the Northern District of Ohio rejected the defense's motion to include these testimonies and wrote an opinion explicating the decision of the court.

The court first pointed out that the government had also proffered an expert witness, Evan Kohlmann, to speak about the defendants' use of the internet, as well as international terrorist organizations' use of the internet more generally. The court first considered Kohlmann's testimony too expansive and granted the defense's motion to exclude the testimony.[60] However,

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55 *See generally* Good, *supra* note 10 (providing an in-depth analysis of the growing use of cultural defense, particularly in British courts). *See also* Kathleen M. Moore, *Representation of Islam in the Language of Law: Some Recent U.S. Cases*, *in* MUSLIMS IN THE WEST: FROM SOJOURNERS TO CITIZENS 187, 196 (Yvonne Yazbeck Haddad ed., 2002) (discussing the use of the cultural defense in U.S. courts); Richard Freeland, *The Treatment of Muslims in American Courts*, 12 ISLAM & CHRISTIAN RELATIONS 449, 457-58 (2001) (noting that American courts do not recognize a formal cultural defense but admit evidence of culture as background information).

56 *See* Good, *supra* note 10, at S53-S56.

57 United States v. Amawi, 552 F. Supp. 2d 669 (N.D. Ohio 2008).

58 *Id*. at 671.

59 *Id*. at 673, 675.

60 *Id*. at 671.

Kohlmann was later allowed to testify on a more limited list of topics.[61]

The court was correct in recognizing that allowing Kohlmann's testimony regarding terrorist and insurgent groups active in the Middle East, with whom the defendants had no interaction "would invariably suggest to the jury that somehow they did."[62] Nevertheless, the court did not specify in its opinion what precisely it would exclude from Kohlmann's testimony to prevent this from happening in response to his more limited testimony.

The first expert the defense proposed was Reza Aslan, a doctoral student at the University of California at Santa Barbara and an expert on the roots of jihad as a social movement.[63] Aslan was to explain both the foundation of jihad as a "global social movement" and how intense engagement by the leaders of the movement transforms its members from "free riders" into "active participants."[64] The defense emphasized the importance of contextualizing the jihad movement for the jury and explaining the process through which one goes from expressing certain religious and political beliefs to advocating and participating in violent action.[65] The defense did not intend to present this argument to justify criminal actions, as in a cultural defense, but to show that although the defendants may have expressed ideological beliefs similar to recognized terrorist groups, that expression did not necessarily mean that they intended to participate in violent actions against the American state or its people.

The court, however, was not convinced. Aslan's testimony was considered too general to be included in the jury trial.[66] Somehow, the trial judge concluded that a case in which the defendants were charged with providing material support to terrorism and conspiring to commit terrorist acts in Iraq "is not a case about Islam, jihadist movements or Terrorism. This is a case about whether specific acts violated federal criminal laws."[67] Aslan's testimony was subsequently excluded.

The court argued that such contextualization for the jury would conflict with the efforts made during the jury selection process to ensure that the religious beliefs of either the defendants or of the jurors would not affect the jury's deliberations.[68] The court appears to be either ignorant of or apathetic to the negative stereotypes about Muslims that are prevalent in American society. Although Kohlmann's testimony about the defendants' allegedly illicit use of computer documents and internet websites was permissible, Aslan's explanation of what these documents *meant* to the defendants, who also happen to be devout Muslims, was not.

The second defense expert whose testimony the court excluded was Jon B. Alterman, the Director of the Center for Strategic and International Studies in Washington, D.C.[69] Like Aslan, Alterman intended to present a nuanced perspective of Middle Eastern attitudes about America and the meanings attached to those attitudes, like the function of jihadist videos downloaded from the web, for example.[70] Again the court claimed that Alterman's testimony would primarily

61 *Id*. at 672 n.2.

62 *Id*. at 672.

63 Amawi, 552 F. Supp. at 672.

64 *Id*. at 673.

65 *Id*.

66 *Id*. at 674.

67 *Id*. at 674.

68 *Id*.

69 Amawi, 552 F. Supp. 2d at 674.

70 *Id*. at 674-75.

"confuse the issues."[71] To the court, the videos were self-explanatory. The jury did not need to hear how the understanding of the confiscated videos might differ completely based on alternate religious or cultural backgrounds. The court excluded all of the defense's attempts to "demystify" their clients' beliefs.[72] The jury was left on its own to determine the meaning of the defendants' statements and actions, which would certainly be subject to general American fears and distrust of Muslims.

B. United States v. Benkahla[73]

In 2003, Sabri Benkahla and ten other men associated with the Dar al-Arqam Islamic Center in Falls Church, VA were arrested and indicted for conspiracy and providing material support to terrorism.[74] Benkahla was acquitted after a bench trial in 2004, but within a short period of time, he was subpoenaed and compelled to testify at several grand juries in exchange for immunity.[75] During these testimonies, Benkahla was asked if he had attended "jihadist training camps" during a trip to Pakistan and Afghanistan in 1999. Benkahla denied attending any camps, which was one of the accusations of which he had been acquitted during his previous criminal trial.[76] In 2006, Benkahla was again indicted, this time for making false material declarations during his testimonies to the grand juries.[77]

While trying Benkahla for perjury, the government presented expert testimony from Evan Kohlmann (by coincidence, the same expert the government used in *Amawi*) concerning background information about terrorism and violent jihad.[78] After his conviction Benkahla appealed, claiming, inter alia, that Kohlmann's testimony was unduly prejudicial and irrelevant.[79] Kohlmann's testimony focused entirely on radical Islam and jihad in general, rather than on Benkahla specifically.[80] Among other issues, Kohlmann iterated the notion that so-called radical Islamists hate us: "Kohlmann remarked that, for Osama bin Laden and al Qaeda, 'Americans, no matter where they are on earth, whether they're civilian or military, are considered to be a target. There are no innocent civilians.'"[81]

Despite the fact that Benkahla was not accused of committing terrorist acts, both the trial and appellate courts considered this background essential. The Fourth Circuit, showing deference to the trial court, found that Kohlmann's testimony assisted the jury in understanding the evidence from a "broader frame of reference."[82]

A side-by-side comparison of Bankahla's and Amawi's cases reveals a frightening approach to terrorist prosecutions. While juries must rely on their own judgment when

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71 *Id*. at 675.

72 *Id*.

73 United States v. Benkahla, 530 F.3d 300 (4th Cir. 2008).

74 *Id*. at 303-04.

75 *Id*. at 304.

76 *Id*.

77 *Id*. at 305.

78 *Id*.

79 Benkahla, 530 F.3d at 308.

80 *Id*.

81 *Id*. at 308-09.

82 *Id*. at 309-10.

interpreting evidence of an alleged terrorist plot, cultural evidence regarding the motivations of international radical Muslim terrorists is permissible against a defendant accused of lying under oath. In other words, these two courts allowed expert testimony that confirmed already widespread fears about Islamic fanaticism in furtherance of the government's prosecution. However, the court excluded testimony intended to challenge these stereotypes in support of the defense.

III. FAMILY LAW AND PUBLIC POLICY: *MAHR* AND PROPERTY IN DIVORCE PROCEEDINGS

The Islamic word *mahr* most closely translates into English as dowry or dower, although this translation is not entirely accurate. In an Islamic marriage contract, *mahr* is a sum of money or other valuables that the husband owes his wife. [83] Without *mahr*, an Islamic marriage is not considered valid. Usually, the husband immediately pays some of the *mahr* to the bride at the initiation of the contract.[84] This initial payment can range from a token amount, such as one dollar or one piece of gold, to the total amount. The rest of the *mahr* is "postponed" or "deferred." The balance is payable to the wife upon divorce or the death of her spouse.[85] Traditionally, Islamic law recognized the wife's right to the *mahr* regardless of the circumstances prompting the divorce, unless the marriage had not been consummated. Even in this case, the husband may have been required to pay half the *mahr* to the wife.[86]

American courts have not reached a consensus on whether or not (and under which circumstances) to enforce a *mahr* agreement. Muslim couples seem to increasingly access the courts in order to enforce their Islamic marriage contracts, and there is no shortage of recent cases dealing with the *mahr* in the context of divorce.[87] When confronted with these cases, courts often make broad assumptions about the nature of the *mahr* and its purpose in an Islamic context. These assumptions again perpetuate stereotypes about Muslims in general, especially those from the Middle East and South Asia.

A. Zawahiri v. Alwattar[88]

Mohammed Zawahiri filed for divorce from his wife, Raghad Zahar Alwattar, in February 2007 after only a year of marriage.[89] During the divorce trial, the couple testified that Zawahiri had approached Alwattar's mother in January 2006, expressing his desire to marry her

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[83] *See generally* O. Spies, *Mahr*, *in* 6 ENCYCLOPAEDIA OF ISLAM 78 (C.E. Bosworth , E. van Donzel, B. Lewis, & Ch. Pellat eds., 2d ed. 1991).

[84] *Id*.

[85] *Id*.

[86] *Id*.

[87] *See* Pascale Fournier, *The Erasure of Islamic Difference in Canadian and American Family Law Adjudication*, 10 J.L. & POL'Y 51 (2001-2002) (investigating the Muslim utilization of U.S. courts to enforce Islamic marriage agreements); Saminaz Zaman, *Amrikan Shari'a: The Reconstruction of Islamic Family Law in the United States*, 28 S. ASIA RES. 185 (2008); Sylvia Whitman, *Whose Place to Decide? Islamic Family Law Issues in American Courtrooms*, *presented at* AMSS 34TH ANNUAL CONFERENCE (Temple University, Philadelphia, PA September 30-October 2, 2005), *available at* www.amss.org/pdfs/34/finalpapers/SylviaChoateWhitman.pdf.

[88] Zawahiri v. Alwattar, No. 07AP-925, 2008 WL 2698679 (Ohio Ct. App. 2008).

[89] *Id*. at *1.

daughter. The wedding took place one month later.[90] The couple had an Islamic marriage ceremony overseen by an imam.[91] Shortly before the ceremony began, the couple completed a marriage contract that the imam presented to them.[92] The pre-printed form contained a blank space on which to write the amount of the *mahr*. The groom and the bride's father began negotiating the *mahr* amount, which they had not previously discussed.[93] They eventually decided that the advanced portion of the *mahr* would be a ring and some gold that Zawahiri had already given Alwattar and the balance would be $25,000.[94] All parties agreed to the terms and signed the contract.

Both the trial court and the appellate court found the *mahr* unenforceable as a pre-nuptial agreement. According to the Ohio Court of Appeals, in order to enforce a contract as a prenuptial agreement, the contract must satisfy three criteria: "(1) the parties entered into it freely without fraud, duress, coercion, or overreaching; (2) there was full disclosure, or full knowledge and understanding of the nature, value, and extent of the prospective spouse's property; and (3) the terms do not promote or encourage divorce or profiteering by divorce."[95]

The court found that the couple's *mahr* agreement failed to satisfy the first requirement. Zawahiri testified that he felt "embarrassed and stressed" during the *mahr* negotiations, which took place immediately before the ceremony.[96] The court presumed coercion merely because the groom and his father-in-law had not previously discussed the *mahr* amount.[97] The court did not try to investigate how *mahr* contracts are usually made, or when parties generally agree upon the *mahr* amount. The court never asked Zawahiri if he knew that he would have to agree to a *mahr* before entering a Muslim marriage or if he had considered an amount before he arrived for the ceremony. The court presented the *mahr* quite like a dowry. The court subtly suggested that a *mahr* is an archaic and outdated concept, using the term interchangeably with dowry and making no attempt to understand the purpose of the *mahr*.[98] By determining that the *mahr* agreement was too rushed to be enforceable, the court suggested that Zawahiri was blindsided by his wife-to-be's sudden demand for a *mahr*. Given the prevalence of *mahr* in Islamic marriages and Zawahiri's professed devotion to his religion, it is difficult to see how this could be the case.

The court found another reason to refuse to enforce the contract. Zawahiri argued, and the court accepted, that enforcing the *mahr* would violate the Establishment Clause of the Ohio Constitution.[99] Zawahiri suggested that the Ohio court would be "establishing" Islam as a state religion if it forced him to pay the *mahr* amount to which he had contracted. There is no real reason to believe that this is the case. Other courts have approached the establishment question in the same context and reached the opposite conclusion. Courts enforce contracts of all kinds, so long as the parties acted freely and their offer and acceptance of the contract was valid. The New Jersey Superior Court in 2002 asked, "Why should a contract for the promise to pay money be

90 *Id*.

91 *Id*.

92 *Id*.

93 Zawahiri, 2008 WL 2698679, at *1.

94 *Id*.

95 *Id*. at *4 (quoting Gross v. Gross, 11 Ohio St.3d 99, 99 (Ohio 1984)).

96 *Id*. at *6.

97 *Id*.

98 *Id* at *7.

99 Zawahiri, 2008 WL 2698679, at *7.

less of a contract just because it was entered into at the time of an Islamic marriage ceremony?"[100]

There is nothing inherently "religious" about Zawahiri and Alwattar's *mahr* agreement. It does not try to force either party to conform to Islamic standards or perform Muslim rituals. The *mahr* simply guarantees a pension to Alwattar in the event of divorce or her husband's death, something quite common in contemporary American marriages. By rejecting the *mahr* contract through the Establishment Clause, the court did something even more surprising. The court's opinion states that "the court is hopeful [Alwattar] will be able to enforce the provision and obtain relief through other *religious* means."[101] The court continues by giving an example of how Alwattar could obtain her relief: "the husband could be jailed in Syria if he has not paid the dowry."[102] It is difficult to imagine how this could be a suitable means for Alwattar's relief. The marriage took place in Ohio, between two Ohio residents who were presumably American nationals. Syria has no jurisdiction over an American couple (even if they were Syrian citizens) for a crime under Syrian law that took place on American soil. Moreover, Syria is not an enforcer of "Islamic" law wherever one finds it. Is the court suggesting that only "Islamic" countries can enforce "Islamic" law? Is an agreement between Muslims automatically "Islamic" by nature of the religious identity of the parties, although an agreement on the same terms between two Christian parties constitutes a "secular" agreement? Is it possible that the two Muslim parties had "secular" intent when discussing the terms of a fiscal agreement? Ultimately, the *Zawahiri* decision leaves more questions than answers regarding how American courts should rule when self-identified religious parties enter into agreements with each other.

B. Aleem v. Aleem[103]

After many years of marriage, Farah Aleem filed for divorce from her husband, Irfan Aleem, in a Maryland court.[104] While the American action was still pending, Irfan went to the Pakistan Embassy in Washington, D.C. to obtain a Pakistani divorce, known as *talaq*.[105] The Aleems, both Pakistani citizens, were married in Pakistan in 1980.[106] The couple agreed on a postponed *mahr* of 51,000 rupees (about $2,500).[107] The couple left Pakistan shortly after their wedding, moving to England for several years, before settling in Maryland, where Irfan worked at the World Bank.[108]

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100 Odatalla v. Odatalla, 801 A.2d 93, 95 (N.J. Super. Ct. Ch. Div. 2002).

101 *Zawahiri*, 2008 WL 2698679, at *6 (brackets in original, emphasis added).

102 *Id.*

103 Aleem v. Aleem, 947 A.2d 489 (Md. 2008).

104 *Id*. at 490-91.

105 *Id. Talaq* (also written *talak*) is a form of divorce in an Islamic marriage with roots going back to pre-Islamic Arabia. Only the husband has the right to *talaq*, in which he repudiates his wife by pronouncement and thus dissolves the marriage. The Qur'an does not lay out specific instances that must necessarily be present for a man to perform *talaq*, but most Islamic jurists and *fqihs* (religious scholars) agree that *talaq* should not be performed without good cause. *Talaq* has been adopted into the legal codes of some Islamic countries, although many have updated and modernized their family laws to reflect more accurately contemporary notions of women's rights and equality. For more on *talaq* in general, *see* A. Layish, *Talak*, *in* 10 ENCYCLOPAEDIA OF ISLAM 151 (P. J. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel & W.P. Heinrichs, eds., 2000).

106 *Aleem*, 947 A.2d at 491.

107 *Id*. at 493-94.

108 *Id*. at 494.

The Aleems lived a comfortable life in Maryland. At the time of their divorce, the court estimated the value of their assets, including Irfan's pension from the World Bank, their real property, and other personal items, at nearly two million dollars.[109] Under Maryland law, a couple's property "should be adjusted fairly and equitably" between the spouses.[110] One can understand this to mean that Farah was entitled to a significant portion, if not one half, of the marital property, valued at just under two million dollars. In the trial court, Irfan argued that since Irfan and Farah obtained a divorce under Pakistani law, the American court was excluded from litigating the division of property.[111] Irfan supported his argument by pointing to a long-standing tradition of comity, under which American courts refrain from interfering in the decisions of foreign courts.[112] According to Irfan, under Pakistani law, Farah would only be entitled to the *mahr*, as no other relevant provision for dividing the property belonging to a single spouse exists under the law.[113] As a matter of diplomacy and international law, comity helps maintain good relations between sovereign nations. However, when a foreign decision is contrary to the policy of American law, courts should not be bound by the domestic decision of a foreign tribunal.[114]

The Maryland Court of Appeals correctly agreed with the trial court and the Court of Special Appeals that to award Farah the $2,500 stipulated in the *mahr* agreement, while her husband left the marriage with nearly two million dollars in assets acquired during the marriage, would be against the Maryland public policy of equitable and fair division of property.[115] However, the court spent much of its opinion mischaracterizing and misrepresenting "Islamic law" in order to reach that conclusion. Islamic law is treated as a monolithic entity, established in the Qur'an and wholeheartedly adopted by some countries. The court fails to distinguish between different schools of Islamic legal thought or identify variations among countries that have adopted, in part or in whole, an Islamic legal code.

This misrepresentation is evident from the first pages of the decision, where the court tries to explain the meaning of *talaq*: "Apparently, under Islamic law, where that Islamic law has been adopted as the secular law of a jurisdiction, such as Pakistan, a husband has a virtual automatic right to *talaq* . . . ."[116] According to the court, not only is there a singular entity known as "Islamic law," but Pakistan adopted it into its secular code. The court continues, trying to explain the limited nature of its decision: "Our holding in this case relates to . . . Islamic law only to the extent it is also the civil law of a country. The viability of Islamic law as a religious canon is not intended to be affected."[117] There is no need for this caveat. "Islamic law," to the extent that any such law is definable, plays no real role in this case. *Pakistani* law is at issue, regardless of whether such law should be characterized as "religious," "secular," or "civil." By labeling the issue as one under "Islamic law [that] has been adopted as the secular law of a jurisdiction,"[118] the court is overreaching beyond the laws of Pakistan and implying that the judgment of any Muslim

109 *Id*. at 491 n2.

110 *Id*. at 500 (internal quotations omitted).

111 Aleem v. Aleem, 947 A.2d 489, 490 (Md. 2008).

112 *Id*. at 494-95.

113 *Id*. at 494 n.5.

114 *Id*. at 495.

115 *Id*. at 502.

116 *Id*. at 491 n.1.

117 *Id*.

118 *Id*.

country that has incorporated Islamic teaching into its civil code could be ignored as a matter of public policy based on this decision. The court seems blissfully unaware of the Christian-normative basis for much of Anglo-American law, much less its potentially disparate effects on religious minorities.

The court further misrepresents the purpose of the *mahr*. Clearly, in this case, there is a huge gap between the value of the *mahr* and the equitable distribution of the Aleem's property. The court understands that "[t]his stark discrepancy highlights the difference in the public policies of this State and the public policies of Islamic law, in the form adopted as the civil, secular law of countries such as Pakistan."[119] Like the asylum claims examined earlier, the court assumes that women are subjugated automatically under Islam. The tone of the opinion suggests that the court is horrified at the gross inequity Irfan proposes and the court attributes this inequity to Islamic law. Quite to the contrary, *mahr* is a means of guaranteeing a woman financial insurance in the event of divorce or death. Because there is an underlying assumption that Islam is "bad" for women, the court interprets *mahr* as a means of belittling women and subjugating their socio-economic positions. However, one does not have to look far to see how the *mahr* provides much more generous compensation to the wife than other contemporary American laws. In *Zawahiri*, the couple was young and only married for a short period of time. Because they had not accumulated any significant property, the *mahr* was the only valuable property at issue in the case. Alwattar was left empty-handed when the American court refused to recognize her *mahr* as a valid prenuptial contract.

Although some jurisdictions have begun to recognize the validity of *mahr*, many courts still seem hesitant to enforce any agreement that appears Islamic in nature. Whereas the Supreme Court of the United States has considered "morality," when it reflects perceived Christian majority values, a valid basis for enforcing public policy,[120] the same is apparently not the case when the values are perceived as Islamic. Assumptions that Islam oppresses women color the judgments of judges who understand the motivation behind Muslim tradition more through prejudice and misconceptions than through an understanding of intellectual history or religious philosophy.

IV. RELIGIOUS FREEDOM AND NATIONAL SECURITY: THE *HIJAB* AND IDENTIFICATION

One of the most visible and prevalent issues Muslims face is the personal use and public restriction of religious headdress. No prototypical Islamic head covering exists. Both men and women cover their heads in ways that could be classified as "Islamic," depending on one's cultural tradition and particular religious beliefs. However, the *hijab* is the article of clothing that seems to get the most press. The word *hijab*, meaning literally a curtain or a veil, is used only a few times in the Qur'an and the Hadith, in passages about the Prophet Mohammed drawing a curtain between his wife and other men.[121] The word has many rich and varied meanings in Islamic thought, from the veil literally worn over one's head or face to a mystical separation

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119 *Id*. at 494 n.5.

120 *See* Bowers v. Hardwick, 478 U.S. 186 (1986) (upholding a state's criminalization of sodomy based on conceived notions of "American" morality).

121 *See* J. Chelhod, *Hijab*, *in* 3 ENCYCLOPAEDIA OF ISLAM 359 (B. Lewis, V. L. Ménage, Ch. Pellat & J. Schacht eds., 2d ed. 1971) (providing more details regarding the *hijab*)

between Man and Truth.[122] In contemporary usage, *hijab* can refer to the institution of veiling itself.[123] It is also commonly used to refer to a specific covering worn by some Muslim women who cover their hair, necks, arms, and legs entirely, but leave their faces, hands, and feet bare in public. Other covering Muslim women wear are also sometimes labeled *hijab* or other names particular to a specific region or ethnic group (such as *niqab, burka,* or *chador*).[124] This covering ranges from loosely wearing a scarf over one's hair to covering the body from head to toe, including the eyes. Islamic scholars have argued for centuries about the necessity of female veiling (as well as male and female modesty in general) and there is no consensus regarding to what extent one should veil, if at all.[125]

Nevertheless, many Muslim women feel it is their religious duty to remain covered in public. It is as sacred to them as communion is to some Christians or donning a yarmulke is to some Jewish men. This has not prevented secular states from enforcing restrictions on veiling. The most notorious modern example, of course, is France's ban on "'conspicuous' religious symbols" in schools, which was passed in 2004.[126] Furthermore, limits on Islamic dress are not confined to non-Muslim countries. The Shah's henchmen were infamous for carrying scissors to slice open the *chadors* of women caught wearing the traditional dress on the street in pre-1979 Iran.[127] A lively debate has also existed in Turkey since Attaturk's rule regarding whether or not to lift the ban on veils in civic spaces.[128] As many governments react to acts of terrorism, they often couch the debate surrounding veiling between religious freedom and national security.

A. Freeman v. Department of Highway Safety and Motor Vehicles[129]

Sultaana Lakiana Myke Freeman converted to Islam in 1997 at the age of thirty.[130] Shortly thereafter, she began regularly wearing a veil, which covered her hair and face.[131] While a resident of Illinois, Freeman had been photographed for her driver's license wearing her veil.[132] She later moved to Florida, where she presented herself for a state driver's license in February 2001, wearing the *hijab*.[133] The clerk who took Freeman's photograph hesitated to do so while her face was covered, but he eventually received permission to take the photograph in spite of

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122 *Id.*

123 *Id.*

124 *Id.*

125 *Id.*

126 Jon Henley, *French MPs Vote for Veil Ban in State Schools*, THE GUARDIAN, Feb. 11, 2004, *available at* http://www.guardian.co.uk/world/2004/feb/11/schools.schoolsworldwide.

127 *See, e.g.*, N.M. Thomas, *On Headscarves and Heterogeneity: Reflections on the French Foulard Affair*, 29 DIALECTICAL ANTHROPOLOGY 373 (2005)

128 *See* Banu Gokariksel & Katharyne Mitchell, *Veiling, Secularism, and the Neoliberal Subject: National Narratives and Supranational Desires in Turkey and France*, 5 GLOBAL NETWORKS 147 (2005).

129 Freeman v. Dep't of Highway Safety and Motor Vehicles, 924 So. 2d 48 (Fla. Dist. Ct. App. 2006).

130 *Id.* at 51.

131 *Id.*

132 *Id.* The court uses the terms veil and *hijab* interchangeably in this case. For purposes of this discussion, I have adopted the terms as synonyms as well, although the veil Freeman wears is not the most common form associated with the Arabic term.

133 *Id.*

Freeman's "headgear," which he did.[134]

Several months after September 11, 2001 attacks on the World Trade Center and the Pentagon, Freeman received a letter from the Department of Motor Vehicles, informing her that she must present herself for a photograph without her veil, or her license would be canceled.[135] After Freeman refused to be photographed without her veil, the state canceled her license and she appealed.[136]

Both sides presented experts who testified to the necessity of veiling for Muslims.[137] The sides only disagreed over the possibility of making exceptions to the general rule.[138] In the absence of differing opinion, the court had no choice but to accept the argument that Islam *dictates* veiling. While the trial and appellate courts recognized some debate within the Islamic community regarding the enforcement of veiling and its potential exceptions, this debate is limited to those who believe, first of all, that Muslim women must veil as a tenet of their faith.

In deciding whether the requirement to remove Freeman's veil for an identification photograph violated her right to religious freedom, the court relied on an earlier Florida case, *Warner v. City of Boca Raton*,[139] which interpreted the breadth of the Florida Religious Freedom Restoration Act ("FRFRA"). FRFRA forbids the state from substantially burdening one's exercise of religion unless the state shows the burden: "(a) is in furtherance of a compelling government interest; and (b) is the least restrictive means of furthering that compelling government interest."[140] However, while the main issue in *Warner* was whether the plaintiffs held genuine religious beliefs, the *Freeman* court hardly addressed the issue.[141] To the appellate court, Freeman truly believed that she must veil, affirming the trial judge's conclusion.[142] Even though the court accepted Freeman's practice as a central tenet of her faith, it still determined that her exercise of that faith was not substantially burdened by the government's insistence that she act directly contrarily to her beliefs. One wonders to what extent latent fears about Muslims influenced the court's decision.

The trial judge made pains in his opinion to point out that Freeman was not "being singled out because she is a Muslim."[143] Moreover, the court was sure to note that Freeman herself is not a terrorist. Nonetheless, the justification for denying Freeman her right to exercise her religion suggests a connection between Islam and terrorism: while "the Court acknowledges that Plaintiff herself most likely poses no threat to national security, there likely are people who would be willing to use a ruling permitting the wearing of fullface cloaks in driver's license photos by pretending to ascribe to religious beliefs in order to carry out activities that would

134 Freeman, 924 So. 2d at 51.

135 *Id*. at 51-52.

136 *Id*. at 50.

137 *Id*. at 52.

138 *Id*.

139 Warner v. Boca Raton, 887 So. 2d 1023 (Fla. 2004). *See also* WINNIFRED FALLERS SULLIVAN, THE IMPOSSIBILITY OF RELIGIOUS FREEDOM (2005) (providing a detailed examination of the *Warner* case by one of the theological experts called to testify at the trial).

140 FLA. STAT. § 761.03 (2003).

141 *Freeman*, 924 So. 2d at 53.

142 *Id*. at 54.

143 Freeman v. Florida, No. 2002-CA-2828, 2003 WL 21338619, at *5 (Fla. Cir. Ct. 2003).

threaten lives."[144] The reader immediately understands what these hypothetical threats are: Islamic terrorists literally hiding behind the veil of protected religion. As Kathleen Moore notes in her analysis of *Freeman*, "[t]he upshot of the court's ruling is that a Muslim woman who was not suspected of any crime was associated with the threat of terrorism merely on the basis of her appearance."[145] In a trial that ultimately had no relation to "radical Islam" or terrorism, the court reiterated the underlying fear that many Americans have about Muslims: that their very presence is a threat to "our" way of life and they will stop at nothing to destroy our freedoms.

V. CONCLUSION

Stereotypes about Muslims and fears of Islamic terrorism permeate the opinions of U.S. courts in many facets of the law. These stereotypes evidently reflect widely-held biases in American society. Akram's neo-Orientalism is not limited to asylum cases, but can be identified in criminal, family, and civil rights cases as well. Although a watershed event in so many other areas of American life, September 11 did not seem to significantly change the ways in which American courts approach Muslim parties. However, as the Muslim population grows and becomes increasingly willing to avail American courts, negative stereotypes about Islam will affect many more parties in the legal system, potentially ostracizing the community. Advocates for Muslim clients should be aware that judges and juries are not immune from social biases and should attempt to fashion their arguments in ways that do not prey on underlying anti-Islamic sentiments.

American Muslims face a society that, despite its overtones of multi-culturalism and tolerance, has identified Islam as the enemy. According to American courts, Islamic culture is violent, irrational, and opposed to liberal values. Consequently, Americans do not need to tolerate, much less encourage, this type of culture because it threatens the foundation of American secularism. Although courts are a reflection of society, they also have the incredible potential to dictate the parameters of social debate. If, through effective advocacy, courts begin to recognize Muslims as the diverse group that they are, then perhaps the rest of society will follow.

144 *Id*. at *7.

145 Kathleen M. Moore, *Visible through the Veil: The Regulation of Islam in American Law*, 68 SOC. OF RELIGION 237, 247 (2007).

Objecting to Race

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Abstract:
Modern efforts by bar associations, courts, and legislatures to regulate the use of race talk in civil rights and criminal cases have faltered not only in describing its various race-neutral, race-coded, and race-conscious forms, but also in prescribing the scope of its permissible use under legal ethics codes and standards, judicial rules, and statutes. The descriptive and prescriptive difficulty of defining and regulating race talk in the courtroom and in advocacy more generally raises fundamental normative and instrumental questions about racial justice and professional ethics in the lawyering process, a process marked by the daily exercise of mainly unseen and mostly unaccountable discretion. Normative questions — whether lawyers should object to race — turn on intrinsic personal and professional value commitments to race, dignity, identity, and role. Instrumental questions — when and how lawyers should object to race — rest on tactical, outcome-oriented calculations about the best interests of clients, groups, organizations, and sometimes whole communities. This Essay revisits ongoing questions of race talk and racial representation in the context of current civil rights and criminal justice practice through the prism of the recent United State Supreme Court decision in Calhoun v. United States and its underlying federal trial and appellate proceedings. Building on Calhoun's factual and legal foundation, the Essay proceeds in three parts. Part I explores the definition of race talk garnered from the text of Justice Sotomayor's statement in Calhoun. Part II examines the prosecutorial exploitation of race talk gleaned from the briefs of the U.S. Attorney's Office for the Western District of Texas and the Solicitor General's Office of the U.S. Department of Justice. Part III considers defense-driven objections to race talk culled from the Calhoun defense team's federal appellate brief and petition for writ of certiorari and from the opinions of the U.S. Court of Appeals for the Fifth Circuit and the statement of Justice Sotomayor. Although limited in scope, the Essay seeks in pursuing these inquiries to transform the pedagogy and practice of civil rights and criminal law in American courtrooms as well as in law school classrooms and community clinics.

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Robert M.A. Johnson

Racial Bias in the Criminal Justice System and Why We Should Care

Is there racial bias, either conscious or subconscious, in the operation of the criminal justice system? Even those who answer, "No," would likely concede that a perception of bias exists within communities of color. The community simply looks at the number of its members who are arrested and imprisoned, compared to the white community.

Numerous research projects have demonstrated at least a prima facie case of racial bias in the criminal justice system. Statistics show significant disparity in jail and prison populations. (Alfred Blumstein, *Race and Criminal Justice*, *in* AMERICA BOOMING: RACIAL TRENDS AND THEIR CONSEQUENCES, VOL. II (2001), 21, 22 (Comm'n on Behav. and Soc. Sci. and Educ.) *available at* http://www.nap.edu/openbook/0309068401/html/21.html.) While African, Hispanic (Latino), and Asian Americans make up only 26 percent of the general population, they make up 58 percent of the prison population. (*See* http://www.ethnicmajority.com/criminal_justice_reform.htm.) In New York, where the state's adult minority population is less than 31.7 percent, nine out of 10 new prisoners are from an ethnic or racial minority. (*Hispanic Prisoners in the U.S.*, THE SENTENCING PROJECT (2003) *available at* http://www.sentencingproject.org/pdfs/1051.pdf.) In 1997, the statewide population of Maryland, Illinois, North Carolina, Louisiana, and South Carolina was two-thirds or more white, but for each, prison growth since 1985 was 80 percent nonwhite. (*Id*.)

> In New York, 9 out of 10 new prisoners are a minority.

Blacks are arrested, convicted, and incarcerated at far higher rates than whites or any other ethnic or racial group. (Randall Kennedy, *Racial Trends in the Administration of Criminal Justice*, *in* AMERICA BOOMING: RACIAL TRENDS AND THEIR CONSEQUENCES 1-20 (2001).) Nationally, black Americans account for fewer than half of the arrests for violent crimes, but they account for just over half of the convictions, and approximately 60 percent of the prison admissions. (Christopher Stone, *Race, Crime, and the Administration of Justice: A Summary of the Available Facts*, NAT'L INST. JUST. J., 28 (1999) (citing unpublished analysis of various data provided to the author by the U.S. Department of Justice, Bureau of Justice Statistics).) Hispanics are the fastest growing group being imprisoned, increasing from 10.9 percent of all state and federal inmates in 1985 to 15.6 percent in 2001. (*Hispanic Prisoners*, *supra*.) From 1985 to 1995, the number of Hispanics in federal and state prisons rose by 219 percent, with an average annual increase of 12.3 percent. (*Id*.) Despite equal rates of drug use proportionate to their populations, Hispanics are twice as likely as whites, and equally as likely as blacks, to be admitted to state prison for a drug offense. (*Id*.)

The overwhelming data contribute to a perception of bias. "In a 1995 Gallup poll, more than half of black Americans said the justice system was biased against them. Moreover, two-thirds of black Americans in that same Gallup poll said that police racism against blacks is common across the country, and a majority of white Americans (52 percent) agreed." (Christopher Stone, *supra*, at 27.) Many

(Continued on page 31)

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prosecutors, judges, corrections officials, and law enforcement personnel look at their acts and deny individual bias, or reject its presence in their places of work. Thus, they see no need for change, and ask communities to simply trust them. This simplistic self-analysis misses two important considerations. The first is that bias may not be as apparent to them as it is to a person of color. The second is that the perception of bias, real or not, must be overcome.

Why we should care

Although the debate over the cause of racial disparity in the system may continue indefinitely, the lack of trust, fear, and suspicion with which some communities view law enforcement is undeniable.(Randall Kennedy, *supra*, at 2.) Why should we care?

We should care because lack of trust severely impacts the criminal justice system's ability to serve and protect society. One symptom of growing distrust is that these communities are less inclined to participate in the criminal justice process. (Lawrence W. Sherman, *Trust and Confidence in Criminal Justice*, 248 NAT'L INST. JUST. J. 25 (2002); Peter Finn & Kerry Murphy Healey, *Preventing Gang- and Drug-Related Witness Intimidation* at 2 (U.S. Dep't of Just., Off. of Just. Programs, Nat'l Inst. of Just., Nov. 1996).) A witness may be hesitant to testify due to fear and distrust, strong community ties, or a personal history of criminal behavior. (Finn & Healey, *supra*, at 1.) Some communities of color may see law enforcement as the oppressor—an adversary rather than an ally. Crimes may be less frequently reported, and intimidated community members may think, "Do not inform on the gang, the system is not to be trusted; Do not testify, the system is not to be trusted; Do not engage in discussions with law enforcement, they will find a way to act against family or neighbors." (Robert C. Davis & Edna Erez, *Immigrant Populations as Victims: Toward a Multicultural Criminal Justice System*, at 1, 2, U.S. Dept. of Just., Off. of Just. Programs, Nat'l Inst. of Just., May 1998); Finn & Healey, *supra*, at 2, 15.)

Nowhere is witness intimidation more evident than in the area of drug- and gang-related crimes. (Nat'l District Attorneys Assoc. Pres., Robert P. McCulloch, testimony before a hearing of the Committee on the Judiciary on Gang Violence & Witness Intimidation (September 17, 2003); Finn & Healey, *supra*, at 1.) Prosecutors, police officers, judges, and victim advocates struggle with witness intimidation as the single biggest hurdle facing gang prosecution. (*Id*.) The problem is widespread, increasing, and impacting the prosecution of crime across the country. (Finn & Healey, *supra*, at 1.) A 1994 survey of a sample of 192 prosecutors found that intimidation of victims and witnesses was a major problem for 51 percent of prosecutors in large jurisdictions (counties with populations greater than 250,000) and 43 percent of prosecutors in small jurisdictions (counties with populations between 50,000 and 250,000). (*Id*. at 5.) Witness intimidation can become so pervasive that case filings decrease as crimes increase. (McCulloch, *supra*.)

A second symptom of community distrust is that local juries may be less likely to convict regardless of the evidence, instead rendering their verdicts on extralegal motivations:

> Recent cases involving controversial acquittals and deadlocked juries highlight both the dangers and advantages of placing the power to nullify in the hands of the jury. Extra-judicial sympathy for the defendant may have been at play in the racially-charged acquittals of ex-football star O. J. Simpson on charges of murder, the Los Angeles police officers who beat African-American motorist Rodney King, and former District of Columbia mayor, Marion Barry, who was filmed smoking crack cocaine with undercover police confederates.

(18 GEO. J. LEGAL ETHICS 1097, 1101 (2005).)

Documented cases of jurors who admit disregarding the law show that jury nullification is present in the criminal justice system. (*Id*. at 1102.)

Communities with high concentrations of immigrant residents are particularly affected by a lack of trust in law enforcement. A national assessment program survey conducted for the National Institute of Justice (NIJ) reflected the consensus that recent immigrants report crimes less frequently than other victims. (Davis & Erez, *supra*, at 2.) Local law enforcement acting as immigration agents compound any existing perception of mistrust, and are just another reason for immigrant citizens to fear and avoid contact. (Finn & Healey, *supra*, at 4.)

What to do

If we are to improve our ability to make our communities safe we must deal directly with issues of bias, whether real or perceived. A 1992 report by the ABA's Task Force on Minorities and the Justice System, entitled, "Achieving Justice in a Diverse America," included numerous recommendations for restoring America's trust in the justice system. Police, prosecutors, and corrections officials could begin by making their practices and decisions as transparent as possible. Cross-cultural training could be provided to police officers, and cultural sensitivity training could be offered in the courts. (*Id.*) Leaders should work to have their offices reflect the ethnic distribution of their jurisdiction. Frank discussions with community leaders can often establish renewed trust in the system, and communities could develop more effective grievance and disciplinary procedures for police misconduct. (*Id.*) Processes within the criminal justice system could also impact change. Plea bargaining practices could be modified to eliminate discriminatory impacts, and racial and ethnic bias could be eliminated in peremptory challenges. (*Id.*) Sentencing provisions could be reexamined, jury selection practices could be changed to ensure proportionate minority representation, and the number of minority judges could be increased. (*Id.*) Steps can also be taken to prevent witness intimidation, including high bail for known intimidators, aggressive prosecution of reports of intimidation, close management of key witnesses, and expansion of victim/witness assistance programs. (Jim Kouri, *Organized Crime: Cops and Prosecutors Frustrated Over Witness Intimidation* (June 2006), *available at* http://www.lincolntribune.com/modules/news/article.php?storyid=4669.)

The ABA is working to deal with these issues. The ABA Council on Racial and Ethnic Justice is working on specific programs, strategies, and partnerships. Our Section's Race and Racism Committee is also engaged in seeking solutions. Although change can trigger resistance, if we fail to face this challenge, we will have failed to give meaning to the pledge, "with liberty and justice for all." ■

Embracing Diversity and Being Culturally Competent is No Longer Optional

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I. Introduction.

The ranks of attorneys, traditionally white males, have grown to include females and minorities. Although the 2010 United States census identified that nearly one-third of the United States population is comprised of minorities, with Hispanic/Latinos at 16.3%, African-Americans at 12.6%, and significant percentages of Pacific Islander, American Indian, and Asian American populations the attorney ranks do not represent the country's population.[5] For several years, law firms have sought to increase the number of minorities and women at their firm with varying success. For years the litmus test for inclusiveness of others was simply not saying the "wrong" thing or laughing at "incorrect" jokes. Today's lawyer and law firms must go beyond avoiding bias by avoiding politically incorrect jokes or statements or merely recruiting them into one's firm. This paper will outline steps that a firm can follow to retain its minority attorneys.

Additionally, lawyers today have an increasingly diverse potential client base due in part to technology, travel, and global business expansion. Lawyers also increasingly

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[5] Karen R. Humes et al., Overview of Race and Hispanic Origin: 2010 Census Briefs 4 (2011), *available at* http://2010.census.gov/2010census/ (under the "Census Briefs and Reports" column, follow "An Overview: Race and Hispanic Origin and the 2010 Census" hyperlink).

operate outside of our country's borders. A growing number of law firms have offices, lawyers and operations worldwide. According to the National Law Journal the largest 250 US law firms employed 15,231 lawyers in their foreign offices in 2007, an increase of more than 11% from the year before.

The minority populations in this country have grown and are expected to continue to grow. And although the current legal profession is a mono-cultural institution, the parties that lawyers have and will represent are multi-cultural. A lawyer must be culturally competent in order to fulfill his professional duty of competent, diligent, and zealous representation and to avoid possible disciplinary action. Such representation, indeed, depends on the lawyer understanding his client, the client's interest, and that interest vis-à-vis his adversary's interest. Absent cultural competence, a lawyer will fail to meet his professional duties. This paper will also point to areas that an attorney must be aware of when representing the folks from other cultures.

II. Diversity: Show Me Don't Tell Me

> Diversity:
> 1: the condition of having or being composed of differing elements: variety; especially: the inclusion of different types of people (as people of different races or cultures) in a group or organization
> 2: an instance of being composed of differing elements or qualities: an instance of being diverse.
> Merriam-Webster Dictionary

Some law firms tout the diversity in its ranks almost as much as the firm's latest court victory. However for all the raving about diversity in the legal profession, the Institute for Inclusion in the Legal Profession reports that the percentage of minorities inched up from 9.7 percent in 2000 to 11.6 percent in 2009. According to NALP statistics quoted in the same institute study, minorities composed 19.5 percent of associates nationwide in 2010. Moreover a glaring gap between minority partners and associates continues to exist. Minorities comprised only 6.3 of the partnerships, about the national average.

In 2010, NALP compiled demographic data from law firms that diversity among associates fell. For lawyers as a whole, representation of both women and minorities declined slightly. Minorities account for 12.4 percent of law firm attorneys in 2010, down from 12.59 percent last year. The number of women attorneys has dipped to 32.69 percent from 32.9 percent in 2009. The study found that fewer minority women practicing in law firms--6.20 percent compared to 6.33 percent in 2009.[6]

While some point to the country's recession as the culprit for the declining numbers, the statistics reveal a more basic problem. Firms may not be doing enough to retain the minority associates it recruits.

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[6] Ed Shanahan , *Law Firms + Recession = Declines in Diversity?* AM Law Daily (November 4, 2010)

Diversity is a Journey Not a Recruitment Goal

Recruiting minorities is not sufficient to ensure a diverse law firm. Having a politically correct environment is also not enough to assure diversity. Diversity should be viewed as an integral part of the law firm that requires an ongoing effort. The firm must have the commitment and a strategy at all levels from new associate to equity shareholder. Firm cultures need to be inclusive and this make take continuous training to ensure that diversity efforts are viewed without resentment, jealousy or perceived as a phase.

- *Work assignments*

  Work assignments are not created equal. Some work assignments develop careers while others do not. Firms need to look at how assignments are distributed and ensure that minorities are provided with the same opportunities to develop their skills and generate substantial fees.

- *Mentorship*

  An assigned mentor (who is held accountable by the firm for its mentoring assignment) is critical to the retention and development of a young minority attorney. The minority attorney will benefit from a formal assignment of mentor who can guide associate through firm culture and provide an excellent sounding board for the associate.

- *Training*

  Some minorities work under the misguided impression that they have to work twice as hard to merit praise. Many forego training in order to bill. Many do not appreciate or make time for valuable training (which refines skills and develops new ones).

- *Creating networking and business development opportunities*

  Creating a book of business is difficult for many and this is especially is true for those who do not have the connections to business. A substantial book of business will make the minority associate a better candidate for partner.

- *Creating trial teams and case teams that reflect diversity*

  This guarantees that different firm members (who may not socialize together) work as a team. A team, in which everyone brings different strengths, will breed more cohesiveness and instills loyalty.

- *Obtaining feedback from the minority associates*

  Assuring a non intimidating environment will garner honest feedback. Some firms, despite the best intentions, may exhibit unconscious bias. Feedback is essential in combating any false assumptions and stereotypes that exists.

- *Articulating and setting goals and objectives*

  A committee should be established, consisting of both associates and shareholders, to monitor the firm's objectives.

- *Recognition of diversity events*

  Associates and shareholders should be recognize for participating in diversity events and have such time credited at least in part towards the billable hours goal.

- *Dealing efficiently with stereotypes*

  The firm should take measures to ensure that work or assignments are not made based on mistakes or assumptions based on race, gender or national origin.

III. Defining Cultural Competency.

Cultural competency covers numerous areas and has been defined in a variety of ways. For example, cultural competency has been defined as something "more than embracing diversity and promoting inclusion. [It] is the ability to adapt, work and manage successfully in new and unfamiliar cultural settings."[7] Others have turned to the medical profession, where cultural competency already has been integrated into the curriculum, to define "cultural competency" as "the ability of organizations and systems to function and perform effectively in cross-cultural situations[,] . . . [as] a set of congruent behaviors, attitudes, and policies that come together in a system, agency or among professionals that enables effective work in cross cultural situations."[8] Similarly, cultural competency, as applied to legal professionals, has been defined as:

> The ability to engage in actions or create conditions that maximize (sic) the optimal development of the client and client systems. [It] is achieved by the counselors acquisition of awareness, knowledge, and skills needed

[7] Sylvia E. Stevens, *Is There An Ethical Duty? Cultural Competency* 69 Or. St. B. Bull. 9, 9-10 (2009).
[8] Beverly I. Moran, *Disappearing Act: The Lack of Values Training in Legal Education – A Case for Cultural Competency*, 38 S.U.L. Rev. 1, 31-32 (2010) (citing Nat'l Colloquium on Afr. Am. Health, Cultural Competency (Nat'l Medical Ass'n 2002), *available at* http://nmanet.org/images/uploads/Cultural_Competency.pdf) (citations omitted from quotation)).

> to function effectively in a pluralistic society (ability to communicate, interact, negotiate, and intervene on behalf of clients from diverse backgrounds) and on an organization/societal level, advocating effectively to develop new theories, practices, policies, and organization structures that are more responsive to all groups.[9]

One way to understand cultural competency is to understand our country's legal culture. It is worth recognizing that the legal profession is a mono-cultural institution. It is predominantly comprised of privileged, white, able-bodied, middle-class men.[10] Thus, attorneys as a group are not generally representative of the larger American society. And in today's society where minorities are at least one-third of the population, culturally competent lawyers are more than ever wanting. But cultural competency is more than being unbiased;[11] it is beyond accepting diversity in the workforce, far from merely promulgating anti-discrimination policies, or providing pro bono services. Cultural competency requires the lawyer to take the affirmative step to acquire the sensitivity and understanding of what is the "other," and learn the means to bridge the differences in order to competently represent a client's interest, regardless of whether the "other" is the lawyer's client or adversary.

Cultural competency is a practical skill that can be learned,[12] and which today's lawyers should acquire given the changing face of our society and legal workforce. A lawyer, thus, has a duty to become culturally competent in order to become the diligent, competent, and zealous advocate that is expected of him or her to be.

Relevant Model Rules

Although nothing in the ABA model rules explicitly addresses cultural competency, the following rules imply that a lawyer must be culturally competent when the circumstances require it:

- Rule 1.1 states, "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[13]

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[9] Annette Demers, *Cultural Competence & the Legal Profession: An Annotated Bibliography of Materials Published Between 2000 & 2011* 39 Int'l J. Legal Info. 22, 24 (citing D. W. Sue & G. C. Torino, *Racial--Cultural Competence: Awareness, Knowledge, and Skills, in Handbook of Racial--Cultural Psychology and Counseling. Vol. 2. Training and Practice 3* 8 (R. T. Carter ed., Wiley 2005)).

[10] Per the ABA, there were 1,225,452 licensed lawyers in 2010, comprised of White lawyers at 88.1%, Black lawyers at 4.8%, Hispanic lawyers at 3.7%, and Asian Pacific American lawyers at 3.4%. ABA Market Research Dep't, *Lawyer Demographics* (2011), *available at* http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2011.pdf-2011-06-29.

[11] Nelson P. Miller, *Beyond Bias—Cultural Competence as a Lawyer Skill* 87 Mich. B.J. 38 (2008).

[12] *See generally id.*; Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers* 8 Clinical L. Rev. 33 (2001); Nelson P. Miller et al., *Equality as Talisman: Getting Beyond Bias to Cultural Competence as a Professional Skill* 25 T.M. Cooley L. Rev. 99 (2008).

[13] Model Rules of Prof'l Conduct R. 1.1 (2010).

- Rule 1.3 states, "[a] lawyer shall act with reasonable diligence and promptness in representing a client."[14] A comment to the rule explains, "[a] lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures required to vindicate a client's cause or endeavor. A lawyer must also act with zeal in advocacy upon the client's behalf."[15]

- Rule 1.4 states, "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."[16]

Tips

- *Communication*

  Communication is the essential. Never make assumptions regarding your client based on stereotypes or one's knowledge about the client's culture. The client needs to outline the parameters of the representation. If the attorney does not speak the client's knowledge, it is critical that a translator is retained. Having a staff member translate without assuring the translator's proficiency level can be a receipt for disaster. Additionally, many cultures require that a foundation of trust be built. This may take many more meetings than a typical client would need.

- *Listen and Look for Signs*

  Having a client say they understand and nod does always mean that one is being understood or that the client agrees. There are many factors that influence the client that have nothing to do with the facts of the case including the client's spouse, children, community, religion, immigration status, and work. Avoiding community gossip may be of more import than obtaining full monetary relief. Fear related to immigration status cannot be ignored or dismissed even for those who are naturalized.

- *Not All Interpreters are the Same*

  Working with interpreters takes practice. There are two types of translations: simultaneous and non simultaneous. The client's may be easily distracted. Practicing with hopefully the interpreter that is going to be used is important. Assuring that the right dialect (Mixteco Alta versus Mixteco Costa Baja) or the right type of language (Puerto Rican Spanish versus Mexican Spanish) is also critical. The client needs to understand what is being said in a hearing or deposition.

[14] Model Rules of Prof'l Conduct R. 1.3 (2010).
[15] Model Rules of Prof'l Conduct R. 1.3 cmt. 1 (2010).
[16] Model Rules of Prof'l Conduct R. 1.4(b) (2010).

The interpreters will not interpret what is being said but instead translate the words. If your client is asked what kind of retaliation he suffered after his protected activity he may say none. However if he asked what did the employer get back at you after you complained the answer may be very different.

Finally, an interpreter may appear that does not speak the language fluently or even proficiently. If the attorney does not speak the language that is being translated in the hearing or deposition a staff person or even a second interpreter needs to be present to ensure that the translations or being done correctly.

If there are key words for example pistol you should all agree on what the word will be.

Wrong translations are a challenge. In a deposition the objection should say the word one is objecting to in English. The court reporter is not transcribing anything in a foreign language. It is best to object to the translation and have the question asked and answered again. Most interpreters will refocus and the translation is typically correct the second time. If there are multiple problems with the translator, the deposition should be stopped and continued another day. In a trial, counsel needs to set ground rules; the federal judge will typically not allow objections before a jury.

- *Flexibility*

  A low wage worker (witness or client) may have limitations that one typically does not encounter. For example, there have been limitations on driving distances, child care, family responsibilities and work. An attorney may want to meet at odd hours, drive to a different location to meet or start the depositions at an unusual time.

- *Immigration Status*

  Some counsels have been known to inquiry when status is not relevant in order to harass, intimidate or embarrass the witness or claimants. This can be avoided with early and effective protective orders. For an undocumented claimant one should be aware of the availability of T and U visas and the client should be sent to an immigration attorney.

IV Conclusion

Diversity in the firm at all levels is indicative of the commitment of that particular firm and the firm understanding that diversity is an integral part of the firm's business. The duties to provide competent and diligent representation suggest that a lawyer has to be knowledgeable of cultural differences and its transparencies within any cross-cultural relationship, either with the client or adversary. A lawyer's own beliefs of what is efficient or even necessary to bridge the cultural differences or diversity, without

anything more, will fail and result in undue embarrassment to himself, his client, and witness and a potential lost of business.