

St. John's University School of Law

St. John's Law Scholarship Repository

Faculty Publications

2015

Intercultural Effectivenss

Mary A. Lynch

Robin Boyle

St. John's University School of Law

Rhonda Magee

Antoinette Sedillo López

Follow this and additional works at: https://scholarship.law.stjohns.edu/faculty_publications



Part of the [Legal Education Commons](#), and the [Legal Profession Commons](#)

This Book Chapter is brought to you for free and open access by St. John's Law Scholarship Repository. It has been accepted for inclusion in Faculty Publications by an authorized administrator of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

E. INTERCULTURAL EFFECTIVENESS

By Mary A. Lynch with Robin Boyle, Rhonda Magee & Antoinette Sedillo López¹

1. Introduction

The legal profession has recognized the need for cross-culturally competent lawyers. The American Bar Association, state and local bar associations, and other professional development experts have called for lawyers to develop cultural competencies.² While the terminology used is not consistent,³ at its core, this call expresses a commitment to legal education that embraces the strengths of diverse student bodies and client populations. Legal education should more effectively help students examine how legal structures can ignore, silence, and devalue alternative perspectives and diverse identities.

BEST PRACTICES FOR LEGAL EDUCATION⁴ suggested that legal education should include training about cross-cultural competence, cited a landmark article,⁵ and listed five habits described in the article.⁶ The literature, conversation, tools, and vocabulary for teaching about all types of differences has greatly expanded since then. So has the examination of how intercultural perceptions and communications affect professional lawyering activities. Still, most schools do little to address the insights of this literature, whether to take full advantage of the diversity in law school classes or to address student preparation for the multicultural legal needs of our changing world.

This section seeks to assist legal educators in integrating intercultural learning goals throughout the curriculum. The section first describes the current status of law

¹ Readers for this section were Janet Heppard, Amna Akbar, Andrea A. Curcio, and Susan Bryant.

² See, e.g., Nelson P. Miller, *Beyond Bias — Cultural Competence as a Lawyer Skill*, 87 MICH. B.J. 38 (June 2008) [hereinafter Miller, *Beyond Bias*]. Miller identified five areas in which lawyers need to demonstrate cultural competence: communication, individual cognition, individual and family resources, cultural references, and relationships. See also ABA Standards for the Provision of Civil Legal Aid, Standard 4.5 (2006) (on offering culturally competent representation).

³ The burgeoning literature in this area lacks a clear and consistent definition of the word “culture.” Sometimes the term refers to social- and heritage-based identity groups (ethnicities, races, and so on). At others, it refers to professional identity characteristics. See, e.g., Rhonda V. Magee, *Legal Education and the Development of Professional Identity: A Critical, Spirituohumanistic — “Humanity Consciousness” — Perspective*, 31 N.Y.U. REV. L. & SOC. CHANGE 467 (2006-2007) [hereinafter Magee, *Critical Perspective*]. Further, some are concerned that the term “culture,” when used to refer to ethnic or racialized groups or individuals, and despite the best efforts of authors, verges on essentialism and reification. In light of this ambiguity and related concerns, some have come to use other terms in teaching, terms that address the underlying interpersonal dynamics that the word “culture” seeks to capture — such as conditioning, habits, and patterns — without reifying fluid socio-historical constructions. See Rhonda V. Magee, *Building on Color Insight: Teaching and Learning About Race Effectively Through Mindfulness-Based Color Insight Practices* (unpublished manuscript on file with authors) [hereinafter Magee, *Building on Color Insight*].

⁴ ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007) [hereinafter BEST PRACTICES].

⁵ Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 64-78 (2001) [hereinafter Bryant, *Five Habits*].

⁶ BEST PRACTICES, text at notes 258-62.

school engagement, the evolution of terminology and ideas, and the context for learning. It then suggests best practices for identifying, teaching, and assessing intercultural knowledge, skills, and values.

2. Legal Education Lags Behind

Cultural awareness is critical to every course in law school, because “cultural experiences underpin how we read and interpret legal principles and rules and how we apply those rules to facts.”⁷ Legal educators, however, still lag behind fields such as medicine, healthcare, and psychology in teaching students to be effective practitioners in a multicultural world. Legal education does not systematically ensure that law students learn about concepts of privilege and difference. Nor do most law schools engage in identification and assessment⁸ of intercultural learning objectives for their students.

Opportunities abound for effectively teaching how to practice law interculturally, the issues that pose barriers to effective intercultural communication, and intercultural sensitivity. To deepen their capacity to do so, however, teachers must identify universal human dignity as a value inherent in good lawyering, and self-awareness as a skill that is foundational to achieving the desired outcomes. The development of these skills must be supported with methods for exposing students to a variety of means of reflecting on their own biases and how those biases might interfere with the students’ best efforts as lawyers.

3. Why “Interculturally Effective?” — Evolving Terminology and Meaning

Scholars have struggled to develop shared terminology to keep up with the theoretical and experience-based development of ideas. This section, like much of the literature, will use many different terms such as cross-cultural lawyering, cultural competence, cultural sensibility, cultural humility, cultural curiosity, intercultural communication, and multicultural awareness. This spectrum of terminology is important because significant ideas and nuances are embedded within each term.

*Cultural competence*⁹ in the context of legal education is often defined as the ability to develop knowledge, skills, and values to enable effective representation and

⁷ Andrea A. Curcio, Teresa E. Ward & Nisha Dogra, *A Survey Instrument to Develop, Tailor, and Help Measure Law Student Cultural Diversity Education Learning Outcomes*, 38 *NOVA L. REV.* 177, 190 (2014) [hereinafter Curcio et al., *Survey Instrument*]. Over a decade ago, Marjorie A. Silver argued eloquently that law students should be taught not only that “all lawyering is cross-cultural,” but that our own cultural experiences inform our legal and factual analysis. Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 *FLA. COASTAL L.J.* 219, 231 (2002). Critical Race, Lat-Crit, and feminist scholars have also made this point in a large swath of work. See, e.g., Richard Delgado & Jean Stefanie, *Critical Race Theory: An Annotated Bibliography*, 79 *VA. L. REV.* 461 (1993); Rhonda V. Magee, *Competing Narratives, Competing Jurisprudences: Are Law Schools Racist? and the Case for an Integral Critical Approach to Thinking, Talking, Writing, and Teaching about Race*, 43 *U.S.F. L. REV.* 777 (2009).

⁸ See Curcio et al., *Survey Instrument* for an instrument designed to fill that gap.

⁹ The term “competence” has been criticized for suggesting an endpoint to reach as opposed to a

communication with individuals from a different race, ethnicity, gender,¹⁰ sexual orientation, age, or cultural background than the lawyer.¹¹ At its core is the need for effective *intercultural communication* by lawyers. *Cultural curiosity* is viewed as an important attitude or value for improving competence. Note that these skills and values should not only facilitate communication by majoritarian white students, but also communication across differences and similarities by students of color, women, LGBTQQIA¹² students, students with disabilities, and those with other non-majoritarian identities in the legal profession.

New terms such as *cultural sensitivity* or *cultural humility* have been discussed in clinical and medical education.¹³ These terms attempt to define culture more broadly to include a “much wider range of cultural factors,” such as “socioeconomic factors that influenced people’s world views.”¹⁴ For example, law teachers may explore ways of giving students opportunities to develop both commitments to and capacities of self-reflection; non-judgmental, non-harming self-critique; and inclusive, identity-safe¹⁵ collaboration with others.

An important aspect of the newer terminology is an effort to encourage “students to examine whether their *own* world views or beliefs needed to shift.”¹⁶ In 2005, one commentator noted that legal education’s post-*Grutter*¹⁷ perspective on diversity in the classroom maintained the perception of diverse students as “the other” and

spectrum of capacity and skill, an always developing and enriching journey of experiences and epiphanies. See Curcio et al., *Survey Instrument*, at 185-187.

¹⁰ “Gender” competence includes effectiveness with both transgender and cisgender individuals. A cisgender person is someone who identifies as the gender/sex they were assigned at birth. Colloquially, cisgender is the “opposite” of transgender.

¹¹ See Katherine Frink-Hamlett, *The Case for Cultural Competence*, N.Y.L.J., 25 Apr. 2011.

¹² LGBTQQIA is generally known to stand for Lesbian, Gay, Bisexual, Transgender, Queer, Questioning, Intersex, Asexual. At times, the “A” can also mean Allies. We will use the specific terms when more appropriate and the more inclusive when that is the intent of the author. When we are attempting to include all sexually and gender diverse (GSD) individuals and groups, we will use the acronym LGBTQQIA.

¹³ Cultural humility for lawyers may be defined as a lifelong commitment to self-reflection and compassionate self-critique; to addressing the power imbalances that impact both relational dynamics within the delivery of legal services and possible legal services outcomes; and to mutual, non-paternalistic partnerships on behalf of the full range of individuals and communities with which lawyers work. Curcio et al., *Survey Instrument*, at 187-88.

¹⁴ *Id.*

¹⁵ Compare DOROTHY STEELE & BECKI COHN VARGAS, *IDENTITY SAFE CLASSROOMS: PLACES TO BELONG AND LEARN* (2013) (discussing the four components of identity safety: student-centered classrooms; support for relationships within the classroom; diversity as a value; and caring made visible).

¹⁶ *Id.*; Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 349 (1997) (emphasis added) (“Part III explores the empirical data gathered by social scientists operating in a counseling capacity, which demonstrate that race plays a significant role in counselor-client interaction. The data reveal that the race and behavior of the counselor can have an equally serious impact on the relationship as can the race and behavior of the client.”).

¹⁷ *Grutter v. Bollinger*, 539 U.S. 306 (2003) (Law school applicants who were denied admission challenged the state school’s race conscious admission policies, alleging the policies violated their equal protection rights. The U.S. Supreme Court held that the policies did not violate the Equal Protection Clause because the law school had a “compelling interest in attaining a diverse student body,” and the admissions policies were narrowly tailored to serve that interest).

absolves White students and others in the dominant American culture from understanding their own race and background or experience and the ways in which the dominant culture — especially its legacy of discrimination — affects their interactions with other individuals.¹⁸

In a similar vein, traditional client-centered lawyering models may fail to incorporate the role of race and behavior of the lawyer and focus heavily instead on the identity and behavior of the *client*. Another risk is that of creating passive acceptance by lawyers of what a practitioner is told by *one* member of a culture about an entire culture. Examples of this phenomenon include fear of examining or challenging cultural norms in situations such as female genital mutilation or when cultural practices are used as a defense to domestic violence or to justify homophobia. Passive acceptance of another's cultural values, or cultural relativism, is not a requirement for effective representation of someone from another culture, rather it is intercultural understanding and effective communication that is key to the representation.

In response to some of these concerns, one group of scholars advocates the concept of “cultural sensibility as an ‘openness to emotional impressions, susceptibility, and sensitiveness’¹⁹ that allows change based . . . [on] interactions [and experiences] with people from different cultural backgrounds” than the law student's own. Generational differences among students may add further challenges. Some scholars suggest using labels like “structured thinking” and “surfacing assumptions” to overcome generational pushback.²¹ However, those labels may mask the very intercultural awareness that the teacher is seeking to show is critical for effective lawyering.

4. The Context for Learning

Differences as well as similarities among clients, faculty, and law students provide rich learning experiences²² and, at the same time, present challenges to effective lawyering and representation. For example, many Navajo people have a cultural aversion to discussing death or dead people, so estate planning or even interviewing them about violent crimes can pose challenges.²³ Cultures vary in their attitudes toward time and deadlines. Given historical patterns of oppression by the dominant

¹⁸ Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness* 11 *CLINICAL L. REV.* 369, 371-72 (2005).

¹⁹ Curcio et al., *Survey Instrument*, at 188, citing Niranjana S. Karnick & Nisha Dogra, *The Cultural Sensibility Model: A Process-Oriented Approach for Children and Adolescents*, 19 *CHILD AND ADOLESCENT PSYCHIATRIC CLINICS OF NORTH AMERICA* 719, 723 (Oct. 2010).

²⁰ *Id.*

²¹ Emily A. Benfer & Colleen F. Shanahan, *Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School*, 20 *CLINICAL L. REV.* 1 (2013), citing Muneer Ahmad et al., *Teaching Our Students to Challenge Assumptions: Six Practices for Surfacing and Exploring Assumptions, and Designing Action*, Plenary Session of the American Association of Law Schools Clinical Conference (May 2007).

²² Bryant, *Five Habits*, at 64-68 (describing degrees of separation and connection).

²³ KAREN K. KIRST ASHMAN, *HUMAN BEHAVIOR IN THE MACRO SOCIAL ENVIRONMENT* 397 (3d ed. 2011).

culture, individuals from some groups feel threatened when having to interact with authority or government agents. Some cultures view looking at another person in the eye as disrespectful, in contrast to dominant norms in the U.S., which consider that behavior a sign of candor.²⁴ In many cultures, grandparents and extended family members are considered part of the immediate family in contrast to the U.S. prioritization of the nuclear family.²⁵ Assumptions of uniform sameness made by either clients or lawyers from *similar* ethnic, race, or religious backgrounds can also hinder communication.

Ethnicity and identity factors are not the only cultural challenges to communication between lawyers and the people with whom they interact professionally. Experience and professional acculturation and socialization also play a role.²⁶ For example, veterans who return from extended deployment may have experienced trauma, and are likely to experience culture shock on return.²⁷ Lawyers and law students themselves experience an acculturation through law school and post-law school professional socialization.²⁸ As one scholar cogently stated, “difficulties arise” in seeking to introduce considerations of community-centered culture “in a profession long cast in terms of individuality and an acultural approach to the law.”²⁹ Cultural context includes not only the values, norms, experiences, and beliefs that stem from one’s culture, ethnicity, race, religion, nationality, gender, sexual orientation, and other identity markers, but also from one’s life experiences.

Because in a traditional lawyer-client representation the power balance in the relationship usually tips toward the lawyer, the lawyer is at risk of making assumptions based on stereotypes that could adversely affect the client. And, clients may have suspicions and concerns about lawyers that pose barriers to effective

²⁴ R.H., *Eye Contact: What Does it Communicate in Various Cultures?*, BRIGHT HUB EDUCATION (Jan. 20, 2012), <http://www.brighthubeducation.com/social-studies-help/9626-learning-about-eye-contact-in-other-cultures/>, archived at <http://perma.cc/U72E-8HQ9>.

²⁵ See Marianne Sawicki, *Empathy for the Devil: How Prisoners Got a New Property Right*, 116 PENN ST. L. REV. 1209, 1252 (2012); Shani M. King, *U.S. Immigration Law and the Traditional Nuclear Conception of Family: Toward a Functional Definition of Family That Protects Children’s Fundamental Human Rights*, 41 COLUM. HUM. RTS. L. REV. 509, 510-12 (2010) (“U.S. immigration law reflects a legal construction of the ‘family’ concept that is largely premised on biology, is grounded in the traditional conception of a nuclear family, and excludes what this Article calls ‘functional’ families: formations which may not satisfy this narrow conception of family, but satisfy the care-taking needs of children”).

²⁶ See Bryant, *Five Habits*, at 40, 68; Curcio et al., *Survey Instrument*, at 187-90.

²⁷ See, e.g., Michael L. Fessinger, *Balancing the Reasonable Requirements of Employers and Veterans Living with Traumatic Brain Injury — The Modern U.S. Military’s “Signature Injury” Is a Game Changer*, 53 WASHBURN L.J. 327, 336-37 (2014) (often, veterans are proficient with computers and have the technical skills sought by many employers, but they may lack the experience and mindset to find success after transitioning from the hierarchical culture of the military).

²⁸ Susan Bryant & Jean Koh Peters, *Reflecting on the Habits: Teaching about Identity, Culture, Language, and Difference*, in SUSAN BRYANT, ELLIOT S. MILSTEIN & ANN C. SHALLECK, *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY*, 350, 354 (2014) (hereinafter Bryant & Koh Peters, *Reflecting*); Curcio et al., *Survey Instrument*, at 187-90.

²⁹ Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557, 568 (1999).

communication with the lawyer.³⁰ Thus, lawyers-to-be need training to acquire the appropriate knowledge, skills, and values that will help them overcome barriers to effective client representation. At the same time, lawyers-to-be whose social or personal identities have been traditionally marginalized may benefit from opportunities to reflect on strategies for responding to the dissonance between their own culture or identity and that of the traditional, white-dominated, male-dominated, cisgender-dominated, and heterosexual-dominated lawyering culture.³¹ They may also benefit from exposure to ways of addressing the application of stereotypes to them as members of traditionally excluded and marginalized groups.³²

In preparing students for the world in which they will live and practice, faculty should assist students to develop a career-long commitment to engaging in efforts to enhance their awareness and sensibilities around real and perceived differences. Just as students and future graduates will likely serve an increasingly diverse array of clients, so, too, are they likely to interact with diverse communities and cultures. Law teachers should instill a degree of professionalism and competence necessary to serve the technical legal needs of this diverse client base and local communities of interest, and also prepare students for the challenge of effectively working with diverse, increasingly transnational, communities and concerns. Such capabilities involve a broad range of factors important to students' abilities to function effectively over the life of their careers, in a world with permeable boundaries across communities of difference. In addition to the knowledge and skills discussed below, the core value at the heart of effective functioning across cultures and geographic space is that of universal human dignity: a basic, foundational appreciation for the common humanity of oneself with and among all others — whether they are those against whom lawyers litigate disputes, or those with whom they engage, in common purpose, as advocates, representatives, or leaders.

5. Identifying Learning Objectives

Intercultural lawyering education requires the fusion of all three traditional domains of legal education: knowledge, skills, and values.³³ The starting point is to identify and articulate learning objectives or competencies for intercultural learning. Thus, legal educators must break apart the generalized concept of intercultural

³⁰ See Antoinette Sedillo López, *Making and Breaking Habits, Teaching (and Learning) Cultural Context, Self Awareness and Intercultural Communication through Case Supervision in a Client Service Clinic*, 28 WASH. U.J.L. & POL'Y 37 (2008) [hereinafter Sedillo López, *Making and Breaking Habits*].

³¹ Magee, *Critical Perspective* (discussing the identity dissonance that students from traditionally underrepresented communities and backgrounds often experience as a part of the professional socialization component of traditional legal education).

³² See, e.g., CLAUDE STEELE, WHISTLING VIVALDI: HOW STEREOTYPES AFFECT US AND WHAT WE CAN DO (discussing the phenomenon of "stereotype threat," and ways of minimizing its effects); Tara Yaso, William Smith, Miguel Ceja & Daniel Soloranzo, *Critical Race Theory, Racial Microaggressions, and Campus Racial Climate for Latino/a Undergraduates*, 79 HARV. EDUC. REV. 659 (2010).

³³ LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT — AN EDUCATIONAL CONTINUUM, REPORT OF THE FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter MACCRATE REPORT].

effectiveness. What are the specific student learning objectives?³⁴ What concepts and knowledge are critical to law students' understanding? What skills can legal educators expect law students to develop during law school? What attitudes are essential in order for law graduates to be effective?

Learning goals should not be set out in isolation. Effective cross-cultural education and training requires that students integrate their knowledge about difference with their skills and values. At a minimum, learning about intercultural concepts — such as knowledge about social and cultural identities common to one's own and to other cultures, the phenomenon of implicit bias, or the role of privilege in legal analysis — is not enough. Students need to use that knowledge to develop skills in areas such as communication and deep listening,³⁵ and they must do so with attitudinal values such as self-awareness, humility, and respect in order to be effective. Even those who attempt to identify these objectives separately note, “there is frequently some overlap and linkage.”³⁶ Another scholar phrases it this way: “In reality, practicing with cultural competence is a fundamental lawyering skill, as is the ability to critically evaluate laws, culture, and societal systems from a variety of perspectives or lenses. Respect for difference and other cultures and belief is also a fundamental lawyer value.”³⁷

Moreover, the link between a range of intercultural skills and effective lawyering has been made. For example, in a widely known study,³⁸ the ability to “See the World Through the Eyes of Others” was identified as one of 26 lawyering effectiveness factors.³⁹ This factor involves understanding the position, view, objective and goals of others.⁴⁰ Although the study demonstrated the importance of the ability to understand others to professional legal development, it left for future researchers the challenge of identifying specific student learning objectives that would guide teaching and learning of that concept.

a. Integrated Objectives: Habits and Factors

Before breaking down objectives into separate categories of knowledge, skills, and values, educators should pay attention to integrated objectives, habits, or factors central to the development of cross-cultural competency.⁴¹ These habits are “under-

³⁴ Other ways of characterizing competencies are as “student learning outcomes” or learning goals. *Id.* at 14.

³⁵ Bryant, *Five Habits*, at 55 (intercultural communication skills include deep listening skills). 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*, OD PRACTITIONER 25, 32-33 (1993), cited in DAN LANDIS & RABI S. BHAGAT, HANDBOOK OF INTERCULTURAL TRAINING 293 (2d ed. 1996).

³⁶ Curcio et al., *Survey Instrument*, at 193.

³⁷ Mary A. Lynch, *An Evaluation of Ten Concerns about Using Outcomes in Legal Education*, 38 WM. MITCHELL L. REV. 976, 1004-05 (2012).

³⁸ Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOC. INQUIRY 620 (2011).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Bryant & Koh Peters, *Reflecting*, at 350 and note 3; LEGAL ED, available at <http://legaledweb.com/>

girded” by three foundational principles:

- All lawyering is cross-cultural;
- The competent cross-cultural lawyer remains present with her client ever respecting her dignity, voice, and story; and
- The cross-cultural lawyer must know himself or herself as a cultural being to understand his or her biases and ethno-centric world views.⁴²

For many, the habits have worked as effective tools.⁴³ Recently, the authors shared another tool, “Doubting and Believing.”⁴⁴ They encourage the exercise of viewing the client’s claim with *alternative* attitudes of total doubt or total belief to aid in identifying “assumptions that might be contributing to doubt and belief, as well as expanding understanding of those who assess credibility differently” than the emerging lawyers do.⁴⁵

An inter-professional team of three scholars recently took a different approach. They identified five factors to assist law schools in conceptualizing “learning outcomes that will enhance law students’ abilities to effectively represent clients in today’s multicultural world and global legal environment.”⁴⁶ They acknowledged that these factors involve a combination of knowledge, skills, and values:

- 1) Understanding how culture influences lawyers, judges and clients in context of the legal decision-making and legal representation;⁴⁷
- 2) Self-awareness about the role culture plays in students’ own perceptions of the legal system, legal rules, and interaction with others;⁴⁸
- 3) Openness to learning about the role culture plays in the lawyering process;
- 4) Understanding differing cultural backgrounds and lawyers’ perceptions about client behaviors;⁵⁰ and
- 5) Identifying own unconscious biases and stereotypes.⁵¹

The seminal works just described provide a background for institutions and law teachers thinking about conceptualizing and drafting learning outcomes.

practical-lawyering-skills, *archived at* <http://perma.cc/2PT5-T437>.

⁴² Bryant & Koh Peters, *Reflecting*, at 350.

⁴³ *Id.* at 349 (They create: “1) a practice of self-awareness and self-improvement, day to day . . . and 2) a common vocabulary for discussion of this practice with others . . .”).

⁴⁴ *Id.* at 364-72 (*see* discussion of the “Methodological Belief, Methodological Doubt, and the Doubting/Believing Scale”).

⁴⁵ *Id.*

⁴⁶ Curcio et al., *Survey Instrument*, at 178.

⁴⁷ *Id.* at 211-13.

⁴⁸ *Id.* after table 4.

⁴⁹ *Id.* after table 5.

⁵⁰ *Id.* after table 6.

⁵¹ *Id.* after table 7.

b. The Triad of Knowledge, Skills, and Values

Fully aware of the problems inherent in grouping intercultural learning into three separate lists of knowledge, skills, and values outcomes because there is such overlap, some institutions and/or teachers, nevertheless, may find this traditional categorization helpful. Accordingly, this section includes the traditional approach.

i. Intercultural Context Learning Objectives

The knowledge objective of intercultural learning outcomes involves understanding how culture, conditioning, identity, implicit assumptions, and implicit biases⁵² affect “decision making, communication, problem solving, and rapport building.”⁵³ It requires knowing that culture and individual experience affect foundational understanding of the role of law and lawyers⁵⁴ as well as familiarity with the range of tools used to improve intercultural performance. It is crucial that students have some knowledge about the various cultural, ethnic, racial, and tribal groups that exist among their own ranks and law school communities, and that they are likely to encounter among client populations. Some student learning objectives for the knowledge component of intercultural learning might include:

- 1) Students will demonstrate understanding that all lawyering is cross-cultural;
- 2) Students will demonstrate familiarity with a variety of cultural norms for communicating (*e.g.*, shaking or not shaking hands), negotiating (*e.g.*, written documents or oral commitment to finalize a deal), and decision-making (prioritizing individual versus communitarian goals), with an emphasis on knowing about individuals in their own region;
- 3) Students will demonstrate conceptual familiarity with the phenomenon of implicit bias, and the social science literature on the continuum of intercultural effectiveness;
- 4) Students will demonstrate knowledge about the potential impact of difference, privilege, and culture in the application of law to facts, in attributing meaning to behavior, and in the assessment of credibility;
- 5) Students will be able to demonstrate understanding of the potential impact of difference, privilege, and culture in legal representation of privileged and non-privileged clients including the red flags and pitfalls other lawyers have encountered;
- 6) Students will be able to demonstrate knowledge about the potential impact of difference, privilege, and culture in understanding and interpreting legal rules, legal systems, and legal issues;
- 7) Students will demonstrate understanding of power imbalances, role and hierarchy in legal systems and rules of law; and

⁵² PROJECT IMPLICIT, <http://www.projectimplicit.net/index.html>, archived at <http://perma.cc/R67R-K4R7>.

⁵³ Bryant, *Five Habits*, at 34.

⁵⁴ See generally, Beverly I. Moran, *The Disappearing Act: The Lack of Values Training in Legal Education — A Case for Cultural Competency*, 38 S.U. L. REV. 1 (2010).

- 8) Students will demonstrate understanding of the habits of self-reflection and reflexivity, which lead to improved intercultural effectiveness and life-long learning in this area.

ii. Intercultural Skills Objectives

Effective intercultural lawyers employ myriad skills. Intercultural skill-building includes practicing communication across differing identities, identifying differing cultural expectations and preferences, overcoming obstacles to problem-solving and communication, identifying one's own implicit biases, and using de-biasing tools to improve one's own intercultural effectiveness.

Skills objectives for law students might include:

- 1) Students will be able to identify and reflect on their own multi-faceted cultural and experiential background and on the history and cultural differences in their communities and region;
- 2) Students will be able to suspend judgment when listening to a client's narrative in order to see the world through the client's eyes and engage in "parallel universe" thinking in order to understand client behavior;
- 3) Students will be able to evaluate whether the legal system involved will credit or discredit the client's perspective and plan ways to overcome implicit bias;
- 4) Students will be able to demonstrate deep and active listening skills, adaptation to language or ability differences, and cultural sensitivity in client interviewing and counseling, and in other common forms of communication between lawyers and others;
- 5) Students will demonstrate continuing reflection upon the effectiveness of their intercultural interactions without veering into shame and judgment and with awareness that reflective practice leads to improvement;
- 6) Students will demonstrate facility with de-biasing tools such as parallel universe thinking, and methodological doubting and believing; searching for assumptions and intersectionality, and challenging or critiquing their effects as needed; and
- 7) Students will demonstrate adaptability and flexibility in engaging with cultural differences in a simulated or real lawyering setting such as a legal negotiation, in transactional planning, or while engaged in problem-solving.

iii. Intercultural Attitudinal and Value Learning Objectives

The intercultural effectiveness literature emphasizes the importance of attitudes and values in order to behave in a non-judgmental, appropriately curious, respectful, humble and sensitive manner. Intercultural values also focus on the development of habits of reflection, the desire to develop non-discriminatory and inclusive lawyer behavior and the professional obligation to redress bias in the legal system. Some critical attitude and values outcomes for students are:

- 1) Students will demonstrate cultural humility and sensitivity when faced with a client whose culture differs from their own as well as open-mindedness about and respect for another culture or nation's legal system or approach to legal issues;
- 2) Students will demonstrate intellectual curiosity for lifelong learning about cross-cultural differences and similarities;
- 3) Students will work to recognize and redress power imbalances and access to justice issues, which disadvantage individuals whose culture, identity, and/or experiences are silenced or dismissed by the legal system in which the student operates;
- 4) Students will value awareness and identification of their own cultural identity and implicit biases and appreciation of de-biasing tools as a means to improve their effectiveness as lawyers; and
- 5) Students will demonstrate commitment to habits of reflection in order to develop non-discriminatory, interculturally aware, and inclusive lawyer behavior throughout their professional life.

Given the recent demand for intercultural legal education and the work done by legal education scholars to advance intercultural awareness and learning, law teachers are well positioned to, and should, systematically identify intercultural learning objectives for law students and lawyers.

6. Effective Teaching to Enhance Intercultural Knowledge, Skills, and Values

Effective teaching to enhance law students' intercultural knowledge, skills, and values requires teachers to appropriately design safe⁵⁵ learning environments.⁵⁶ It is a best practice for law schools to ensure that teachers create the conditions needed to help students develop their intercultural knowledge, skills, and values. It is also a best practice for law schools to ensure that each student has an intercultural learning experience.

a. Creating Learning Environments and Professional Development Opportunities to Enhance Intercultural Effectiveness

Teaching to enhance cross-cultural effectiveness requires attention to creating classrooms that honor and demonstrate the value of diversity and support the caring inclusion of all students' relevant experiences and perspectives. In the education field, the term "inclusivity" has come to stand for a foundational philosophy and set of

⁵⁵ In this context, safe means that participants listen carefully, give each other the presumption of good faith, and do not hold inevitable mistakes against each other. It does not necessarily mean comfortable, because talking about issues of difference and culture is often challenging and uncomfortable.

⁵⁶ For example, law schools could prioritize effective intercultural teaching in annual reviews and faculty development by providing teaching grants or by other forms of recognition for law teachers who engage in this work and increase their skill set.

practices aimed at respecting and creating effective learning spaces for all.⁵⁷ Commitment to the practices of human dignity and inclusivity in interactions with others may best be demonstrated by showing respect for all other persons, traditions, and cultures involved. A sense of respect for all others and a practice of engaging in inclusive interpersonal interactions may be part of a student's existing skills and values, but not always. Accordingly, legal educators should help law students learn these skills and values. They should support students in attaining outcomes that demonstrate competencies in this area.

These competencies must be identified as foundational values, and supported by a variety of opportunities for students to gain concrete knowledge and skills that prepare them to demonstrate them. However, raising these issues can feel uncomfortable. Teachers must make themselves vulnerable and also handle vulnerability that may be exposed in their students. Numerous resources can assist in promoting such reorientations within law schools.⁵⁸

A law school's ability to teach all students these valuable skills requires a diverse student body with students from a variety of racial, ethnic, socio-economic, and cultural backgrounds. When the institution or classroom is less diverse, the law school will face additional challenges in creating an effective learning environment that does not place additional psychological burdens on non-majority learners. The same is true for experiential courses and the law students' opportunities to interact with a diverse range of clients and systems. At the same time, however, the more diverse the classroom, the more teachers must raise their capacities as teachers to build trust and connection with each student, and to navigate the often messy conversations that arise at the intersection of different lived-experiences and corresponding worldviews.

To help build competencies in these areas, law teachers can use materials and exercises on cross-cultural lawyering and cultural sensibility such as readings, websites, films, role plays, and literature to generate discussion.⁵⁹ A teacher who feels unprepared to facilitate such discussions might consider taking anti-racism training to develop her understanding. Teachers may also create faculty learning communities focused on assisting teachers' development in these areas. In creating materials, the teacher should take into account the characteristics of the students, the surrounding community, and the future clients the students will likely serve. The context

⁵⁷ See SUSAN AMBROSE ET AL., *HOW LEARNING WORKS: SEVEN RESEARCH-BASED PRINCIPLES FOR SMART T* (2010) (discussing the importance of inclusive class climates to student performance); see also NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, *INCLUSIVE EDUCATION IN ACTION, POLICY GUIDELINES ON INCLUSIVITY IN EDUCATION* (2009), available at http://www.inclusion-in-action.org/iea/dokumente/upload/72074_177849e.pdf, archived at <http://perma.cc/M7BS-JYLL> (discussing "inclusivity" as a human rights imperative for educators, essential to achieving equity in education for all, and important to the promotion of global peace).

⁵⁸ Attending an anti-racism training outside law school can provide tools for integrating many of these concepts into teaching in classrooms, clinics, externships, simulations, and one-on-one interactions. A recent example of such training is the anti-racism training being given by the Sargent Shriver National Center on Poverty.

⁵⁹ For suggestions about incorporating discussion groups within the classroom, see Johanna K. P. Dennis, *Ensuring a Multicultural Educational Experience in Legal Education: Start with the Legal Writing Classroom*, 16 TEX. WESLEYAN L. REV. 613, 618-21 (2010).

(geographic, demographic, and historic) of the community should also be taken into account in developing effective materials. The students and the surrounding community will differ from setting to setting, as will the future clients the students will serve. In short, just like law students, law faculty need both commitment and ongoing opportunities to develop the knowledge, skills, sensibilities, and values necessary to effectively guide students in preparing for an ever-more diverse and global legal environment.

b. Classroom

Classroom courses can incorporate multi-cultural perspectives. Cases in which the ethnicity, race or culture of the client affected the outcome can be discussed, with skillful facilitated discussion aimed at drawing out and supporting reflection on relevant aspects of the context. Another way to incorporate these issues into the classroom is for teachers to share their own experiences with the cultural, racial, or ethnic issues raised in cases and to invite students to share theirs.

As indicated above, however, addressing issues of difference requires careful planning and community building, and skillful facilitation. The goal of this type of discussion is to help students become more open-minded about difference, not to reinforce stereotypes, or make students feel attacked or judged. However, despite a teacher's best efforts, such difficulties will sometimes arise. Thus, it is critical to do as much as possible in advance to avoid turning cultural competence discussions into an outlet for stereotyping, blaming, or judgmental lecturing.

It is a best practice to develop ground rules for classroom discussions. A useful strategy is to invite students to co-create a learning community by agreeing on rules, such as letting each speaker finish, giving each other both full attention and the benefit of the doubt, staying calm while discussing disagreements, and listening respectfully. Modeling civil discourse and discussing the importance of listening helps students learn appropriate ways of engaging around controversial topics. Providing students with leadership concepts such as "candor with care" may also be helpful.⁶⁰ Here, as well, the literature provides useful guidance.⁶¹ Questions to consider in establishing ground rules include:

- 1) What ground rules might be desirable for supporting participants in discussing difficult matters with greater authenticity and presence to a range of relevant difficult facts and experiences?
- 2) What challenges do class members expect as they seek to embrace accountability for co-creating non-judgmental, and safe (though not always comfortable) spaces within which each student may reflect more deeply on these issues — even in groups whose members differ across categories of identity and experience?

⁶⁰ John C. Maxwell, *For Leaders: Balancing Care with Candor*, JOHN MAXWELL ON LEADERSHIP (Dec. 20, 2010), <http://johnmaxwellonleadership.com/2010/12/20/for-leaders-balancing-care-with-candor/>, archived at <http://perma.cc/SS86-6YFS>.

⁶¹ Bryant & Koh Peters, *Reflecting*, at 352-72.

- 3) What support would class members need in identifying and discussing their thoughts and emotional reactions to the material under consideration, and developing a capacity to reflect more objectively on those thoughts, emotions, and personal stories, rather than uncritically attaching to and identifying with them?
- 4) Can we work, individually and together, to surface assumptions, habits, biases, and blind spots that each of us brings to thinking about such matters?
- 5) Are class members willing to make personal commitments to ongoing self-exploration and interpersonal and inter-systemic work with others, aimed at increasing self- and other-awareness around these issues and the different and myriad ways they may arise in a given setting?
- 6) Are class members willing to commit to honoring our differences-in-community, by working to listen more deeply to one another's unique experiences, while working together and building on the lived-sense of common humanity that exists across these so-called differences?⁶²

One method for building intercultural skills in a typical doctrinal course is to ask law students to identify alternatives that the lawyers in a doctrinal case might have used to fully develop the cultural issues. For example, one commentator has asked students whether they think a hotel manager might have called the police so quickly for a small disturbance in a fashion show if the show had not been sponsored by *Ebony* magazine.⁶³ Presenting information on various cultural contexts in a family law case is another common way to open the doors to this type of discussion.⁶⁴ All areas of law lend themselves to cross-cultural analysis once examined with an intercultural lens.

Another way to invite reflection is to use role-plays and discussion problems in small groups to incorporate an aspect of cultural differences. For example, one teacher uses a problem involving damages for emotional distress in a company's failure to deliver dresses for a 15-year-old Mexican-American young woman's quinceañera, an important cultural and religious event for many Mexican and Mexican-American families. He describes how the problem had the effect of making Mexican-American students insiders on the cultural knowledge and how they effectively educated the class on the importance of the cultural event.⁶⁷ Incorporating cultural issues in this fashion can

⁶² Magee, *Teaching Race*, at 20.

⁶³ Alfred Dennis Mathewson, *Race in Ordinary Course: Utilizing the Racial Backgrounds in AntiTrust and Corporate Law Courses*, 23 ST. JOHN'S J. LEGAL COMMENT. 667, 682-83 (2008) (citing *Billops v. Magness Construction*, 391 A.2d 196 (Del. 1978)).

⁶⁴ See, e.g., PEGGY COOPER DAVIS, *NEGLECTED STORIES: THE CONSTITUTION AND FAMILY VALUES* (1997).

⁶⁵ See, e.g., Amir N. Licht, *The Mother of All Path Dependencies: Toward a Cross-Cultural Theory of Corporate Governance Systems*, 26 DEL. J. CORP. L. 147 (2001) ("points out the growing awareness among practitioners and theorists of the relevancy of national culture to corporate governance and securities regulation. It shows that efforts to treat cross-cultural aspects so far have been few and sporadic and thus posits the urgent need for a systematic cross-cultural theory of corporate governance systems").

⁶⁶ Charles Calleros, *Traditional Office Memoranda and E-Mail Memos, in Practice and in the First Semester*, 21(2) PERSP: TEACHING LEGAL RES. & WRITING 105 (Spring 2013) [hereinafter Calleros, *Traditional Office Memoranda*].

⁶⁷ *Id.*

help broaden students' perspective.

Other teachers use games, imagery, and exercises in classes. For example, to develop cultural competency, one teacher has created a cultural iceberg exercise designed to generate a discussion about what parts of culture are the tip of the iceberg and which lie below the surface,⁶⁸ while another distributes toy prisms to explore similar issues of visible and invisible differences.

Teachers can develop law students' self-reflection and compassionate self-critique in service of an attitude of cultural humility by incorporating methods such as reflective and reflexive writing, storytelling, and communication exercises. Smaller classes can be helpful in providing a safe space for developing social and emotional awareness, and to practice building better relationship and interpersonal communication skills within the context of course content addressing the intersection of law, culture, and community. For example, in a course dealing with race, law and policy, a law teacher might develop the content of the course to explicitly provide opportunities for intellectual, social, and emotional learning in every class.

With these objectives in mind, the teacher might design opportunities for the students in the class to do more than discuss a range of cases that demonstrate important decisions, rules, principles and jurisprudential disputes. She might also include carefully selected, appropriately tailored exercises that build students' abilities to reflect on their own experiences as sources of relevant knowledge about the application and effect of these laws in real lives. For example, one teacher invites students to reflect on and share their own experiences with the police as part of the discussion of *Whren v. U.S.*,⁶⁹ a case in which the Supreme Court ruled on the constitutionality of racial profiling in law enforcement.⁷⁰ She invites students to consciously reflect individually, in dyads, and as a group on the value of particular instances of diversity in the classroom. She explicitly seeks students' commitments to engaging in personal self-reflection and compassionate self-critique as part of their intellectual, social, and emotional responsibility as members of ongoing learning and professional communities. And she encourages them to assist their clients and colleagues in considering the impact of positionality, privilege, lived experience, and broader context to more fully achieve just results for individuals and communities.⁷¹

The classroom teacher may also use out-of-class activities such as field trips or exercises. He may ask students to live for one week on minimum wage and use only public transportation. Guest lectures by relevant community leaders can be helpful to expand perspective. Films or portions of films are useful. Old films like *Rashomon* or

⁶⁸ To request a copy of Prof. Terry McMurtry-Chubb's classroom games and exercises, you may send her an email at Chubb_tm@law.mercer.edu. In addition to the iceberg exercise, she uses an exercise called, "The Human Race," which is meant to demonstrate that not everyone starts out at the same point in life, and is an exercise best done in a large room. And finally, she shares a checklist to make students aware of classism and a cultural literacy test.

⁶⁹ *Whren v. U.S.*, 517 U.S. 806 (1996).

⁷⁰ *Id.*

⁷¹ Rhonda V. Magee, *Legal Education as Contemplative Inquiry: An Integrative Approach to Legal Education, Law Practice, and the Substance of the Law We Make* (unpublished manuscript on file with authors).

A Jury of Her Peers can show the importance of understanding perspective. Newer films examining the many factors that can influence perspective are *Courage Under Fire*, *Crash*, or *Life of Pi*. Films can be tied into discussion of majority and dissenting opinions in cases that can be explained by the different perspectives of the judges, particularly if the judges are different genders, races, or otherwise have different backgrounds that can explain their perspectives on the case.⁷²

In various ways, legal educators can provide more holistic opportunities for learning and growth, with the potential to support students' development of cultural humility, cross-cultural listening and communication skills, and ever-expansive inclusivity.

c. Simulations

Simulations can be used to enhance intercultural knowledge, skills, and values both in doctrinally-focused courses and in courses designed to teach specific lawyering skills such as mediation, interviewing and counseling, and negotiation.⁷³ Simulation-based courses can be used effectively to train students about intercultural competence as long as the exercises are carefully designed to raise the issues. In a skills-focused class, attention to intercultural differences is important to ensure that students have sufficient knowledge to effectively represent a wide spectrum of clients. In addition, it is important to be sensitive to cross-cultural differences between law students and the client, between the client and witnesses, or between parties and jurists. Cultural knowledge and cultural sensibility should be incorporated into the student's preparation, particularly when the dispute or the creation of lawyer-client rapport may well pivot on intercultural differences or at least influenced by them.

The simulation or role-play should be structured to raise awareness of intercultural issues and to build skills in effectively using cultural knowledge. Care must be taken to ensure that students employ no stereotypes in either their enactment of the simulation or their use of intercultural knowledge. The simulation should include opportunities to demonstrate active listening, checking assumptions, and exploring the cultural context thoroughly. For example, a role-play based upon the quinceañera example described above, involving emotional distress involved in failing to deliver dresses for a quinceañera,⁷⁴ should thoroughly explore the cultural significance of the event. To prepare for this role play, the students would research how much planning goes into the event, how the event is viewed by the community, and the importance of the event to the young woman and to her family's social capital and status in the community.

⁷² For example, students in Constitutional Law class could discuss Justice Harlan's dissent regarding race in America in *Plessy v. Ferguson*, 163 U.S. 537 (1896), or the majority decision in *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982), which was penned by the first woman justice on the U.S. Supreme Court, Sandra Day O'Connor, and held that a state-supported nursing school's policy of denying qualified males like petitioner to enroll in its school violated the Equal Protection Clause of the Fourteenth Amendment.

⁷³ See Bryant, *Five Habits*, at 94.

⁷⁴ See Calleros, *Traditional Office Memoranda*.

Using interpreters as part of the role-play or simulation provides another opportunity to enhance intercultural competence skills. Students should understand the appropriate use of interpreters in interviewing and counseling clients and in court.⁷⁵ Teachers should emphasize the importance of ensuring that the interpreter is familiar with the non-English speaker's culture, both formal and informal versions of the language, and the need for the interpreter to translate accurately. Students who might be native speakers of the language can be very helpful in assessing the accuracy of the translation. Of course, students should not be asked to serve as interpreters in the simulations. They are being trained as lawyers, not interpreters, and thus, they should be trained on how to use interpreters effectively.

Faculty should plan for students to have sufficient time to reflect on the experience immediately after each simulation or role-play to maximize their learning. Faculty should also plan for multiple opportunities for students to receive non-graded, formative faculty feedback on the reflection so that students learn that intercultural effectiveness is a learned and practiced skill.

Some law schools offer courses focused primarily on cross-cultural lawyering issues. For example, one cross-cultural counseling course uses information about the brain to compare traditional legal analysis with real human decision-making focusing on lawyers' and clients' "Cultural Worldviews."⁷⁶

d. Externships

The classroom component of an externship should include some cultural competence training to help students face new situations in their placements. The variety of placements may range from working with indigenous people on a community project to a corporate law firm setting, from representing one individual with a disability in a Legal Aid office to working on a system change issue with a major public interest organization such as the Mexican American Legal Defense and Educational Fund, from clerking for a judge in a court populated by mostly majoritarian individuals to

⁷⁵ See, e.g., Ileana Dominguez-Urban, *The Messenger as the Medium of Communication: The Use of Interpreters in Mediation*, 1 J. DISP. RESOL. 1 (1997).

⁷⁶ Iris Burke's course describes worldviews as follows:

Worldviews are not conscious "opinions" which we adopt because they make logical sense to us, and discard or change when we encounter new information. They are absorbed by osmosis from our experiences. They concern the most basic social questions:

- I. the relationship of the individual to the group; and
- II. the appropriate distribution of power and authority.

Cultural worldviews impact not only on substantive goals, but also on the processes that one finds appropriate in pursuing those goals, from threats and adversarial litigation to problem-solving collaboration.

Understanding differing cultural worldviews, and the power of their influence, allows lawyers to expand the conversation of goals and values with their clients, and to better understand client goals, which differ from what the lawyer would value. Lawyers who recognize their own cultural worldviews can better guard against allowing those worldviews to inappropriately influence the counseling process.

Professor Burke's Syllabus for Cross Cultural Legal Counseling, Fall 2014 (on file with section authors).

working at a prosecutor's office situated in a county in which many residents do not speak English. To maximize teaching moments, externship teachers could design classroom activities that introduce students to more multicultural issues than they experience in their placement.

Because of the dual supervision by both teachers and field supervisors, students may receive different messages from their placement supervisor and their law school teacher, or may observe legal practice or a legal setting that exhibits poor intercultural communication and awareness. Such realities make it all the more important that the classroom component, reflective journaling, and other forms of guided supervision from the law school be designed to raise awareness of and specifically focus on intercultural learning. Placements that prioritize and emphasize intercultural effectiveness can be used as resources from which all externship students can learn. Field supervisor training should include materials on intercultural effectiveness and discussions of how to mentor inclusively and how to model and teach intercultural effectiveness.

e. Faculty-Supervised Clinical Experiences

Faculty-supervised experiences in which law students represent clients provide rich teaching opportunities for intercultural skills building, because these issues often arise organically and can be incorporated into supervision and feedback, case rounds, and training sessions in a variety of formats.⁷⁷ Additionally, an important tenet of adult learning theory is that learning is most effective when it is directly applicable to experience.⁷⁸ In these closely supervised experiences, students can be reflective in action and faculty can assist students immediately and in the midst of representation. The faculty member can draw out issues of difference and power imbalances intrinsic to the representation. The faculty member can use one-on-one sessions to help the student become more self-aware. And, in the clinical setting, the entire clinic of students and teachers can help each other with "parallel universe thinking" other cross-cultural tools.

To avoid the risk that the students might develop stereotypes or pre-judgments about the client, some faculty prefer to introduce intercultural awareness material and issues after the student has had a chance to meet the client and begin the representation.⁸⁰ Learning the law and learning about the client at the early stages

⁷⁷ See generally Charity Scott, *Collaborating with the Real World: Opportunities for Developing Skills and Values in Law Teaching*, 9 IND. HEALTH L. REV. 409 (2012) (AALS Symposium article); Sedillo López, *Making and Breaking Habits*; Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L.J. 219 (2002).

⁷⁸ See Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 49 (1995).

⁷⁹ Parallel Universe Thinking is one of the habits described in the seminal work of Jean Koh Peters and Sue Bryant.

⁸⁰ Some identity or background issues relevant to the legal matter may require earlier training prior to a first interview such as representing a person with a disability or an individual whose primary language is not English. These situations require special accommodations and skill in navigating the initial interview. Another example might be clients who have suffered in long-term domestic violence situations and the need

can be overwhelming. As the student becomes more comfortable, the teacher can draw out some of the issues of difference and sameness, and help the student see that the best authority on the client's culture is the client. As the student develops more confidence, the teacher can gently probe issues of culture and/or power imbalance to help the student recognize how cultural issues can be addressed most effectively. Students who are excited about the opportunity to represent clients are usually very open to better understanding all aspects of a client's decision-making. The desire to be client-centered provides an optimal avenue for giving students positive feedback and gently helping the student look at issues from multiple perspectives. As the skills of the student improve, discussion about difference issues can occur at a more sophisticated level and the teacher can provide feedback to the student about the development of the student's knowledge, skills, and values, including the student's growth in culturally effective representation.⁸¹

7. Assessing Intercultural Effectiveness

It has often been said that we assess what we value, and we value what we assess. If law schools and law teachers truly value intercultural effectiveness, they will want to know whether their curriculum and teaching improves their students' intercultural competencies. Schools and teachers will evaluate, assess, and document students' progress. In contrast to health professionals⁸² and other educators,⁸³ legal professionals and legal educators have not spent significant energy and resources exploring and experimenting with assessment of intercultural competence.⁸⁴ This is

for the law student to be well acquainted with the dynamics of domestic violence and trauma-informed practices before meeting the client.

⁸¹ See generally 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).

⁸² See, e.g., NATIONAL CONSORTIUM FOR MULTICULTURAL EDUCATION, <http://culturalmeded.stanford.edu/>, archived at <http://perma.cc/UX5B-U7FM>; *Cultural Competence Assessment Tools*, OFFICE OF MENTAL HEALTH, http://www.omh.ny.gov/omhweb/cultural_competence/assessment_tools.html, archived at <http://perma.cc/BY5Q-UVLA>.

⁸³ *Self-Assessment for Cultural Competence*, AMERICAN SPEECH-LANGUAGE-HEARING ASSOCIATION, <http://www.asha.org/practice/multicultural/self/>, archived at <http://perma.cc/E3AJ-NX4T>.

⁸⁴ Of course, many exciting and interesting projects and parts of the academy focus on intercultural competency. Rachel Moran, *When Intercultural Competency Comes to Class: Navigating Difference in the Modern American Classroom*, 26 PAC. McGEORGE GLOBAL BUS. & DEV. L.J. 109 (2013) ("Clinical educators already deploy a range of techniques to inculcate lawyering skills, and there is no single right way to teach intercultural competency. Some would like to see these skills infused into all or most courses in the curriculum. Critics worry, though, that any such mandate could disrupt the faculty's freedom to set goals and priorities for the substantive material that they teach. Reluctant teachers might do a superficial job of dealing with intercultural competency, which in turn might marginalize these skills even as they were officially integrated into much of the curriculum."); Bryant, *Five Habits*, at 35. Critical race, feminist, queer, disability law theorists, and legal writing communities have also made important contributions. In addition, there are, of course, specific projects at different schools. David Oppenheimer, et. al., *Berkeley Law's Student-Initiated Legal Services Projects*, 62 J. LEGAL EDUC. 621 (2013). However, the current version of the ABA Accreditation standards fails to prioritize such learning and at the February 2014 ABA Standards Review Committee meeting, two members of the committee proposing to update and revise the standards declared they didn't even "know what such terms mean."

so despite the availability of such tools and resources⁸⁵ and their relevance to the practice of law.⁸⁶ It is time to address that gap.

As noted earlier in this section, intercultural effectiveness may not seem to be easy to assess. Does this learning fall into the knowledge, skills, or value domain? Is it about behaviors or habits? Since all domains are implicated, does this complicate assessment?

Of course, any assessment must be tied to the learning objectives, so a faculty member should start there. In other sections, this book describes assessment as a mechanism for (among other goals) gathering information about whether and to what extent students have achieved the targeted knowledge, skills, and values, and using the assessment to improve teaching. To improve law students' intercultural effectiveness, law teachers must assess their progress, provide the students feedback on that progress, and use the results of the assessment to adapt and improve their teaching and learning objectives and methods.

a. Formative Assessment

BEST PRACTICES distinguished between formative assessment, which aims to assist a student in developing and is given at a time that permits incorporation and growth, and summative or evaluative assessment, which gives a student a single point of evaluative data, generally at the end of the grading period.⁸⁷ Those distinctions remain helpful. BEST PRACTICES also emphasized the need for multiple and varied assessment throughout the course of the semester and this remains a best practice.⁸⁸ A culture of continual improvement through reflective assessment is especially important for students to improve their intercultural effectiveness given the risk that addressing these issues can generate defensiveness or shame.⁸⁹ Some common methods of formative assessment for multicultural competence include:

⁸⁵ See e.g. NATIONAL CENTER FOR CULTURAL COMPETENCE, <http://nccc.georgetown.edu/resources/assessments.html>, archived at <http://perma.cc/YSE7-T8DK>; INTERCULTURAL DEVELOPMENT INVENTORY idiinventory.com/, archived at <http://perma.cc/H9PK-PH67>.

⁸⁶ See Miller, *Beyond Bias*, at 38 ("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 or may even 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 . . . Lawyers who do not possess and exercise these skills cannot serve diverse populations effectively."); ABA Standards for the Provision of Civil Legal Aid, Standard 2.4, <http://apps.americanbar.org/domviol/trainings/Interpreter/CD-Materials/civillegalaidstds2006.pdf>, archived at <http://perma.cc/SNU9-NGLX>; La Fonte Nesbitt et al., *Using a Diversity Assessment to Fuel and Guide Diversity Training and Other Lessons Learned*, THE METROPOLITAN CORPORATE COUNSEL (March 2006) at 34, available at <http://www.metrocorpocounsel.com/articles/6541/using-diversity-assessment-fuel-and-guide-diversity-training-and-other-lessons-learned>, archived at <http://perma.cc/X2UG-8B4R>; Philip A. Berry, *Developing Talent in a Global Marketplace*, 17 INT'L H.R. J. ART 5 (2008).

⁸⁷ BEST PRACTICES, text at notes 764-66.

⁸⁸ *Id.*, text at notes 767-781.

⁸⁹ Bryant & Koh Peters, *Reflecting*, at 350-52.

- Student self-identification of goals and self-evaluation of progress at periodic interviews similar to the assessment and evaluation method used in clinical teaching;
- Student journaling on the use of “parallel universe thinking,”⁹⁰ “standing in the shoes of the other,”⁹¹ “Just Like Me” practice,⁹² or other tools for improving intercultural analysis, communication, and compassion;
- One-minute papers on the knowledge factors of intercultural competence;
- Mid-semester evaluation of student performance in simulated exercises that raise intercultural communication challenges;
- Mid-semester evaluation of student responses to hypotheticals and problems that raise such issues;
- In-class quizzes or tests on implicit bias concepts or intercultural knowledge concepts;
- Multicultural rounds — faculty feedback or evaluation of contributions or “dialogic” progress similar to that used in clinical rounds;⁹³
- Using rubrics with standardized clients in simulated role plays.⁹⁴

b. Summative Assessment

Many law schools that have embraced student learning outcomes have charted their own path for assessment of cultural competence. For example, when one law school identified nine learning outcomes for its students, it included one on adoption of values including inclusivity.⁹⁵ One of the methods used to evaluate student learning and progress on this outcome is the assessment of student participation in activities “designed to improve the justice system and the profession, such as ridding both of bias” and student demonstration of “diversity skills, such as sensitivity to social and

⁹⁰ The habit of “parallel universes” thinking invites students to look for multiple interpretations, especially at a time when the student is judging the client negatively. Bryant, *Five Habits*, at 70-71.

⁹¹ Magee, *Teaching Race*, at 10-11.

⁹² *Id.*

⁹³ See generally Bryant & Millstein, *Rounds: A Signature Pedagogy For Clinical Education*, 14 CLINICAL L. REV. 195 (2007) (“One method used in the field of education to help teachers learn while on the job is to create ‘professional development and inquiry groups.’ These groups of six to ten teachers meet regularly to discuss teaching problems “by means of conversation that includes personal narratives of teaching experiences.”); Christopher M. Clark & Susan Florio-Ruane, *Conversation as Support for Teaching in New Ways*, in D. JEAN CLANDININ & CHRISTOPHER M. CLARK, TALKING SHOP: AUTHENTIC CONVERSATION AND TEACHER LEARNING 6, 12 (2001) (“Personal experience narratives” permit learners to communicate what they know and what they believe, to explore new ideas and challenge assumptions, and to expand their sense of what is possible).

⁹⁴ Antoinette Sedillo López et al., *A Medical/Legal Teaching and Assessment Collaboration on Domestic Violence: Assessment Using Standardized Patients/Standardized Clients*, 14 INT’L J. CLINICAL LEGAL EDUC. 61 (2009).

⁹⁵ “Learning Outcome 9: Graduates will adopt the Marianist charism of faith, service, community and inclusivity in their professional and personal life.” University of Dayton School of Law, Learning Outcomes & Criteria (March 2009) (on file with authors).

cultural difference.”⁹⁶

The formative assessment methods described above can individually and cumulatively provide information for a summative assessment. Other summative or evaluative methods include:

- Papers that demonstrate knowledge of the concepts and theories surrounding multicultural competence development;
- End-of-semester observation and evaluation of students’ demonstrated multicultural competence while in “real lawyer” role in clinical or pro bono experiences or in a simulation course;
- End-of-semester doctrinal examinations that include intercultural concepts and issues in interpreting the application of fact to law;
- Pre- and post-course tests of attitudes.⁹⁷

c. Institutional Assessment of Intercultural Learning

As discussed in this book’s section on assessment, institutions and teachers should assess both directly and indirectly. Direct assessments by institutions could include course assessments and common rubrics or employer, client or other external evaluator’s assessment of student or graduate’s multicultural competency. Indirect methods should also be used as a complement to direct methods. Such methods include student surveys which “are particularly good, not for measuring what students learned, but for revealing their attitudes and opinions about what they learned. Surveys are also useful to evaluate outcomes that only come to fruition in students’ post-[graduation] careers.”⁹⁸ Other ideas include questioning students about their learning during student exit interviews and conducting institutional review of syllabi and course evaluations to examine whether students are being encouraged to achieve facility in multicultural concepts and interactions.

Some common methods of assessment that could help assess multicultural competence involve:

- Pre- and post-experience surveys of law student knowledge or appreciation of multicultural competence. This could be done before and after the student experiences law school, a specified course or experiential learning activity, or a specified semester;
- Anonymous surveys focused on the appreciation/value of multicultural competence;
- Portfolios of student development of knowledge, skills, and appreciation of multicultural competence over three years outlining classes, experiential learning, and extracurricular involvement that increased learning;
- Evaluation at the beginning and end of the course or experience;

⁹⁶ *Id.*

⁹⁷ Curcio et al., *Survey Instrument*, at 234; Appendix A, discussed below.

⁹⁸ University of Virginia, Office of Institutional Assessment and Studies, *Assessment Guide: Seven Steps To Developing and Implementing a Student Learning Outcomes Assessment Plan* (on file with authors).

- Surveys of summer employers or of clinic clients, pro bono student clients, judges, or others with whom law students interact asking for ratings of the students' skills in the area of multicultural competence.

One very promising assessment tool that should be explored is the five-factor survey instrument referenced throughout this section.⁹⁹ This statistically reliable survey instrument promises to “help faculties gauge their students’ receptivity to learning about the role culture plays in the lawyering process and assist educators in identifying where to devote educational time and effort.”¹⁰⁰ It can also “help faculties identify potential learning outcomes and track students’ cultural sensibility development over the course of their legal education.”¹⁰¹

8. Conclusion

Best practices for teaching about intercultural effectiveness are still emerging as scholarship and teaching on these issues develop. Law school administrators should identify intercultural effectiveness as a criterion by which faculty and staff will be assessed in both hiring and promotion. Law teachers and law schools should identify intercultural effectiveness as a required student learning outcome for all students and create many opportunities for students to engage in this learning. Law teachers must continue to explore best practices for identifying, teaching and assessing law students’ intercultural learning and add to this literature. And, law students should be encouraged to draw on their experiences and backgrounds, to learn from others, and to continue to develop capacities for intercultural effectiveness and good practice within increasingly diverse communities — both locally, and across our interconnected world.

⁹⁹ Curcio et al., *Survey Instrument*, at 234, Appendix A.

¹⁰⁰ *Id.* at 233.

¹⁰¹ *Id.*