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## Beyond Best Practices for Legal Education: Reflections on Cultural Awareness - Exploring the Issues in Creating a Law School and Classroom Culture

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# BEYOND BEST PRACTICES FOR LEGAL EDUCATION: REFLECTIONS ON CULTURAL AWARENESS— EXPLORING THE ISSUES IN CREATING A LAW SCHOOL AND CLASSROOM CULTURE

Antoinette Sedillo Lopez<sup>†</sup>

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## I. INTRODUCTION

A body of American literature about law practice suggests that lawyers develop “local legal cultures” that shape their conduct and sense of professionalism.<sup>1</sup> Lawyers are socialized in law school and develop concepts of professionalism within their practice networks.<sup>2</sup> Gilson and Mnookin argue that relationships among lawyers in a specialized field such as divorce law create mutual

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1. See, e.g., LYNN MATHER ET AL., *DIVORCE LAWYERS AT WORK: VARIETIES OF PROFESSIONALISM IN PRACTICE* 10 (2001) (“[L]ocal legal cultures . . . [are] loose networks of interdependent lawyers who establish shared expectations for conduct through repeated interaction in common activity.”); Andrea M. Seielstad, *Unwritten Laws and Customs, Local Legal Cultures, and Clinical Legal Education*, 6 CLINICAL L. REV. 127, 145 (1999) (“American judicial proceedings . . . are governed by unwritten rules of professional conduct. These rules arise out of and reinforce mutual values, ‘esprit de corps,’ and intimacy between regularly interacting participants of local legal cultures.”).

2. See, e.g., Terrence C. Halliday, *Legal Professions and the State: Neocorporatist Variations on the Pluralist Theme of Liberal Democracies*, in 3 *LAWYERS IN SOCIETY: COMPARATIVE THEORIES* 375, 377 (Richard L. Abel & Phillip S. C. Lewis eds., 1989) (stating that the professional community was historically seen as sharing common traditions, values, and commitments).

obligations that may constrain the lawyers' conduct.<sup>3</sup> And, of course, legal education shapes legal culture.<sup>4</sup>

A lawyer's culture includes the lawyer's acculturation as a professional, as well as the lawyer's pre-education cultural norms and values that might have survived the acculturating process of law school and post-law school socialization.<sup>5</sup> A client's cultural context will include the values, norms, and beliefs that stem from a client's cultural identity, including the client's ethnicity, race, religion, nationality, gender, etc. Because in a traditional lawyer-client representation the power imbalance in the relationship favors the lawyer, the lawyer is in a position to make assumptions based on stereotypes that could adversely affect the client.<sup>6</sup> Of course, the lawyer may impose the lawyer's cultural values on the representation.

One of the more extreme examples of a lawyer's culture affecting his or her representation is a study of Catholic lawyers in the 1950s who would not handle the divorces of Catholic clients without clearing them through the Church.<sup>7</sup> In our individualistic, autonomy-valuing, postmodern Western society, such an approach may seem shocking to some of us. Nonetheless, attorney-client cultural differences can adversely affect the representation in subtle ways. And, while some law faculty have been writing about this issue, law school administrations have not looked at the issue from an institutional perspective.

Susan Bryant has written about the ways in which culture

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3. Ronald J. Gilson & Robert H. Mnookin, *Disputing Through Agents: Cooperation and Conflict Between Lawyers in Litigation*, 94 COLUM. L. REV. 509, 543-45 (1994) (highlighting the importance of reputation and relationships in the specialized field of divorce).

4. See Diane Vaughan, *The Dark Side of Organizations: Mistake, Misconduct, and Disaster*, 25 ANN. REV. SOC. 271, 276 (1999) (asserting that organizational culture affects behavior and can interfere with the implementation of stated organizational values).

5. See ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) (defining the knowledge, skills, and values that law students should develop in law school); see also WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 128 (2007) (stating that law school is "highly formative" of student identity).

6. See Susan T. Fiske, *Controlling Other People: The Impact of Power on Stereotyping*, 48 AM. PSYCHOLOGIST 621, 621 (1993) (explaining the interaction between power structure in relationships and stereotyping).

7. JEROME E. CARLIN, LAWYERS ON THEIR OWN: A STUDY OF INDIVIDUAL PRACTITIONERS IN CHICAGO 99-100 (1962).

might affect practice and suggests ways that lawyers can become more culturally competent.<sup>8</sup> One of the points she makes is that it is important to be self-aware and to identify cultural differences that might affect representation.<sup>9</sup> Paul Tremblay has given some suggestions for being more culturally competent in the interviewing and counseling context by using heuristics to focus on aspects of culture that may affect the communication process.<sup>10</sup> Michelle Jacobs has demonstrated that unconscious racism and cultural hegemony can affect the communication process between a lawyer and a client.<sup>11</sup> I have also written an article seeking to set out teaching objectives for teaching cultural knowledge, self-awareness, and intercultural communication in a clinical setting.<sup>12</sup> While it is impossible for a lawyer to become “cross-culturally competent” because of the many different cultures in the world, a lawyer can become more aware of the potential effect of cultural differences on the quality of representation and work to address cross-cultural differences.<sup>13</sup>

If law schools are to prepare students for the reality of practice, it is useful to help students become aware of cultural issues that can affect client representation by examining the culture that the law school creates. The culture created by faculty, students, administration, and staff will affect the law student’s acculturation as a legal professional as well as the law student’s psychological well-being.<sup>14</sup> This issue was addressed briefly in *Best Practices for Legal*

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8. Susan Bryant, *The Five Habits: Building Cross-Cultural Competence In Lawyers*, 8 CLINICAL L. REV. 33, 55 (2001) (“[A] competent cross-cultural lawyer acknowledges racism, power, privilege and stereotyped thinking as influencing her interactions with clients and case planning, and works to lessen the effect of these pernicious influences.”).

9. *Id.* at 68–70 (discussing the interaction between the client, the decision-maker, and the lawyer in the context of how culture may influence the outcome of a case).

10. Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373, 387–89 (2002) (exploring how cultural diversity might affect the models for interviewing and counseling).

11. Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 377 (1997) (examining how these factors affect the lawyer-client relationship and the client’s view of the law).

12. Antoinette Sedillo Lopez, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic*, 28 WASH. U. J.L. & POL’Y 37 (2008).

13. See generally *id.* (discussing the importance of cultural awareness in clinical and teaching settings).

14. See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 34 (1992) (“In the last analysis, the law is

*Education* (“*Best Practices*”),<sup>15</sup> but not developed. This essay explores some of the challenges and opportunities of bringing cross-cultural issues into a law school classroom and some of the issues raised in consciously creating a more professional and culturally sensitive law school culture.

A growing body of literature focuses on helping professionals become more comfortable with diverse communities and helping the professionals perform their jobs more effectively.<sup>16</sup> In addition, literature in the area of communications theory has described developmental approaches to developing “intercultural sensitivity.”<sup>17</sup> This literature can help develop ideas for training students about cultural context and awareness, cultural sensitivity, and communication by using *Best Practices*<sup>18</sup> as the template for the methodology. In addition, *Best Practices* suggests that law professors develop learning objectives, provide student feedback, and assess students based on learning objectives.<sup>19</sup> These ideas are included as a way of improving the quality of education. I posit that law school administration and faculty should go beyond *Best Practices*

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what the lawyers are. And the law and the lawyers are what the law schools make them.” (quoting Letter from Felix Frankfurter, Professor, Harvard Law School, to Mr. Rosenwald (May 13, 1927) (on file with the Harvard Law School Library)); Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 77–80 (2002) (describing the effects of the law school environment on students); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 872 (1999) (exploring the psychological burdens on the legal profession); Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values and Well-Being*, 22 BEHAV. SCI. & L. 261, 261 (2004) (evaluating changes in subjective well-being, motivation, and values occurring over the span of a law student’s career).

15. ROY STUCKEY AND OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION* 110–29 (2007) (describing the creation and maintenance of healthy learning environments).

16. See, e.g., DANIEL LANDIS, JANET M. BENNET & MILTON J. BENNET, *HANDBOOK OF INTERCULTURAL TEACHING* (3d ed. 2004) (supplying curriculum handouts to advance intercultural education); SUNITA MUTHA ET AL., *TOWARD CULTURALLY COMPETENT CARE: A TOOLBOX FOR TEACHING COMMUNICATION STRATEGIES* (2002) (emphasizing the importance of integrating cultural training into the workplace); Sedillo Lopez, *supra* note 12 (outlining an education method for representing clients of different cultures, using case supervision to enhance students’ cross-cultural understanding, and aiding students in developing intercultural communication skills).

17. See, e.g., Milton J. Bennett, *A Developmental Approach to Training for Intercultural Sensitivity*, 10 INT’L J. INTERCULTURAL REL. 179 (1986) (describing several ways in which intercultural sensitivity can be developed).

18. STUCKEY AND OTHERS, *supra* note 15.

19. *Id.* at 40–51.

and consider these issues as part of the law school culture, as well as part of the law school classroom.<sup>20</sup>

## II. EXPLORING BIAS

As Justice Sotomayor famously explained, it is important to understand one's own culture and how it might affect perspective and bias.<sup>21</sup> While Justice Sotomayor spoke about perspective in the context of the role of a judge, bias can affect all aspects of practice and legal education. There are many opportunities in legal education to help students explore their own biases and perspectives. In family law, cases that discuss issues such as same-sex marriage, polygamy, and incest might challenge students' values and beliefs and cloud their ability to address these issues. In the last several years, students in my family law course have become much less judgmental about cases involving alternative families. While, of course, the community and social climate has changed, encouraging students to discuss their own backgrounds and their own feelings about families has helped our class discussion focus on issues and helped students identify biases. This semester, one of my students noticed that she felt strongly that the state should not get involved in defining conceptions of marriage when it involved same-sex couples, but she did not feel the same way when the argument was made in Justice Durrant's concurrence in *State v. Green*,<sup>22</sup> which involved the practice of polygamy. This discovery helped her develop a deeper understanding of her values and beliefs, and we discussed whether her perspective affected her ability to address the issues analytically rather than judgmentally or emotionally.

Another idea that has been developed by my colleague, Alfred Mathewson, to raise these issues is to highlight the race, gender, culture, or sexual orientation of the parties in a case.<sup>23</sup> Professor

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20. See generally Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515 (2007) (focusing on the need to change the law school culture of competition and conformity and its tendency to create habits of mind and behavior).

21. Sonia Sotomayor, *A Latina Judge's Voice*, 13 BERKELEY LA RAZA L.J. 87, 91–92 (2002).

22. 99 P.3d 820, 835–37 (Utah 2004) (Durrant, J., concurring).

23. Alfred Dennis Mathewson, *Race in Ordinary Course: Utilizing the Racial Background in Antitrust and Corporate Law Courses*, 23 ST. JOHN'S J. LEGAL COMMENT. 667, 677 (2008) (discussing the discourse in legal classrooms where nonwhite and white students are integrated).

Mathewson gives several examples of bringing race into the classroom.<sup>24</sup> He brings out the race of parties in a case and contextualizes the case for the students so that they develop their perspectives on the issues, but also so that the discussion of race can emerge naturally, without always having a focus on subordination and discrimination.<sup>25</sup> He also hypothesizes about the race in cases, asking whether a dispute about the arrangements for a fashion show might be explained if the fashion show was the Ebony Fashion Fair sponsored by a black sorority.<sup>26</sup> Pointing out this fact might explain why the hotel manager felt it necessary to call the police when he perceived an escalating dispute.<sup>27</sup> Changing the race, gender, culture, or sexual orientation of the parties in a case can help students discover if they made judgments or stereotyped the parties' behavior based on race, gender, culture, or sexual orientation. Using cases that defy stereotypes or highlight judges making judgments based on gender roles can help professors draw out the issues.

One of the many challenges that introducing concepts of culture presents is that, sometimes, cultural differences can be used to support stereotypes. It is important to recognize the difference between cultural value systems, beliefs and practices, and stereotypes about individuals. This can be highlighted by using cases that actually go against stereotypes. For example, using cases involving male victims of domestic violence or female business owners can help the professor draw out students to help them identify their own stereotypes. In addition, it can be very powerful for the professor to admit the professor's own experiences with bias and stereotypes.

Addressing these issues in the classroom is only one step in changing the culture of a law school so that it is more intercultural. The faculty, staff, and students should also explore bias as exhibited by the law school environment. In some cases, the literal environment will suggest a bias. When I started teaching, the women's restroom contained a urinal. This was a none-too-subtle reminder that the building was designed for male lawyers. In addition, the pictures on the walls and the decor can all reflect a cultural perspective. And, of course, the tone set by the

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24. *Id.* at 677–98.

25. *Id.* at 675–77.

26. *Id.* at 682–83.

27. *Id.* at 683.

administration as well as the policies of the law school can reflect a certain perspective. The policies may range from prohibiting children in the building, to dress codes, holidays, and codes of conduct. These policies can be reviewed with an eye toward making them more inclusive and more explicitly multicultural and/or intercultural.

### III. HUMILITY AND RESPECT

Humility and respect are rarely explicitly discussed in law school.<sup>28</sup> Indeed, the law school acculturation process can result in students developing habits of thought, mannerisms, and behaviors that can seem arrogant or pompous.<sup>29</sup> As demonstrated by the stereotypical Professor Kingsfield in the movie *The Paper Chase*,<sup>30</sup> the law school environment may actually create a culture of arrogance, verbal aggressiveness, and competition.<sup>31</sup> These mannerisms and attitudes can become a barrier to effective communication—particularly cross-cultural communication. If a professor wants to address these issues, the professor should reflect on the professor's own affect and approach. Law professors who stand at the front of the room and appear to “know it all” are not very effective at modeling humility and respect, particularly if they emphasize competitive and aggressive conduct and fail to demonstrate effective cultural sensitivity or intercultural communication skills.<sup>32</sup>

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28. See LAWRENCE S. KRIEGER, THE HIDDEN SOURCES OF LAW SCHOOL STRESS—AVOIDING THE MISTAKES THAT CREATE UNHAPPY AND UNPROFESSIONAL LAWYERS 1–19 (2005) (describing aspects of law school that can affect the health and happiness of law students). Other sources discuss competition and disrespectful dialogue. See, e.g., Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524 (1998) (discussing the role law schools play in creating emotional dysfunction in attorneys); Lawrence S. Krieger, *Institutional Denial about the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112 (2002) (analyzing evidence about the challenges of law school).

29. Sturm & Guinier, *supra* note 20, at 519.

30. THE PAPER CHASE (Twentieth Century Fox 1973).

31. *Id.*

32. See Connie J.A. Beck, Bruce D. Sales & G. Andrew H. Benjamin, *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J.L. & HEALTH 1, 55 (1996) (suggesting a stressful, competitive environment can lead to unhealthy coping mechanisms); Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?*, 8 LEGAL WRITING: J. LEGAL WRITING INST. 229 (2002) (discussing the negative emotional and physical reactions experienced by law students).



Lectures about humility, respect, and professionalism are simply not effective.<sup>33</sup> Instead, law professors should think about alternative pedagogy to teach affective aspects of law practice.<sup>34</sup>

One of my colleagues, Joel Nossoff, from another department within the university, takes pains to point out when he notices students engaging in disrespectful or contemptuous tone of voice. He says that many individuals are not aware of their tone and that it should be gently pointed out. Women in particular can struggle with this because many women are so concerned about appearing confident and in control in the classroom that they may not be good role models for humility and respect. Many women are told not to appear “soft” or overly feminine in the classroom so that they may command respect.<sup>35</sup>

Modeling and expecting respectful, civil discourse in the classroom, and explicitly identifying discourse as a classroom expectation in the syllabus will signal the importance of the issue. Assessing the classroom climate and modeling respectful discourse will help set the culture. My former dean, Suellen Scarnecchia, initiated a series of sessions on “Difficult Dialogues” in which students organized respectful debates and panels on issues that deeply divide communities. Her vision for the Dialogues was to model respectful discourse in which parties might engage in important conversations that involved listening carefully as well as speaking. Her goal was to model and encourage respectful and professional discourse. She also tackled controversial topics and raised issues of intercultural conflict to promote intercultural communication.

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33. See Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1398–99 (1997) (investigating whether inherent personality characteristics or attributes exist that bear on legal professionalism); Joshua E. Perry, *Thinking Like a Professional*, 58 J. LEGAL EDUC. 159, 160 (2008) (reflecting on the value of an expansive approach to professional formation).

34. See Barbara Glesner Fines, *Teaching Empathy Through Simulation Exercises—A Guide and Sample Problem Set 2–4* (Nov. 19, 2008) (unpublished manuscript) (on file with the University of Missouri-Kansas City School of Law), available at <http://ssrn.com/abstract=1304261>.

35. See THE MULTICULTURAL WOMEN ATTORNEYS NETWORK, *DEAR SISTERS, DEAR DAUGHTERS: STRATEGIES FOR SUCCESS FROM MULTICULTURAL WOMEN ATTORNEYS* (C. Elisia Frazier et al. eds., 2009).

## IV. CONCLUSION

Studies have shown that persons with more perceived power tend to set the tone of the culture of an organization.<sup>36</sup> Thus, a law school administration can set the tone for faculty, and faculty can set the tone for students and staff.<sup>37</sup> As such, it is crucial for the messages about the professionalism and tone of the law school to start at the top.<sup>38</sup> Deans should model and require professional conduct.<sup>39</sup> Faculty can incorporate intercultural issues into their classrooms and discuss the attributes of the profession.<sup>40</sup> The law school should be a place where respectful discourse is modeled. The legal system is awe-inspiring in that disputes are resolved nonviolently in a courtroom or through agreement. Lawyers may be diametrically opposed to each other in one case and then co-counsel in another. Lawyers should respect their clients and should approach their profession with humility, no matter how different the client. Law schools should be where this starts.<sup>41</sup> In seeking to go beyond best practices for legal education, law school administrators, staff, and faculty should consider the culture that they create in law school, and think about creating a culture that is open to intercultural dialogue and communication. That culture will have lasting ramifications on the professionalism of lawyers and the quality of services they provide to their diverse clients.

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36. See KIM S. CAMERON & ROBERT E. QUINN, *DIAGNOSING AND CHANGING ORGANIZATIONAL CULTURE: BASED ON THE COMPETING VALUES FRAMEWORK* 40–42 (1999).

37. See generally Note, *Making Docile Lawyers: An Essay on the Pacification of Law Students*, 111 HARV. L. REV. 2027, 2043 (1998) (describing the effect on morale and attitude that law school has on Harvard law students).

38. See Sheldon & Krieger, *supra* note 14.

39. See Laurie A. Morin, *Reflections on Teaching Law as Right Livelihood: Cultivating Ethics, Professionalism, and Commitment to Public Service from the Inside Out*, 35 TULSA L.J. 227 (2000) (describing teaching in the context of the Buddhist notion of “Right Livelihood”).

40. See Robert P. Schuwerk, *The Law Professor as Fiduciary: What Duties Do We Owe Our Students?*, 45 S. TEX. L. REV. 753, 758–61 (2004) (debating the duties owed by professors to their students).

41. See Steven C. Bennett, *When Will Law School Change?*, 89 NEB. L. REV. 87, 94–98 (2010) (assessing the instruction of ethics and professional responsibility in law school).