

Multicultural Lawyering: Teaching Psychology to  
Develop Cultural Self-Awareness

DRAFT: DO NOT CITE OR CIRCULATE

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The Supreme Court's decisions in the Michigan affirmative action cases<sup>2</sup> has reenergized our national conversation regarding diversity. The Court's endorsement of diversity as "essential" to quality education, preparation for work in a global economy, cross-racial understanding, and decreasing prejudice<sup>3</sup> was unexpected.<sup>4</sup> A core premise of this endorsement is that "the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints."<sup>5</sup> This article, however, does not directly review the Michigan affirmative action decisions. Rather, the article considers the implications of this rationale as well as

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<sup>2</sup> White applicants who were denied admission to the University of Michigan at Ann Arbor's undergraduate college and law school sued the university to challenge its affirmative action programs. The undergraduate college used a point-allocation system, by which racial and ethnic minorities could receive up to 20 points for their racial/ethnic membership. Points also were awarded for academic excellence, as demonstrated by GPA and test scores, athletic prowess, other talents, geographic diversity, etc. An applicant typically needed 100 out of 150 points to be admitted right away. The Supreme Court struck down this system as approximating a quota because the allocation of points did not allow sufficiently individualized review of each applicant. *Gratz v. Bollinger*, 539 U.S. --, Slip Op. No. 02-516 (June 23, 2003). The law school utilized a more individualized, holistic admissions process, with the goal of achieving a "critical mass" of racial and ethnic minority members. This process was upheld as constitutional. *Grutter v. Bollinger*, 539 U.S. --, Slip Op. No. 02-241 (June 23, 2003).

<sup>3</sup> *Grutter*, Op of Justice O'Connor, at 16-18.

<sup>4</sup> Lyle Denniston, *High Court's Course Debated after Rulings Two Key Civil Rights Decisions Mark Shift from Conservatism*, BOSTON GLOBE, June 30, 2003, at A3; Jan Crawford Greenberg, *High Court Rulings Stun the Right Decisions on Race, Gays Show Justices' Knack for Surprise*, SUN SENTINEL (Ft. Lauderdale, FL, Broward Co. Metro ed.), June 29, 2003, at 4A; Linda Greenhouse, *The Supreme Court: Overview; In a Momentous Term, Justices Remake the Law, and the Court*, N.Y. TIMES, July 1, 2003, at A1; Tony Mauro, *It's a Mad, Mad, Mad, Mad Court/Justices Upended Expectations in 2002-2003 Term*, TEXAS LAWYER, July 7, 2003, at 12; and Martin Michaelson, *The Court's Pronouncements Are More Dramatic and Subtle Than the Headlines*, THE CHRONICLE OF HIGHER EDUCATION, July 18, 2003, at Review 11.

<sup>5</sup> *Id.* at 18. (citations omitted). Justice O'Connor relied on the briefs of the respondent law school and numerous *amici* from the business world and the military in reaching her conclusion. *Id.* at \_\_\_\_.

the rationale that is missing – the ongoing role affirmative action plays in redressing past and current discrimination<sup>6</sup> – for training law students to practice with multicultural competence.

My concerns with the Court’s emphasis on exposure to diverse students are twofold. First, this emphasis ignores ongoing discrimination faced by members of nondominant cultures. Now, diversity is acceptable because it helps white students compete in a global marketplace rather than to redress ongoing discrimination. Second, by ignoring ongoing discrimination, the emphasis on exposure suggests that structural diversity<sup>7</sup> alone could eradicate a history of prejudice and discrimination and create culturally competent workers within one generation.<sup>8</sup> Such a suggestion minimizes the need for institutional support for diversity and acknowledgement that discrimination continues. Without such support, “[a] campus could be full of minority students<sup>9</sup> yet still have a segregated environment without meaningful interactions between different racial and ethnic groups.”<sup>10</sup> Indeed, students from culturally diverse backgrounds might face pressure to contribute diverse cultures, ideas, and viewpoints to the classroom

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<sup>6</sup> As Justice Ginsburg noted, “In the wake of ‘a system of racial caste only recently ended, large disparities endure. Unemployment, poverty, and access to health care vary disproportionately by race. Neighborhoods and schools remain racially divided.” *Gratz*, 539 U.S. at \_\_\_; Slip Op. at 1 (J. Ginsburg dissenting).

<sup>7</sup> Structural diversity refers to the “levels of diversity” in an institution. *Grutter v. Bollinger*, No. 02-241, Brief of the American Psychological Ass’n as Amicus Curiae in Support of Respondents, 2002 US Briefs 241, 17 (2003) (hereinafter APA amicus brief); Gurin Report, Theoretical Foundations @ 4.

<sup>8</sup> *Grutter*, 539 U.S. at \_\_\_, Slip Op. O’Connor at 31. Justice O’Connor evinced the hope that, given the progress in minority enrollments since the decision in *Regents of Univ. of California v. Bakke*, 438 U.S. 265 (1978), “25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.”

<sup>9</sup> The emphasis in the Michigan cases was, of course, on racial and ethnic diversity. The arguments advanced in these cases as well as in this article apply as well to a broader definition of diversity.

<sup>10</sup> APA amicus brief, *supra* note \_\_\_, at 18. Full institutional support for cultural competence would allow the institution itself to become culturally competent. For this to occur, the institution would need to value diversity, engage in self-assessment of its own culture, develop means to accommodate difference, integrate cultural competence into the institution, and adapt to diversity. Carolyn Copps Hartley & Carrie J. Petrucci, *Justice, Ethics, and Interdisciplinary Teaching and Practice: Practicing Culturally Competent Therapeutic Jurisprudence: A Collaboration between Social Work and Law*, 14. WASH. U. J.L. & POL’Y 133, 171-73 (2004).

experience<sup>11</sup> and to be diverse in a way that is “global,” rather than partly American.<sup>12</sup> In short, an emphasis on exposure alone maintains the perception of diverse students as “the other” and absolves students in the dominant American culture from understanding their own culture and the ways in which that culture – especially its legacy of discrimination – affects their interactions with other individuals.

The literature on developing multicultural competence, of course, does not adopt so simplistic a perspective. Empirical studies in the social sciences support the need for educational initiatives specifically designed to teach multicultural competence<sup>13</sup> in combination with meaningful exposure to multicultural interactions.<sup>14</sup> Through these studies, consensus has arisen that multicultural competence begins with cultural self-awareness.<sup>15</sup> Cultural self-awareness is the key because it enables lawyers to “recognize that as cultural beings, they may hold attitudes and beliefs that can detrimentally influence their perceptions of and interactions with individuals who are ethnically and

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<sup>11</sup> Perry Bacon, Jr., *How Much Diversity Do You Want from Me?* TIME, July 7, 2003, at 108. Bacon, an African-American journalist at TIME, comments, “O’Connor’s diversity rationale doesn’t just pressure colleges to admit more minority students. It gives me and other underrepresented minority students an added burden: delivering diversity. It creates expectations that I have a uniquely black viewpoint to contribute and that part of my responsibility as a student or worker is to do that.” In essence, a new stereotype is being created, and people of color may feel “stereotype vulnerability,” or pressure to behave in conformity with the stereotype. Marc R. Poirier, *Gender Stereotypes at Work*, 65 Brooklyn L. Rev. 1073, 1098-99 (1999).

<sup>12</sup> The emphasis on multicultural competence to function in a global marketplace suggests that such competence is necessary to deal with non-Americans, and this suggestion in turn implies that all Americans, regardless of cultural background (racial, ethnic, sexual orientation, socioeconomic class, etc.) are sufficiently uniform that multicultural competence need not be developed as to them. [Need to define American???

<sup>13</sup> For a comprehensive review and listing of such empirical studies, see Gurin Report, Appendix B. See also Cruz Reynoso & Cory Amron, *Diversity in Legal Education: A Broader View, A Deeper Commitment*, J. of Legal Educ., December 2002, at 491, 503-5 (encouraging law schools to “foster pedagogical and curricular innovation” to promote diversity’s values).

<sup>14</sup> See, e.g., APA amicus brief, *supra* note \_\_\_\_, at 12-15 and studies cited therein.

<sup>15</sup> See, e.g., American Psychological Ass’n, *Guidelines on Multicultural Education, Training, Research, Practice, and Organizational Change for Psychologists* (approved August 2002) (hereinafter APA Guidelines) (copy on file with author); Patricia Arredondo & G. Miguel Arciniega, *Strategies and Techniques for Counselor Training Based on the Multicultural Counseling Competencies*, J. of Multicultural Counseling and Development, October 2001, at 263, 266; Paul B. Pedersen, CULTURE-CENTERED COUNSELING INTERVENTIONS: STRIVING FOR ACCURACY 203 (1997); Derald W. Sue & David Sue, COUNSELING THE CULTURALLY DIFFERENT: THEORY AND PRACTICE 17 (3d ed. 1999).

racially different from themselves.”<sup>16</sup> The risk of errors in perception and judgment is even greater in clinical programs because of the power differential between the client (usually a poor person of color) and the student attorney, usually a more privileged member of the dominant culture.<sup>17</sup> However, within the newer world of multicultural competence training for lawyers, the emphasis on concrete skills<sup>18</sup> (how do I interview a client who is culturally different from me?) can encourage law students to take shortcuts that reinforce the perception of the client as “the other” and to avoid developing cultural self-awareness.<sup>19</sup>

The partial solution I offer today is to include the teaching of cognitive and social psychology relevant to multicultural lawyering in law school. Within the multicultural lawyering literature, an understanding of the underlying psychological theories often is present,<sup>20</sup> but the literature emphasizes concrete interventions that allow students to

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<sup>16</sup> APA Guidelines, *supra* note \_\_\_\_, at 17. The APA places self-awareness as the first of its guidelines for multicultural counseling. Note that the APA Guidelines deal solely with racial and ethnic cultural competence. Its strictures, however, also apply to other kinds of cultural diversity, which are included in this article.

<sup>17</sup> See Bea Wehrly, PATHWAYS TO MULTICULTURAL COUNSELING COMPETENCE: A DEVELOPMENTAL JOURNEY 171 (1995) (advising psychotherapists to address cultural self-awareness, including racism, because of the power counselors have over their client’s lives). **A Bryant or Tremblay cite?** Even when the student attorney is a member of, for example, a racial or ethnic minority, she acquires aspects of power vis à vis her client due to her role as the professional in the relationship. **CITE – maybe something on intersectionality.**

<sup>18</sup> See generally Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyering*, 8 Clinical L. Rev. 33 (2001) (espousing five habits as “process to avoid cultural blinders and recover from cultural blunders”); Paul R. Tremblay, *Interviewing and Counseling across Cultures: Heuristics and Biases*, 9 Clinical L. Rev. 373 (2002) (offering “concrete ways to change behavior, especially drawing on other field’s exploration of cross-cultural interaction”). These authors do not ignore need for self-awareness, but students will tend to leapfrog over that step.

<sup>19</sup> See discussion *infra* at \_\_\_\_.

<sup>20</sup> Bryant, *supra* note \_\_\_\_, at \_\_\_\_, Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 Golden Gate U.L. Rev. 345, 380-1? (1997), Tremblay, *supra* note \_\_\_\_, at 385-7, 407-16? Other authors have written expressly about the relevant psychology but as a means of understanding the actions of others, not the attorney herself. See, e.g., Stefan H. Krieger & Richard K. Neumann, Jr., *ESSENTIAL LAWYERING SKILLS* 130-32 (2<sup>ND</sup> ed. 2003) (understanding how clients create narratives and how courts and juries perceive them), Poirier, *supra* note \_\_\_\_, at \_\_\_\_ (accounting for ongoing gender discrimination in employment), Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 Stan. L. Rev. 1161, \_\_\_\_ (1995) (same), Kim Taylor-Thompson, *Empty Voices in Jury Deliberations*, 113 Harv. L. Rev. 1261,

bypass the need for cultural self-awareness. Specifically, the literature teaches multicultural lawyering through learning about the out-group culture of the client and does not include efforts to understand ourselves as perpetrators (whether active or passive) of the dominant American culture.<sup>21</sup> Without such an understanding, we risk overlooking the ethnocentric bias the dominant culture inculcates in its members, which can result in the formation of stereotypes and/or (un)conscious discrimination toward out-group members, even in individuals who consider themselves to hold progressive attitudes on diversity.<sup>22</sup> Consequently, students will not lawyer with multicultural competence unless we also emphasize self-awareness, challenging students and ourselves to examine the attitudes, beliefs, and knowledge that create and reinforce social constructions<sup>23</sup> that can (un)consciously perpetuate discrimination.<sup>24</sup>

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\_\_\_\_ (2000) (understanding dynamics of juries that include women and racial/ethnic minorities). One exception is Robert M. Bastress and Joseph D. Harbaugh, *INTERVIEWING, COUNSELING, and NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION* 19-57 (1990) which includes a chapter on “Helping Theories” designed to assist students to understand themselves as helpers. This information does not explicitly address multicultural lawyering.

<sup>21</sup> Jacobs, *supra* note \_\_\_\_, at 373 (need to recog need for understanding cl’s context), 380-1 (need to address own racism else won’t be aware of effect on lawyering – but how?); accepts that atty learning more about cl’s culture helps to increase familiarity and decrease anxiety about the other (400-01) Bryant’s five habits are useful, concrete ways to think about similarities and differences but do not expressly address power dynamics or discrimination that can arise from cultural difference. Bryant, *supra* note \_\_\_\_, at \_\_\_\_.

<sup>22</sup> The unconscious privilege that members of the dominant culture, usually whites, typically enjoy can increase resistance to examining issues of discrimination because exploration of ethnocentrism “challenges the common and accepted images and messages members of the majority culture have received since childhood.” Hartley, *supra* note \_\_\_\_, at 137-38.

See if Gupta has a reference here. Or use her conference remarks, *Color Lines*, Sept. 1, 2003: self reporting indicates a decrease in conscious, or intentional, prejudice but studies indicate a strong unconscious bias can still operate. See part 3 *infra*. Ex. of her research measuring reaction times to images and words.

<sup>23</sup> Social constructions are “cultural characterizations or popular images individuals hold that serve to define certain groups in society.” Constructions involving race or ethnicity in particular are strongly held, and the more strongly held a construction is, “the more resistant are the attitudes associated with [it] to new and contradictory information.” Hartley, *supra* note \_\_\_\_, at 163-64.

<sup>24</sup> Jacobs, *supra* note \_\_\_\_, at 391 (active listening, empathy aren’t sufficient to address cross-cultural issues; need to understand why race-linked issues arise). Gupta @ *Color Lines*: reports 30+ studies over past 10 yrs show, for example that people interpret ambiguous behavior along race lines, with the benefit of the doubt going to members of the same cultural group as the perceiver; whites w/ higher levels of prejudice more clearly show cold, distand, uncomfortable behavior in interactions w/ members of other racial groups.

This article proposes a framework in which to teach law students to develop self awareness, as a first step in developing multicultural lawyering competence. The framework operates as both a theoretical underpinning and as a means to lawyer with multicultural competence, but the article itself focuses on theory over practice. The article thus first reviews the development of client-centered lawyering, to the recognition that dominant models of lawyering described clients of color in pathological terms. Part two considers the development of more inclusive models of lawyering based on developments in psychotherapy and social work education. Part three describes cognitive and social psychology relevant to multicultural lawyering, including empirical studies that demonstrate the prevalence of unconscious discrimination. Finally, Part four uses the lessons of this psychology to develop a framework for teaching students to develop cultural self-awareness.

#### I. From Client-Centered to Multicultural Lawyering.

Lawyers are professionals because they are trained in an area that requires intellectual skill and specialized knowledge.<sup>25</sup> This training creates a power imbalance in the lawyer-client relationship: the client supposedly goes to the lawyer for assistance because the lawyer has expertise the client lacks.<sup>26</sup> Thus, in a traditional model of lawyering, the lawyer controls: she is the one who knows the law and uses this knowledge to make predictions about the best legal outcomes and to set legal strategy.<sup>27</sup>

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<sup>25</sup> Oxford Legal Usage Dictionary.

<sup>26</sup> Bastress & Harbaugh, *supra* note \_\_\_\_, at 283: reminding students that the lawyer client relationship “necessarily renders the client susceptible to manipulation by the lawyer” due to the lawyer’s control of the structure, agenda, and knowledge of the law. Bastress and Harbaugh warn that “domination and manipulation can only be avoided by persistent and conscientious self-control by the more powerful party.” *Id.*

<sup>27</sup> David A. Binder, Paul Bergman, Susan C. Price & Paul R. Tremblay, *Lawyers as Counselors: A Client-Centered Approach* 4 (2<sup>nd</sup> ed 2004) (hereinafter *Lawyers as Counselors*).

But the traditional model of lawyering is in many respects unsatisfactory. Crafting a good solution to a client's problem could require familiarity with more than just the relevant legal facts; indeed, familiarity with more facts about the client's situation could determine whether the lawyer even is thinking about the right legal claim. Clients too might be unhappy with directive lawyering: humanized lawyering accords them more respect and allows them greater control over the process.<sup>28</sup> So, client-centered models of lawyering have developed. The first model, promulgated by Binder, Bergman, and Price,<sup>29</sup> recognizes that the client has superior knowledge about her values, goals and situation, which will enable her to better choose a satisfactory resolution.<sup>30</sup> Thus, client-centered lawyering attempts to shift the power imbalance by engaging the client as a participant in the lawyering process.<sup>31</sup>

However, the original formulation of client-centered lawyering was flawed. Although it helped to bring the client into the lawyering process, the Binder, Bergman, and Price model conceptualized the client as a clone of the lawyer, minus the legal know-how. This clone shared the lawyer's socioeconomic status, perspective, organizational modes, etc. – for example, related his situation in clear, chronological order – and thus was ready, willing, and able to participate in the lawyering process.<sup>32</sup> Any other kind of client was perforce “difficult” and did not fit the model easily.<sup>33</sup> I don't say that such a paragon does not exist, but, at the Boston College Legal Assistance Bureau (BCLAB),

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<sup>28</sup> *Lawyers as Counselors*, *supra* note \_\_\_\_, at 4-8.

<sup>29</sup> Binder & Price, *Legal Interviewing and Counseling: A Client-Centered Approach* (1977), now *Lawyers as Counselors*, *supra* note \_\_\_\_.

<sup>30</sup> *Lawyers as Counselors*, *supra* note \_\_\_\_, at 5; Krieger & Neuman, *supra* note \_\_\_\_, at 22.

<sup>31</sup> *Lawyers as Counselors*, *supra* note \_\_\_\_, at 8; Krieger & Neuman, *supra* note \_\_\_\_, at 22-23.

<sup>32</sup> Jacobs, *supra* note \_\_\_\_, at 349-53; Ann Shalleck, *Constructions of the Client within Legal Education*, 45 *Stan. L. Rev.* 1731, 1742-8 (1993).

<sup>33</sup> *Lawyers as Counselors* labels clients as “atypical” or “difficult” if they are reluctant to discuss certain topics or to commence an interview; aged and infirm; rambling in speech; hostile, angry, and explosive; and untruthful. *Lawyers as Counselors*, *supra* note \_\_\_\_, at 247-68.

where we teach the Binder, Bergman, and Price model, our students consistently complain that the model does not fit our clientele, who are overwhelmingly white and poor. In fact to address the students' complaint [?], BCLAB long has added a special class, taught by Lynn Barenberg, the social worker on faculty, which focuses on working with our particular clientele.<sup>34</sup>

I emphasize the whiteness of the BCLAB clientele to make the point that the original Binder, Bergman, and Price model does not contemplate even clients of different socioeconomic status within the same racial or ethnic group as the majority of our student lawyers.<sup>35</sup> The model thus ignores the fact that money and other power and privilege differences also affect the client's willingness to participate in the lawyering relationship.<sup>36</sup> I recall, for example, a woman client who told me that I could not possibly understand her situation as a homeless survivor of domestic violence, who bounced from shelter to shelter with a small bag of clothes, because I have a loving husband and drive a new car.<sup>37</sup>

In "Constructions of the Client within Legal Education," Anne Shalleck points out that this undifferentiated model of client-centered lawyering in fact maintains the lawyer as the dominant player. She notes that the model favors a chronological narrative over

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<sup>34</sup> It is interesting that the social worker teaches this class; we are saying that her training is more culturally sensitive than ours as lawyers – and that's true. But by separating out the class from our regular seminar schedule and sending mixed messages as to attendance, we are also sending a message that her knowledge is less important than the lawyers'.

<sup>35</sup> The new edition of *Lawyers as Counselors* does address issues of multicultural counseling explicitly. See, e.g., *Lawyers as Counselors*, *supra* note \_\_\_\_, at 32-40.

<sup>36</sup> Shalleck, *supra* note \_\_\_\_, at 1742-8. By contrast, social work education emphasizes that students be aware of how their clients' history of discrimination affects them in their interactions with the social worker as well as with groups and organizations. Social work education, therefore, recognizes that, "to interact effectively with clients, particularly in a multicultural context, the client perspective must also be acknowledged, whether it is supported by research or not." Hartley & Petrucci, *supra* note \_\_\_\_, at 144.

<sup>37</sup> The client eventually reconciled with her husband, vacating her abuse prevention order in a hearing at which I was present. After the hearing, she and her husband both thanked me for my support and assistance in effectuating the reconciliation.

other forms of storytelling, depends on the lawyer to determine the importance of both legal and nonlegal concerns, assumes a standardized client, and ignores power imbalances.<sup>38</sup> Thus, the Binder, Bergman, Price model “uses the lawyer-client relationship to construct the interests and motivations of clients through criteria the law controls.”<sup>39</sup>

Indeed, concerns about a “one-size-fits-all” training model arose among mental health professionals before they arose among law clinicians.<sup>40</sup> Derald and David Sue warned that an “ethnocentric” model of counseling teaches students to practice in a way that can harm their clients.<sup>41</sup> The model views the experiences of clients of color “from the ‘White, European-American perspective’ . . . [and] the focus tends to be on their pathological lifestyles and/or a maintenance of false stereotypes.”<sup>42</sup> For example, a counselor might view a patient’s reluctance to self-disclose as paranoia, when in fact that reluctance might be “a healthy reaction to racism” from the counselor<sup>43</sup> or “overshadow” a client’s job-related problems with personal ones, resulting in an underdiagnosis of psychopathology.<sup>44</sup> Thus, mental health professionals also clearly recognized that an

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<sup>38</sup> Shalleck, *supra* note \_\_\_\_, at 1742-8.

<sup>39</sup> *Id.* at 1747.

<sup>40</sup> Sue & Sue, *supra* note \_\_\_\_, at 11-12, discussing studies dating from the late 1970s in clinical and counseling psychology that indicated the failure of the profession to “meet the particular mental health needs” of people of color.

<sup>41</sup> *Id.* at 12. Sue and Sue explored, for example, cultural differences in support structures and decision making could lead to misunderstandings in the therapy relationship. [ck this.]

<sup>42</sup> *Id.* at 12. Charles R. Ridley reminds us that “judgment [about diagnoses, treatment, referrals, etc.] is biased in the direction of preexisting stereotypes when the material to be judged is ambiguous or complex,” as it typically is in counseling and lawyering relationships. He therefore warns counselors “to be alert, not only to biases in judgment, but also to their personal biases as judges.” Charles R. Ridley, OVERCOMING UNINTENTIONAL RACISM IN COUNSELING AND THERAPY: A PRACTITIONER’S GUIDE TO INTENTIONAL INTERVENTION 54-5 (YEAR).

<sup>43</sup> *Id.* at 62-5. Ridley describes “cultural paranoia” as “a healthy reaction to racism. The minority client who fears the White counselor and avoids self-disclosure fits this category.” By contrast, “functional paranoia” is “an unhealthy psychological condition. Minority clients who have a pervasive suspicion fit this category. They would not disclose to any counselor regardless of race.” *Id.* at 63.

<sup>44</sup> *Id.* at 59. Diagnostic overshadowing is defined as “the tendency of counselors to use one diagnosis to obscure or minimize the importance of another diagnosis. In such cases, counselors underdiagnose

ethnocentric model of practice, combined with a power imbalance in favor of the professional, creates a system that permits replication of societal discrimination.<sup>45</sup>

Small wonder, then, that Michelle Jacobs should find the existing client-centered model so troubling when applied to the primary consumer at her clinic, namely poor, black clients.<sup>46</sup> Jacobs reminds us that clients labeled difficult by textbooks espousing client-centered lawyering<sup>47</sup> might be resisting the lawyer's invitation to participate in the lawyering process. This resistance could arise in reaction to unconscious racism by the lawyer who fails to recognize "the real client in her full context – culturally, politically and economically."<sup>48</sup>

In the legal arena, as Jacobs warned, attorneys who learn an ethnocentric model are ill-equipped to perceive and understand different values and world views presented by their clients. These blinders can result in a lawyer's misperception of culturally-based behaviors by her client or reactions to her own culturally-based behaviors. They can affect the lawyer's ability to build trust and, therefore, the information the client chooses to share.<sup>49</sup> They also can determine how the lawyer frames the client's legal problem and

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psychopathology and minimize the client's need for treatment." Ridley provides the example of a Native American college sophomore at a predominantly White university who seeks counseling at a time when she is having problems selecting a major. The counselor chooses to focus on the student's efforts to adjust to the university rather than on the student's need to select a major. In so doing, the counselor may overlook concerns about, for example, choosing not to major in Native American studies, uncertainty about sciences versus humanities, or more specific concerns related to a major. *Id.*

<sup>45</sup> Wehrly, *supra* note \_\_\_, at 167-8 (recognizes that power imbalance in therapeutic relationship and cultural dynamics gives counselor power to perpetuate oppression)

<sup>46</sup> Jacobs, *supra* note \_\_\_, at 352-3 (model creates an "essentialist" client, i.e., a standardized one that does not take into account people at the bottom of privilege)

<sup>47</sup> Jacobs, *supra* note \_\_\_, at 355-61 (critiquing client behaviors considered to be problematic through a racial culture lens)

<sup>48</sup> Jacobs, *supra* note \_\_\_, at 352-53, 355. Charles Ridley points out that, "Many counselors are ineffective with minority clients because they fail to see the 'big picture.' They overlook societal factors that influence the behavior and adjustment of these clients." He therefore recommends that counselors learn of external pressures their clients encounter, such as racism and economic and educational disadvantages. Ridley, *supra* note \_\_\_, at 12.

<sup>49</sup> Anthony A. Alfieri, *Stances*, 77 Cornell L. Rev. 1233, 1249 (1992); Jacobs, *supra* note \_\_\_, at 389.

directs the strategy.<sup>50</sup> We thus end up with lawyers trained to consider clients who do not fit the model to be “pathological” and who believe that multicultural lawyering involves only a slight tweaking of the basic model.<sup>51</sup>

For example, a white student at BCLAB was representing an African American client in a public housing eviction proceeding for nonpayment of rent. The client had told the intake worker falsely that the only rent allegedly due was not owed because the housing authority had failed to grant her a 12-month freeze on rent once she stopped receiving public assistance benefits and began working. Later, the client told the student that, in fact, she owed about an additional year’s worth of rent because she had not paid the rent that was based on her public assistance income. The student was dumbfounded at the client’s earlier fabrication (in the process overlooking the fact that the client had “come clean” and ignoring the good reason for telling the lie initially – to obtain an intake appointment) and that the client had not paid rent when, technically, she had the income to do so. The student continued the interview, asking questions about the rent that was due. The client told the student that she had made efforts to pay the rent but that money orders had been lost or stolen and she no longer had the money order receipts. Based on this information, the student fashioned a negotiation strategy of a low-amount, 18-month payment plan. Later, after the student had left the clinic and I was preparing for the court hearing, I learned that the client had not paid rent because she was fed up with the paternalistic, racist, and often hostile attitude of her housing manager. She was unwilling to negotiate with him but instructed me to offer a shorter, higher-level payment plan to the housing authority lawyer who had readily conceded the rent freeze. She based

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<sup>50</sup> Jacobs, *supra* note \_\_\_\_, at 380-1, 391.

<sup>51</sup> Sue & Sue, *supra* note \_\_\_\_, at 12.

this instruction on her willingness to treat with a lawyer with whom she did not have a contentious history and on her desire to show her manager that she was a good and worthy tenant. The client had not shown this aspect of herself – a person with dignity and awareness of the racism she faced – to the student, for she had picked up the student’s prejudice against her.

These critiques recognize that the standard model of client-centered lawyering does not contemplate the practice of law with disenfranchised clients – who are usually poor and racially/ethnically diverse from their lawyers. Thus, suggestions to improve client-centered lawyering also draw on the theories of rebellious lawyering and theoretics of practice to change the underlying discourse between lawyer and client.<sup>52</sup> With rebellious lawyering, the emphasis is on the client: the client’s life, including her membership in an outsider group and her group’s history of subordination – define the legal problem, generate the solutions, and determine the course of action.<sup>53</sup> With this emphasis, the client becomes the driving force in the legal action, participating as an equal in the decision-making process.<sup>54</sup>

With theoretics of practice, the emphasis is on the lawyer: how can the lawyer understand the “assumptions, biases, values, and norms embedded in the law’s workings in order to heighten awareness of the political and moral choices made by lawyers and

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<sup>52</sup> Jacobs, *supra* note \_\_\_\_, at 402-05; Shalleck, *supra* note \_\_\_\_, at 1748-51.

<sup>53</sup> Need a Lopez cite. But also Jacobs, *supra* note \_\_\_\_, at 402-03 (“We cannot allow our students to practice on a client without seeing the client’s reality.”); and Shalleck, *supra* note \_\_\_\_, at 1749-50 (describes rebellious lawyering as using clients stories to solve problems, by accepting client’s knowledge and experience as part of the legal action).

<sup>54</sup> Lopez cite? Jacobs, *supra* note \_\_\_\_, at 402-3.

the legal system”?<sup>55</sup> How can the lawyer “listen[] to and describ[e] clients in a way that does not impose upon them categories constructed by lawyers”?<sup>56</sup>

Both rebellious lawyering and theoretics of practice describe approaches to bridging the gap – cultural and power-based – between lawyers and clients who are different from each other. Building this bridge is not an easy task. Empathy and active listening may elicit more details from the client, and questioning the premises of the American legal system may help the lawyer consciously to avoid its biases. But the lawyer’s cultural lens will operate automatically to filter this information and to create expectations about the lawyer-client interaction. So, unless the lawyer understands her own culture and the ways it affects her interactions with others, she risks perpetuating the status quo of discrimination.<sup>57</sup>

More recently, developments in “the comprehensive law movement,”<sup>58</sup> have made interdisciplinary approaches to lawyering more common. In particular, legal theory has drawn on generalist social work<sup>59</sup> approaches to improve lawyer-client relationships

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<sup>55</sup> Phyllis Goldfarb, *Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory*, 43 *Hastings L.J.* 717, 719-22 (1992).

<sup>56</sup> Shalleck, *supra* note \_\_\_, at 1751.

<sup>57</sup> APA Guidelines, *supra* note \_\_\_, at 21, Wanda M.L. Lee, AN INTRODUCTION TO MULTICULTURAL COUNSELING 15 (1999). A counselor who is not culturally self-aware risks “cultural encapsulation,” or viewing the world from only her cultural lens. Tracy L. Robinson & Mary F. Howard-Hamilton, THE CONVERGENCE OF RACE, ETHNICITY, AND GENDER: MULTIPLE IDENTITIES IN COUNSELING 11 (2000). Cultural encapsulation is dangerous because it can cause errors in interpretation, strategy, and communication. Lee, *supra* note \_\_\_, at 15.

<sup>58</sup> The “comprehensive law movement,” a term coined by Susan Daicoff, refers to ten “theoretical and practice-based approaches . . . that aim to ‘optimize[] human well-being’ and focus[] on ‘extra-legal concerns,’ including the emotions of those involved and relationships.” Hartley & Petrucci, *supra* note \_\_\_, at 135, quoting Susan Daicoff, *The Role of Therapeutic Jurisprudence within the Comprehensive Law Movement* in PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION 465-67 (Dennis P. Stolle et al. eds., 2000). The ten approaches are preventive law, therapeutic jurisprudence, procedural justice, restorative justice, facilitative mediation, transformative mediation, holistic law, collaborative law, creative problem solving, and specialized courts. *Id.* at 135 n. 12.

<sup>59</sup> A generalist social worker has “knowledge and skills [that] encompass a broad spectrum and [] assess[es] problems and their solutions comprehensively.” Hartley & Petrucci, *supra* note \_\_\_, at 140 n.43 quoting Robert L. Barker, THE SOCIAL WORK DICTIONARY 190 (4<sup>th</sup> ed. 1999)

and the effectiveness and reputation of legal systems.<sup>60</sup> The generalist social work model trains the professional to interact with clients at the individual, small group, and agency or community levels so that the “organizational context” of the client is integral to any interaction.<sup>61</sup> As part of that contextual interaction, the client’s culture is vital, and the professional must learn to interact in a client-centered,<sup>62</sup> culturally competent manner.<sup>63</sup>

Training in multicultural lawyering brings together the approaches championed by rebellious lawyering, theoretics of practice, and the comprehensive law movement by “combin[ing] personal growth with content learning and skill development.”<sup>64</sup> As a starting point, multiculturalists focus on a broad understanding of culture as “unstated assumptions, shared values, and characteristic ways of perceiving the world that are normally taken for granted by its members.”<sup>65</sup> Multicultural lawyering training teaches the student to be aware of the cultural basis for his own behavior and champions “use[] a ‘cultural lens’ as a central focus of professional behavior . . . recogniz[ing] that all individuals including themselves are influenced by different contexts, including the historical, ecological, sociopolitical, and disciplinary.”<sup>66</sup> Thus, the student develops a

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<sup>60</sup> Hartley & Petrucci, *supra* note \_\_\_\_, at 135.

<sup>61</sup> Hartley & Petrucci, *supra* note \_\_\_\_, at 140-41.

<sup>62</sup> In social work, client-centeredness entails “be[ing] where the client is.” Hartley & Petrucci, *supra* note \_\_\_\_, at 143. Thus, if the client believes that she experiences discrimination in her daily interactions, then the professional must acknowledge that perspective to be effective in working with the client. *Id.* at 144.

<sup>63</sup> Hartley & Petrucci, *supra* note \_\_\_\_, at 141.

<sup>64</sup> Lee, *supra* note \_\_\_\_, at 196. “The cognitive distance between the mental health service providers and the lower class and minority consumers can be bridged through didactic instruction, but the social and emotional distance can be reduced only through an intensive program of reeducation of the counselors, one aimed at changing their attitudes.” *Id.* at 196, quoting Das (1995 p 47). But see Ridley, *supra* note \_\_\_\_, at 24-5: “Consciousness raising is an inadequate method of combating racism.” Instead, Ridley advocates changing racist behavior because behavior is easier to change. *Id.* at 24-5.

<sup>65</sup> Robinson & Howard-Hamilton, *supra* note \_\_\_\_, at 11 (quoting Bronstein & Quina 1988, p. 14) Bryant provides a list of factors that influence culture, including “ethnicity, race, gender, nationality, age, economic status, social status, language, sexual orientation, physical characteristics, marital status, role in family, birth order, immigrant status, religion, accent, skin color.” Bryant, *supra* note \_\_\_\_, at 41. This article accepts these factors as cultural influences but notes that race, ethnicity, and nationality remain particularly salient in American culture.

<sup>66</sup> APA Guidelines, *supra* note \_\_\_\_, at 11.

“personal-cultural orientation” toward lawyering in which she considers how her and others’ behavior is guided by culturally learned expectations and values,<sup>67</sup> rather than relying on stereotypes.<sup>68</sup> With such knowledge, the student is better prepared to engage in accurate decision making – unbiased by the cultural backgrounds of either the lawyer or the client or by the complexity of the problem presented.<sup>69</sup>

## II. Current Methods of Teaching Multicultural Lawyering

To develop this personal-cultural orientation, diversity trainers recommend a three-fold approach: developing awareness and knowledge of one’s own culture; developing awareness of the client’s culture; and learning specific skills to minimize the impact of one’s own biases and prejudices toward the multicultural interaction.<sup>70</sup> Within each of these domains, students focus on becoming competent cognitively, affectively, and behaviorally.<sup>71</sup>

The literature of multicultural lawyering emphasizes developing awareness of the client’s culture. For example, Stefan Krieger and Richard Neumann urge that students develop “an instinct for situations where another person’s cultural assumptions may be very different from yours.”<sup>72</sup> To develop this instinct, they suggest a three-step process: (1) learn about the other cultures an attorney is most likely to encounter; (2) anticipate

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<sup>67</sup> Both common sense and empirical studies support the proposition that culturally learned beliefs about differences among cultural groups affects interpersonal interactions across groups. Hartley & Petrucci, *supra* note \_\_\_, at 162. These beliefs need not be stereotypes but are often social constructions, or “cultural characterizations or popular images individuals hold that serve to define certain groups in society.” *Id.* at 163-64. “The more strongly held the social construction, the more resistant are the attitudes associated with the construction to new and contradictory information.” *Id.* at 164.

<sup>68</sup> Pedersen, *supra* note \_\_\_, at 203-05.

<sup>69</sup> Bryant, *supra* note \_\_\_, at 56; Ridley, *supra* note \_\_\_, at 56.

<sup>70</sup> Arredondo & Arciniega, *supra* note \_\_\_, at 266. Sue & Sue, *supra* note \_\_\_, at 224-5. The benefit of this approach is that it a competence model – in contrast with earlier models, which “suggest something or someone needs to be fixed,” Arredondo and Arciniega, *supra* note \_\_\_, at 265-6 – “provides guidelines and developmental benchmarks for adaptive cognitive, emotional, and behavioral attributes.” *Id.* at 266.

<sup>71</sup> Arredondo & Arciniega, *supra* note \_\_\_, at 265-6; Bryant, *supra* note \_\_\_, at 48; Robinson & Howard-Hamilton, *supra* note \_\_\_, at 272; Sue & Sue, *supra* note \_\_\_, at 17.

<sup>72</sup> Krieger & Neumann, *supra* note \_\_\_, at 53.

situations in which taking culture into account will improve lawyering and plan non-stereotyped, non-offensive behavior; and (3) apologize in a prompt and straightforward manner if a mistake occurs.<sup>73</sup> Thus awareness of the other, rather than of the self, takes precedence.

Not surprisingly, law students are more receptive to this kind of training. Even when educators warn that students must beware of relying on stereotypes, the laundry lists of cultural differences reinforce the notion of the client as “the other” and suggest that the lawyer is not intolerant but merely ignorant.<sup>74</sup> In addition, this focus more readily enables the student to ignore her relationship to her own culture.<sup>75</sup>

Without a doubt substantive knowledge of other cultures is important. Michelle Jacobs, for example, pointed to a study of American students going to Morocco, which considered how the students handled immersion in a new culture.<sup>76</sup> The students received lectures on cultural differences and classes on the history and culture of Morocco prior to their arrival. However, upon their arrival in Morocco, this instruction did not improve the students’ interactions. Instead, the students’ increased awareness of the differences between the cultures, of their own cultural incompetence, and of the

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<sup>73</sup> Krieger & Neumann, *supra* note \_\_\_\_, at 53. This advice is not wrong, merely incomplete.

<sup>74</sup> The “cookbook approach” to diversity training can lead students to “‘buy into’ the content of a particular manuscript or ‘expert,’” which makes them think they are now ready to work with members of that particular cultural group. Wehrly, *supra* note \_\_\_\_, at 172. Indeed, the brief warnings not to accept whole cloth cultural differences are visibly outweighed by the longer sections devoted to the cookbook approach. See, e.g., *Lawyers as Counselors*, *supra* note \_\_\_\_, at 32-40 (the section on stereotyping consists of approximately one page of text but this section describing cultural differences necessarily takes more space, here approximately three pages).

<sup>75</sup> Social scientists have determined that too limited a focus on learning basic knowledge about other cultures “can give students a false sense of accomplishment and cause them to resist exploring their own cultural heritages or their attitudes toward other cultural groups.” Wehrly, *supra* note \_\_\_\_, at 140 (cite omitted).

<sup>76</sup> Jacobs, *supra* note \_\_\_\_, at 398-401. Study conducted by Stephan and Stephan in 1992; focus on how empathy and attributional complexity (tendency to attribute complex causes to other’s beh; assoc’d w/decreased anx and greater effectiveness in intercultural interaction)

pitfalls in navigating the culture increased the students' anxiety.<sup>77</sup> Stephan and Stephan, the authors of the study, and by adoption Jacobs, hypothesize in part that a better instructional method, namely a combination of lectures and simulation, would more effectively help students to interact with a culture different from their own.<sup>78</sup>

Paul Tremblay, like Krieger and Neumann, urges lawyers to anticipate the most likely areas of cultural differences and the way these differences affect the cross-cultural interaction. He identifies five areas in which differences are most likely to occur – proxemics,<sup>79</sup> kinesics,<sup>80</sup> time and priority considerations,<sup>81</sup> narrative preferences,<sup>82</sup> relational perspectives,<sup>83</sup> and scientific orientation.<sup>84</sup> Tremblay posits that knowledge of cultural differences in these areas will assist the lawyer in avoiding cultural blunders.<sup>85</sup>

But clearly, book knowledge of the other culture alone does not enable culturally competent lawyering.<sup>86</sup> A little knowledge, as the Stephan and Stephan study determined, can increase the lawyer's anxiety. That anxiety can manifest as paralysis – the student who postpones meeting with a client diagnosed with Post-Traumatic Stress Disorder for fear of triggering the trauma – or tentativeness during the interaction – the

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<sup>77</sup> Jacobs, *supra* note \_\_\_\_, at 400.

<sup>78</sup> Jacobs, *supra* note \_\_\_\_, at 400-01.

<sup>79</sup> Tremblay, *supra* note \_\_\_\_, at 389-92 (“perception and use of personal and interpersonal space”)

<sup>80</sup> Tremblay, *supra* note \_\_\_\_, at 392-95 (“way in which bodily movements are used and interpreted;” ie expressions, eye contact, hand shakes, posture, gestures)

<sup>81</sup> Tremblay, *supra* note \_\_\_\_, at 395-96.

<sup>82</sup> Tremblay, *supra* note \_\_\_\_, at 396-99.

<sup>83</sup> Tremblay, *supra* note \_\_\_\_, at 400-03 (individual vs. collective orientations)

<sup>84</sup> Tremblay, *supra* note \_\_\_\_, at 403-06 (acceptance or not of science eg, medicine thru science or faith)

<sup>85</sup> Tremblay, *supra* note \_\_\_\_, at 385-86. Tremblay also warns students to beware the trap of book knowledge. He labels his suggestions “heuristics” to emphasize the necessity of “train[ing] lawyers in the discipline of naïveté and in accepting the tentativeness of our assumptions, with ‘informed not-knowing.’” *Id.* at 407. He also advises students to cultivate their own cultural identities, including acknowledging biases and oppression that their culture contains. *Id.* at 414.

<sup>86</sup> Pedersen warns against the “presumption that multiculturalism in counselor education is merely accumulating additional knowledge about other cultures, without regard to the underlying assumptions or the consequent skills that are necessary.” Pederson, *supra* note \_\_\_\_, at 209 (citation omitted). Similarly, Bryant warns that, as students “learn specific cultural rules, [they] have to be careful to apply them correctly and to guard against substituting them for information about the client.” Bryant, *supra* note \_\_\_\_, at 86-87.

student who self-consciously shies away from eye contact with an Asian-American client – and overeagerness – the student who trots out her repertoire of high school Spanish to greet a Guatemalan client.<sup>87</sup> These reactions are counterproductive; they overemphasize the cultural differences between lawyer and client and, therefore, interfere with the creation of a secure, nonjudgmental environment in which the lawyer and client can interact.<sup>88</sup>

More importantly, as the authors cited above acknowledge, a little knowledge also can trigger biases or prejudices in the lawyer that unconsciously impair cultural competence. An infamous example of book knowledge gone awry occurred in the case of Dong Lu Chen, a Chinese immigrant<sup>89</sup> who had killed his wife with a claw hammer because he believed she was having an affair.<sup>90</sup> I base the discussion that follows on Leti Volpp's account of the sentencing hearing in her article, "(Mis)Identifying Culture: Asian Women and the 'Cultural Defense.'"<sup>91</sup> At the sentencing hearing, Chen's attorney presented a "cultural defense:" that traditional Chinese values about adultery, community, and saving face had caused him to kill his wife and, therefore, that Chen had

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<sup>87</sup> At first glance, the effort to communicate with a client in his primary language might not seem culturally insensitive, as the student intends the exchange to respect the client's culture and to put him at ease. However, the impact on the client might be quite different. As Lisa Navareete of the National Council of La Raza commented on the first Democratic presidential candidates' debate held in Albuquerque, NM, on September 4, 2003, the candidates' efforts at Spanish, "'Speaking Spanish is nice, . . . [b]ut it's not really what the Latino community is looking for, and it's not what they're going to vote on.'" "¿Quién es más gringo?" BOSTON GLOBE, Sept. 7, 2003, at A26.

<sup>88</sup> Wehrly points out that substantive knowledge of the client's culture is helpful as a means of establishing the counselor's credibility with the client: does the counselor prove to be an "effective and trustworthy helper" by appropriately using the substantive knowledge and giving something of value to the client at each session? Wehrly, *supra* note \_\_\_\_, at 172.

<sup>89</sup> Chen and his wife had been living in the United States for approximately one year when he killed her. Leti Volpp, *(Mis)Identifying Culture: Asian Women & the "Cultural Defense,"* 17 HARV. WOMEN'S L.J. 57, 65 (1994).

<sup>90</sup> *People v. Dong Lu Chen*, No. 87-7774 (N.Y. Sup. Ct. Dec. 2, 1988). This article does not discuss the merits of using a cultural defense, as does Volpp's article. Rather, this article considers how the prosecutor and the judge interpreted the information they received through their own cultural lenses.

<sup>91</sup> 17 HARV. WOMEN'S L.J. 57 (1994)

acted without criminal intent.<sup>92</sup> The defense came in through the testimony of a white male anthropologist, Burton Pasternak. Pasternak posited that a Chinese male would react to adultery by his wife “in a much more volatile, violent way” than an American male would.<sup>93</sup> He further pontificated that the Chinese values of the sanctity of family and the need for collective social control over the behavior of individuals effectively required a man to act against an adulterous wife to reaffirm the cultural values, to reassert control over his wife, and, through these corrective measures, to maintain his desirability as a partner to other Chinese women.<sup>94</sup>

The prosecutor, Arthur Rigby, responded to this “lecture” on Chinese culture by interpreting and evaluating its contents through his own cultural lens. (In this regard, he is analogous to the students in the Stephan and Stephan study.) Rigby attempted to undermine the content of lecture, eliciting admissions that Pasternak had no personal knowledge of Chinese men in China acting as Chen had.<sup>95</sup> But, in the main, as Volpp explicates, Rigby’s questions – What is an average American male? Can Chinese in America assimilate? Has China “westernized” since Nixon normalized relations with that country? -- showed that he accepted Pasternak’s premise of the Chinese in America, as foreign and of the Chinese in China as isolated, insular, and closed to “westernizing” influences.<sup>96</sup> With these blinders on, Rigby did not consider whether Chen in fact acted in accordance with the picture of “Chinese male” that Pasternak drew.<sup>97</sup> Similarly, the

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<sup>92</sup> Volpp, *supra* note \_\_\_\_, at 64.

<sup>93</sup> Volpp, *supra* note \_\_\_\_, at 66, citing Dong Lu Chen Record at 74.

<sup>94</sup> Volpp, *supra* note \_\_\_\_, at 68-9. Pasternak implicitly assumed that Chinese women also accept this cultural view.

<sup>95</sup> Volpp, *supra* note \_\_\_\_, at 70, citing Record at ?

<sup>96</sup> Volpp, *supra* note \_\_\_\_, at 70-2. Would be helpful to have portion of transcript?

<sup>97</sup> See Volpp, *supra* note \_\_\_\_, at 89.

white male judge assumed that Chen was a victim of his unenlightened culture in sentencing him to probation.<sup>98</sup>

Because we filter substantive information through our own cultural lens, we must be vigilant in confronting our own biases and prejudices and beware stereotyping the individual client with whom we are working.<sup>99</sup> As Sue Bryant admonishes, the culturally competent lawyer must acknowledge her own cultural persona, analyze how it affects the client relationship, acquire knowledge about the client's culture but apply it accurately, and interact based on the actual details of the client's circumstances.<sup>100</sup> And the key, as many authors recognize, is cultural self-awareness.<sup>101</sup>

The five habits for cross-cultural lawyering that Bryant and Jean Koh Peters have devised provide practical guidance for students to develop such self-awareness.<sup>102</sup> The habits are designed to encourage awareness cognitively, emotionally, and behaviorally. For example, Habit 1, Degrees of Separation and Connection, focuses on cognition and behavior: it asks students to identify similarities and differences between the student and the client and to consider how these aspects affect information gathering/ processing and professional distance/judgment.<sup>103</sup> By deliberately identifying similarities and differences, the lawyer can challenge assumptions about himself and the client, probe for

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<sup>98</sup> Volpp ?

<sup>99</sup> Bryant, *supra* note \_\_\_\_, at 53-4; Tremblay, *supra* note \_\_\_\_, at 415-16.

<sup>100</sup> Bryant, *supra* note \_\_\_\_, at 86-7; Tremblay, *supra* note \_\_\_\_, at 408-9.

<sup>101</sup> Tremblay, *supra* note \_\_\_\_, at 415-16; Jacobs, *supra* note \_\_\_\_, at 395.

<sup>102</sup> Bryant, *supra* note \_\_\_\_, at 33. The habits are: (1) Degrees of Separation and Connection (charting similarities and differences between lawyer and client and considering their significance); (2) The Three Rings (expanding Habit 1 to include the legal decision-maker); (3) Parallel Universes (explore alternative interpretations to client behavior); (4) Red Flags and Remedies (using cultural info to accurately communicate info to and interpret info from client); and (5) The Camel's Back (emotional intelligence to understand when interaction is failing and to take corrective action).

<sup>103</sup> Bryant, *supra* note \_\_\_\_, at 64-8.

facts, and lawyer based on fact.<sup>104</sup> Habit 5, The Camel’s Back, encourages emotional intelligence: the student identifies factors like stress, lack of control, and burn out that disrupt the lawyer-client interaction. That identification permits proactive efforts to minimize future interference and, in conjunction with Habit 1, to identify client traits that cause the lawyer to treat the client with insensitivity.<sup>105</sup>

Because of their concreteness, the habits for cross-cultural lawyering and Tremblay’s related heuristics are particularly valuable in clinical teaching. Their use helps students to change behavior to foster better lawyering for the individual client; the culturally-aware lawyer may hear the client’s narrative more accurately and relay it to the legal decision maker with less distortion.<sup>106</sup> However, because a behavior betraying prejudice can occur automatically, before the habits and heuristics kick in, an understanding of unconscious or automatic discrimination is necessary to supplement the habits and heuristics of multicultural lawyering.<sup>107</sup> This understanding is rooted in cognitive and social psychology, including the formation of cognitive categories or schemas, group behavior, and awareness of the individual’s place within the dominant culture.<sup>108</sup>

### III. The Psychological Underpinnings of Multicultural Lawyering Training

Why is an understanding of psychology necessary? Because, in this more progressive climate, lawyers typically do not discriminate intentionally against clients

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<sup>104</sup> B & KP 2. ???

<sup>105</sup> Bryant ?; B&KP 33-35 ???

<sup>106</sup> Shalleck 1751? Bryant, *supra* note \_\_\_\_, at 56 (“primary goal is . . . ‘isomorphic attributions,’ i.e., to attribute same meaning to behavior and words that the person intended to convey)

<sup>107</sup> Gupta @ Color Lines: identifying source of unconscious race-based preferences leads to solutions. Cf Poirier, *supra* note \_\_\_\_, at 1120-21 (need “to address head-on the source of cognitive tagging of social roles w/gender traits” to equalize women’s participation in professional employment).

<sup>108</sup> Poirier, *supra* note \_\_\_\_, at 1076, 1085.

who differ from them.<sup>109</sup> Rather, they treat clients in culturally insensitive ways due to “unconscious or aversive racism,”<sup>110</sup> which can stem from categorization errors that characterize normal cognitive functioning<sup>111</sup> and from normal tendencies to favor members of social groups similar to themselves over members of other groups.<sup>112</sup> Learning more about these psychological processes provides a basis for understanding how lawyers behave in ways that cause discrimination and, therefore, how to assess their own beliefs and lawyering practices.<sup>113</sup>

A lawyer who understands that his subconscious cognitive categories – called schemas – and the way he automatically employs them can cause subordinating treatment might be less defensive about acknowledging that his behavior is discriminatory. In addition, awareness of how a schema is created might enable a dominant-culture lawyer

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<sup>109</sup>The APA reports that “many people who firmly believe that they have open and favorable attitudes about people of various races and ethnicities will demonstrate that they implicitly (unconsciously) harbor a variety of racial and ethnic prejudices that can translate into subtle discriminatory behaviors.” APA amicus brief, *supra* note \_\_\_, at 6. For example, in one study, the participants consistently made quicker associations between faces of African Americans and words with negative concepts – such as bomb, devil, awful – than they did between faces of White Americans and words with positive concepts – such as peace, joy, and love. APA amicus brief, *supra* note \_\_\_, at 8. Gupta?

In another study, the researchers considered how employers reacted to African-American sounding names (Lakisha, Jamal) compared to White American sounding names (Emily, Greg) in the labor market. The researchers answered over 5,000 classified advertisements, sending a set of four resumes to each posting. Each set of resumes included two better qualified applicants and two lesser qualified applicants. The study demonstrated two levels of discrimination: White-American sounding names received 50% more call backs than African-American sounding names, and the better resume assisted White-American sounding names by 30% but only minimally assisted African-American sounding names (approx. 3%??). Bertrand and Mullainathan. *ColorLines?*

Indeed, social scientists warn that unconscious racism is more likely among helping professionals. This racism occurs because “[c]ounselors often assume that their good intentions automatically make them helpful[,]” and, therefore, do not monitor the consequences of their behavior. Ridley, *supra* note \_\_\_, at 10-11.

<sup>110</sup> Poirier, *supra* note \_\_\_, at 1073 and n2; Ridley, *supra* note \_\_\_, at 10.

<sup>111</sup> Krieger, *supra* note \_\_\_, at 1165.

<sup>112</sup> Ridley, *supra* note \_\_\_, at 13-15. Ridley describes this group thinking as “either/or thinking” in which we place people into single, mutually exclusive categories with the subtle belief that our own group is superior, or in some cases supreme.

<sup>113</sup> Ridley, *supra* note \_\_\_, at 15.

to understand how that culture influences the contents of her schemas<sup>114</sup> and to make conscious efforts to diversify her interactions and to question the contents of her schemas in an effort to be more accurate regarding members of different cultures.<sup>115</sup> Such a change could radically affect the discourse between the client and the lawyer, allowing the client's life, including her membership in an outsider group and that group's history of subordination, to define the legal problem, generate the solutions, and determine the course of action.<sup>116</sup>

Let us consider then, how schemas operate: A lawyer meeting a client automatically places the client into a cognitive category or schema. The schema itself is not inherently bad. Rather, it is simply a means of organizing information “to identify objects, make predictions about the future, infer the existence of unobservable traits or properties, and attribute the causation of events.”<sup>117</sup> A schema thus enables people to process information quickly and largely automatically.<sup>118</sup> We acquire our schemas through experience: behavior becomes associated with race, gender, age, roles, and character traits; event scripts<sup>119</sup> develop through repetition.<sup>120</sup> With regard to people,

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<sup>114</sup> Poirier, *supra* note \_\_\_\_, at 1075 (calling gender schemas “mechanisms of dominance and subordination”). Social scientists posit that, “[i]f we meaningfully change that world – ‘the larger societal context that controls these phenomena’ – we can thereby change individuals’ classification strategies and thus reduce both unconscious bias and its behavioral effects.” *Id.* Indeed, research indicates that “positive exposure to members of other racial groups helps reduce such biases.” *Id.* at 13. (citing Irene V. Blair, *The Malleability of Automatic Stereotypes and Prejudice*, 6 PERSONALITY & SOC. PSYCHOL. REV. 242 (2002)).

<sup>115</sup> APA Amicus Brief, *supra* note \_\_\_\_, at 12-13. (citations omitted). Meaningful encounters with new racial information requires the individual to develop new schema and behaviors to cope with the new information, and if these new schema and behaviors are effective, the individual can develop a more mature cultural identity status that allows more accurate, autonomous multicultural interaction. Hartley & Petrucci, *supra* note \_\_\_\_, at 167.

<sup>116</sup> Shalleck, *supra* note \_\_\_\_, at 1749-50 (describes rebellious lawyering as using clients’ stories to solve problems by accepting cl’s knowledge and experience as part of the legal action).

<sup>117</sup> Krieger, *supra* note \_\_\_\_, at 1188-89. Taylor-Thompson, *supra* note \_\_\_\_, at 1290-91.

<sup>118</sup> APA Guidelines, *supra* note \_\_\_\_, at 19 (citation omitted).

<sup>119</sup> An event script is the expectation of a “particular sequence of causally related events.” Krieger and Neumann give the example of a script for going to a restaurant: being seated, getting a menu, giving one’s order, and being served. Krieger & Neumann, *supra* note \_\_\_\_, at 131.

<sup>120</sup> Poirier, *supra* note \_\_\_\_, at 1093; Krieger & Neumann, *supra* note \_\_\_\_, at 131.

physical characteristics like skin color, gender, and age are readily perceived and therefore are more likely to become salient features in our cognitive categories.<sup>121</sup> Each category then becomes a prototype or reference point for the people we meet, and we interact with the people based on the category that is activated.<sup>122</sup> If we do not question the expectations evoked by the activated category, insensitive behavior can result.<sup>123</sup>

For example, at a recent AALS clinical education conference, I was approached by a fellow clinician who, out of the blue, wanted to know if I knew the Hong Kong - US dollar exchange rate. What had struck him most about me was not that I am a clinician or an American (we were in Canada at the time), but that I look (and am) Asian (-American), and my ethnicity evoked a schema that said Asian appearance = Hong Kong foreigner, so he asked his question.<sup>124</sup>

This kind of social categorization operates on an automatic level. Based on one's own characteristics, a person sorts others into "in-groups" sharing characteristics with the perceiver and "out-groups" that do not.<sup>125</sup> The separation of others into in-groups and out-groups further influences the way in which the perceiver views others. For example, if a lawyer has limited experience with members of different cultures, then the behavior of those few members of the out-group culture becomes more salient and may be seen as representative of that culture.<sup>126</sup> In addition, the perceiver may use her in-group as a

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<sup>121</sup> Poirier, *supra* note \_\_\_, at 1093-94.

<sup>122</sup> Krieger, *supra* note \_\_\_, at 1200-01.

<sup>123</sup> Indeed, a person with low levels of prejudice "must be conscious of the stereotype as stereotype in order to avoid unconscious reliance on it." Taylor-Thompson, *supra* note \_\_\_, at 1289. Cf. Krieger & Neumann, *supra* note \_\_\_, at 180-81 (advising attorneys to evaluate credibility of witnesses by considering schemas used in processing facts)

<sup>124</sup> I didn't know the answer.

<sup>125</sup> APA Guidelines, *supra* note \_\_\_, at 19 (citation omitted).

<sup>126</sup> Krieger, *supra* note \_\_\_, at 1192, 1194-95 (solo member can be more distinctive and therefore more memorable so form stronger schema)

reference point for interpreting her own behavior as well as that of others.<sup>127</sup> On a subconscious level, she may exaggerate differences among groups and favor members of her in-group over members of out-groups.<sup>128</sup> “In-groups are more highly valued, more trusted, and engender greater cooperation as opposed to competition, and those with the strongest in-group affiliation also show the most prejudice.”<sup>129</sup>

A problem with schemas is that they are susceptible to unconscious biases and stereotyping. A stereotype is “a generalized description of a group of people that has usually developed over time on the basis of cross-cultural interactions.”<sup>130</sup> Because a stereotype can become ingrained in a schema, the stereotype can create an unconscious expectation that a specific individual will behave in conformity with the stereotype.<sup>131</sup> If the expectation is distorted or illusory – as it was in the case of Dong Lu Chen – then the perceiver might unconsciously be biased in the way she interacts with the client.<sup>132</sup>

When the client comes from a culture different from the lawyer’s, the risk of stereotyping is greater.<sup>133</sup> Experience with members of the client’s culture that was seen as negative is

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<sup>127</sup> Lee, *supra* note \_\_\_\_, at 10-11.

<sup>128</sup> APA Guidelines, *supra* note \_\_\_\_, at 19-20. (citations omitted). “Prejudice occurs when a person takes his or her own group as the positive reference point from which to judge other people negatively.” Lee, *supra* note \_\_\_\_, at 10.

<sup>129</sup> APA Guidelines, *supra* note \_\_\_\_, at 19-20 (citations omitted). Taylor-Thompson describes a chilling example of group-related bias in a study regarding perceptions of a criminal defendant’s honesty or guilt. The participants watched a simulated robbery trial and then had to reach a unanimous verdict and, if that verdict was of guilt, recommend a sentence. The “defendant” did not testify at trial, and the participants saw him only when he entered a plea of not guilty. The study determined that majority white juries were less likely to believe the defendant to be honest when he was Latino and also more likely to convict with recommendations for the maximum sentence. Taylor-Thompson, *supra* note \_\_\_\_, at 1293 (describing study conducted by Dolores Perez in 1993).

<sup>130</sup> APA Guidelines, *supra* note \_\_\_\_, at 11 (citation omitted). A stereotype is distinguished from prejudice, which is the “endorsement of negative attitudes toward and stereotypes about groups.” *Id.* at 21; Taylor-Thompson, *supra* note \_\_\_\_, at 1291.

<sup>131</sup> Poirier, *supra* note \_\_\_\_, at 1098-99; APA amicus brief, *supra* note \_\_\_\_, at 10 (citations omitted)

<sup>132</sup> Krieger, *supra* note \_\_\_\_, at 1198.

<sup>133</sup> Krieger, *supra* note \_\_\_\_, at 1204.

more readily recalled,<sup>134</sup> and thus the lawyer runs the risk of expecting negative behavior and finding it, whether or not it actually occurred.<sup>135</sup>

In addition, the lawyer is more likely to attribute behaviors of the out-group client to character traits if the behaviors fit the expectation and to situational factors if the behavior seems aberrant.<sup>136</sup> Then, the student attorney starts to label the client who does not return phone calls as rude or uncaring instead of considering that work, personal, child-related or other factors might cause the delay.<sup>137</sup>

Given these problems with cognitive schemas, one might become discouraged, wondering whether we could ever become culturally competent. Explicit discussion of the schemas and stereotypes we hold, however, enables us to uncover the hidden assumptions.<sup>138</sup> Thus, the teaching of nonracist behaviors, coupled with cognitive and social psychology, can help lawyers to examine their values, biases, and prejudices and therefore to change their behaviors and attitudes.

#### IV. Teaching Cultural Self-Awareness as Part of Multicultural Lawyering Training

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<sup>134</sup> Krieger, *supra* note \_\_\_\_, at 1192, 1194-95 (more data about members of same culture so more likely to understand that more factors are at play in the interaction). Hence the habit of parallel universes: thinking of alternative, often situational explanations for behavior.

<sup>135</sup> Krieger, *supra* note \_\_\_\_, at 1208.

<sup>136</sup> Krieger, *supra* note \_\_\_\_, at 1205-7. Also note that failures of out-group are more likely to be attributed to person than to situation; with in-group, have greater familiarity and more data so more able to posit complex factors leading to failure. *Id.* at 1207.

<sup>137</sup> Jean Koh Peters tells the story of a student who was unable to reach his/her client. The student dutifully, if rote, recited alternative explanations for this failure (Habit 3) but clearly did not consider them credible. Finally, on the day of court, the client did appear, and the student learned that she had given birth in the interim. Jean Koh Peters, *Access to Justice: The Social Responsibility of Lawyers: Habit, Story, and Delight, Essential Tools for the Public Service Advocate*, 7 Wash. U. L.J. & Policy 17, \_\_\_\_ (2001).

<sup>138</sup> Taylor-Thompson, *supra* note \_\_\_\_, at 1288-89.

An understanding of psychology in these areas provides a foundation on which to develop cultural self-awareness, which is essential to multicultural competence.<sup>139</sup> Self-awareness enables the lawyer to understand that her culture – including ingrained “beliefs, values, and attitudes”<sup>140</sup> – shapes her unconscious assumptions and influences her interactions with people of different cultures.<sup>141</sup> Through self-awareness, a lawyer can develop a positive identification with her own heritage, which will “provide[ ] a firm base for understanding and respecting the world views of people with different ethnic, cultural, and racial heritages.”<sup>142</sup>

To develop self-awareness competency, a student must work through three domains: attitudes and beliefs, knowledge, and skills.<sup>143</sup> The framework presented below is not linear in nature but rather identifies issues that a student encounters as he acknowledges himself as a cultural being. Permeating this framework is the premise that “unlearning racism [or oppression] is the first step a [lawyer] must take on the path of developing cultural awareness.”<sup>144</sup> By oppression, I mean not prejudice, which is

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<sup>139</sup> Arredondo & Arciniega, *supra* note \_\_\_, at 266; Pedersen, *supra* note \_\_\_, at 203; and Wehrly, *supra* note \_\_\_, at 48. Bill Ong Hing has commented that recognizing how “personal identification differences,” such as class, race, ethnicity, gender, disability, and age, (all part of a student’s cultural self-awareness) affect lawyering seems common sensical but nonetheless requires training. Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 Stan. L. Rev. 1807, 1808-10 (1993).

<sup>140</sup> APA Guidelines, *supra* note \_\_\_, at 23-24.

<sup>141</sup> APA Guidelines, *supra* note \_\_\_, at 23- 25; and Wehrly, *supra* note \_\_\_, at 109-10.

<sup>142</sup> Wehrly, *supra* note \_\_\_, at 110. The premise of cultural self-awareness is that appreciation of the significance of culture in one’s own life allows one to appreciate the significance of culture in another person’s life. Thus, “It is not possible to be a competent counselor without being culturally competent.” Robert T. Carter, *Becoming Racially and Culturally Competent: the Racial-Cultural Counseling Laboratory*, J. of MULTICULTURAL COUNSELING AND DEVELOPMENT, Jan. 2003, at \_\_\_, 21.

<sup>143</sup> Robinson & Howard-Hamilton, *supra* note \_\_\_, at 272-73; and Sue & Sue, *supra* note \_\_\_, at 224-25.

<sup>144</sup> Lee, *supra* note \_\_\_, at 16. Lee Anne Bell, *Theoretical Foundations for Social Justice Education*, in TEACHING FOR DIVERSITY AND SOCIAL JUSTICE: A SOURCEBOOK 3, 4 (Marianne Adams et al. eds. 1997) I substitute the term “oppression” for racism because my perspective on multicultural competence includes cultural differences other than those limited to racial and ethnic groups. Use of the term oppression “emphasize[s] the pervasive nature of social inequality woven throughout social institutions as well as embedded within individual consciousness” and encompasses the problems of intersectionality of gender, class, etc. *Id.* at 4-5.

“negative attitudes, beliefs, and intentions,”<sup>145</sup> but behavior that perpetuates social inequality.<sup>146</sup> To perpetuate social inequality, the actor must have power.<sup>147</sup> Power can come by virtue of membership in a cultural group. In a lawyer-client relationship, the lawyer holds power by virtue of her role and cultural dynamics.<sup>148</sup> This distinction between intentions and effects is crucial to developing multicultural competency, as it enables the lawyer to focus on behavior (hence the third domain), which is easier to change than the underlying, automatic assumptions ingrained in our schema<sup>149</sup> and to work through the defensiveness that can accompany discussions of oppression.

First, the student ponders her own attitudes and beliefs: Does she believe that cultural self-awareness is important? Does she recognize that she has a culture?<sup>150</sup> Is she aware of how her culture shapes her attitudes, values, biases, and assumptions about lawyering? Does she recognize the limits of her own multicultural competency? What makes her comfortable or uncomfortable working with cultural similarity and

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<sup>145</sup> Ridley, *supra* note \_\_\_, at 17-18. An example of racial prejudice is the “assumption that traits and abilities are determined biologically and one race is therefore inherently superior.” Lee, *supra* note \_\_\_, at 12. A person might hold stereotyped images in her schema, but if she does not endorse the stereotype, then she is not exhibiting prejudice. Taylor-Thompson, *supra* note \_\_\_, at 1291.

<sup>146</sup> Bell, *supra* note \_\_\_, at 5-6 (explaining that oppression manifests through different kinds of discrimination such as racism, sexism, classism, heterosexism, ageism, and ableism); see Ridley, *supra* note \_\_\_, at 17, 20-21 (advocating determination of racism from the consequences, not the causes, of the behavior).

<sup>147</sup> Ridley, *supra* note \_\_\_, at 21-22; Wehrly, *supra* note \_\_\_, at 167-68. Unfortunately, the presence of power also makes developing multicultural competence more difficult. The “persistent nature of [cultural] stereotypes and misinformation and a keen desire to preserve in-group status” makes the powerholder more resistant to exploring social inequality and acknowledging her own role in maintaining that inequality. Hartley & Petrucci, *supra* note \_\_\_, at 165.

<sup>148</sup> Wehrly, *supra* note \_\_\_, at 168.

<sup>149</sup> Ridley, *supra* note \_\_\_, at 24-25.

<sup>150</sup> Members of the dominant white American culture may not recognize that such a culture exists. In many instances, “Whites do not see themselves as White. Often, American or *human* being is used as a descriptor.” Robinson & Howard-Hamilton, *supra* note \_\_\_, at 278 (emphasis in original) (citation omitted). De-racializing the culture can occur because “Whites in the United States learn that they are entitled to privileges associated with being White and learn to deny or distort race-related reality in order to protect the status quo.” Lee, *supra* note \_\_\_, at 51. Thus, an early step for members of a dominant culture is acknowledging the prevalence of cultural discrimination in the United States. Lee, *supra* note \_\_\_, at 16-18.

difference?<sup>151</sup> This domain is probably the most difficult for law students to develop, as law students tend to favor reason over emotions.<sup>152</sup> In addition, society and legal training acculturate students into blindness toward cultural differences and the privileges that can accompany group membership.<sup>153</sup> However, examination of one’s attitudes and beliefs – and the emotions that examination can arouse – can pay dividends for client interaction by helping the lawyer to develop empathy for clients, which in turn can enhance information gathering.<sup>154</sup>

Second, the student consciously considers specific knowledge – about her own culture, about “how oppression, racism, discrimination, and stereotyping are perceived”<sup>155</sup> by members of different cultures, and about her own style of lawyering as “culturally learned and culturally specific,”<sup>156</sup> with its own impact on her clients and others.<sup>157</sup> For example, she might consider how her office’s policy regarding the scheduling of interviews affects clients who are hourly wage earners. The focus on specific knowledge – which can be drawn from fieldwork, personal experience,

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<sup>151</sup> Pedersen, *supra* note \_\_\_\_, at 203; and Robinson & Howard-Hamilton, *supra* note \_\_\_\_, at 272-73.

<sup>152</sup> Marjorie A. Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLINICAL L. REV. 259, 278 (1999). Silver notes that on the Myers-Brigg scale, lawyers tend to fall in the thinker category rather than the feeler category.

<sup>153</sup> Robinson & Howard-Hamilton, *supra* note \_\_\_\_, at 61, 68. See Lee, *supra* note \_\_\_\_, at 13-14 (describing cognitive dissonance White Americans can experience in trying to reconcile their receipt of benefits and privileges in a society that discriminates against racial and ethnic minorities and their efforts to rationalize that dissonance by denying their participation in racism). Indeed, legal education long has ignored the effects of race and culture on the lawyer-client relationship, preferring instead to consider race and culture as a strategic tool, to be used, for example, in jury selection, Hartley & Petrucci, *supra* note \_\_\_\_, at 165, or developing a narrative to appeal to the court, Krieger & Neumann, *supra* note \_\_\_\_, at \_\_\_\_ (using schema to spin story).

<sup>154</sup> See Laurel E. Fletcher & Harvey M. Weinstein, *When Students Lose Perspective: Clinical Supervision and the Management of Empathy*, 9 CLINICAL L. REV. 135, 136 (2002) (explaining that empathy helps information gathering because “the lawyer is called upon to feel as the other does not only to solicit information but also to understand more fully the import of the speaker’s words”).

<sup>155</sup> Pederson, *supra* note \_\_\_\_, at 203.

<sup>156</sup> Pederson, *supra* note \_\_\_\_, at 203.

<sup>157</sup> Robinson & Howard-Hamilton, *supra* note \_\_\_\_, at 272-73.

simulations, readings, etc. – leads to processing the information gleaned<sup>158</sup> and then to the formulation of abstract concepts and generalizations that will assist the students in new situations.<sup>159</sup>

Finally, building on her knowledge, the student acquires skills that expand her multicultural competence, continue the process of understanding her self as a cultural being, limitations and all, and develop a nonracist identity.<sup>160</sup> As noted above, discrimination typically occurs through the consequences of behavior, not through the intentions of the actor. Thus, by identifying specific behaviors that are oppressive and nonoppressive, a lawyer can reinforce nonoppressive behaviors and fair practices.<sup>161</sup> Bryant and Koh-Peter's Five Habits and Tremblay's heuristics can be valuable here to help students to acquire good behaviors, which can be reinforced and replicated through simulations, classroom discussion, supervision and fieldwork.<sup>162</sup>

## V. Conclusion

As a legal services attorney, I attended numerous multicultural competence trainings. Inevitably, they fell short, being at best one-day events in which the attendees talked in general terms about the importance of multicultural competence and sometimes participated in an exercise, usually to identify our individual social group memberships. There was little explanation of the purpose of the exercise, little time for reflection and

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<sup>158</sup> Journals and in-class discussion are useful for this purpose. Lee Anne Bell & Pat Griffin, *Designing Social Justice Education Courses*, in *TEACHING FOR DIVERSITY AND SOCIAL JUSTICE: A SOURCEBOOK* \_\_\_\_, 56-58 (Marianne Adams et al. eds. 1997).

<sup>159</sup> Bell & Griffin, *supra* note \_\_\_\_, at 56-58.

<sup>160</sup> Pederson, *supra* note \_\_\_\_, at 203; Robinson & Howard-Hamilton, *supra* note \_\_\_\_, at 272-73.

<sup>161</sup> Ridley, *supra* note \_\_\_\_, at 25-26.

<sup>162</sup> "To prevent a relapse into racism, nonracist behaviors and fair practices must be acquired, reinforced, and carefully monitored." Ridley, *supra* note \_\_\_\_, at 26.

processing, and no specifics as to cultural knowledge or skills from which to develop.<sup>163</sup>

As a new clinician, I have attended conference workshops that were more helpful in sharing concrete exercises for classroom use.

Throughout these trainings, however, something was missing: the theory that informs the learning and creates the framework for understanding the process. Some educators advise us to give our students the theory up front because

theory enables us to think clearly about our intentions and the means we use to actualize them in the classroom. It provides a framework for making choices about what we do and how, and for distinguishing among different approaches. . . . [A]t its best, theory also provides a framework for questioning and challenging our practices and creating new approaches as we encounter inevitable problems of cooptation, resistance, insufficient knowledge, and changing social conditions . . . .”<sup>164</sup>

Certainly, I would have benefited from knowing the psychosocial theories that started us with self-awareness and, ultimately, might have provided knowledge and skills for multicultural lawyering competence..

This article, therefore, attempts to provide some of the theory and framework underlying multicultural competence training as practiced by mental health practitioners.<sup>165</sup> By naming the goal – combating oppression in lawyering – and laying bare the psychology that can cause us all unintentionally to discriminate against members of different cultural groups, I hope to engage law students and clinicians in a frank,

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<sup>163</sup> Pedersen identifies three ways in which multicultural competency training can fail: (1) an exclusive focus on awareness of one’s own cultural biases and prejudices, without training on what to do with this awareness; (2) an overemphasis on acquiring knowledge of cultures without linkage to skills and behaviors; and (3) an overemphasis on skills, which can be applied in culturally inappropriate ways if not linked to awareness and knowledge. Paul Pedersen, A HANDBOOK FOR DEVELOPING MULTICULTURAL AWARENESS 26 (2d ed. 1995).

<sup>164</sup> Bell, *supra* note \_\_\_\_, at 4.

<sup>165</sup> The APA boasts, with justification, that mental health practitioners take cultural competency more seriously than do lawyers, for they are “driven by widespread awareness of treatment inadequacies for minorities” APA Amicus Brief, *supra* note \_\_\_\_, at 26, and view cultural competency as the responsibility of every practitioner. *See generally* APA Guidelines, *supra* note \_\_\_\_.

structured, and ongoing journey toward cultural self-awareness. The short-term goal is the development of a self-aware lawyer: conscious of her own biases and values without favoring them over another's; aware of how his own values and biases affect clients from a different cultural group; comfortable with cultural difference; sensitive to circumstances that make it appropriate for a client to change lawyers; and aware of her attitudes, beliefs, and behaviors that may be oppressive.<sup>166</sup> From this base, the student can actively develop an understanding of her client's culture and skills that will enable her to lawyer with multicultural competence.

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<sup>166</sup> Sue & Sue, *supra* note \_\_\_\_, at 228-29.