

Required Reading for the Community-Building Workshop
Villanova Law School Orientation

Excerpt from:

Susan, Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. Rev. 33 (2001).

"Yet the challenge confronts us: Build a unified society without uniformity. "...(P. 38).

This article describes a process developed by Professors Susan Bryant (CUNY) and Jean Koh Peters (Yale) that can be used by lawyers to increase their cross-cultural competence. By outlining and giving examples of the role that culture plays in decision making, communication, problem solving, and rapport building, the article demonstrates the importance of lawyers learning cross-cultural concepts and skills.

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

(P. 40) To become good cross-cultural lawyers, students must first become aware of the significance of culture on themselves. Culture is like the air we breathe -- it is largely invisible and yet we are dependent on it for our very being. Culture is the logic by which we give order to the world. Culture gives us our values, attitudes and norms of behavior. We are constantly attaching culturally-based meaning to what we see and hear, often without being aware that we are doing so. Through our invisible cultural lens, we judge people to be truthful, rude, intelligent or superstitious based on the attributions we make about the meaning of their behavior.

...Cross-cultural lawyering occurs when lawyers and clients have different ethnic or cultural heritages and when they are socialized by (P. 41) different subsets within ethnic groups. By this definition, everyone is multi-cultural to some degree. Cultural groups and cultural norms can be based on ethnicity, race,

gender, nationality, age, economic status, social status, language, sexual orientation, physical characteristics, marital status, role in family, birth order, immigration status, religion, accent, skin color or a variety of other characteristics. ...

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

When lawyers and clients come from different cultures, several aspects of the attorney-client interaction may be implicated. The capacity (P.42) to form trusting relationships, to evaluate credibility, to develop client-centered case strategies and solutions, to gather information and to attribute the intended meaning from behavior and expressions are all affected by cultural experiences. By using the framework of cross cultural interaction, students can learn how to anticipate and name some of the difficulties they or their clients may be experiencing.

... Lawyers and clients who do not share the same culture face special challenges in developing a trusting relationship in which genuine and accurate communication can occur. ... When the client's culture fosters a significant distrust of outsiders or of the lawyer's particular culture, the lawyer must work especially hard to earn trust in a culturally sensitive way....

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

Inaccurate attributions can cause lawyers to make significant errors in their representation of clients. Imagine a lawyer saying to a client, "If there is anything that you do not understand, please just ask me to explain" or "If I am not being clear, please just ask me any questions." The lawyer might assume that a client who does not then ask for clarification surely understands what the

lawyer is saying. However, many cultural differences may explain a client's reluctance to either blame the lawyer for poor communication . . . or blame himself or herself for lack of understanding. . . . Indeed, clients from some cultures might find one or the other of these results to be rude and, therefore, will feel reluctant to ask for clarification for fear of offending the lawyer or embarrassing himself.

Cultural differences may also 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, this gesture indicates agreement with the speaker; in others, however, it simply indicates that the listener is hearing the speaker. Another common example involves eye contact. In some cultures, looking someone straight in the eye is a statement of open and honest communication while a diversion of eyes signals dishonesty. In other cultures, however, a diversion of eyes is a sign of respect. Students need to recognize these differences and plan for a representation strategy that takes them into account.

More generally,. . . concepts of credibility are very culturally determined. In examining the credibility of a story, lawyers and judges often ask whether the story makes "sense" (P. 44) as if "sense" were neutral. 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 departure is critical to the credibility of her story, how will the fact-finder evaluate the client's credibility? Does the fact-finder come from a culture where dreams are valued, where an interventionist God is expected, or where major life decisions would be based on these expectations or values? Will the fact-finder, as a result of differences, find the story incredible or indicative of a disturbed thought process or, alternatively, as a result of similarities, find the client credible?

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

In other settings, the distinction between individual and collective cultures has been called the most important concept to grasp in cross-cultural encounters. Understanding this distinction and the differences that flow from it are also critically important for lawyers to understand. . . . In an individualistic culture, people are socialized to have individual goals and are praised for achieving these goals. They are encouraged to make their own (P. 46) plans and "do their own thing." Individualists need to assert themselves and do not find competition threatening. By contrast, in a collective culture, people are socialized to think in terms of the group, to work for the betterment of the group, and to integrate individual and group goals. Collectivists use group membership to predict behavior. Because collectivists are accepted for who they are and accordingly feel less need to talk, silence plays a more important role in their communication style.

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

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

and consequences within a collective cultural context that was far different than their own.

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

Each of these cases presented stark cultural contrasts with clear connections to lawyering choices. In hindsight, it is easy to see the cultural contrasts and their effects on the clients' and lawyers' perceptions of what actions were appropriate and what accommodations were acceptable. In the heat of the moment, however, cases are more difficult, and the differences and similarities are more subtle and, at times, invisible. [O]ur job is to develop ways to make the invisible less so. . . .