

FIVE HABITS FOR CROSS-CULTURAL LAWYERING

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Introduction

Practicing law is often a cross-cultural experience. The law, as well as the legal system within which it operates, is a culture with strong professional norms that give meaning to and reinforce behaviors. Many of you may recall your first year of law school as “culture shock.”² Like travelers to a foreign country, you were aware of differences between your own culture and the legal culture. You were learning a new language and learning to make explicit the cultural values implicit in the law; the communication style of argument predominated and competition was highly valued. For some of us, the law and its practice reflect many of our own cultural values and meanings. For others of us, the legal culture is more foreign. All of us have been acculturated as lawyers, as such, even when a lawyer and a non-law trained client share a common culture, the client and the lawyer will likely experience the lawyer-client interaction as a cross-cultural experience because of the cultural differences that arise from the legal culture.

In addition to these cultural differences, we know that the global movement of people, as well as the multicultural nature of the United States, create many situations where lawyers and clients will work in cross-cultural situations. To meet the challenges of cross-cultural representation, lawyers need to develop awareness, knowledge, and skills that enhance the lawyers’ and clients’ capacities³ to form meaningful relationships and to communicate accurately.

These materials, and the Habits they introduce, prepare lawyers to engage in effective, accurate cross-cultural communication and to build trust and understanding between lawyers and clients. A cross-cultural training theorist has identified the primary goal of effective cross-cultural interaction as developing the capacity to make “isomorphic attributions,” to attribute the same meaning to behavior and words that the person intended to convey.⁴ A cross-cultural anthropologist has referred to this as the capacity to enter the

cultural imagination of another, as “perceiving as normal things that at first seem bizarre or strange.”⁵

The materials⁶ are designed to allow the lawyer in a cross-cultural relationship to engage in the following three-step process.

1. A lawyer should be able to identify his assumptions.
2. A lawyer should challenge those assumptions with fact.
3. A lawyer should practice law/lawyering based on fact.

In truth, this three-step process is not only good cross-cultural lawyering, but also good lawyering in general.⁷ One hallmark of professionalism is the ability to identify when the lawyer or others are using assumptions to fill in information, to identify solutions to problems, or to negatively evaluate a client or her situation. Lawyers in cross-cultural settings may have greater difficulty sorting out when they are making assumptions and when they are using facts. The Habits develop ways to surface assumptions or to warn the lawyer when to look for them and gather more facts to test their accuracy.

Section one identifies some ways that culture influences lawyering and the potential issues that may arise in cross-cultural lawyer-client interactions. This section introduces common themes that appear in all cultures and identifies some of the ways that these themes may result in cultural differences. These cultural differences influence the attorney-client communication, lawyer and client expectations for the legal system, and potential strategies and solutions to the problems that clients bring to lawyers.

Section Two of the materials identifies the Principles and Habits that are the skills and perspectives that can be used to identify our own cultural norms and those of our clients and to communicate effectively, knowing these differences. As one anthropologist has recognized, there is “a great distance between knowing that my gaze transforms and becoming aware of the ways that my gaze transforms.”⁸ To help lawyers identify the ways their gaze transforms and the cultural bridges that are needed for joint work between

lawyers and clients, we have developed Five Habits for Cross-Cultural Lawyering. We use the term “habit” because we see the possibility of lawyers incorporating ways of lawyering that, overtime, can become habitual ways of interacting with clients that recognize the individuality of each client.⁹

SECTION ONE

CULTURE AND THE ROLE IT PLAYS IN LAWYERS’ WORK

To become good cross-cultural lawyers, we must first become aware of the significance of culture in the ways we make sense out of the world. 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.¹⁰ Our culture is learned from our experiences, sights, books, songs, language, gestures, rewards, punishments, and relationships that come to us in our homes, schools, religious organizations, and communities.¹¹ We learn our culture from what we are fed and how we are touched and judged by our families and significant others in our communities. Our culture gives us our values, attitudes, and norms of behavior. Through our cultural lens, we make judgments about people based on what they are doing and saying. We may judge people to be truthful, rude, intelligent, or superstitious based on the attributions we make about the meaning of their behavior. Because culture gives us the tools to interpret meaning from behavior and words, we are constantly attaching culturally-based meaning to what we see and hear, often without being aware that we are doing so.¹²

In these materials, when we talk about cross-cultural lawyering, we are referring to lawyering where the lawyer’s and the client’s ethnic or cultural heritage comes from different countries, as well as where their cultural heritage comes from socializing in groups within the same country. By this definition, everyone is multicultural to some degree.¹³ 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.

This broad definition of culture is essential for effective cross-cultural lawyering because it teaches us that no one characteristic will completely define the lawyer's or the client's culture.¹⁴ 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" ought 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 ethnic culture may understand these responsibilities and privileges better than an outsider and yet, because her experiences are different, may still not fully understand.

A broad definition of culture recognizes that no two people have had the exact 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 and make different decisions in the particular. People can also reject norms and values from their culture. Understanding and accepting that culture unites us and gives meaning and at the same time allows for significant differences helps us to avoid stereotyping or assuming we know that which we have not explored with the client. At the same time that we recognize these individual differences, we also know that if we share a common cultural heritage with a client, we are often better able to predict or interpret and our mistakes are likely to be smaller misunderstandings.

Lawyers and clients who do not share the same culture face special challenges in developing a trusting relationship where genuine, accurate communication occurs. Building trust is a goal for all lawyering and is an

especially important focus in cross-cultural lawyering. Lawyers cannot assume that trust exists because the client has chosen to come to the lawyer or because the client is paying the lawyer. Especially where the culture of the client is one with a significant distrust of outsiders¹⁵ or of the particular culture of the lawyer, the lawyer must work hard to earn trust in a culturally sensitive way.

Even where trust is established, cultural differences may significantly interfere with lawyers' and clients' capacities to understand one another's goals, behaviors, and communications. Because we interpret another's messages through lenses shaped by our cultural, social, and personal experiences, we often interpret the behavior and communication of others by asking ourselves subconsciously, "What would that mean if I did it or said it?" "What would members of my group think of me if I did that?" We also predict how others will interpret us based on these same life experiences.¹⁶ For example, when a lawyer puts out a right hand to greet a client, the lawyer engages in an introduction ritual that the lawyer expects will be welcoming to clients. However in many cultures, this is not a welcoming gesture and may instead be considered offensive.

Cultural differences often cause us to attribute different meaning to the same set of facts. Imagine a lawyer tells 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 ask me any questions you like." The lawyer might assume that if the client never asks for clarification that the client understood what the lawyer was saying. However, many cultural differences may explain a client's reluctance to either blame the lawyer for poor communication (the second question) or blame the client for lack of understanding (the first question). People from different cultures might find one or the other of these results to be rude and, therefore, be reluctant to ask for clarification for fear of offending the lawyer or embarrassing himself.¹⁷

Cultural differences may cause lawyers and clients to misperceive body language and judge each other incorrectly. For an everyday example, take nodding while someone is speaking. In some cultures, the nodding indicates agreement with the speaker while in others, 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, a diversion of eyes is a sign of respect. When one is lawyering on behalf of someone who is culturally different, the lawyer must continually examine assumptions about the client based on body language. The lawyer must also be careful about the messages she sends with her body language.

More generally, our concepts of credibility are very culturally determined. In examining the credibility of a story, lawyers and judges often ask whether the story makes “sense,” as if “sense” were neutral.¹⁸ Consider for example, a client who explains that the reason that she left her native country was that God appeared to her in a dream and told her it was time to leave. If the time of leaving is a critical element to the credibility of her story, how will the fact-finder judge the credibility of the client’s story? Does the judge come from a culture where dreams are valued,¹⁹ where an interventionist God is expected, and/or where major life decisions would be based on these expectations or values? Will the judge find the story incredible or evidence of a disturbed thought process of the witness?

Cultural differences may cause lawyers to develop case strategies that fail to appreciate the significant cultural norms of the client. For example, in one case, lawyers negotiated a plea to misdemeanor assault with probation for a battered Chinese woman who had killed her husband and 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 an

acknowledgement of responsibility for the killing. Her attorneys did not fully comprehend the concept of shame and the meaning of the plea to the client until she consistently and steadfastly rejected her attorneys' and advocates' advice to take the plea. In these conversations, she explained that 25 years in jail was far less offensive than the shame that would be experienced by her family (past, present, and future.) These negative reactions to what the lawyers thought was an excellent result allowed the lawyers to examine the meaning of pleas, family, responsibility, and consequences within a culture context that was different from their own.²⁰

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 woman client wanted to present evidence of persecution by showing an injury to an area of her body that the client by religion and culture was committed to keeping private. Ultimately, the client developed a strategy of showing the injury to the adversary, an INS lawyer who was also a woman.²¹ This strategy, challenging conventional legal procedures and violating cultural norms of the adversary system, allowed the client to present a case that honored her values and norms.²²

Finally, cultural differences may cause us to misjudge a client or to provide differential representation based on stereotype or bias. Few lawyers engage in explicit open racial or cultural hostility towards a client. However, if recent studies in the medical field have relevance for lawyers, we need to recognize that even lawyers of good will may engage in unconscious stereotyping. Studies in the medical field show that doctors are less likely to explain diagnoses to patients of color, less likely to gather significant information from them or refer them for needed treatment.²³ While no studies of lawyers have focused specifically on lawyers engaging in discriminatory treatment, two recent studies have identified differential treatment by the legal system based on race. One study done by the Child Welfare Watch shows

that African-American children are far more likely to be removed from their home, put in foster care, and left there longer than similarly situated white children.²⁴ Another study showed that African-American juveniles received disproportionate sentences when compared to similar white youths. In each of these legal studies, lawyers - as prosecutors, representatives and judges - are deeply implicated in the work that led to the differential treatment.

Culture-General Knowledge

In addition to developing awareness of the role that culture plays in attributing meaning to behaviors and communication, a competent cross-cultural lawyer also studies the specific culture and language of the client group that the lawyer represents. If the lawyer represents clients from a multitude of cultures, the lawyer can improve cross-cultural interactions by acquiring culture-general knowledge and skills. This culture-general information is also helpful to lawyers who are beginning to learn about a specific culture. Because learning any new culture is a complex endeavor, (remember the number of years that we spent learning our own) the lawyer can use culture-general knowledge and skills while learning specifics about a new culture.

In their work on culture-general themes, leading cross-cultural scholars²⁵ have identified themes that arise in cross-cultural interactions. Some of these themes are listed in the chart on the next page. In looking at the knowledge areas listed on the chart, we can identify many areas of cultural differences that could influence the attorney-client relationship. For example, some communication and language use differences will be obvious and require translators. Other communication differences that may be less noticeable are discussed in more detail in Habit Four, the Habit that focuses on communication specifically. Value differences cause lawyers and clients to evaluate strategies, options and solutions differently. Categorization

differences may cause lawyers and clients to see different information as relevant.²⁶

Lawyers and clients who have different time and space orientations may have difficulty understanding each other. The lawyer trying to get a time-line from a client whose culture is not oriented to day, month, year may incorrectly interpret the client's failure to provide the information as uncooperative, lacking intelligence, or, worse, lying. 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 she arrives "late" according the lawyer's time orientation to minutes and hours²⁷.

In other settings, the distinction between individual and collective cultures has been called the most important concept to grasp in cross-culture encounters.²⁸ This concept and the differences that flow from it are also critically important for lawyers to understand. Cultural differences that exist between individual and collective cultures will have a significant effect on how clients and lawyers define problems, identify solutions, and determine who are the important players in a decision. For example, the client who refused a misdemeanor plea described above came from a collective culture where her actions of pleading guilty had effects for her family and not just her.

The collective/individual distinction also influences communication styles, implicates value differences, and may influence clients' and lawyers' views of the roles of the lawyer and client. All cultures and people have individualistic and collective parts to them. Even in the most individualistic cultures, people consider themselves part of a group. In an individualistic culture, people are raised to have individual goals and praised for achieving these goals. They are encouraged to make their own plans and "do their own thing."²⁹ Individualists need to assert themselves and do not find competition threatening. In contrast, in a collective culture, people are raised to think 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. Collectivists are accepted for who they are, feel less need to talk and therefore, 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.³⁰ The Anglo-American legal system reflects this culture with substantive laws that reflect a highly individualistic model of rights and responsibilities.³¹ 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.³² While legal systems and forms of practice in the United States are beginning to respond to demographic changes,³³ a lawyer working with a client from a highly collective culture may face special challenges in helping that client accomplish her goals in a culturally sensitive way in our legal system.

Other cross-cultural themes listed on the chart on the next page identify additional categories from which to examine lawyers' work. In trying to identify cultural norms, each of these knowledge areas helps the lawyer clarify how his background may affect the way he practices law. When the lawyer identifies similarities and differences between herself and her client, the lawyer can use these knowledge areas as examples of similarities and differences that may affect the practice.

A word of caution:

In using the cross-cultural themes, remember that because cultures are so complex, lawyers should not totally isolate one of the cultural themes from the others as the context within which each of the themes operate will influence how the theme is developed in the culture. Instead, the themes are useful to identify possible similarities and differences and to explore these with the client.

Knowledge Areas that People Learn as a Result of Being Raised within any Given Culture:³⁴

1. *Communication and language use.* Communication differences are probably the most obvious problem that must be overcome when crossing cultural boundaries. Cross-cultural communication, attitudes toward language use, the difficulties of learning another language, and its relation to education are addressed in this area.
2. *Roles.* People perform a generally accepted set of behaviors in relation to the roles they adopt. Tremendous differences exist with respect to the occupants of these roles and how these roles are enacted in different social groups.
3. *Individualism versus collectivism.* All people act at times in their individual interest, and at other times according to their group allegiances. The relative emphasis on group versus individual orientation varies from culture to culture and may have a significant impact on people's decision-making processes, their choice of peers and associates, and the degree to which they perform effectively on their own.
4. *Rituals versus superstition.* All cultures have rituals that help people meet their needs and cope with life's everyday demands. People in all cultures also engage in behaviors that "outsiders" may label superstitious. One's rituals may be seen by others as based on superstitions.
5. *Social hierarchies - class and status.* People often make distinctions based on various markers of high and low status. These distinctions differ from culture to culture.
6. *Values.* People's experiences in such broad areas as religion, economics, politics, aesthetics, and interpersonal relationships become internalized. Understanding these internalized views and the range of possible differences is important to cross-cultural understanding.
7. *Work.* Differences in the amount of time people spend on tasks versus socializing, which has the onus of control, and the way decisions are made may differ significantly across cultures.
8. *Time and spatial orientation.* Culture determines people's orientation toward time and the degree to which one feels bound by the clock. In addition, people's use of space may also be quite different.
9. *Categorization.* Because people cannot attend to all the information they perceive, they group similar bits of information into categories and then respond according to that category. Different cultures may put the identical piece of information into different categories. This variation causes confusion when people who use different sets of categories must interact.
10. *Differentiation.* People make finer distinctions between elements in categories that are of great importance to them.
11. *In-group/out-group distinctions.* People the world over classify people into in-groups – those with whom they are comfortable and can discuss their concerns – and out-groups – those who are generally kept at a distance. People entering other cultures or new groups must recognize that they will often be considered out-group members and that they will never participate in some behaviors associated with in-group membership.
12. *Attribution.* People observe the behavior of others and reflect on their own behavior. Judgments about the causes of behavior are called *attributions*. Effective intercultural interaction is facilitated when people can make *isomorphic* (shared or agreed-on) attributions about the behavior of others.

SECTION 2
PRINCIPLES and HABITS for
CROSS-CULTURAL LAWYERING

The Habits are based on the belief that if lawyers can find ways of identifying assumptions that hamper their ability to lawyer based on fact, lawyers would, on a day-to-day basis, achieve better cross-cultural communication and understanding in their lawyering. The Principles articulate the underlying rationale for the Habits and the Habits give concrete ways to identify our assumptions – which is the most difficult and painful part of practicing cross-cultural lawyering. We believe that once these assumptions are identified, lawyers have the wherewithal to put those assumptions aside in favor of the actual facts of the individual case.

The Habits develop ways, both in the moment and upon reflection, to recognize when we have put on cultural blinders and, as a result, interpreted or predicted behavior incorrectly, judged clients negatively or used stereotype or bias in place of facts.

Four Principles

The Habits are based on four core principles about practice, clients, and learning.

1. **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.
2. **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 nonjudgmental approach.

3. **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 while 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.
4. **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. This final principle recognizes that developing competence in cross-cultural lawyering is an ongoing, lifelong process that never ends. To begin this process, a lawyer must understand and accept the role that culture plays in shaping his or her values, judgments, interpretations, and the potential 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.” Over time, a lawyer can learn to befriend herself as a cultural being, through self-understanding.

Five Habits

The Habits One and Two give the lawyer concrete ways to identify cultural differences and commonalities between the lawyer-client, client-legal system and lawyer-legal system. These Habits also provide the lawyer with a framework for analyzing the attorney-client interaction, hidden issues that may exist in a case, and the cross-cultural challenges that may arise in the client-legal system interaction. Habit Three, Parallel Universes Thinking, allows the lawyer to enter the cultural imagination of another and develop alternative explanations for client behavior. Habit Four focuses on communicating more effectively across cultures and identifying signs of communication problems. Finally, Habit Five encourages reflecting on the norms, biases, and stereotypes that may interfere with quality lawyering and finding ways to overcome these.

Developing these habits, like all skill development, requires practice to be mastered. We are still working on mastering these habits and enjoying the benefits that come when we are able to learn from clients and interact in meaningful cross-cultural relationships. Whenever, we introduce the habits, we say these are works in progress. By this we mean that we are still working on making them our own habits and that we are still working on examining whether the individual habits that we propose work to promote lawyer-client interaction.

HABIT ONE: DEGREES OF SEPARATION AND CONNECTION

Mary, an Irish-Catholic, thirty-year-old student in a domestic violence clinic reviews two of her client-intake memos. In one she details the story of Razia, a recent immigrant from Pakistan, who is experiencing spousal abuse and preparing to leave the marital home. The memo describes Razia's family in detail and reports that Razia has intentionally isolated herself from her large extended family. Mary reports that Razia's family does not support her decision to leave and that she cannot rely on any family members to attend court proceedings with her or provide her assistance. The other memo was about Maureen, a recent immigrant from Ireland, and Mary notices that she reports sparse information about Maureen's family, other than to report that she has moved in with her sister to escape the spousal abuse.

Why does a lawyer 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 helps address this question by asking the lawyer to identify how differences and similarities between the lawyer and client may influence lawyer-client interaction. This habit is simple in concept and execution. The first part of the habit asks the lawyer to brainstorm, as quickly as possible, as many similarities and differences between him and the client as he can generate. The second part of the habit asks the lawyer to assess the significance of these similarities and differences. By identifying differences, we make conscious the potential cultural misunderstandings that may occur. By identifying similarities, we make conscious the connections we have with clients.

Pinpoint and Record Similarities and Differences

This Habit is rewarded for numerosity – the more differences and similarities the better. Thus, in the list below and in the sample work sheets (attached in Appendix A), we identify many categories of difference and similarity. Extensive lists, help the lawyer make conscious the less obvious similarities and differences that may enhance or interfere with understanding. With each client, you may identify different categories that will influence the case and your relationship. These lists will change as the relationship with the client and the client’s case changes.

Most importantly, by consciously identifying a long list of similarities and differences, we are more likely to see our client as an individual who has personal, cultural, and social experiences that shape the client’s behavior and communications. In asking you to create long lists, we do not mean to suggest that all similarities and differences have the same order of importance for you or your client. For example, in interactions involving people of color and whites, race will likely play a significant role in the interaction given the discriminatory role that race plays in our society.³⁵

A lawyer should brainstorm under conditions that promote the greatest possible accuracy and honesty. Even if the list is private, the lawyer may find his own internal self-judgment hampering his ability to make a comprehensive list. If, for instance, the lawyer representing a Jewish client knows in his heart that he has demonstrated anti-Semitic views from time to time, that fact is clearly relevant to the list and the diagram. Yet, shame may prevent the lawyer from acknowledging or recording that fact. Habit One specifically asks the lawyer to put that shame to one side and acknowledge the former views as a relevant fact.

Keep in mind that differences need not be diametrical opposites and similarities need not be exact equivalents. The most important thing is to make this list honestly and non-judgmentally, thinking about what similarities and differences you perceive and suspect might affect your ability to hear and understand your client’s story. Most of us will never know our clients or

ourselves well enough to develop a comprehensive list. However, by identifying similarities and differences, we identify possible categories that may be ripe for stereotyping and bias.

Examples: Some examples of categories where you might identify differences or similarities:

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

Another way to illustrate the degrees of connection and separation between client and lawyer is through the use of a simple Venn diagram. The graphical representation of Habit One asks you to imagine impressionistically the worlds of lawyer and client as two circles. Drawing from instinct, map the two circles, overlapping broadly if the worlds of the client and lawyer largely coincide, and narrowly if they largely diverge. As the chart in Appendix A illustrates, the diagram allows the lawyer to create a picture of similarities and differences that may give the lawyer different insights than the lawyer got from the list. For example, the list of similarities may be small and yet the lawyer may feel very similar to the client because of one shared similarity or the lawyer may have many similarities and yet find herself feeling very distant from the client.

Analyzing the Effect of Similarities and Differences on Professional Distance and Judgment

After creating the lists and diagrams, the lawyer can identify where the cross-cultural challenges might occur. By naming the things that unite and

distance us from our clients, we are able to identify relationships that need more or less professional distance because they are “too close” or “too far.”

No perfect degree of separation or connection exists between lawyer and client. However, where the list of similarities is long, the lawyer may usefully ask, “Are there differences that I am not recognizing?” By asking that question we acknowledge that, while similarities promote understanding, misunderstanding can occur when we assume that the client’s story is just like ours. In situations where lawyers and clients have circles that overlap, the lawyer should ask herself, “How do I develop proper professional distance with a client who is so similar to me?”

In other cases, where the list of differences is long, the question for the lawyer is: “Are there any similarities that I am missing?” We know that negative judgments are more likely to occur when the client and lawyer see the other as an “outsider.” Thus, the lawyer who identifies significant cultural differences between herself and the client will be less likely to judge the client if she also sees herself as similar to the client. Where large differences exist, the lawyer needs to consciously address the question, “How do I bridge the huge gap between the client’s experiences and mine?”

Analyzing the Effect of Similarities and Differences on Gathering and Presenting Information

Where cultural differences exist between lawyer and client, different perspectives may increase the possibility for misinterpretation. Therefore, the lawyer must pay careful attention not to interpret the client’s words, behavior and body language within the lawyer’s cultural lens but instead to try to understand the behavior, words, and body language within the context of the culture within which it occurs. Differences and similarities or assumptions of similarity will significantly influence questioning and case theory.

One example of how differences and similarities in the lawyer-client dyad may influence information gathering can be seen in the way lawyers

probe for clarification in interviews. Lawyers usually ask questions based on differences that they perceive between themselves and their clients.³⁶ Thus, lawyers tend to ask questions when clients make choices that the lawyers would not have made or when they perceive an inconsistency between what the client is saying and the client's actions. Lawyers tend not to ask questions about choices clients have made when the lawyers would have made the same choices. The questioner assumes that the client's thought processes and the reasons they reached those decisions are the same as her own.

To identify the unexplored cultural assumptions that the lawyer may be making, the lawyer should reflect on attorney-client interview and identify areas where the lawyer may have missed relevant explanations of behavior. What has the lawyer followed up on and what has he left unexplored?

Mary, the student-lawyer in the example at the beginning of Habit One, has probably 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. This probing occurs because the lawyer perceives the client's choices as different from the ones the lawyer might make and therefore, she tries to understand why the client has failed to involve her family. These differences may arise out of cultural differences in family relationships, in assessment of appropriate uses of the law or outsiders to resolve problems, in response to violence, or a number of other explanations. (Notice parallel universe thinking here which is described more fully in Habit Three.)

Perhaps Mary leaves unexplored the report that Maureen has moved in with her sister to escape the spousal abuse because Mary imagines taking similar steps. In her failure to ask questions, Mary is probably making a host of assumptions about cultural values that relate to the client's family, her family values and her sister and their relationship. The lawyer may for example assume incorrectly that the sister is supportive of the client's decisions and shares the client's view that moving out is appropriate.

Assumptions of similarities that mask differences can lead the lawyer to solutions and legal theories that may not ultimately work for the client. In assuming that the client has family support, the lawyer in the above example may neglect to explore other housing arrangements or supportive environments.

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.

A Final Thought about Habit One

Some lawyers may feel reluctant to name the differences between themselves and clients for fear that acknowledging differences will encourage stereotyping and promote inequality. However, cross-cultural psychologists, anthropologists, and trainers tell us that we already stereotype and misunderstand one another. They believe that conscious attention to differences is the best way to eliminate stereotyping and promote a focus on the individual.³⁷ We hope that the use of these habits convinces you of the validity of acknowledging differences as a way to lead to understanding of the individual and justice in the legal system. We also know that assumptions about the meaning of similarities may also cause us to stereotype and misjudge clients. By listing both similarities and differences, we are consciously identifying ways that we will connect to clients and the ways that we might judge, misunderstand, and misinterpret clients.

HABIT TWO: THE THREE RINGS

If the key to Habit One is “identifying and analyzing the distance between me and my client,” the key to Habit Two is identifying and analyzing how cultural differences and similarities influence the interaction between the client, the legal decision-maker, and the lawyer - the three rings.

Lawyers interview clients to gain an understanding of the client's problem from the client's perspective and to gather information that will help the lawyer identify potential solutions particularly those that are available within the legal system. What information is considered relevant and important is a mixture of the client's, lawyer's, and legal system's perspectives.

If these perspectives are different in material ways, information will likely be presented, gathered, and weighed differently. Habit Two examines these perspectives explicitly by asking the lawyer to identify and analyze the similarities and differences of two different dyads – client-law and lawyer-law. In addition to focusing on these two dyads, Habit Two requires the lawyer to link the analysis gleaned from the client-law and law-lawyer dyads with the lawyer-client analysis from Habit One.

Habit Two asks the lawyer to consciously pay attention to how cultural differences and similarities among lawyer-client, client-law, and lawyer-law will influence the outcome of a case. Like Habit One, the lawyer is encouraged to name and diagram the differences and similarities first and then to analyze their effect on the case. (An example of Habit Two in a simulated child protective proceeding is included in Appendix A. Worksheets that can be used to work through Habit Two are also attached.)

Pinpoint and Record Similarities and Differences in The Legal System-Client Dyad

The lawyer should identify the similarities and differences that may exist between client-law and legal decision-maker-law. As in Habit One, the similarities and differences can be listed or can be put on a Venn diagram. In many cases, multiple players will influence the outcome and should be included when identifying the similarities and differences. For example, a prosecutor, a prospective jury, 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.

What are the cultural similarities and differences that may lead to different values or biases, causing legal decision-makers to negatively judge the client? What are 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 successful client? In making these assessments, the lawyer should also avoid stereotyping the decision-makers by learning as much as possible about them so that the lists of similarities and differences account for the complexity of the people making the decisions.

In addition, to focus on the decision-makers, the lawyer should identify 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?

Pinpoint and Record Similarities and Differences in the Legal System-Lawyer Dyad

The lawyer should also focus on the legal system-lawyer dyad and assess the similarities and differences between himself and the legal system. To what extent does the lawyer adopt the values and norms of the law and legal decision-makers? What are the similarities and differences between the lawyer and these decision-makers? How acculturated to the law and legal culture has the lawyer become? In what ways does the lawyer see the “successful” client as the same as the law and legal decision-makers and to what extent does the lawyer have different values and evaluations? Understanding the differences and similarities between the lawyer and the legal system players will help the lawyer assess whether her assessment of the case is likely to match the legal decision-maker.

Again the lawyer can list or create a diagram that indicates the similarities and differences.

Reading the Rings: Analyze the Effect of Similarities and Differences

After filling in the diagrams and/or making the lists of the three different dyads, the lawyer can interpret the information to look for insights about the impact of culture on the attorney-client relationship, the case, and potential successful strategies. The lawyer's goal in reading the rings is to consciously examine influences on the case that may be invisible but will nonetheless affect the case. The following questions may help identify some of those insights:

1. *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 gaps that occur? What additional facts can I use to strengthen the case?
2. *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 sense of the story? How credible is my client? Are there cultural factors in the way the client tells the story that will affect my client's credibility? What can I do if those exist?
3. *Legal strategies:* Can I shift the law's perspective to encompass more of the client's claim? 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?
4. *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?
5. *Questions based on assumptions about similarities and differences:* How large is the area of overlap between all three circles? Notice that the overlap is now divided into two parts: the characteristics relevant to the legal case that the lawyer shares with the client, and those relevant characteristics that the lawyer does not share with the client. 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 using three frames of reference – the client’s, the legal system’s, and mine? Or am I focused mostly on my own frame?

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

What can the lawyer learn from explicitly examining the lists and diagrams and asking questions? The lawyer can see problem areas for the client and identify where the client will be judged negatively by the legal system. By identifying the similarities and differences between the lawyer and legal system, the lawyer is able to see where his judgment might overlap the decision-maker and provide insight into some of the difficulties the client might face.

Lawyers who have used Habit Two find that it often helps to focus them when they are troubled by a case or client. The lawyer can identify why she has been focusing on a particular aspect of a case even when that aspect is not critical to the success of the case. The lawyer may gain insight into why a judge is bothered by a particular issue that is presented in the case. Lawyers might gain insight into why clients are resisting the lawyer’s advice or are “uncooperative.” Lawyers might also begin to understand why clients often see the lawyer as part of a hostile legal system when a high degree of overlap between the lawyer and the legal system is identified.

What can the lawyer do with the insights gained from reading the rings or lists? 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 discovering some of these insights, the lawyer may be better able to explain the client to the legal system and the legal system to the client.

A Final Thought About Habit Two

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 Venndiagrams or other imaginative ways that help the lawyer concretely examine the cultural differences and similarities that are involved in a case.

HABIT THREE: PARALLEL UNIVERSES

Margaret, a 40-year-old Polish American, is seeking custody of her 8-year-old child, Alison. Margaret has been the primary caretaker for Alison and has not worked outside the home since her oldest daughter was born 15 years ago. Margaret's husband George works as a factory worker in a local plant. Margaret's lawyer, Annette, a 40-year-old immigrant from the Dominican Republic, advises Margaret 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 Margaret 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. Margaret agrees to seek counseling. One month later, Annette learns that Margaret has not set up an appointment to have Alison speak to a therapist. Angry, Annette believes that Margaret either does not really care about her case or that she does not believe Annette's assessment that Margaret's case will improve if she puts Alison in counseling.

Habit Three helps a lawyer identify alternatives to her assumed explanations for her client's behavior. The habit of parallel universes³⁸ invites the lawyer to explore multiple alternative interpretations to any client

behavior. While the lawyer can never exhaust the parallel universes that explain a client's behavior, in a matter of minutes, the lawyer can explore multiple parallel universes to explain any client's given behavior at a given moment.

In the above example, one can imagine many different explanations for the client's behavior: the 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 give the child to her husband who was not the primary child caretaker; or the client did not think that she needed to get her into therapy immediately, etc. Race and class differences between the lawyer and client may account for Margaret's behavior or her inaction may be linked to a tendency to procrastinate.

In another example, a lawyer who assumes that a client's lack of questions indicates complete understanding could identify many different reasons why the client has not asked any questions. The client's behavior may instead mean that she is embarrassed, does not want to insult the lawyer, feels it is inappropriate to ask questions, or thinks she understands even if she does not. Using parallel universe thinking, the lawyer for a client who fails to keep appointments can explore parallel universe explanations for her initial judgment that: "She does not care about the case." The behavior may have occurred because the client lacked carfare, failed to receive the letter setting up the appointment, lost her way to the office, had not done what she promised the lawyer she would do before their next appointment, or simply forgotten about her appointment because of a busy life.

The point of the parallel universe habit is to get used to challenging oneself to identify the many alternatives to the interpretations to which we may be tempted to leap, on insufficient information. By doing so, we remind ourselves that we lack the facts to make the interpretation, and we identify the assumptions we are making. The process need not take a lot of time; it takes

only a minute to generate a number of parallel universe explanations to the interpretation to which the lawyer is immediately drawn.

Parallel universe thinking would cause Annette, the lawyer in the introductory example, to resist lecturing Margaret on the merits of counseling for Alison and the importance of counseling to the ultimate success of her case. Instead, the lawyer would first explore with Margaret what she is thinking about the counseling for Alison.

Parallel universe thinking is especially important when the lawyer is feeling judgmental about her client. If we are attributing negative inferences to a client's behavior, we should identify other reasons for the behavior. It is not necessary, or even expected, that the parallel universes generated include the actual explanation for the behavior. Parallel universe thinking lets us know that we need to explore with the client the reason for the behavior rather than operating on assumptions. This exploration may also be helpful in explaining the client's behavior to others.

By engaging in parallel universe thinking, lawyers are less likely to assume that they know why clients are doing what they are doing when they lack critical facts. Parallel universe thinking also allows the lawyer to follow the advice of a cross-cultural trainer who suggests that one way to reduce the stress in cross-cultural interactions is to say, "I wonder if there is another piece of information that, if I had it, would help me interpret what is going on."³⁹

HABIT FOUR: RED FLAGS AND REMEDIES

Jeff, an experienced lawyer who is Jewish and fourth generation Austrian-American, is interacting with his client Charles, an 8-year-old African-American. 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, reticent to talk except to tell Jeff, "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 did Charles think there would be police, Charles replies, "You only get a lawyer if you've done something wrong." He explains that everyone he knows who had a lawyer was put in jail.

What could Jeff have done to get this information early in his representation?

The first three habits focus on ways to think like a lawyer, incorporating cross-cultural knowledge into analyzing how we analyze claims, our clients, and the usefulness of the legal system to addressing the client's concerns. Habit Four focuses on the skills that are needed to accurately communicate information to clients as well as to accurately interpret the verbal and non-verbal information that the client is communicating to us.

Good cross-cultural interaction requires mindful communication where the lawyer remains cognitively aware of the communication process and avoids being on automatic pilot in her responses to the client. In all client interaction, careful attention to the process of communication will improve the quality of the communication. In cross-cultural communication, the lawyer must listen deeply, carefully attuned to the client and continuously monitoring whether the interaction is working and whether adjustments need to be made.

Habit Four is a habit that can be done in the moment and requires little planning for the experienced lawyer. For the new lawyer, who has difficulty paying attention to the process and content of the interview, planning for what to look for can take the place of more "in the moment" observations. The lawyer can identify ahead of time what she will look for to spot good communication and "red flags" that will tell her that accurate, genuine communication is probably not occurring.

In addition to paying attention to red flags and corrective measures, Habit Four encourages culturally sensitive exchanges with clients including the following:

Uses Scripts Carefully

The more we do a particular activity, the more likely we are to have a “script.” Lawyers often have scripts for the opening of interviews, explaining confidentiality, building rapport, explaining the legal system, and other topics common to the lawyer’s practice. However, a mindful lawyer uses scripts carefully, especially in cross-cultural encounters, and instead, develops a variety of communication strategies to replace scripts. As the above example of Jeff and Charles illustrates, assumptions about the information that clients need and scripted responses to explain may result in miscommunication.

Pay Special Attention to Beginnings

A lawyer working with a client from another culture must pay special attention to the beginnings of communications with the client. Each culture has introduction rituals or scripts as well as trust-building exchanges that promote rapport and conversation. A lawyer who is unaware of the client’s rituals must pay careful attention to the verbal and nonverbal signals the client is giving to the lawyer. How will the lawyer greet the client? What information will be exchanged before they “get down to business?” How do the client and lawyer define “getting down to business?” For one, the exchange of information about self, family, status, or background is an integral part of the business; for another, it may be introductory chitchat before the real conversation takes place. If a translator who is familiar with the client’s culture will be involved with the interview, the lawyer can consult with the translator on appropriate introductory behavior.

Use Techniques that Confirm Understanding

Both clients and lawyers in cross-cultural exchanges will likely have high degrees of uncertainty and anxiety when they interact with someone they perceive to be different. The lack of predictability about how they will be received and their capacity to understand each other often leads to this uncertainty and anxiety. To lessen uncertainty and anxiety, both the lawyer and client will be assisted by using techniques that consciously demonstrate

that genuine understanding is occurring. Active listening techniques – including feedback to the client rephrasing his or her information – that are espoused by legal interviewing texts may be used to communicate to the client that the lawyer understands what the client is saying.⁴⁰

In addition to giving the client feedback, the lawyer should look for feedback from the client that the client understands the lawyer or is willing to ask questions if the client does not understand. Until the lawyer knows that the client is very comfortable with a direct style of communication, a lawyer should refrain from asking the client if she understands and instead probe for exactly what the client understands.

Gather Culture-Sensitive Information

How do we gather information that helps us interpret the client within her cultural context? In the first instance, the lawyer should engage in “deep listening” to the client’s story and voice. For reasons identified in Habit One, the lawyer, in question mode, will often be too focused on his or her own context and perspective. When exploration of the client’s values, perspective, and cultural context is the goal, the lawyer needs to reorient the conversation to the client’s world, the client’s understandings, the client’s priorities, and the client’s narrative. Questions that get the client in narrative mode are usually the most helpful. When the client is in narrative mode, the lawyer can actively observe the client and her culture and the client’s approach to the problem. Note, however, that narrative mode may be more difficult for people in some cultures than for others. In some cultures, for example, conversation space is expected to be shared equally and monologues are considered rude or boring.

Questions that ask the client how or what they think about the problem they are encountering may also expose differences that will be helpful for the lawyer to understand the client’s worldview. For example, had the lawyer in the neglect case described above explored even briefly the client’s response to the situation, the lawyer may have learned the source of the client’s

apprehensions. 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? Who else besides the client will 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?

If the client has come from another country, the lawyer should ask the client how this problem would be handled in their country of origin. These questions help the lawyer understand the context within which the client sees the problem. They may, for example, help the lawyer see whom else the client considers importantly involved with what the lawyer may see as an individual concern. These questions also give the lawyer some information about the expectations that the client has for the legal system and for the lawyer. For example, in many legal cultures, the lawyer is the "fixer" or the person-in-charge. In contrast, most law students in the United States are taught client-centered lawyering which sees the lawyer as partner and the client in charge of major decisions about resolving the case.

Look for Red Flags that the Interaction Is Not Working

What are the red flags that mindful lawyers pay attention to in assessing whether the conversation is working for the client and lawyer? In the above example, Jeff had been told that his client was bright and verbal and yet the client was cautious and mostly silent in the interview. This should have raised a red flag for Jeff. Other red flags that the lawyer can look for include:

- The client appears bored, disengaged, or even actively uncomfortable;
- The client has not spoken for many minutes and the lawyer is dominating the conversation;
- The lawyer has not taken any notes for many minutes;
- The client is using the lawyer's terminology instead of the lawyer using the client's words;

- The lawyer is judging the client negatively;
- The client appears angry⁴¹; or
- The lawyer is distracted and bored.

These are a few of dozens of examples. Each lawyer and client, and each lawyer/client pair will have their own repertoire.

The first step is to see the red flag, and be shaken out of complacency. “Uh, oh, something must be done.” The next step is the corrective one. This must be done on the spot, as soon as the red flag is seen. The general corrective is to do anything possible to return to seeking the client’s voice and story.

Explore Corrective Measures

In creating a corrective, the lawyer should be careful to use a different approach than the one that has led to the red flag. For example, if the client is not responding to a direct approach, try an indirect approach. If the call for narrative is not working, ask the client some specific questions or ask for narrative on a different topic.

Other suggested correctives include:

- Turning the conversation back to the client’s stated priority;
- Seeking greater detail about the client’s priority;
- Giving the client a chance to explain in greater depth her concerns;
- Asking for examples of critical encounters in the client’s life that illustrate the problem area;
- Exploring one example in some depth;
- Asking the client to describe in some detail what a solution would look like; and
- Using the client’s words.

These are again only a few examples of many correctives that can be fashioned. Encounter by encounter, the lawyer can build a sense of the red flags in this relationship and the correctives that “work” for this client. Client

by client, the lawyer can gain self-understanding about her own emblematic red flags and correctives that specifically target those flags. Red flags can remind the lawyer to be aware of the client and focused on the client in the moment. With reflection, the red flags can help the lawyer avoid problems in the future.

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 (she lived out of town), was talking in a rambling fashion. The lawyer just back from vacation was thinking angry thoughts towards the client. The lawyer in the extreme stress caused by time pressure and by listening to the client tell about some horrible rapes that she had suffered, was falling back on some awful 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?

Like the proverbial straw that breaks the camel's back, Habit Five recognizes that there are innumerable factors in addition to bias and stereotype that may negatively influence an attorney-client interaction. A lawyer who proactively addresses some of these factors may prevent the interaction from reaching the breaking point. Once the breaking point has been reached, Habit Five asks the lawyer to identify why certain lawyer-client interactions derail and to plan for corrective action to prevent future derailments.

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.

Consider the lawyer in the above example; in the midst of these feelings which were causing the lawyer shame, what can the lawyer do to put the interview back on track and prevent a collision? This lawyer, like all lawyers, had biases and stereotypes that he brought to this attorney-client interaction. Research on stereotypes indicates that we are more likely to stereotype when we are feeling stress and unable to monitor ourselves for bias. By identifying the factors leading the lawyer to the car crash: and by controlling the ones that could be controlled, the lawyer could prevent himself, at least sometimes, from acting on the basis of his assumptions and biases.

The lawyer in the above example, can take a break, have some food and drink and identify what is interfering with his capacity to be present with the client before he resumes the interview. This, however, requires that the lawyer accepts his every thought, including the ugly ones, and finds a way to investigate and control for those factors that are simply unacceptable in the context of lawyering. Knowing oneself as a cultural being, identifying biases and preventing them from controlling the interview or case are keys to Habit Five thinking.

Over time, lawyers can learn to coordinate final factor analysis with Habit One to make sure they identify 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.⁴² In addition to biases and stereotypes, straws that break the lawyer's back frequently include stress, lack of control, poor self-care, and a non-responsive legal system. Final factor analysis identifies the straws that break the lawyer's back in the particular case and corrective steps that may work to prevent this from happening.

For example, assume that a lawyer after working with a few Russian clients begins to stereotype Russians as people who intentionally communicate with a lack of candor with lawyers. Habit Five encourages this lawyer to be extra mindful when interviewing a Russian client. Given her biases, there is a higher likelihood that the lawyer may not find herself fully present with this client. In addition to using the other habits, the lawyer can improve the communication by controlling other factors (hunger, thirst, time constraints, and resource constraints) knowing that this client is at greater risk of being misunderstood by the lawyer.

Like the prudent driver, the prudent lawyer identifies proactively factors that may impede full communication with the client. Some she cannot control: pressure from the court, lack of resources, bad timing, excessive caseload. But some she can: language barrier (through a competent interpreter), her own stress (through self-care and back-to-basics: sleep, food, water), amount of time to spend with client (increase as needed).

Habit Five thinking asks the lawyer to engage in self-analysis rather than self-judgment. A lawyer who has noticed a red flag that recurs in interactions with clients can brainstorm ways to address it. Likewise, a lawyer who has noticed factors that tend to be present at particularly smooth encounters with clients can brainstorm ways to make more use of these advantages. By engaging in this reflective process, the lawyer is more likely to respond to and respect the individual client.

Conclusion

As we indicated in our introduction, these Habits are works in progress. Figuring out what works with clients is a tentative process. Inevitably, our suggestions are culture bound. Because culture is so hidden, we have undoubtedly missed some of the cultural norms that are implicit in our work and therefore we look forward to hearing from those of you who try these Habits whether or not they work for you and your clients. As Professors Montoya and Harrison have noted⁴³:

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.

We invite your comments and feedback.

Sue Bryant

Jean Koh Peters

Peter suggests reading Paul R. Rice, *Attorney-Client Privilege: Continuing Confusion about Attorney Communications, Drafts, Pre-Existing Documents, and the Source of the Facts Communicated*, 48 *American U. L. Rev.* 967 (1999)."

Endnotes

¹ This work grows out of a joint collaborative process between us that started in conversations in the early 90s and began as a project with a concrete goal in Fall 1998 of developing a teaching module about cross-cultural lawyering. Ultimately, that project resulted in these materials for use in clinical courses which we first presented at the 1999 CUNY Conference, “Enriching Legal Education for the 21st Century, Integrating Immigrant’s Perspectives Throughout the Curriculum and Connecting with Immigrant Communities.” This work has also contributed to a Chapter written by Jean Koh Peters in the supplement to her book, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS.

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Our husbands, Jim and Larry, and children, Lizzie, Chris, Alison and Zach, gave critical support throughout the process.

² Culture shock has been defined as "anxiety that results from losing all of our familiar signs and symbols of social intercourse." Oberg, K., *Culture Shock: Adjustment To New Cultural Environments*, 7 PRACTICAL ANTHROPOLOGY, 170 - 179 (1960). It has also been called "cultural fatigue" which includes among other things, a feeling of impotence from being unable to deal competently with the environmental unfamiliarity.

³ Developing cross-cultural competence is usually directed to change in three areas: Cognitive, Affective, and Behavioral. Cognitive goals are aimed at developing awareness and knowledge about culture, affective aims at helping manage emotional reactions to dealing with difference and behavioral focuses on needed skills.

⁴ H. C. Triandis, *INTERPERSONAL BEHAVIOR*, Monterey, CA: Brooks/Cole.

⁵ R. Carroll, *CULTURAL MISUNDERSTANDINGS*, University of Chicago Press, Chicago, 1988, p. 2.

⁶ We have chosen to focus these materials on culture general skills and perspectives that we think will be useful for all lawyers working in cross-cultural relationships. If a lawyer works with a particular community the lawyer should also learn as much as possible about the cultural group the lawyer represents. When using information about a particular group a lawyer should be mindful of the admonition that: "we should - make gentle use of prior knowledge of a group."

⁷ See, David Binder and Paul Bergman, *FACT INVESTIGATION*, West Publishing, 1984, pp. 82-98. Professors Binder and Bergman point out the importance of making explicit the assumptions that underlie arguments about why certain evidence or facts prove a particular point.

⁸ *Id* at *CULTURAL MISUNDERSTANDING*, p.3; others have referred to this

as “conscious incompetence,” where the individual recognizes that cross-cultural competence is needed but the person has not yet acquired the skills for this work. *See*, W.S. Howell, *THE EMPATHETIC COMMUNICATOR*, 30–35 (1982).

⁹ Howell has identified 4 stages of building competence in cross-cultural communication. (1) unconscious incompetence; (2) awareness of misinterpretation but unwillingness to change; (3) conscious competence, where we think about and try to modify; and (4) unconscious competence, where we practice the skills for effective communication so that we no longer have to think about them. *See*, W.S. Howell, *THE EMPATHETIC COMMUNICATOR*, 30–35 (1982).

¹⁰ R. Carroll, *CULTURAL MISUNDERSTANDINGS*, University of Chicago Press, Chicago, 1988, p. 2; 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 value, attitudes, beliefs are kept in people’s minds. Most cross-cultural misunderstandings occur at the subjective culture level. Cushner and Brislin, R., *INTERCULTURAL INTERACTIONS*, Sage Publications, 1996, p. 6.

¹¹ Those who grew up in cultures in the U.S. that prized individualism and self-reliance can identify specific experiences from their childhood that helped them develop these traits, such as paper routes and baby-sitting jobs and proverbs such as “God helps them who help themselves” and “The early bird catches the worm.” Cushner and Brislin, R., *INTERCULTURAL INTERACTIONS*, Sage Publications, 1996, p 7. Not all who grew up in the United States share this commitment to individualism; significant cultural groups in the U.S. prize commitment to community. They might have heard “Blood is thicker than water.”

¹² Ethnocentrism occurs when a person uses his own value system and experiences as the only reference point from which to interpret and judge behavior.

¹³ Cushner and Brislin, R., *INTERCULTURAL INTERACTIONS*, Sage Publications, 1996, p 10.

¹⁴ Critical feminist race theorists have recognized 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 different vantage points and life experiences. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990), Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1249 n. 29 (1991); See also, Melissa Harrison and Margaret E. Montoya, *Voices/Voces In The Borderlands: A Colloquy On Re/Constructing Identities In Re/Constructed Legal Spaces*, COLUMBIA JOURNAL OF GENDER AND LAW, 1996. Professors Montoya and Harrison discuss the importance of seeing multiple and changing identities.

¹⁵ Insider/outsider group distinctions is one of the core themes in cross-cultural interactions. K. Cushner and D. Landis, HANDBOOK OF INTERCULTURAL TRAINING, 2d ed., p. 189. Historical struggles between native countries of the lawyer and client or situations where 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. *Infra*, note 32.

¹⁶ William Gudykunst, BRIDGING DIFFERENCES: EFFECTIVE INTERGROUP COMMUNICATION, Sage, Thousand Oaks, CA, (1994).

¹⁷ What's a lawyer to do if she cannot just tell the client "feel free to ask me questions"? Habit Four discusses ways that lawyers can "test" comprehension by the clients.

¹⁸ As Professor Hing recognized in one of the first articles written about the influence on lawyering of what he called "personal identification issues," "[c]ommon sense, without training, is dangerously fashioned by our own class, race, ethnicity/culture, gender and sexual background." 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).

¹⁹ Different cultures view rituals and superstitions differently. Rituals and Superstition are one of the eighteen categories of knowledge about cultures. See, K. Cushner. and D. Landis, HANDBOOK OF INTERCULTURAL TRAINING, 2d ed., p. 189. One group's ritual is

another's superstition.

²⁰ These lawyers were significantly aided by the advocates of the New York Asian Women's Center who perform both language and cultural translations. The New York Asian Women's Center is a community-based organization that addresses issues of violence against women in the Asian community and maintains shelter and counseling programs.

²¹ Peter Margulies, *Re-Framing Empathy In Clinical Legal Education*, 5 CLINIC L.R. 605 (Spring 1999).

²² The classic fact finder, the judge never saw the evidence. The adversary heard and observed the evidence not from the lawyer but from the client and the adversary not the advocate presented the evidence to the court. *Id.*

²³ See, Michelle Jacobs, *People From the Footnotes: The Missing Element In Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 372 (1997).

²⁴ *Race, Bias & Power in Child Welfare*, CHILD WELFARE WATCH, Spring/Summer 1998, Number 3. Child Welfare Watch is funded by the Child Welfare Fund and produced by City Limits Community Information Services, Inc.

²⁵ R. Breslin, K. Cushner, C. Cherrie, and M. Yong, (1986), INTERCULTURAL INTERACTIONS: A PRACTICAL GUIDE. Beverly Hills, CA. Sage. These scholars identify 18 themes. A summary of the themes can be found in K. Cushner and D. Landis, HANDBOOK OF INTERCULTURAL TRAINING, 2d ed., Thousand Oaks, CA. Sage, p. 189.

²⁶ 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 cultural assumptions. See, Binder, David and Bergman, Paul, FACT INVESTIGATION, West Publishing, 1984, pgs. 82-98.

²⁷ Argyle, *Rules for Social Relationships in Four Cultures*, 38 AUSTRALIAN JOURNAL OF PSYCHOLOGY, 309-318 (1986) argues that rules of punctuality are one of 7 categories of rules that are the most difficult when people move across cultures.

²⁸ Cushner and Brislin, INTERCULTURAL INTERACTIONS (Sage Publications, 1996) 302, international travelers.

²⁹ *Id* at 302.

³⁰ Hofstede (1980) and 1991 as cited in Cushner and Brislin, *INTERCULTURAL INTERACTIONS*, 302 (Sage Publications, 1996), other nations that rank high on 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.

³¹ In her article, *[On the] Road Back In: Community Lawyering In Indigenous Communities*, 5 *CLINICAL L. REV.* 557, Spring, 1999, Professor Zuni identifies the differences in an adversarial system and a traditional indigenous system. *Id* at 594. Professor Zuni's article identifies the different role choices that lawyers who lawyer in more collective societies may make. She encourages an approach that sees the client and her legal problems in the context of her community. Using this framework as opposed to the client-centered individualistic framework causes the lawyer to gather different kinds of information. *Id.* at 575, and to counsel clients differently, *Id* at 577.

³² See also, Kimberly O'Leary, *Using "Difference Analysis" To Teach Problem-Solving*, at 72. Professor O'Leary points to both the ethical rules and concepts of standing as limiting the lawyers' conceptions about who is involved in a dispute. **Need full site**

³³ After hearing our presentation at the 2000 AALS Clinical teacher's Conference, Professor Peter Joy sent the following comments. "Wolfram's *Modern Legal Ethics*," Section 6.3.7 states: "[N]o matter how comforting, attendance of close friends and relatives at the client's conference with a lawyer prevents their meeting from being confidential if the presence of each third party is not necessary for the protection of the client's interests." Wolfram does discuss that in some jurisdictions, like California, the rule is very relaxed and it permits family members, business associates, and other agents necessary to further the interests of the client to be present. So, it is important for students, and lawyers, to know exactly what is at risk by letting in a third person for the interview. Peter suggests reading Paul R. Rice, *Attorney-Client Privilege: Continuing Confusion about Attorney Communications, Drafts, Pre-Existing Documents, and the Source of the Facts Communicated*, 48 *AMERICAN U. L. REV.* 967 (1999)."

³⁴ This Chart appears in K. Cushner and D. Landis, *HANDBOOK OF*

INTERCULTURAL TRAINING, 2d. ed., 189 (Thousand Oaks, CA., Sage).

³⁵ Professor Michelle Jacobs has detailed the importance of recognizing the contextual experience of race and how the failure to do this can impede a lawyer's capacity to understand the client's story or assist other legal decision makers in understanding the client's story. "People From the Footnotes: The Missing Element In Client-Centered Counseling," 27 Golden Gate U. L. Rev. 345, 372 (1997)

³⁶ Cross-cultural trainers tell us 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. This observation was presented at AALS Clinical Teachers Conference in 1992 by Professor Isabelle Gunning, Steve Hardwell, and Sue Bryant.

³⁷ See for example, Howell, CULTURAL MISUNDERSTANDINGS, pp. 2-3; N. Dinges and K. Baldwin, INTERCULTURAL COMPETENCE: A RESEARCH PERSPECTIVE, K. Cushner and D. Landis, HANDBOOK OF INTERCULTURAL TRAINING, 2d ed.. Chapter 6, SAGE Thousand Oaks, CA.; R. Brislin and T. Yoshida, INTERCULTURAL COMMUNICATION TRAINING: AN INTRODUCTION, Thousand Oaks, CA. SAGE, p. 30.

³⁸ Parallel universes is a concept from science fiction, which suggests that every reality has multiple alternatives.

³⁹ R. Brislin and T. Yoshida, INTERCULTURAL COMMUNICATION TRAINING: AN INTRODUCTION, Thousand Oaks, CA. SAGE.

⁴⁰ I do not know how the recommendation that we engage in active listening by identifying the emotional content of the client's communication works for 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 of the emotional content of the message.

⁴¹ Whether the client is in fact angry or the lawyer is misinterpreting the anger, the lawyer should respond by exploring correctives that ask whether there is something the lawyer has done or are there factors that cause the lawyer to judge the client in a negative light? See Jacobs at 361 and 379.

⁴² This analysis is critical if we are to begin to work on some troubling trends that Jacobs has been identified. After detailing studies that

show differential treatment of white and African-American patients by their doctors, Professor Jacobs hypothesizes that lawyers, like doctors, may unconsciously work off of stereotypes in their work. The recent juvenile justice study which showed that African-American youth are more likely to spend time in jail than their white counterparts who have same crimes and records, etc., may be evidence in the legal profession of this phenomenon.

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