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## A Survey Instrument to Develop, Tailor, and Help Measure Law Student Cultural Diversity Education Learning Outcomes

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## A SURVEY INSTRUMENT TO DEVELOP, TAILOR, AND HELP MEASURE LAW STUDENT CULTURAL DIVERSITY EDUCATION LEARNING OUTCOMES

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*Legal education reformers are increasingly focused on an outcome-oriented approach to legal education. Law school accreditors are poised to adopt learning outcomes standards requiring each law school to identify the knowledge, attitudes, and skills its law graduates should possess. Among the skills suggested for inclusion in law school learning outcomes is the ability to work effectively across cultures. Despite the importance of cultural competence for effective legal practice, law schools have not yet developed a systematic method for helping students develop awareness of how cultural perspectives shape lawyer-client interactions, affect transactions, and influence the development of the law. This article identifies ways law schools might conceptualize learning outcomes that will enhance law students' abilities to effectively represent clients in today's multicultural world and global legal environment. It provides legal educators with a statistically valid and reliable survey instrument developed to help identify, and potentially measure, some of those learning outcomes. It discusses the survey design and findings. Finally, this article suggests several ways our survey instrument and research can help legal educators conceptualize ways to integrate the inclusion of cultural sensibility learning and learning outcomes into the law school curricula.*

#### INTRODUCTION

In recent years, law schools have been heavily berated for ill-preparing students for real-world law practice.<sup>1</sup> In response to widespread attacks on the legal education system, many U.S. law schools have begun rewriting their curricula.<sup>2</sup> Legal education reformers have placed increasing

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1. A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 1951–53 (2012). A. Benjamin Spencer has described this as “[the] perfect storm in legal education: Law school graduates are under-employed, over-indebted, and under-prepared for practice,” prompting an attack on legal education practices. *Id.*

2. See U. DENVER STURM C. LAW, <http://www.denverlawplan.com> (last visited Feb. 16, 2014); Brian Leiter, *Washington & Lee's Radical Transformation of the 3rd*

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emphasis on learning outcomes, sparking discussion about the value of an outcome-oriented approach to legal education as well as debate over which outcomes should be included in standard curricula.<sup>3</sup> Law school accreditors are poised to adopt learning outcomes standards requiring each law school to identify the knowledge, attitudes, and skills law graduates should possess.<sup>4</sup> Among the skills proposed for inclusion in the mandatory outcomes was the ability to work effectively across a range of cultures.<sup>5</sup>

Despite the fact that lawyers frequently deal with people from diverse backgrounds in the increasingly globalized practice of law, law schools have not yet developed a systematic method for helping students develop awareness of how cultural perspectives shape lawyer-client interactions, affect transactions, and influence the development of the law.<sup>6</sup> This aspect of education, often called *cultural competence*, has largely been relegated to the domain of clinical faculty or specialty courses. Law school

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*Year of Law School*, BRIAN LIETER'S L. SCH. REP. (Mar. 24, 2008), <http://www.leiterlawschool.typepad.com/leiter/2008/03/washington-lees.html>; Symposium Program, Ne. Univ. Sch. of Law, Experience the Future: Inaugural National Symposium on Experiential Education in Law (Oct. 26–28, 2012), <http://www.northeastern.edu/law/pdfs/academics/exp-future-papers/program-2012.pdf>.

3. See Janet W. Fisher, *Putting Students at the Center of Legal Education: How an Emphasis on Outcome Measures in the ABA Standards for Approval of Law Schools Might Transform the Educational Experience of Law Students*, 35 S. ILL. U. L.J. 225, 225–26 (2011); Beverly Petersen Jennison, *Beyond Landgell: Innovating in Legal Education*, 62 CATH. U. L. REV. 643 *passim* (2013). For a comprehensive discussion of the shift to learning outcomes in legal education, see Mary A. Lynch, *An Evaluation of Ten Concerns About Using Outcomes in Legal Education*, 38 WM. MITCHELL L. REV. 976 (2012).

4. The proposed accreditation standard incorporating learning outcomes, Standard 302, is currently in its final phase of adoption, having been published for “notice and comment” by the American Bar Association Council of the Section of Legal Education and Admission to the Bar. The most recent version of proposed Standard 302 is available at Proposed Standards for Approval of Law Schools, Am. Bar Ass’n, Section of Legal Educ. & Admissions to the Bar, on Chapter 3: Program of Legal Education (Mar. 2014), available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/march2014councilmeeting/2014\\_02\\_compilation\\_of\\_proposed\\_changes\\_to\\_standards\\_clean.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/march2014councilmeeting/2014_02_compilation_of_proposed_changes_to_standards_clean.authcheckdam.pdf).

5. See, e.g., Letter from Jackie Gardina, Co-President, Soc’y of Am. Law Teachers & Ngai Pindell Co-President, Soc’y of Am. Law Teachers, to Dean Jeffery E. Lewis, Chair, Am. Bar Ass’n Standards Review Comm. (Apr. 13, 2012), available at [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/legal\\_education/committees/standards\\_review\\_documents/20120416\\_comment\\_general\\_salt\\_s211\\_212.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/20120416_comment_general_salt_s211_212.authcheckdam.pdf).

6. Numerous legal educators have argued that cultural sensibility skills should be infused throughout the curriculum. See ANTHONY O’DONNELL & RICHARD JOHNSTONE, DEVELOPING A CROSS-CULTURAL LAW CURRICULUM 13 (1997); Nelson P. Miller et al., *Equality as Talisman: Getting Beyond Bias to Cultural Competence as a Professional Skill*, 25 T.M. COOLEY L. REV. 99, 111–13 (2008); Beverly I. Moran, *Disappearing Act: The Lack of Values Training in Legal Education—a Case for Cultural Competency*, 38 S.U. L. REV. 1, 24–26 (2010).

accreditors have thus far declined to include *cultural competence* as one of the mandatory outcomes, in contrast to the accrediting bodies for medical and other professional schools.<sup>7</sup> Instead, the proposed accreditation standard allows individual law schools to decide whether *cultural competence* should be amongst the school's designated learning outcomes.<sup>8</sup> As schools respond to the demand for more experiential learning, and as they develop their list of learning outcomes, law schools should consider whether they should prepare students to become what we call a *culturally sensible lawyer*<sup>9</sup>—a lawyer who can work effectively across cultures.

This article discusses the theoretical and practical aspects of developing a *culturally sensible lawyer* and a statistically reliable survey instrument we developed to help law schools assess some baseline cultural sensibility knowledge, attitudes, and skills learning outcomes. Part I discusses why cultural sensibility should be a designated legal education learning outcome. It begins with a brief discussion about the paradigm shift to learning outcome accreditation standards. It then explains how the construct of cultural competence evolved into a construct of cultural sensibility. Emphasizing an open-mindedness about one's own and others' cultures, cultural sensibility education works toward helping students avoid making assumptions about other cultures or legal systems, as well as avoiding behaviors based upon impressions of cultural domination or superiority. This part then discusses why cultural sensibility is important for all lawyers, not just those engaged in international transactions or social justice issues. Using the cultural sensibility framework, Part II discusses how law schools and law professors might conceptualize knowledge, skills,

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7. See LIAISON COMM. ON MED. EDUC., FUNCTIONS AND STRUCTURE OF A MEDICAL SCHOOL: STANDARDS FOR ACCREDITATION OF MEDICAL EDUCATION PROGRAMS LEADING TO THE M.D. DEGREE 10 (2012), available at <http://www.lcme.org/publications/functions2012may.pdf> (requiring medical schools to document objectives relating to the development of skills in cultural competence); see also THE NAT'L ARCHITECTURAL ACCREDITING BD., INC., 2009 CONDITIONS FOR ACCREDITATION 22 (2009), available at [http://www.naab.org/accreditation/2009\\_conditions](http://www.naab.org/accreditation/2009_conditions) (listing cultural diversity as one of its student performance criteria).

8. See Proposed Standards for Approval of Law Schools, Am. Bar Ass'n, Section of Legal Educ. & Admissions to the Bar, on Chapter 3: Program of Legal Education (Mar. 2014), *supra* note 4.

9. Some ideas in this article explicate thoughts originally expressed in earlier pieces. See Andrea A. Curcio et al., *Using Existing Frameworks to Develop Ways to Teach and Measure Law Students' Cultural Competence*, in THE LEGAL PROFESSION: EDUCATION AND ETHICS IN PRACTICE 21, 21 (David A. Frenkel ed., 2013) [hereinafter Curcio et al., *Using Existing Frameworks to Develop Ways to Teach and Measure Law Students' Cultural Competence*]; Andrea A. Curcio et al., *Educating Culturally Sensible Lawyers: A Study of Student Attitudes About the Role Culture Plays in the Lawyering Process*, 16 U. W. SYDNEY L. REV. 100, 104 (2012) [hereinafter Curcio et al., *Educating Culturally Sensible Lawyers*].

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and attitude learning outcomes related to the development of a culturally sensible lawyer. Part III explains theoretical models that explore the progression students experience as they develop their ability to work effectively across cultures. These models challenge the notion that anyone can ever become fully *culturally competent*, positing that culture—and our experience of culture—is an evolving and dynamic process<sup>10</sup> that occurs along a cultural sensibility learning continuum.

In light of the cultural sensibility learning outcomes and learning continuum, Part IV discusses a statistically reliable survey instrument we developed to measure some aspects of students' cultural sensibility knowledge, attitudes, and skills. We explain the survey development and methodology and discuss the survey results. In Part V, we discuss how the survey can be used to inform teaching, and develop learning outcomes. Our survey results suggest that the focus of cultural sensibility teaching needs to be helping students understand that we all have multi-faceted cultural backgrounds and experiences that affect how we perceive and analyze legal problems and how we interact with clients and colleagues. Our results suggest legal educators can use the survey to develop learning outcomes tailored to their students and that the survey can serve as one measure of achievement of some of those cultural sensibility learning outcomes.

## I.            WHAT IS CULTURAL SENSIBILITY AND WHY IS IT IMPORTANT?

A.            *Cultural Sensibility and the Law School Accreditation Context*

Historically, law school accreditors have focused on input measurements, requiring schools to provide substantial instruction with regard to certain kinds of knowledge, skills, and values.<sup>11</sup> In addition to focusing on specific types of instruction, assessing law schools based on input measurements means emphasizing factors such as “faculty-student ratios [and] per pupil expenditures.”<sup>12</sup> Law school accreditors' input-oriented focus significantly differs from the focus of accreditors in other

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10.        Lan Cao, *The Ethnic Question in Law and Development*, 102 MICH. L. REV. 1044, 1069 (2004); Doris Estelle Long, *Crossing the Innovation Divide*, 81 TEMPLE L. REV. 507, 541 (2008).

11.        CATHERINE L. CARPENTER ET AL., AM. BAR ASS'N, SECTION OF EDUC. & ADMISSIONS TO THE BAR, REPORT OF THE OUTCOME MEASURES COMMITTEE 19 (2008), available at <http://apps.americanbar.org/legaled/committees/subcomm/Outcome%20Measures%20Final%20Report.pdf>; Susan Hanley Duncan, *The New Accreditation Standards Are Coming to a Law School Near You—What You Need to Know About Learning Outcomes & Assessment*, 16 LEGAL WRITING: J. LEGAL WRITING INST. 605, 610 (2010).

12.        Lauren Carasik, *Renaissance or Retrenchment: Legal Education at a Crossroads*, 44 IND. L. REV. 735, 764 (2011).

professions,<sup>13</sup> and this approach has been widely criticized for failing to prepare students for legal practice.<sup>14</sup> For instance, an influential 2007 report by the Clinical Legal Education Association critiqued the input-oriented approach, stating: “In the history of legal education in the United States, there is no record of any concerted effort to consider what new lawyers should know or be able to do on their first day in practice or to design a program of instruction to achieve those goals.”<sup>15</sup> Subsequently, the report noted, law school graduates were ill-prepared for practice, and law schools were guilty of doing a disservice to communities by failing to focus more on learning outcomes rather than educational inputs.<sup>16</sup>

The traditional focus on learning inputs, however, has been rapidly changing in recent years as law school educators and accreditors have increasingly acknowledged the importance of an outcome-oriented approach to legal education.<sup>17</sup> In 2007, the American Bar Association (“ABA”) Section on Legal Education and Admissions to the Bar appointed a Special Committee on Outcome Measures (“Outcomes Committee”), and in 2008, this Outcomes Committee released a report encouraging the section to “re-examine the current ABA Accreditation Standards and reframe them, as needed, to reduce their reliance on input measures and instead adopt a greater and more overt reliance on outcome measures.”<sup>18</sup>

Since 2008, the ABA Standards Review Committee has been working to develop an accreditation standard that identifies mandatory learning outcomes.<sup>19</sup> The latest version of proposed ABA accreditation standards includes Standard 302, which is entitled “Learning Outcomes” and

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13. *Id.* at 763–64 & n.153.

14. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 1–5 (1st ed. 2007); Spencer, *supra* note 1, at 2009.

15. STUCKEY ET AL., *supra* note 14, at 3. For more discussion of the Best Practices Report and other background, see Carasik, *supra* note 12, at 743; Mary Crossley & Lu-in Wang, Essay, *Learning by Doing: An Experience with Outcomes Assessment*, 41 U. TOL. L. REV. 269, 272 (2010); Fisher, *supra* note 3, at 225–30; Spencer, *supra* note 1, at 2009–10.

16. *See* STUCKEY ET AL., *supra* note 14, at 7–8; Spencer, *supra* note 1, at 2009–10.

17. *See* Crossley & Wang, *supra* note 15, at 269–73; Lynch, *supra* note 3 at 981–84; Spencer, *supra* note 1, at 2016–17.

18. Crossley & Wang, *supra* note 15, at 271–72.

19. CARPENTER ET AL., *supra* note 11, at 1. The outcome measures have undergone numerous revisions and been the subject of substantial debate within the academy. Crossley & Wang, *supra* note 15, at 271–72. For a thorough discussion of the debate within the academy, see generally, Lynch, *supra* note 3. The various iterations of the proposed Learning Outcomes Standards, and the public comments on those iterations, are available at *Notice and Comment*, A.B.A., [http://www.americanbar.org/groups/legal\\_education/resources/notice\\_and\\_comment.html](http://www.americanbar.org/groups/legal_education/resources/notice_and_comment.html) (last visited Feb. 16, 2014).

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would require law schools to establish learning outcomes that demonstrate student competency in a number of areas.<sup>20</sup>

Learning outcomes have been defined as “something [the] students can do now that they could not do previously . . . [a change in people] as a result of a learning experience.”<sup>21</sup> Those advocating for an outcomes-based education argue that outcome-oriented assessment benefits students, law schools, and the community at large. Students benefit from having clearly stated learning goals and faculty and law schools are able to determine the effectiveness of the institution’s curriculum.<sup>22</sup> Further, they argue that law school accreditors protect consumers by encouraging educators to focus on institutional effectiveness and the training of competent lawyers.<sup>23</sup> While there are legitimate concerns about the effect and implementation of learning outcomes,<sup>24</sup> law school accreditors soon will join other professions and require schools to identify learning outcomes and demonstrate achievement of those outcomes.<sup>25</sup>

As law schools make the paradigmatic shift toward focusing on what students have learned rather than on areas or types of instruction, legal educators will need to identify learning outcomes both on a course and curricular level. Additionally, law school accreditors will be looking for ways to identify and analyze learning outcomes. Cultural sensibility—more commonly known as *cultural competency*—is amongst the learning outcomes schools may choose to establish to satisfy the requirement that schools prepare law students for “competent and ethical participation as a

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20. Standard 302 will require schools to establish learning outcomes that, at a minimum, include competency in the following: (a) knowledge and understanding of substantive and procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.

Proposed Standards for Approval of Law Schools, Am. Bar Ass’n, Section of Legal Educ. & Admissions to the Bar, on Chapter 3: Program of Legal Education (Mar. 2014), *supra* note 4. Interpretation 302-1 encourages schools to consider fulfilling the mandate of Standard 302(d) by designating and measuring a wide range of additional skills, including cultural competency and self-evaluation. *Id.*

21. Paul Watson, *The Role and Integration of Learning Outcomes Into the Educational Process*, 3 ACTIVE LEARNING HIGHER EDUC. 205, 208 (2002).

22. Lori A. Roberts, *Assessing Ourselves: Confirming Assumptions and Improving Student Learning by Efficiently and Fearlessly Assessing Student Learning Outcomes*, 3 DREXEL L. REV. 457, 461, 466–67 (2011).

23. *Id.* at 464; *see also* Steven I. Friedland, *Outcomes and the Ownership Conception of Law School Courses*, 38 WM. MITCHELL L. REV. 947, 959, 962 (2012).

24. *See infra* text accompanying notes 105–08.

25. *See* Proposed Standards for Approval of Law Schools, Am. Bar Ass’n, Section of Legal Educ. & Admissions to the Bar, on Chapter 3: Program of Legal Education (Mar. 2014), *supra* note 4.

member of the legal profession.”<sup>26</sup> Recognizing the importance of preparing students to work in our multi-cultural world, this article provides law schools with a method to conceptualize, and begin to measure, some cultural sensibility learning outcomes.

#### B. *Evolution from Cultural Competence to Cultural Sensibility*

Culture is a social construct, steeped in the history, politics, and economics of a given community,<sup>27</sup> and culture is not value-free.<sup>28</sup> Culture encompasses a wide range of factors that influence individuals’ perspectives and behaviors. The term *culture* itself has been the subject of great debate.<sup>29</sup> Although no singularly accepted definition of culture exists, some medical educators define culture as: “[I]ntegrated patterns of human behavior that include the language, thoughts, [communications], actions, customs, beliefs, [values], and institutions of racial, ethnic, social, or religious groups.”<sup>30</sup> By including the term *social groups*, this definition indicates that many aspects of culture exist, including but not limited to: Socio-economic status, sexual orientation, disability, gender, physical characteristics, marital status, role in family, religion, and age.<sup>31</sup> Of course, all members of a particular social group do not share all of the same experiences,<sup>32</sup> and people have multiple

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26. See Proposed Standards for Approval of Law Schools, Am. Bar Ass’n, Section of Legal Educ. & Admissions to the Bar, on Chapter 3: Program of Legal Education (Mar. 2014), *supra* note 4.

27. O’DONNELL & JOHNSTONE, *supra* note 6, at 7–9.

28. Nisha Dogra & Khalid Karim, *Diversity Training for Psychiatrists*, 11 ADVANCES PSYCHIATRIC TREATMENT 159, 159 (2005); Amir N. Licht, *Legal Plug-Ins: Cultural Distance, Cross-Listing, and Corporate Governance Reform*, 22 BERKELEY J. INT’L L. 195, 217–19 (2004).

29. Raquel Aldana, *Cross-Cultural Legal Competence as Transformation* (n.d.) (unpublished manuscript) (on file with Nova Southeastern University, Shepard Broad Law Center Library); Linz Audain, *Critical Cultural Law and Economics, the Culture of Deindividualization, the Paradox of Blackness*, 70 IND. L.J. 709, 715 n.16 (1995); Mary Helen McNeal, *Slow Down, People Breathing: Lawyering, Culture and Place*, 18 CLINICAL L. REV. 183, 204–05 (2011).

30. ASS’N OF AM. MED. COLLS., CULTURAL COMPETENCE EDUCATION FOR MED. STUDENTS 1 (2005), available at <https://www.aamc.org/download/54338/data/>.

31. See Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 41 (2001); Adam B. Cohen, *Many Forms of Culture*, 64 AM. PSYCHOLOGIST 194, 194–95 (2009).

32. Bradley W. Bergey & Avi Kaplan, *What Do Social Groups Have to Do with Culture? The Crucial Role of Shared Experience*, FRONTIERS PSYCHOL., Nov. 2010, at 1, 1, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3153807/pdf/fpsyg-01-00199.pdf>; Bryant, *supra* note 31, at 41. See generally Alexis Anderson et al, *Challenges of “Sameness”: Pitfalls and Benefits to Assumed Connections in Lawyering*, 18 CLINICAL L. REV. 339 (2012) (discussing the need to train students to be aware of the risks of sameness and assumptions of sameness when lawyers interact with clients).

cultural backgrounds that all converge to influence perceptions and behaviors.<sup>33</sup> Thus, not only is the definition of culture elusive, one cannot assume that simply because someone has a particular cultural background they will act in a certain manner or hold certain beliefs.

The way educators conceptualize frameworks for teaching students to work effectively across cultures reflects evolving understandings of cultural complexity. Educators spanning numerous disciplines initially designated such work as *cultural competence* education.<sup>34</sup> Although valuable insights exist from many disciplines, we focus on the cultural diversity teaching and assessment developments in the health care fields because of the parallels between medical and legal education with regard to developing students' abilities to successfully work across cultures.<sup>35</sup>

Decades ago, health care educators recognized the need for *cultural competence* education because studies indicated there were significant disparities in health outcomes related to patients' race and ethnicity.<sup>36</sup> Early health care educational endeavors proceeded on the premise that certain races and ethnicities had particular attitudes, beliefs, or experiences that impacted the delivery of health care services.<sup>37</sup> This cultural competence model "emphasized a notion that clinicians and trainees need to develop expertise in particular cultures to be effective providers."<sup>38</sup> Based on this early conceptualization of cultural competence, students were expected to have a certain level of knowledge about particular cultures—e.g., knowledge about the culture's history and origin and beliefs of people belonging to that

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33. See Dogra & Karim, *supra* note 28, at 163; Ascanio Piomelli, *Cross-Cultural Lawyering by the Book: The Latest Clinical Texts and a Sketch of a Future Agenda*, 4 HASTINGS RACE & POVERTY L.J. 131, 133 (2006) [hereinafter Piomelli, *Cross-Cultural Lawyering by the Book*].

34. See, e.g., THE SAGE HANDBOOK OF INTERCULTURAL COMPETENCE 272–403 (Darla K. Deardorff, ed., 2009) (discussing developing intercultural competence in numerous disciplines).

35. See WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 80–81, 130–31 (1st ed. 2007) (discussing how legal educators can learn from our medical educator counterparts); Jennifer S. Bard, "Practicing Medicine and Studying Law": How Medical Schools Used to Have the Same Problems We Do and What We Can Learn from Their Efforts to Solve Them, 10 SEATTLE J. FOR SOC. JUST. 135, 150–55 (2011) (discussing similarities and differences between legal and medical education efforts to develop students' practice skills).

36. Franklin A. Gevurtz, *Report Regarding the 2011 Pacific McGeorge Workshop on Promoting Intercultural Legal Competence (The "Tahoe II" Conference)*, 26 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 63, 71 (2013).

37. Niranjana S. Karnik & Nisha Dogra, *The Cultural Sensibility Model: A Process-Oriented Approach for Children and Adolescents*, in 19 CHILD AND ADOLESCENT PSYCHIATRIC CLINICS OF NORTH AMERICA 719, 721 (Shashank V. Joshi & Andres J. Pumariega eds., 2010).

38. *Id.*

culture both generally and as they related to the provision of health care. Students were also expected to develop skills based upon that knowledge, including the ability to communicate with sensitivity, to understand the patient's perspective, and to develop culturally sensitive treatment plans.<sup>39</sup> Finally, students were expected to acquire attitudes that demonstrated an understanding of, and respect for, differences based upon cultural beliefs and practices.<sup>40</sup> However, little attention was devoted to examination of how one's own culture influences responses to these ideas.

As medical educators used the *cultural competence* framework to develop teaching materials and assess student-learning outcomes, they discovered shortcomings inherent in that framework. Although the impetus for development of cultural competence learning outcomes was to address health care disparities based upon race and ethnicity,<sup>41</sup> some commentators criticized the narrow conceptualization of culture used when measuring health care students' learning outcomes.<sup>42</sup> Additionally, early educational models were criticized for proceeding on the assumption that one could develop *expertise* in a particular culture simply by learning about broad generalizations related to cultural beliefs and practices.<sup>43</sup> Because culture is a complex, multi-faceted concept, and because all people have multiple cultural backgrounds and experiences that influence the lenses through which they see the world, it is impossible for anyone to become *competent* in another's culture.<sup>44</sup> It also became clear that given the number of different cultures that exist, the curriculum would become quickly overloaded with an emphasis on acquisition of specific cultural knowledge.<sup>45</sup>

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39. Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 409–10 (1997) (discussing learning outcomes for mental health counselors); Karnik & Dogra, *supra* note 37, at 724 (discussing learning outcomes for medical students).

40. Karnik & Dogra, *supra* note 37, at 724.

41. Aysegul Gozu et al., Review, *Self-Administered Instruments to Measure Cultural Competence of Health Professionals: A Systematic Review*, 19 TEACHING & LEARNING MEDICINE 180, 181 (2007).

42. See Arno K. Kumagai & Monica L. Lybson, *Beyond Cultural Competence: Critical Consciousness, Social Justice, and Multicultural Education*, 84 ACAD. MED. 782 *passim* (2009); Zofia Kumas-Tan et al., *Measures of Cultural Competence: Examining Hidden Assumptions*, 82 ACAD. MED. 548 *passim* (2009).

43. Angela C. Jenks, *From "List of Traits" to "Open-Mindedness": Emerging Issues in Cultural Competence Education*, 35 CULTURE, MED., & PSYCHIATRY 209, 215 (2011).

44. Kumagai & Lybson, *supra* note 42, at 782–83; see also Kumas-Tan et al., *supra* note 42, at 552.

45. Elois Ann Berlin & William C. Fowkes, Jr., *A Teaching Framework for Cross-Cultural Health Care: Application in Family Practice*, 139 W. J. MED. 934, 938 (1983) (noting that it was "unrealistic to [believe] that health care providers [could] gain [an] in-depth

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To remedy the theoretical problems inherent in the cultural competency model, medical educators began talking about developing students' *cultural sensitivity* or *cultural humility*. These models defined culture more broadly and encompassed a much wider range of cultural factors, including race, ethnicity, gender, religion, sexual orientation, socio-economic status, and other factors that influenced people's worldviews.<sup>46</sup> Educators also examined developing students' awareness of the role that culture plays in the delivery of health care services and using that awareness as a communication tool when treating patients.<sup>47</sup> A *culturally sensitive* or *culturally humble* medical practitioner was taught to be aware that others may come from a different belief system or perspective and that they needed to respect that belief system and develop an appropriate treatment plan in light of the patient's cultural background.<sup>48</sup> Students also were taught to be self-reflective about their own biases and stereotypes and how those might affect the ways in which they interacted with and treated patients.<sup>49</sup> They were encouraged to reflect upon their own preconceptions and to respect differences between their worldview and that of their patient to optimize patient care.<sup>50</sup>

Clinical legal educators adopted this culturally sensitive approach, encouraging law students to be self-reflective about their own cultural experiences and how those experiences affected the students' interpretation of client interactions and behaviors.<sup>51</sup> Students were encouraged to be

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knowledge about . . . health-affecting beliefs and practices of every ethnic or cultural group they [were] likely to encounter").

46. Lisa Bliss et al., *Client and Patient Relationships: Understanding Cultural and Social Context*, in POVERTY, HEALTH AND LAW: READINGS AND CASES FOR MEDICAL-LEGAL PARTNERSHIP 125, 147 (Elizabeth Tobin Tyler et al. eds., 2011); see also Melanie Tervalon & Jann Murray-Garcia, *Cultural Humility Versus Cultural Competence: A Critical Distinction in Defining Physician Training Outcomes in Multicultural Education*, 9 J. HEALTH CARE FOR POOR & UNDERSERVED 117, 120 (1998).

47. Tervalon & Murray-Garcia, *supra* note 46, at 119–20; see also Bliss et al., *supra* note 46, at 148, 150.

48. Bliss et al., *supra* note 46, at 146, 148.

49. *Id.* at 148.

50. Naser Z. Alsharif, *Cultural Humility and Interprofessional Education and Practice: A Winning Combination*, AM. J. PHARMACEUTICAL EDUC., Sept. 10, 2012, at 1, 1.

51. The seminal work in this area was done by Professors Susan Bryant and Jean Koh Peters. *E.g.*, Bryant, *supra* note 31. Their 2001 article paved the way for clinical legal educators grappling with how best to teach law students to account for the role culture plays in the lawyering process. *Id.* Since then, many clinical educators have addressed how to help students understand the impact cultural experiences have on the lawyer-client relationship. *See, e.g.*, Bliss et al., *supra* note 46, at 148; Antoinette Sedillo López, *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, 43–44 (2008); Miller et al., *supra* note 6, at 111–12; Piomelli,

sensitive to cultural practices that differed from their own and to approach interactions with humility rather than hubris.<sup>52</sup> However, this humility or sensitivity approach did not account for the fact that cultural experiences vary over our lifetimes and did not necessarily include encouraging students continuously to examine whether their own worldviews or beliefs might need to shift. This approach also had the potential to encourage passive or blind acceptance of what the practitioner is told about other cultures. Female genital mutilation—as an extreme example—might not be challenged for fear of being disrespectful of another’s culture.<sup>53</sup> Similarly, this approach could lead to unexamined acceptance of cultural practices as a defense to charges of domestic violence.<sup>54</sup> As educators continue to reflect upon—and improve—how to teach students to work effectively in today’s multicultural society, they develop new models. For example, recently, doctors Karnik and Dogra proposed moving from a *cultural sensitivity* model to a *cultural sensibility* model. They describe *cultural sensibility* as “an openness to emotional impressions, susceptibility, and sensitiveness” that allows one to reflect and change because of his or her interactions with people from different cultural backgrounds.<sup>55</sup> This conceptual framework emphasizes that everyone has a cultural background that affects his or her perceptions,

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*Cross-Cultural Lawyering by the Book*, *supra* note 33, at 141; Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373, 384 (2002). Professors Bryant and Koh have brought their work with law students to the attention of practicing lawyers, who confront these same issues. See Sue Bryant & Jean Koh Peters, *Five Habits for Cross-Cultural Lawyering—Introduction*, ILL. LEGAL ADVOC., [http://www.illinoislegaladvocate.org/index.cfm?fuseaction=home.dsp\\_content&contentID=5985](http://www.illinoislegaladvocate.org/index.cfm?fuseaction=home.dsp_content&contentID=5985) (last updated Oct. 2007).

52. Margaret Martin Barry et al., *Teaching Social Justice Lawyering: Systematically Including Community Legal Education in Law School Clinics*, 18 CLINICAL L. REV. 401, 418 (2012); Sedillo López, *supra* note 51, at 45–48, 68; Liwen Mah, Comment, *The Legal Profession Faces New Faces: How Lawyers’ Professional Norms Should Change to Serve a Changing American Population*, 93 CALIF. L. REV. 1721, 1754 (2005).

53. Some cultural relativists argue that one must respect the cultural practice of female genital mutilation while others argue that this practice violates basic human rights. For insights into this debate see Henriette Dahan Kalev, *Cultural Rights or Human Rights, The Case of Female Genital Mutilation*, 51 SEX ROLES 339, 347 (2004), available at [http://www.intact-network.net/intact/cp/files/1296997267\\_Cultural%20Rights%20or%20Human%20Rights.pdf](http://www.intact-network.net/intact/cp/files/1296997267_Cultural%20Rights%20or%20Human%20Rights.pdf).

54. For a very thoughtful analysis of the tensions between acceptance and challenging culturally based defenses in domestic violence cases, see Holly Maguigan, *Cultural Evidence and Male Violence: Are Feminist and Multiculturalist Reformers on a Collision Course in Criminal Courts?*, 70 N.Y.U. L. REV. 36 *passim* (1995).

55. Karnik & Dogra, *supra* note 37, at 723 (laying out the cultural sensibility framework). This work was based upon research originally outlined by Dr. Dogra in 2003. Nisha Dogra, *Cultural Expertise or Cultural Sensibility? A Comparison of Two Ideal Type Models to Teach Cultural Diversity*, 5 INT’L J. OF MED. 223, 224–226 (2003).

beliefs, and actions.<sup>56</sup> The cultural sensibility framework focuses on students' understanding that culture is a complex compilation of numerous influences and emphasizes developing students' understanding of how culture, in turn, influences interactions or knowledge.<sup>57</sup> This approach considers whether students are able to use their understanding of culture to develop constructive and positive relationships or skills.<sup>58</sup> Finally, the model looks at whether students are willing to be self-reflective about the role culture plays in interactions and use information they have learned to be open to re-examining, and potentially changing, their own perspectives, behaviors, and attitudes.<sup>59</sup> At the heart of this framework is the notion that cultural experiences are not static. Students and practitioners continue to develop; and their experiences continue to influence their worldviews.<sup>60</sup>

This cultural sensibility framework, focused on the need to develop cultural self-awareness, compliments the work of many clinical legal educators,<sup>61</sup> as well as views expressed by legal educator experts at the 2011 Pacific McGeorge Workshop on Promoting Intercultural Legal Competence.<sup>62</sup> This framework focuses on the need to teach students to recognize the influence their own cultural backgrounds and perspectives have on how they interpret legal rules and how they interact with others.<sup>63</sup> The goal of cultural sensibility education is to build self-awareness and to move students away from looking at those with different cultural experiences as the *Other*.<sup>64</sup> Cultural sensibility education seeks to create an open-mindedness that allows students to avoid making assumptions about other cultures or legal systems,<sup>65</sup> teaching students to avoid behaviors based upon cultural domination or superiority,<sup>66</sup> and encouraging them to be open to reconsidering, and potentially altering, their own way of viewing lawyer-client interactions and legal problems.

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56. Dogra & Karim, *supra* note 28, at 159–60.

57. *Id.* at 163–64 tbl.1; Karnik & Dogra, *supra* note 37, at 726–28 tbl.1.

58. Karnik & Dogra, *supra* note 37, at 726–28 tbl.1.

59. *Id.*

60. *Id.*

61. See, e.g., Bryant, *supra* note 31, at 40; Jacobs, *supra* note 39, at 405–06; Sedillo-Lopez, *supra* note 51, at 47–48; Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLINICAL L. REV. 369, 374–75 (2005).

62. See generally Gevurtz, *supra* note 36.

63. See Bryant, *supra* note 31, at 40; Weng, *supra* note 61, at 390, 396.

64. See Weng, *supra* note 61, at 396–98 (discussing the need for students to become culturally self-aware and to recognize that a person's culture shapes his or her attitudes, values and assumptions about the law and legal processes).

65. Gevurtz, *supra* note 36, at 79–82.

66. *Id.* at 82.

### C. *Why Cultural Sensibility is Important for Lawyers*

Cultural experiences underpin how we read and interpret legal principles and rules and how we apply those rules to facts.<sup>67</sup> Cultural experiences also account for the way we understand and communicate information.<sup>68</sup> Cultural perspectives permeate transnational transactions and cross-border disputes as well as domestic legal issues and interactions. Additionally, different countries and cultures have different views about attorneys' functions in society and in particular situations.<sup>69</sup>

Lawyers working in an international law context, be it in a large law firm's business practice or on international human rights issues, should understand the role culture plays in their work.<sup>70</sup> Likewise, understanding how to effectively work across cultures is important to lawyers who deal with cross-border disputes and transactions in many different legal specialties such as immigration law,<sup>71</sup> environmental law,<sup>72</sup> family law,<sup>73</sup>

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67. Over a decade ago, Professor Marjorie Silver eloquently argued that law students should be taught that all lawyering is cross-cultural and that our cultural perspectives inform our legal and factual analysis. See Marjorie Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L.J. 219 (2002). Others have noted that culture permeates legal interpretation. See, e.g., Kris Franklin, *Pedagogy, "Theory Saved My Life"*, 8 N.Y. CITY L. REV. 599, 607 (2005) (noting "interpretation is both a basic human activity and wholly historically and culturally conditioned"); see Dan M. Kahan, *Essay, "Ideology in" or "Cultural Cognition of" Judging: What Difference Does It Make?*, 92 MARQ. L. REV. 413, 420 (2009).

68. See Tae-Seop Lim, *Language and Verbal Communication Across Cultures*, in HANDBOOK OF INTERNATIONAL AND INTERCULTURAL COMMUNICATION 69, 70, 73–76 (William B. Gudykunst & Bella Mody eds., 2d ed. 2002); Peter A. Andersen et al., *Nonverbal Communication Across Cultures*, in HANDBOOK OF INTERNATIONAL AND INTERCULTURAL COMMUNICATION 89, 90–91 (William B. Gudykunst & Bella Mody eds., 2d ed. 2002).

69. Gevurtz, *supra* note 36, at 75.

70. In the law firm context, see John Barkai, *What's a Cross-Cultural Mediator to Do? A Low-Context Solution for a High-Context Problem*, 10 CARDOZO J. CONFLICT RESOL. 43, 44 (2008); Nancy S. Kim, *Reasonable Expectations in Sociocultural Context*, 45 WAKE FOREST L. REV. 641, 642, 655–60 (2010). For application in the human rights context, see Kathleen Kelly Janus & Dee Smythe, *Navigating Culture in the Field: Cultural Competency Training Lessons from the International Human Rights Clinic*, 56 N.Y.L. SCH. L. REV. 445, 446 (2011–2012).

71. Nora V. Demleitner, *How Much Do Western Democracies Value Family and Marriage?: Immigration Law's Conflicted Answers*, 32 HOFSTRA L. REV. 273 *passim* (2003); Gevurtz, *supra* note 36, at 74.

72. Gevurtz, *supra* note 36, at 74.

73. Annie Bunting, *Elijah and Ishmael: Assessing Cultural Identity in Canadian Child Custody Decisions*, 42 FAM. CT. REV. 471, 472–73 (2004); Gevurtz, *supra* note 36, at 74.

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criminal law,<sup>74</sup> and employment law,<sup>75</sup> as well as in equity, property, and torts issues.<sup>76</sup> However, the need to understand how cultural experiences affect the legal process is not limited to those engaging in international or cross-border transactions and disputes. Most lawyers will encounter colleagues, judges, jurors, and clients whose cultural perspectives and experiences differ from their own. Failure to understand the role culture plays can limit a lawyer's ability to meet critical legal needs and provide access to justice as well as impede client representation generally.<sup>77</sup>

Global competence, competently representing domestic clients, and access to justice issues all require lawyers to understand the role culture plays in the lawyering process. Thus, scholars and educators working to develop students' intercultural legal competence have identified two reasons for doing so: (1) to enable law graduates to successfully represent clients in transactions and litigation situations that involve different countries, cultures or legal systems,<sup>78</sup> and (2) to better serve those from underrepresented cultures and countries, providing greater access to justice.<sup>79</sup>

Developing law students' abilities to work effectively across cultures is important because lawyers' failure to recognize and account for culturally different approaches to communication and problem solving may result in

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74. See Scharlette Holdman & Christopher Seeds, *Cultural Competency in Capital Mitigation*, 36 HOFSTRA L. REV. 883, 883–84 (2008); see also Gevurtz, *supra* note 36, at 74.

75. Gevurtz, *supra* note 36, at 74.

76. O'DONNELL & JOHNSTONE, *supra* note 6, at 24, 66, 105 (suggesting ways to incorporate cultural sensibility teaching into a range of doctrinal courses); see also Gevurtz, *supra* note 36, at 74.

77. For a discussion of the need for cultural sensibility to improve access to justice, see Gevurtz, *supra* note 36, at 74–75; see also Holdman & Seeds, *supra* note 74, at 894, 896 (discussing how cultural competency is critical in capital cases involving clients from underserved and outsider communities); Ascanio Piomelli, *Sensibilities for Social Justice Lawyers*, 10 HASTINGS RACE & POVERTY L. J. 177, 185–86 (2013) [hereinafter Piomelli, *Sensibilities for Social Justice Lawyers*] (discussing the need for social justice lawyers to pay attention to class, race and gender to recognize, and account for, cultural encapsulation). For a discussion of the need for cultural sensibility skills in general client representation, see *infra* text accompanying notes 80–85.

78. Gevurtz, *supra* note 36, at 71; Catherine J. Iorns Magallanes, *Teaching for Transnational Lawyering*, 55 J. LEGAL EDUC. 519, 520 (2005) (noting cultural competence is “key to so many other methods of thinking and problem-solving that it should be taught as foundational to transnational lawyering”).

79. Gevurtz, *supra* note 36, at 71; Nelson Miller & Victoria Kremski, *Who Is the Customer and What Are We Selling? Employer-Based Objectives for the Ethical Competence of Law School Graduates*, 33 J. LEGAL PROF. 223, 236–37 (2009); Piomelli, *Sensibilities for Social Justice Lawyers*, *supra* note 77, at 185–86; Rose Voyvodic, *Lawyers Meet the Social Context: Understanding Cultural Competence*, 84 CANADIAN B. REV. 563, 581–82 (2006).

misunderstandings,<sup>80</sup> misapplication of the legal rules and principles to facts,<sup>81</sup> failed international and cross-border transactions,<sup>82</sup> the development and interpretation of laws and legal rules that fail to account for differing perspectives,<sup>83</sup> and, in some cases, the continued marginalization of those who do not belong to the dominant culture.<sup>84</sup> In all practice areas, cultural misunderstandings may impede lawyers' abilities to effectively interview, investigate, counsel, negotiate, litigate, and resolve conflicts.<sup>85</sup>

Helping law students understand the role culture plays in the lawyering process serves both lawyer and client. As one health care educator noted, improved doctor-patient communications leads to more accurate diagnosis and treatment, increased patient satisfaction, and ultimately fewer malpractice claims.<sup>86</sup> The same reasoning applies to lawyers. Studies show that client satisfaction often relates as much to how lawyers communicate as to actual results achieved in a given case.<sup>87</sup> Effective lawyers must be able to recognize, and appropriately respond to, their own and others' cultural perceptions and beliefs because these often play a central role in lawyer-client communications.<sup>88</sup>

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80. Jean R. Sternlight & Jennifer Robbennolt, *Good Lawyers Should Be Good Psychologists: Insights for Interviewing and Counseling Clients*, 23 OHIO ST. J. ON DISP. RESOL. 437, 510–12 (2008); see also Bryant, *supra* note 31, at 42; see generally RICHARD BRISLIN, UNDERSTANDING CULTURE'S INFLUENCE ON BEHAVIOR (1993).

81. Bryant & Peters, *supra* note 51 (noting that “[l]awyers in cross-cultural settings may have greater difficulty sorting out when they are making assumptions and when they are using facts”).

82. Annette Demers, *Cultural Competence and the Legal Profession: An Annotated Bibliography of Materials Published Between 2000 and 2011*, 39 INT'L J. LEGAL INFO 22, 22–23 (2011) (relaying story of failed international business transaction because of lawyer's lack of awareness of cultural practices and expectations).

83. O'DONNELL & JOHNSTONE, *supra* note 6, at 1.

84. Anthony V. Alfieri, *(Un)Covering Identity in Civil Rights and Poverty Law*, 121 HARV. L. REV. 805, 837 (2008) (arguing that “the failure to train civil rights and poverty lawyers in practices of cross-cultural and difference-based identity analysis perpetuates stigma-induced marginalization in law and society”).

85. Sternlight & Robbennolt, *supra* note 80, at 437, 442, 509–12.

86. Wendy Levinson et al., *Physician-Patient Communication: The Relationship with Malpractice Claims Among Primary Care Physicians and Surgeons*, 277 J. AM. MED. ASS'N 553, 558 (1997).

87. Clark D. Cunningham, *Legal Education After Law School: Lessons from Scotland and England*, 33 FORDHAM URB. L.J. 193, 203 (2005) (noting that studies found professional negligence claims often were not based upon case outcome but instead related to lawyer-client communication failures, including lawyers' “failure to listen to the client, to ask appropriate questions, and to explain relevant aspects of the matter”).

88. Bliss et al., *supra* note 46, at 141–43.

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## II. IDENTIFYING LEARNING OUTCOMES RELATED TO THE DEVELOPMENT OF A CULTURALLY SENSIBLE LAWYER

Educators committed to helping law students become culturally sensible professionals must consider how best to develop students' abilities to work effectively across cultures. Before designing a course or curriculum, it is useful to identify what students should learn in order to best design assignments, teaching methods, and assessments.<sup>89</sup> One way to focus on student learning is to articulate learning outcomes. Learning outcomes can help measure student progress.<sup>90</sup> Learning outcomes can also provide valuable feedback about gaps in the course or curriculum and whether particular teaching modules or methods should be modified.<sup>91</sup>

As mentioned above, learning outcomes are “something [the] students can do now that they could not do previously. . . . [A change in people] as a result of a learning experience.”<sup>92</sup> The shift to learning outcomes is an educational paradigm shift in which the focus is upon what students have learned rather than on areas or types of instruction.<sup>93</sup> The focus is on learner achievements rather than teacher intentions.<sup>94</sup> Learning outcomes commonly consist of three aspects of student learning: (1) the acquisition of knowledge (what instructors want students to know), (2) attitudes (the professional values or attitudes instructors want students to demonstrate), and (3) skills (what instructors want students to be able to do).<sup>95</sup> These concepts constitute the knowledge–attitudes–skills framework used to develop student learning outcomes in other disciplines. Although specific outcomes are often categorized separately, there is frequently some overlap and linkage. As a group of medical school deans noted, “[i]nvariably there is overlap between the different domains with some outcomes being

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89. MICHAEL HUNTER SCHWARTZ ET AL., *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* 37 (2009); GRANT WIGGINS & JAY MCTIGHE, *UNDERSTANDING BY DESIGN* 13–14 (2d ed. 2005).

90. Fisher, *supra* note 3, at 237.

91. *Id.* at 236–37; see also Deborah Maranville et al., *Lessons for Legal Education from the Engineering Profession's Experience with Outcomes-Based Accreditation*, 38 WM. MITCHELL L. REV. 1017, 1032–33 (2012); Lynch, *supra* note 3, at 995–97.

92. Watson, *supra* note 21, at 208.

93. CARPENTER ET AL., *supra* note 11, at 16–17; Friedland, *supra* note 23, at 960.

94. STEPHEN ADAM, *LEARNING OUTCOMES CURRENT DEVELOPMENTS IN EUROPE: UPDATE ON THE ISSUES AND APPLICATIONS OF LEARNING OUTCOMES ASSOCIATED WITH THE BOLOGNA PROCESS* 14 (2008), available at [http://www.ond.vlaanderen.be/hogeronderwijs/bologna/BolognaSeminars/documents/Edinburgh/Edinburgh\\_Feb08\\_Adams.pdf](http://www.ond.vlaanderen.be/hogeronderwijs/bologna/BolognaSeminars/documents/Edinburgh/Edinburgh_Feb08_Adams.pdf).

95. *Writing Learning Outcomes*, AM. ASS'N. L. LIBR., <http://www.aallnet.org/Archived/Education-and-Events/cpe/outcomes.html> (last visited Feb. 16, 2014).

common to more than one domain, but such duplication serves to illustrate the inextricable links and interdependence between the different elements comprising a competent and reflective practitioner.”<sup>96</sup>

Learning outcomes may be designed by individual faculty members for a specific course and outcomes may be curricular in light of expectations of the knowledge–attitudes–skills graduates should demonstrate.<sup>97</sup> Learning outcomes vary depending upon course or curricular content or individual faculty members’ learning objectives. Both curricular and course learning outcomes are shaped by educators’ own world views and educational philosophies,<sup>98</sup> and it is useful for educators to consider the reasons they choose particular approaches and the rationale for their preferences.<sup>99</sup>

Because learning outcomes seek to provide information to students and teachers about student learning, they should be specific, measurable, achievable, relevant, and realistic.<sup>100</sup> With that said, learning outcomes are difficult to draft because all learning is part of a continuum<sup>101</sup> and the level and depth of learning depends upon context, teacher knowledge, and understanding as well as student knowledge and understanding.<sup>102</sup> Very broad or general learning outcomes may provide learners little guidance and be difficult to measure.<sup>103</sup> On the other hand, overly precise learning outcomes may too narrowly prescribe learning.<sup>104</sup>

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96. J.G. Simpson et al., *The Scottish Doctor—Learning Outcomes for the Medical Undergraduate in Scotland: A Foundation for Competent and Reflective Practitioners*, 24 MED. TCHR. 136, 137 (2002).

97. RICHARD JOHNSTONE & SUMITRA VIGNAENDRA, AUSTRALIAN UNIV. TEACHING COMM., LEARNING OUTCOMES AND CURRICULUM DEVELOPMENT IN LAW 110–11 (2003), available at [http://www.cald.asn.au/docs/AUTC\\_2003\\_Johnstone-Vignaendra.pdf](http://www.cald.asn.au/docs/AUTC_2003_Johnstone-Vignaendra.pdf) (discussing curricular based learning outcomes); Carolyn Grose, *Outcomes-Based Education One Course at a Time: My Experiment with Estates and Trusts*, 62 J. LEGAL EDUC. 336, 343–44 (2012) (discussing course-based learning outcomes).

98. Grose, *supra* note 97, at 340 (noting that in determining learning outcomes, educators identify their goals for the class, the desired outcomes and how those will be assessed, and the teaching methods best suited to the achievement of those outcomes).

99. *Id.* at 345.

100. Declan Kennedy et al., *Writing and Using Learning Outcomes: A Practical Guide*, in *EUA BOLOGNA HANDBOOK: MAKING BOLOGNA WORK*, 1, 18 available at [http://sss.dcu.ie/afi/docs/bologna/writing\\_and\\_using\\_learning\\_outcomes.pdf](http://sss.dcu.ie/afi/docs/bologna/writing_and_using_learning_outcomes.pdf); Jacob M. Carpenter, *Unique Problems and Creative Solutions to Assessing Learning Outcomes in Transactional Drafting Courses: Overcoming “The Form Book Problem,”* 38 U. DAYTON L. REV. 195, 203 (2012).

101. Trevor Hussey & Patrick Smith, *Learning Outcomes: A Conceptual Analysis*, 13 TEACHING HIGHER EDUC. 107, 109 (2008).

102. *Id.*

103. Ian Scott, *The Learning Outcome in Higher Education: Time to Think Again?*, WORCESTER J. LEARNING & TEACHING, Jan. 2011, available at <http://www.worc.ac.uk/adpu/documents/WJLTIssue5PersonalperspectivesIScott.pdf>.

104. *Id.*

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Some have correctly noted that not all aspects of what law professors teach can be reduced to an easily measurable learning outcome.<sup>105</sup> Additionally, there is a danger that quantification of learning outcomes may oversimplify the complexity of what students should learn.<sup>106</sup> Although raising valid points, these critiques should not lead to a wholesale rejection of legal education learning outcomes. The danger is not in identifying learning outcomes. Rather, the dangers lay in reliance upon one instrument or one assessment method to quantify student learning,<sup>107</sup> and in rigid adherence to a set of pre-determined learning outcomes rather than use of learning outcomes as part of an iterative process that guides, rather than dictates, student learning and curriculum development.<sup>108</sup>

The process of identifying learning outcomes is relatively new to most law professors. Therefore, to suggest cultural sensibility learning outcomes in the legal education context, we use work done by medical educators,<sup>109</sup> clinical legal educators,<sup>110</sup> and a group of legal education

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105. See, e.g., Lynch, *supra* note 3, at 986–90 (addressing concerns that a move to learning outcomes will result in a diminution of intellectual and conceptual classroom teaching and discussions).

106. See Maranville et al., *supra* note 91, at 1035.

107. See, e.g., Stefan H. Krieger & Serge A. Martinez, *Performance Isn't Everything: The Importance of Conceptual Competence in Outcome Assessment of Experiential Learning*, 19 CLINICAL L. REV. 251 *passim* (2012) (arguing that outcomes assessment in experiential legal education should go beyond a checklist approach and encompass techniques designed to evaluate student reasoning as they engage with clients and cases).

108. Angela Maher, *Learning Outcomes in Higher Education: Implications for Curriculum Design and Student Learning*, J. HOSPITALITY, LEISURE, SPORT & TOURISM EDUC., Nov. 2004, at 46, 50.

109. The theoretical constructs from medical educators were based upon the work of doctors Dogra, Karnik, and Karim. See generally Dogra & Karim, *supra* note 28; Karnik & Dogra, *supra* note 37. We also reviewed learning outcomes drafted by a blue ribbon commission of physicians and medical educators. ASS'N OF AM. MED. COLLS., TOOL FOR ASSESSING CULTURAL COMPETENCE TRAINING (TACCT) (2010), available at [https://www.aamc.org/download/54344/data/tacct\\_pdf.pdf](https://www.aamc.org/download/54344/data/tacct_pdf.pdf) [hereinafter ASS'N OF AM. MED. COLLS., TOOL FOR ASSESSING CULTURAL COMPETENCE TRAINING (TACCT)]. We also reviewed survey instruments developed by numerous health care educators. Michael D'Andrea et al., *Evaluating the Impact of Multicultural Counseling Training*, 70 J. COUNSELING & DEV. 143, 145–48 (1991); Glenn Gamst et al., *Cultural Competency Revised: The California Brief Multicultural Competence Scale*, 37 MEASUREMENT & EVALUATION COUNSELING & DEV. 163, 163–66 (2004); Gozu et al., *supra* note 41 *passim* (reviewing numerous health care educator survey instruments); Sunil K. Khanna et al., *Cultural Competency in Health Care: Evaluating the Outcomes of a Cultural Competency Training Among Health Care Professionals*, 101 J. NAT'L MED. ASS'N. 886, 887–89 (2009).

110. Although many legal educators have worked on these issues, we found work done by the following clinical educators particularly informative as we designed the survey: Bliss et al., *supra* note 46; Bryant, *supra* note 31; Miller et al., *supra* note 6; Sedillo López, *supra* note 51; Weng, *supra* note 61.

experts on cross-cultural learning.<sup>111</sup> In designing these outcomes, we used the cultural sensibility model<sup>112</sup> and the knowledge–attitudes–skills framework.<sup>113</sup> We present these learning outcomes cognizant of the issues discussed above and with the understanding that although they might form a core curriculum of basic outcomes to help students understand the effect cultural perspectives have on the lawyering process, they are not an exhaustive or definitive list.<sup>114</sup> Rather, they provide a starting place to envision developing a curriculum that prepares students to practice law in today’s multicultural society. As with all learning outcomes, cultural sensibility learning outcomes will need to be revised and modified in response to student feedback and changing contexts. We have categorized learning outcomes into the knowledge, skills, and attitudes domains. However, as mentioned above, there is often overlap within and between domains, and therefore learning outcomes that we have identified may appropriately fit within more than one domain.<sup>115</sup>

#### A. *Knowledge*

Many legal educators, especially clinical legal educators, recognize that competent lawyers must acknowledge the effect culture has upon the lawyer-client encounter and the ways in which lawyer ignorance of cultural perspectives can adversely impact clients.<sup>116</sup> As discussed in Section I, amongst medical educators who pioneered the concept of developing *culturally competent* practitioners, *competency* originally was defined by knowledge about specific cultures as if there was a homogeneity amongst people who possessed a similar cultural background.<sup>117</sup> Additionally, culture was commonly conflated with race and ethnicity.<sup>118</sup> Such an approach

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111. See generally Raquel Aldana & Leticia Saucedo, *Learning in Mulukukú: A Journey of Transformation*, in VULNERABLE POPULATIONS AND TRANSFORMATIVE LAW TEACHING 251 (Soc’y of Am. Law Teachers & Golden Gate Univ. Sch. of Law eds., 2011); Gevurtz, *supra* note 36.

112. Karnik & Dogra, *supra* note 37 *passim*.

113. See *supra* text accompanying notes 94–96.

114. For an example of a comprehensive list of cultural sensibility medical school learning outcomes, see ASS’N OF AM. MED. COLLS., TOOL FOR ASSESSING CULTURAL COMPETENCE TRAINING (TACCT), *supra* note 109.

115. See *supra* text accompanying note 96.

116. We do not attempt to provide an exhaustive list of all legal educators who have advocated for the integration of cultural sensibility education into law student clinical training. Rather, we simply note that this issue is one that has long been considered by legal educators, and especially clinicians. See, e.g., Bryant, *supra* note 31, at 35; Sedillo López, *supra* note 51, at 40; Weng, *supra* note 61, at 372–74.

117. Karnik & Dogra, *supra* note 37, at 721.

118. *Id.*

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encourages stereotyping and fails to acknowledge that individuals have multiple cultures and cultural experiences that shape their perceptions and attitudes.<sup>119</sup> This conceptualization of culture can also lead to teaching about culture as if culture belongs to the *Other* rather than encouraging students' understanding that we all have multiple cultural backgrounds that affect how we perceive and interact.<sup>120</sup>

The issues inherent in this narrow approach have led legal educators to reject a knowledge-based approach in which students learn about particular cultures in favor of a more contextual approach in which learning outcomes focus on students' knowledge and understanding of the cultural contexts in which information is presented and received.<sup>121</sup> Additionally, some legal educators suggest that students should understand that cultural perspectives underlie legal decision-making in order to both effectively develop legal strategies under existing laws and to argue for changes to the law.<sup>122</sup> Some argue that law students' knowledge must extend to an understanding of the subconscious cognitive categories, schemas, and the susceptibility of schemas to unconscious biases and stereotyping in order to uncover deeply embedded assumptions and attitudes that affect interactions.<sup>123</sup> Finally, some legal scholars postulate that students must understand the historical role cultural perspectives of the dominant culture

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119. See TERRY CROSS ET AL., TOWARDS A CULTURALLY COMPETENT SYSTEM OF CARE: A MONOGRAPH ON EFFECTIVE SERVICES FOR MINORITY CHILDREN WHO ARE SEVERELY EMOTIONALLY DISTURBED 6 (1989); Mary E. Duffy, *A Critique of Cultural Education in Nursing*, 36 J. ADVANCED NURSING 487, 489 (2001); Cynthia A. Savage, *Culture and Mediation: A Red Herring*, 5 AM. U. J. GENDER & L. 269, 274 (1996).

120. Piomelli, *Cross-Cultural Lawyering by the Book*, *supra* note 33, at 137–42 (critiquing clinical textbook's focus on examining the client's culture while ignoring the student's need to examine his or her own cultural experiences, beliefs and assumptions).

121. See 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, 1811–17 (1993) (arguing that understanding cultural contexts are critical to teaching lawyering for social change, and suggesting ways to raise personal identification issues in a wide range of classes); Alizabeth Newman, *Bridging the Justice Gap: Building Community by Responding to Individual Need*, 17 CLINICAL L. REV. 615, 664 (2011) (noting the need for community members to help lawyers understand the cultural contexts of clients' statements and actions). Clinical legal educators have adopted this contextualized approach as they teach students to interact with clients. See, e.g., Bryant, *supra* note 3; Sedillo-López, *supra* note 51.

122. See Kahan, *supra* note 67, at 419–21 (arguing that judges view cases through a cultural lens even when consciously trying to be objective); Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1197 (2009) (finding that judges often have implicit biases that affect their judicial decision-making).

123. See Weng, *supra* note 61, at 373, 391–93; see also Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1504 (2005); Miller et al., *supra* note 6, at 121–22.

have played and how these perspectives shaped the law in order to understand power differentials<sup>124</sup> and how these perspectives influence relationships between individuals and the development of the law and legal systems.<sup>125</sup>

We relay these last *knowledge* learning objectives with the caveat that, while it may be important to build students' knowledge about historical perspectives, historical contexts vary among different communities and groups.<sup>126</sup> Faculty should carefully consider how much emphasis should be placed upon the role the dominant culture has played in the development of the law and legal systems. If students from the dominant culture feel that the curriculum is saying that their world views are wrong, as opposed to asking them to consider how their world views may color their thinking, the students may be less open to exploring the role culture plays in the lawyering process.<sup>127</sup> A categorical view that certain views are acceptable and others are not may produce a defensive reaction and inhibit students' willingness to engage in self-reflection and challenge their long-held beliefs.<sup>128</sup> Thus, it is generally more effective to talk about unacceptable behaviors rather than unacceptable views.

The following list utilizes the conceptualizations of various aspects of students' cultural sensibility knowledge articulated above to identify some cultural sensibility *knowledge* learning outcomes one might have for a course or even a program of legal education—recognizing that many of these outcomes could also be categorized as *attitude or skill* outcomes.

At the end of the course/law school you should be able to:

- Define, in contemporary terms, race, ethnicity, and culture;

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124. See O'DONNELL & JOHNSTONE, *supra* note 6, at 8; see also Anthony R. Chase, *Race, Culture, and Contract Law: From the Cottonfield to the Courtroom*, 28 CONN. L. REV. 1, 6 (1995).

125. See O'DONNELL & JOHNSTONE, *supra* note 6, at 8; Roberta Rosenthal Kwall, *The Cultural Analysis Paradigm: Women and Synagogue Ritual as a Case Study*, 34 CARDOZO L. REV. 609, 619 (2012).

126. See, e.g., Denise C. Morgan, *The New School Finance Litigation: Acknowledging That Race Discrimination in Public Education is More than Just a Tort*, 96 NW. U. L. REV. 99, 146–47 (2001–2002) (noting that race is a social construct based upon the historical and social context of a given community).

127. See Aldana & Saucedo, *supra* note 111, at 255–56 (discussing the role reflective thinking plays in transformative educational experiences).

128. See Camille Gear Rich, *Marginal Whiteness*, 98 CALIF. L. REV. 1497, 1563–65 (2010) (discussing psychologists' findings that discussions of white privilege can have deleterious effects and ignite hostility in marginalized whites who may otherwise be allies in attempts to disrupt effect of that privilege).

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- Identify your own cultural experiences and how those experiences may affect your perceptions of the law and legal systems;
- Explain why cultural biases are not unique to one particular race or ethnicity or cultural background;
- In a particular case or factual scenario, identify cultural experiences of the parties and the lawyers that may affect the legal and factual analysis;
- Discuss the ways in which social determinants such as culture, education, income, housing, employment, access to transportation, and socio-economic status may affect access to justice;
- Describe the influence of culture on the historical development of laws and legal systems;
- Describe how stereotyping and biases may affect a lawyer's interpretation of the facts and application of a legal rule to the facts;
- Identify examples of culturally biased assumptions that lawyers and clients may bring into the lawyer-client relationship;
- Explain your own cultural biases and how those may impact legal representation generally as well as in the context of a particular case or factual scenario;
- Explain how subconscious schemas and categories make it difficult to identify when your reactions to other people are based upon culturally biased assumptions or stereotypes;
- Recognize that bias and stereotyping (conscious and unconscious) affect your factual and legal analysis;
- Describe challenges in cross-cultural communications.

B.      *Attitudes*

Because our perspectives influence the decisions we make and how we view interactions,<sup>129</sup> legal educators have discussed the need to develop students' receptiveness to exploring the effect of socio-cultural beliefs and behaviors on the provision of legal services and the lawyer-client relationship.<sup>130</sup> Clients may receive inadequate representation if law students and lawyers are not aware of their own potential bias and how their cultural

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129.      See John B. Mitchell, *Narrative and Client-Centered Representation: What is a True Believer to Do When His Two Favorite Theories Collide?*, 6 *CLINICAL L. REV.* 85, 90–91 (1999).

130.      See generally Bryant, *supra* note 31; Miller et al., *supra* note 6; Sedillo López, *supra* note 51.

backgrounds affect their perceptions. For example, Professor John B. Mitchell relates the story of a clinic case in which a recent émigré from an Asian country was accused of trying to sexually assault a man at a restroom urinal.<sup>131</sup> The client's story was that he thought he knew the alleged victim, and the client was simply trying to shake the man's hand.<sup>132</sup> For many Americans, the story would not be believable because of cultural attitudes about appropriate behavior at urinals.<sup>133</sup> Understanding that in the client's culture there was no self-consciousness about displaying what many Americans consider private body parts helped student lawyers develop the man's defense.<sup>134</sup> Understanding the effect of one's socio-cultural belief systems is not just important in social justice lawyering. It also important to lawyers engaged in representing business clients. For example, in Western cultures, a signed contract represents a final business deal that the parties should honor and follow. In other cultures, the fulfillment of a deal may be based upon trust between the parties rather than what is written in the contract.<sup>135</sup> If lawyers do not understand that their attitudes toward a transaction stem from their own cultural practices and traditions, and that they should not view other cultural practices as *wrong*, the transaction may fail.

A critical component of cultural sensibility education involves helping students understand how their own and others' cultural practices and perceptions affect how they view clients and transactions.<sup>136</sup> Students must understand that there is no single *correct* attitude or viewpoint, and faculty should not attempt to impose specific attitudes or values upon students.<sup>137</sup> Rather, faculty should seek to develop students' curiosity, empathy, respect, and humility with regard to their own and others' cultural beliefs and perspectives.<sup>138</sup> These attitudes are important because they acknowledge that

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131. Mitchell, *supra* note 129, at 104–05.

132. *Id.* at 112.

133. *Id.* at 116–17.

134. *Id.* at 121.

135. Catherine Sun, *Negotiating Business Transactions in China*, in BEST PRACTICES FOR INTERNATIONAL BUSINESS TRANSACTIONS IN CHINA: LEADING LAWYERS ON STRUCTURING AND NEGOTIATING TRADE TRANSACTIONS, UNDERSTANDING THE IMPORTANCE OF DUE DILIGENCE, AND WORKING AS A LEGAL PROFESSIONAL IN THE INTERNATIONAL BUSINESS COMMUNITY 76 (Aspatore, 2009).

136. See Miller et al., *supra* note 6, at 105–06; Sedillo López, *supra* note 51, at 45–49.

137. Charles R. Calleros, *Training a Diverse Student Body for a Multicultural Society*, 8 LA RAZA L.J. 140, 160 (1995); F. Patrick Hubbard, *Justice, Creativity, and Popular Culture: The "Jurisprudence" of Mary Chapin Carpenter*, 27 PAC. L.J. 1139, 1146–47 (1996).

138. Miller et al., *supra* note 6, at 113; Piomelli, *Cross-Cultural Lawyering by the Book*, *supra* note 33, at 153, 166; see also Weng, *supra* note 61, at 372.

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our world view is not an absolute truth. In cultural sensibility education, perhaps the most important attitudes to cultivate are openness to learning about how culture affects the lawyering process and open-mindedness about the assumptions students have about their own and others' cultures.<sup>139</sup> Students should learn not to make judgments based upon their own cultural background and perceptions and should not assume that others share their perspective.<sup>140</sup> They should also be open to discovering that their initial assumptions about another's legal system or culture may be incorrect.<sup>141</sup> Faculty should also help students develop their self-awareness about their own system and culture, teaching students about how their own cultural backgrounds affect their perceptions and actions.<sup>142</sup> Finally, students should be aware of differences in communication styles and value systems without attributing positive or negative connotations to those differences.<sup>143</sup>

With these principles in mind, the following list identifies some cultural sensibility *attitude* learning outcomes one might have for a course or even a program of legal education (recognizing that many of these outcomes could also be categorized as *knowledge or skill* outcomes).

At the end of the course/law school you should be able to:

- Explain the challenges inherent in exploration of one's own cultural biases and stereotypes;
- Identify impediments that affect your openness to learning about your own cultural biases and stereotypes;
- Explain why lawyers are as likely as clients to see the world through their own cultural lenses;
- Reflect on how different values systems and communications styles may affect lawyers' interpretations of client reactions and behaviors;
- Reflect upon how your own varied cultural experiences affect your perceptions and interactions with clients, colleagues, and staff;
- Evaluate why people are resistant to admitting that they make judgments based upon cultural biases and stereotypes;
- Evaluate the role your own cultural experiences have had in shaping your views about the law and legal systems;

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139. The attitude learning outcomes for a culturally sensible lawyer are built upon the work done by clinical legal educators. For example, over a decade ago, Professor Bryant suggested that open-mindedness was a critical component of building students' abilities to work effectively across cultures. Bryant, *supra* note 31, at 41–42.

140. Weng, *supra* note 61, at 385–86.

141. See Gevurtz, *supra* note 36, at 84–85.

142. Miller et al., *supra* note 6, at 105–06, 114; Silver, *supra* note 67, at 230.

143. See Gevurtz, *supra* note 36, at 83–84.

- Recognize the need to suspend judgment when encountering unfamiliar conduct or views;
- Demonstrate curiosity about the ways in which your cultural beliefs and practices influence your perceptions and interactions;
- Demonstrate curiosity about clients' cultural beliefs and practices.

### C. *Skills*

Legal educators have identified the need for students to account for cultural perspectives, motivations, backgrounds, and understandings of the lawyer and the person with whom he or she interacts, and to apply these same understandings to their legal analysis.<sup>144</sup> Students should be taught to assess whether their own assumptions and biases affect their understandings of information or the overall case,<sup>145</sup> to identify *red flags* that indicate miscommunication may have occurred, and to develop strategies for correcting miscommunications caused by cultural misunderstandings.<sup>146</sup> All of these skills enhance students' abilities to effectively represent clients from a wide range of cultural backgrounds and perspectives. Although some cultural sensibility skills are probably best developed via experiential learning, others can be developed in doctrinal courses through analysis of the cultural perspectives and beliefs underlying legal arguments, legal rules and judicial reasoning.

The list below suggests some cultural sensibility *skills* learning outcomes one might have for a course or program of legal education (recognizing that many of these outcomes could also be categorized as *knowledge or skill* outcomes).

At the end of this course/law school you should be able to:

- Identify the cultural factors that may have affected the judge's or jury's decision-making process in a given case;
- Identify the cultural factors that may have affected how the lawyer presented his or her client's case;
- Identify methods that may be utilized to ensure awareness of your own cultural traditions, perspectives, and beliefs;
- Identify methods that may be utilized to ensure awareness of others' cultural traditions, perspectives, and beliefs and how those may be the same or different than your own;

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144. Bryant, *supra* note 31, at 40–41.

145. *Id.* at 48–50; Sedillo López, *supra* note 51, at 46–48.

146. Bryant, *supra* note 31, at 73, 76.

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- Incorporate cultural considerations into your discussion of a hypothetical legal problem and the appropriate solution;
- Provide examples of how your own cultural assumptions and biases affected your understanding of the factual and legal issues in a given case or transaction;
- Identify situations in which your cultural biases or stereotypes impeded successful legal representation;
- Ask appropriate questions to elicit client information about cultural beliefs or practices that may affect representation;
- Communicate effectively using a wide range of strategies to engage with clients;
- Respond appropriately to client feedback about key cross-cultural issues;
- Demonstrate strategies to assess, manage, and reduce bias in encounters with clients and witnesses;
- Explain techniques and tools that can help identify *red flags* that there has been a cross-cultural miscommunication;
- Use reflective practices when working on legal cases or transactions;
- Use reflective practices when considering cultural contexts and cultural norms and whether particular cultural norms and practices create injustices which should be challenged.

## III.      THE CULTURAL SENSIBILITY LEARNING CONTINUUM

Identification of learning outcomes helps clarify what students should learn. However, assessment of learning outcomes has to occur with the recognition that cultural sensibility develops on a continuum and that individual students within a given cohort may be in different places on that continuum. Educators in other disciplines have developed various models to explain the progression students go through as they develop their abilities to work effectively across cultures. One seminal early model was developed by Milton J. Bennett, M.D.<sup>147</sup> Dr. Bennett's model "provides a theory-based explanation for the varying degrees of individual and organizational effectiveness one observes in intercultural endeavours."<sup>148</sup> Bennett's theoretical model describes the progression through various phases of what

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147. Milton J. Bennett, *A Developmental Approach to Training for Intercultural Sensitivity*, 10 INT'L J. INTERCULTURAL REL. 179, 179 (1986).

148. Joe Greenholtz, *Assessing Cross-Cultural Competence in Transnational Education: The Intercultural Development Inventory*, 25 HIGHER EDUC. EUR. 411, 412 (2000); see also Bennett, *supra* note 147, at 180.

he calls *intercultural sensitivity*.<sup>149</sup> He suggests that learners move from being ethnocentric, using their own culture as the yardstick by which other cultures are measured, to becoming ethnorelative, realizing that their own culture is “one of many equally valid worldviews.”<sup>150</sup>

Bennett labels the first level of this development as *Denial of Difference*.<sup>151</sup> In this phase, students do not understand or accept cultural differences. People in this category either do not notice differences or construct broad, undifferentiated categories of cultural difference, such as *Asian*.<sup>152</sup> Students at this stage must learn to recognize the existence of cultural differences.<sup>153</sup> Bennett identifies the second level as *Defense Against Difference*, a stage in which one views differences as a “threat to the centrality of one’s world view.”<sup>154</sup> In this phase, learners recognize cultural differences but negatively evaluate those differences.<sup>155</sup> People at this level tend to either denigrate other cultures, exaggerate the positive characteristics of their own culture, or in some cases see another culture as superior to their own.<sup>156</sup> At this stage, students need to work on developing less polarized views about cultural differences.<sup>157</sup> Bennett describes the third level, *Minimization of Difference*, as a “last-ditch attempt to preserve the centrality of one’s own world view”<sup>158</sup> by trivializing differences.<sup>159</sup> Learners recognize and accept superficial cultural differences but insist that all human beings are essentially the same, with the same basic values.<sup>160</sup> At this stage, students need to work on development of cultural self-awareness, including understanding their own values and beliefs and exploring issues of dominant group privilege.<sup>161</sup> The goal is to help students at this stage develop open-mindedness, the ability to perceive others accurately, and the capacity to maintain a nonjudgmental interaction posture.<sup>162</sup>

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149. Bennett, *supra* note 147, at 180.

150. Greenholtz, *supra* note 148, at 413; *see also* Bennett, *supra* note 147, at 190–91.

151. Bennett, *supra* note 147, at 182.

152. *Id.* at 182–83, 187.

153. *Id.* at 187–88.

154. *Id.* at 183.

155. *Id.* at 183, 188.

156. Bennett, *supra* note 147, at 183, 188.

157. *Id.* at 189.

158. *Id.* at 183.

159. *Id.* at 184.

160. *Id.*

161. *See* Bennett, *supra* note 147, at 190–91.

162. *See id.*; Bryant, *supra* note 31, at 56 (noting that “non-judgmental [thinking] is a core cross-cultural skill and one that is particularly difficult for lawyers”). For an insightful discussion of why it is important to help law students move from an ethnocentric

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At the fourth level, *Acceptance of Difference*, learners recognize and appreciate cultural differences in behavior and values.<sup>163</sup> Learners are able to differentiate and elaborate various cultural categories and develop a meta-level view of cultural difference, including knowledge about the multi-faceted aspects of their own culture.<sup>164</sup> At this stage, educators should work with students to help them refine their analysis of cultural contrasts and deepen cultural self-awareness.<sup>165</sup> Students should begin to learn how to shift their frame of reference to incorporate willingness to learn about other cultures without judgment.<sup>166</sup> Bennett's fifth level, *Adaptation to Difference*, is the stage at which students are aware of the role culture plays in interactions and have developed the communication skills that enable effective intercultural communication.<sup>167</sup> Students at this level consciously understand the need to shift their frame of reference in intercultural situations so that they are not looking at the situation only through their own cultural lens.<sup>168</sup> At this stage, students are working at problem solving and interaction skills from the perspective of one who understands that culture is multi-faceted and relative, and that there is no one good or bad cultural perspective.<sup>169</sup> Bennett's final level, *Integration of Difference*, is when learners have internalized multicultural frames of reference and do not self-identify with any one particular culture, but rather look at themselves as having a multicultural identity and having the ability to unconsciously adjust to a wide range of cultural beliefs and practices.<sup>170</sup> At this stage, educators help students understand their multicultural identity and how that identity is a work-in-progress based upon continuing experiences and interactions.<sup>171</sup>

As learners progress through these stages, they move from a lack of recognition of the role culture plays in their own interactions to fully understanding and integrating cultural sensibility into their lives by accounting for, and adjusting to, differing cultural perspectives. Underlying Bennett's model is the need to help students develop self-awareness in order to progress from ethnocentrism—the first three stages—to ethnorelativism—the latter three stages.<sup>172</sup>

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to an ethnorelative perspective, see Shiv Narayan Persaud, *Is Color Blind Justice Also Culturally Blind*, 14 BERKELEY J. AFR. AM. L. & POL'Y 23, 63–64 (2012).

163. Bennett, *supra* note 147, at 184–85.

164. *Id.*

165. *See id.* at 191–92.

166. *Id.*

167. *Id.* at 185–86.

168. Bennett, *supra* note 147, at 185–86.

169. *Id.* at 192–93.

170. *Id.* at 186.

171. *See id.* at 193–94.

172. Greenholtz, *supra* note 148, at 412–13.

William Howell designed a slightly different model<sup>173</sup> that Professors Bryant and Koh adapted to describe the stages of law student cultural competence. Using Howell's model, they identify the first stage as *unconscious incompetence*, one that involves a total lack of awareness of the role culture plays in the lawyering process.<sup>174</sup> Students at this stage do not recognize cultural differences and are unaware of cross-cultural miscommunications. In Howell's second stage, *conscious incompetence*, students recognize that culture plays a role in how they understand and perceive communications and interactions, but they do not have the skills necessary to engage in effective cross-cultural interactions.<sup>175</sup> In this stage, students recognize cross-cultural miscommunications and misunderstandings, but they do not know how to avoid them or how to build positive and trusting relationships with clients.<sup>176</sup> The third stage is one of *conscious competence*, in which students understand how to effectively communicate across cultures, and are aware of the need to use cross-cultural lawyering skills that they consciously apply to their interactions with clients.<sup>177</sup> Finally, students reach Howell's fourth stage: The level of *unconscious competence*.<sup>178</sup> At this stage, the understanding of the role culture plays in the lawyering process, and the skills necessary to deal effectively across cultures, has become so ingrained that students unconsciously incorporate cross-cultural skills and perspectives into their interactions with others.<sup>179</sup>

For cultural sensibility, the learning continuum is slightly different than the continua described above in that the best practice or highest level in cultural sensibility education is achieved when the individual incorporates the principles regarding culture and diversity as an integral part of their daily practice.<sup>180</sup> That is, practitioners reflect on their communications and interpretations as they are happening—reflection in action—and modify them as they receive cues that clients are disengaging or that client and practitioner perspectives are too far apart.<sup>181</sup> In recognizing potential differences at an individual level, practitioners avoid falling into the trap of using stereotypes.<sup>182</sup> Practitioners are also skilled at making subtle changes

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173. See WILLIAM S. HOWELL, THE EMPATHIC COMMUNICATOR 29–33 (1982).

174. Bryant, *supra* note 31, at 62–63 (describing how Howell's work applies to law students).

175. *Id.* at 62.

176. *Id.*

177. *Id.* at 62–63.

178. *Id.* at 63.

179. Bryant, *supra* note 31, at 63.

180. See Karnik & Dogra, *supra* note 37, at 724–25.

181. See *id.* at 725.

182. Sternlight & Robbenolt, *supra* note 80, at 511–12.

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to accommodate different perspectives and bring them closer together if needed to avoid miscommunication.<sup>183</sup> The cultural sensibility model also recognizes that students may need to be aware of the fact that our emotional contexts can influence how comfortably we are able to challenge our perspectives and understandings. For example, when we are anxious or afraid, we are less likely to feel comfortable challenging our perspective or even questioning our perspectives.<sup>184</sup>

However, it is important not to view stages along learning continuums as linear and unidirectional. Individuals will move between stages at different times and in different contexts. The stages in these theoretical models are fluid and should not be viewed in absolute terms. Also, as with all theoretical models, they do not operate as neatly in practice as they do on paper. Nonetheless, the models are useful because they may help faculty set realistic cultural sensibility learning outcome goals.<sup>185</sup> Although it may not be realistic to hope law graduates all attain the highest level of cultural sensibility, a reasonable goal might be that all law graduates reach recognize and appreciate that everyone approaches issues through their own cultural lens, which varies based upon each person's cultural experiences—Bennett level 4/Howell level 2.<sup>186</sup> It may be that the goal is simply to get students to the point where they accept the roles of cultural beliefs, values, and behaviors in the lawyering process, understand that all behavior, including their own, exists in a cultural context<sup>187</sup> and understand that *good* and *bad* ways of being in the world exist in cultural context.<sup>188</sup> This does not mean students should be taught to blindly accept the status quo. For example, attitudes towards sexual orientation, gender, and race have changed significantly over the last century. These changes would not

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183. See Karnik & Dogra, *supra* note 37, at 728 tbl.1.

184. “Research indicates that we are more likely to fall prey to stereotype when we are feeling stress and unable to monitor ourselves for bias.” Bryant, *supra* note 31, at 78. “Stress inhibits students from receiving and processing information when anxiety distracts them from the learning task.” Nancy L. Schultz, *Lessons from Positive Psychology for Developing Advocacy Skills*, 6 JOHN MARSHALL L.J. 103, 134 (2012). See also Jacobs, *supra* note 39, at 400–01 (noting that learning more about clients’ cultural backgrounds will help reduce student anxiety when working with clients and enable the students to recognize that a client may have a perspective which differs from the student’s).

185. See, e.g., Sonia J. Crandall et al., *Applying Theory to the Design of Cultural Competency Training for Medical Students: A Case Study*, 78 ACAD. MED. 588, 588–89 (2003) (using the theoretical models described above to shape course and curricular learning outcomes).

186. See *supra* text accompanying notes 163–66, 175–76.

187. See *supra* text accompanying notes 163–66, 175–76.

188. John Alan Cohan, *Honor Killings and the Cultural Defense*, 40 CAL. W. INT’L L.J. 177, 225 (2010) (discussing cultural relativism).

have happened if accepted norms had not been challenged.<sup>189</sup> Thus, when developing learning outcomes for cultural sensibility, educators should consider including, as an outcome, preparing students to become reflective practitioners willing to examine, and potentially challenge, social norms. They should also consider where on the cultural sensibility continuum they hope their students will be at the completion of a given course or curriculum.

#### IV. DEVELOPING A BASELINE MEASURE OF STUDENTS' CULTURAL SENSIBILITY

In light of the move to incorporate learning outcomes into legal education and mindful of the theoretical underpinnings of cultural sensibility education, we developed a measure to assess some aspects of law students' cultural sensibility knowledge, attitudes, and skills. The initial development work has been detailed elsewhere.<sup>190</sup> As described below, the initial instrument has since been revised.

The revised instrument described herein is a starting point in measuring some law student cultural sensibility learning outcomes and we share it with many caveats in the hope that it can continue to be further refined and improved. First, we note that cultural sensibility cannot be measured by a single instrument. We also acknowledge that despite the efforts described below to develop a valid and reliable instrument, some may disagree with the questions we asked or the language we used. Our goal with this work is not to develop the definitive cultural sensibility learning outcome instrument. Rather, it is to present a tool legal educators can use to: Assess the need for cultural sensibility education, develop cultural sensibility learning outcomes, design courses and curriculum that meet students' educational needs, and track changes in students' cultural sensibility knowledge, attitudes, and skills.<sup>191</sup> The completion of the tool can also serve as an educational intervention in itself because it enables students to consider their responses and prompts them to think about the role culture plays in the lawyering process. Finally, we hope the instrument will be further tested as a tool for measuring student learning outcomes.

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189. For examples of these changes and other efforts to challenge accepted norms, see Athena D. Mutua, *The Rise, Development and Future Directions of Critical Race Theory and Related Scholarship*, 84 DENV. U. L. REV. 329, 330–40 (2006) (discussing legal scholars' challenges to race and class based legal norms).

190. Curcio et al., *Educating Culturally Sensible Lawyers*, *supra* note 9, *passim*.

191. These goals are similar to those identified by pharmacy school educators who performed a factor analysis on a pharmacy education cultural competence tool. See Margarita Echeverri et al., *Nine Constructs of Cultural Competence for Curriculum Development*, AM. J. PHARMACEUTICAL EDUC. Dec. 15, 2010, at 1, 1.

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*CULTURAL DIVERSITY EDUCATION LEARNING OUTCOMES*A. *Initial Survey Design and Development*

Health care educators,<sup>192</sup> as well as educators in other disciplines,<sup>193</sup> have developed numerous instruments to measure what they identify as students' *cultural competence* learning outcomes. We used those survey instruments<sup>194</sup> and the scholarship of clinical legal educators who have incorporated cultural sensibility into their teaching,<sup>195</sup> to develop an initial twenty-nine-question, anonymous electronic survey using a five-point semantic differential response scale—one equals strongly disagree and five equals strongly agree—that sought information about students' knowledge of how culture affects the lawyering process, their attitudes toward cultural diversity education, and their awareness of how their cultural background affects the ways in which they, and others, communicate and interact. The survey also asked demographic questions and contained a series of open-ended questions seeking information about the survey design as well as students' thoughts about the role culture plays in their world-view and interactions. After obtaining Institutional Review Board ("IRB") approval, we conducted an initial study. The survey was distributed to incoming law students during their orientation week at a second-tier, southern, urban state law school that has both a full and part-time program. The survey was also distributed to a small number of upper level students enrolled in one of the school's clinics. A total of 138 students participated in the initial study. The initial study provided valuable insights into students' knowledge and attitudes.

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192. See, e.g., Gozu et al., *supra* note 41, at 182–83 (reviewing forty-five instruments used to measure nurses, physicians, and other health care professionals' cultural competence).

193. Alvino E. Fantini, *Assessing Intercultural Competence: Issues and Tools*, in THE SAGE HANDBOOK OF INTERCULTURAL COMPETENCE 456, 466–75 (Darla K. Deardorff ed., 2009) (listing various assessment tools used in a wide range of disciplines to measure ability to communicate effectively across cultures).

194. Instruments that helped us develop this survey include those set out in the following articles: Jesse C. Crosson et al., *Evaluating the Effect of Cultural Competency Training on Medical Student Attitudes*, 36 FAM. MED. 199, 201 (2004) (medical students); D'Andrea et al., *supra* note 109, at 145 (counselors); Nisha Dogra & David Stretch, *Developing a Questionnaire to Assess Student Awareness of the Need to be Culturally Aware in Clinical Practice*, 23 MED. TCHR. 59, 60 (2001) (medical students); Gamst et al., *supra* note 109, at 164–65 (counselors); Gozu et al., *supra* note 41, at 181–82 (assorted health care professions); Khanna et al., *supra* note 109, at 887–89 (assorted health care professionals); Stephanie Myers Schim et al., *Development of a Cultural Competence Assessment Instrument*, 11 J. NURSING MEASUREMENT 29, 34–35 (2003) (nurses).

195. See Bliss et al., *supra* note 46, at 126–27; Bryant, *supra* note 31, at 38–48; Helen Y. Kim, Note, *Do I Really Understand? Cultural Concerns in Determining Diminished Competency*, 15 ELDER L.J. 265, 286–88 (2007); Sedillo López, *supra* note 51, at 42–45.

Although the survey instrument used in the initial study reached an acceptable level of statistical reliability ( $\alpha = 0.713$ ) and provided useful information,<sup>196</sup> we decided to further refine the instrument. To do this, we used the data collected from the open-ended questions in the initial study. We also asked two faculty members of divergent political and cultural perspectives, to review the survey. Finally, after obtaining IRB approval to do so, we conducted three student focus groups. Based upon information gathered in these processes, we made some significant changes to the original instrument. We included a definition of culture<sup>197</sup> and drafted survey questions that encompassed a wider range of cultural factors. These changes were made to both ensure students approached the questions with the same understanding of the term *culture* and to educate them that culture is multi-faceted. We also added an initial set of questions that alerted students to the fact that because not all individuals in a given cultural group hold the same views or have the same experiences,<sup>198</sup> it is our cultural experiences, rather than our culture, that impacts our perspective. In addition to these structural changes, we re-worded questions that students found confusing and re-worded or eliminated questions students and expert reviewers identified as seeming to call for a *correct* answer. We also added the Marlowe-Crowne social desirability scale<sup>199</sup> to determine whether the survey answers were tainted by the desire to answer in a socially desirable manner. Finally, we expanded the response scale to a 6-point semantic differential scale. This change controlled for a *perceived* neutral point.

Our goal was to produce an instrument that could be used to provide law faculty with information about their students' views and where their students were on the cultural sensibility education continuum to help faculty develop tailored learning outcomes. We also hoped to develop an instrument that ultimately could be used to measure whether some cultural sensibility learning outcomes were achieved. In the survey design, we focused on

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196. For a discussion of our initial findings, see Curcio et al., *Using Existing Frameworks to Develop Ways to Teach and Measure Law Students' Cultural Competence*, *supra* note 9, at 25–27.

197. The survey began with the following statements:

There are many different definitions of culture, race, and ethnicity and these terms are sometimes used interchangeably. In this questionnaire by the term *culture* we mean: Culture is a historically transmitted pattern of shared meaning by which people communicate, perpetuate, and develop their knowledge and attitudes about life. An individual's cultural identity may be affected by such factors as race, ethnicity, age, language, country of origin, acculturation, sexual orientation, gender, socioeconomic status, religious/spiritual beliefs, physical abilities, occupation, among others.

198. Bergey & Kaplan, *supra* note 32, at 1; Steven A Ramirez, *A General Theory of Cultural Diversity*, 7 MICH. J. RACE & LAW 33, 51–52 (2001).

199. See *infra* text accompanying notes 200–08.

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broad-based learning outcomes built upon a structural framework that provides a starting point from which to develop and evaluate courses. Using this framework, the final version of the re-designed survey consisted of twenty-four questions relating to cultural sensibility. The first six questions asked students to identify which of their cultural experiences has influenced their views of the U.S. legal system using a scale of 1 to 6—no influence at all to very strong influence—(Appendix A). The remaining eighteen questions sought students’ views on a variety of questions related to the role culture plays in the lawyering process. Students were asked to respond on a scale of 1 to 6—strongly disagree to strongly agree—(Appendix A). The reliability alpha for the new survey instrument was .842, indicating a high degree of internal consistency in the instrument.

B.      *Survey Methodology*

One issue with any self-assessment instrument is whether respondents are answering in a *socially desirable* manner—i.e., choosing answers that they believe “conform to socially acceptable values, avoid criticism, or gain social approval.”<sup>200</sup> We took the opportunity to measure whether social desirability would be an issue since such bias is “most likely to occur in response[] to socially sensitive questions.”<sup>201</sup> Although there is no absolute way to determine if the answers are based upon a desire to answer correctly, social scientists often use the *social desirability* scale developed by Marlowe and Crowne.<sup>202</sup> This scale serves as a test for whether surveyors are getting accurate or tainted responses.<sup>203</sup> We used the thirteen-question Marlowe-Crowne short form<sup>204</sup> with the 191 incoming student cohort at the Southern Urban School. Although there is some debate about whether the Marlowe-Crowne test is a valid measure of social desirability bias,<sup>205</sup> it continues to be the instrument most frequently used to assess whether respondents were answering in what they believe was the

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200.      Thea F van de Mortel, *Faking It: Social Desirability Response Bias in Self-Report Research*, AUSTRALIAN J. ADVANCED NURSING, June–Aug. 2008, at 40, 41.

201.      *Id.*

202.      *Id.*; see Douglas P. Crowne & David Marlowe, *A New Scale of Social Desirability Independent of Psychopathology*, 24 J. CONSULTING PSYCHOL. 349, 351 (1960).

203.      Van de Mortel, *supra* note 200, at 40.

204.      See William M. Reynolds, *Development of Reliable and Valid Short Forms of the Marlowe-Crowne Social Desirability Scale*, 38 J. CLINICAL PSYCHOL. 119, 124 (1982).

205.      See Steven D. Barger, *The Marlowe-Crowne Affair: Short Forms, Psychometric Structure, and Social Desirability*, 79 J. PERSONALITY ASSESSMENT 286, 289 (2002) (critiquing the use of the Marlowe-Crowne instrument to determine social desirability responses).

correct socially desirable manner.<sup>206</sup> An analysis of the social desirability scale compared favorably with the literature standards.<sup>207</sup> Results indicated that 17% of our respondents were low scorers (e.g., answering in a socially undesirable direction), 60.2% were average scorers (showing an average degree of concern for social desirability), and 22.5% scored high (indicating a high degree of concern for social approval).<sup>208</sup> These percentages suggest that general survey responses were not due to a social desirability bias. Having checked the instrument for social desirability responses, we then eliminated the Marlowe-Crowne questions from the remaining survey administrations to shorten the instrument.

After receiving IRB approval, the revised survey was initially administered to incoming students at a second-tier, southern, urban state law school. Time was set aside during orientation week for completion of the revised survey; thus, the response rate was very high (n = 191, 94% response rate). The revised survey also was administered to incoming law students at a top-tier, northern, metropolitan state law school that purposefully seeks to promote diversity in viewpoint, experience, and background among its faculty and students. At that school, during orientation week, students were asked to complete the survey via an email solicitation. A total of 118 incoming students (response rate of 58%) chose to complete the survey.

In the spring semester, upper level students at both the Southern Urban and the Northern School were asked, via email, to complete the revised survey. The response rate for upper level students at the Northern School was 32% (n = 127). At the Southern Urban School, 27% (n = 155) of the upper level students completed the survey. The total response rate for upper level students was 30% (n = 282). The combined total response rate for the survey was 591 with an average response rate of 43%. The overwhelming majority of respondents self-identified as white, while gender distribution was virtually equal (see Table 1).

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206. See Van de Mortel, *supra* note 200, at 42–45 tbl.1 (listing thirty-one studies in 2004–2005 that used Marlowe-Crowne instrument to check for social desirability response); Shana L. Lassiter, Cultural Competency Training in Dental Education and Implications for the Elimination of Oral Health Disparities: Results from a Quantitative and Qualitative Investigation (May 16, 2009) (unpublished E.d. dissertation, Columbia University) (microformed on UMI 3368358); see also Maria Antonia Marzan, Incoming Medical Students' Perceptions of Knowledge, Attitudes and Skills Regarding Cross-Cultural Medical Education (May 16, 2008) (unpublished E.d. D. dissertation, Columbia University) (microformed on UMI 3327063).

207. The scoring key is available at *Self-Assessment: Dare You Say What You Think? The Social-Desirability Scale*, CENGAGE LEARNING, [http://www.cengage.com/resource\\_uploads/downloads/0495092746\\_63626.pdf](http://www.cengage.com/resource_uploads/downloads/0495092746_63626.pdf) (last visited Feb. 16, 2014).

208. These results are based upon the scoring key, see *id.*

Table 1: Respondent Demographics.

		N	%
Gender	Female	287	48.6
	Male	291	49.2
Ethnicity/Race	Asian	46	8.1
	Black	37	6.5
	Hispanic/Latino(a)	17	3.0
	White	435	76.7
	Two or More	32	5.6
Age	20–25 years	323	55.9
	26–30 years	181	31.3
	31–35 years	43	7.4
	36–40 years	11	1.9
	41–45 years	15	2.6
	46–50 years	3	.5
	Over 50 years	2	.3
Student Type	Entering Law Students	309	52.3
	2L or 3L	282	47.7
School Type	Northern	273	46.2
	Southern Urban	318	53.8

An exploratory factor analysis (“EFA”) was performed on the data to identify, through statistical exploration, inter-relationships between items that are part of a unified concept or underlying structure.<sup>209</sup> Social scientists use exploratory factor analysis to reduce a number of interrelated items (e.g., items on a survey) into factors that can be conceptually grouped together.<sup>210</sup>

The Kaiser-Meyer Olkin Measure of Sampling Adequacy was .843 (excellent) and the Bartlett’s Test of Sphericity was  $p < .000$  (the strength of the relationship among the survey items is strong), indicating that a factor analysis was appropriate. Using Principal Component Analysis (“PCA”) as

209. See DENISE F. POLIT & CHERYL TATANO BECK, RESOURCE MANUAL FOR NURSING RESEARCH: GENERATING AND ASSESSING EVIDENCE FOR NURSING PRACTICE 255 (9th ed. 2012).

210. DENNIS CHILD, THE ESSENTIALS OF FACTOR ANALYSIS 1–2 (3d ed. 2006); see Anna B. Costello & Jason W. Osborne, *Best Practices in Exploratory Factor Analysis: Four Recommendations for Getting the Most from Your Analysis*, PRAC. ASSESSMENT RES. & EVALUATION, July 2005 at 1, 8.

our extraction method and Varimax with Kaiser Normalization as our rotation method, we retained five factors (Table 2).

Table 2: Factor Descriptives.

	No. of Items	Mean (SD)	Alpha
Factor 1	9	4.25 (0.81)	.827
Factor 2	6	3.17 (1.16)	.827
Factor 3	3	4.57 (1.08)	.778
Factor 4	3	4.88 (0.79)	.588
Factor 5	2	4.40 (0.87)	.726

The five identified factors group the survey findings into conceptual constructs that correspond to various aspects of cultural sensibility learning. The first factor examines students' understanding of how culture influences lawyers, judges, and clients in the context of legal decision-making and representation. The second factor assesses students' self-awareness about the role their cultural experiences play in their own perceptions of the legal system. The third factor looks at students' desires to learn how culture affects the lawyering process. The fourth factor examines students' understanding of client behaviors that may be based upon cultural practices different from their own. The fifth factor looks at how students self-assess their ability to identify their own unconscious biases and stereotypes. These factors help educators assess students' openness to learning about the role culture plays in the lawyering process, students' understanding of how culture may influence others, and their understanding of how their own cultural experiences affect their perceptions and actions. This information can be useful in designing courses, curricula, and teaching methods that are best suited to a given group of students' educational needs. It also can be useful to those who want to assess—in a big picture way—the effectiveness of education geared toward developing certain aspects of cultural sensibility, such as developing students' awareness that cultural experiences affect everyone, not just clients or those belonging to specific racial or ethnic groups. Below, we set forth each factor and the survey questions that grouped with that factor.

Table 3: Cultural Sensibility Survey Structure.

Factor	Survey Item
Factor 1 <i>Cultural Influences</i>	<p>2.16. White lawyers bring culturally biased assumptions into the lawyer/client relationship.</p> <p>2.2. Lawyers look at legal problems through their own cultural lens.</p> <p>2.6. A lawyer's socioeconomic background influences how the lawyer perceives a client's behavior.</p> <p>2.11. How a lawyer communicates with his or her client is not influenced by the lawyer's cultural background.</p> <p>2.9. Judges do not look at legal problems through their own cultural lenses.</p> <p>2.14. Lawyers belonging to racial and ethnic minorities bring culturally biased assumptions into the lawyer/client relationship.</p> <p>2.4. I do not view the legal system through a culturally biased lens.</p> <p>2.1. Clients look at legal problems through their own cultural lenses.</p> <p>2.3. How a client communicates with his or her lawyer is not influenced by the client's cultural background.</p>
Factor 2 <i>Self-Awareness</i>	<p>(Influences views about the U.S. legal system)</p> <p>1.1. Experiences arising from your racial identity.</p> <p>1.2. Experiences arising from your ethnic identity.</p> <p>1.4. Experiences arising from your socioeconomic background.</p> <p>1.3. Experiences arising from your religious identity.</p> <p>1.5. Experiences arising from your gender.</p> <p>1.6. Experiences arising from your sexual identity.</p>
Factor 3 <i>Desire to Learn</i>	<p>2.17. Law professors should discuss with their students the cultural assumptions embedded in appellate legal opinions.</p> <p>2.18. A law student's ability to recognize cultural diversity issues as they relate to the lawyering process should be assessed during law school.</p> <p>2.7. Legal education should not include education about cultural issues that may arise when providing legal services to people from different cultural backgrounds than my own.</p>

Factor 4 <i>Client Behaviors</i>	2.8. A lawyer should assume that a client's visible lack of emotion means that the client does not feel strongly about what is being discussed. 2.12. When a client refuses to look his or her lawyer in the eyes, the lawyer should assume the client is not being truthful. 2.15. When a client shakes hands with a male attorney, but refuses to shake hands with a female attorney, the lawyers should assume the client will not respect advice given by the female attorney.
Factor 5 <i>Self-assessment</i>	2.13. In general, I can accurately identify my culturally biased assumptions about others who are from cultures different from my own. 2.10. In general, I am able to recognize when my reactions to others are based on stereotypical beliefs.
Excluded Item	2.5. If a client's cultural practice is to defer decision making to others in the client's family, a lawyer should help the client understand why he or she should make his or her own decisions about the case.

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### C. *Survey Results*

Below we explain the factors in greater detail and identify key findings from the data. Throughout our descriptions, we note when there are significant differences between incoming and upper level students, between students at the two schools, and differences in survey responses, by gender and race or ethnicity. It should be noted that for analytical purposes we collapsed all Asians, Blacks, Latinos, and Two or More races into one group to ameliorate the differences in numbers between those groups and Whites. We are, however, mindful that collapsing these groups is a study limitation.

#### **Factor 1: Understanding How Culture Influences Lawyers, Judges, and Clients in Context of the Legal Decision-Making and Legal Representation.**

The first factor includes nine items that can be grouped under the construct of understanding how culture influences lawyers, judges, and clients in the context of legal decision-making and legal representation (Table 3). This factor relates to students' understanding that lawyers, judges, and clients look at legal problems through their own cultural lenses and that lawyer-client communications are influenced by both the lawyer's and the

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client's cultural backgrounds.<sup>211</sup> Factor 1 also looks at students' understanding that all lawyers, regardless of racial or ethnic background, bring culturally biased assumptions into the lawyer-client relationship<sup>212</sup> and their self-assessment about whether, as future lawyers, they bring culturally biased assumptions into the lawyering process (Table 3).<sup>213</sup> The items in this factor all deal with students' perceptions of the role culture plays in others' perceptions of legal problems and interactions, with the exception of item 2.4—*I do not view the legal system through a culturally biased lens*. That item was grouped with this factor because it sought information about how, as future lawyers, students believed their cultural biases would affect their assessment of legal problems.

Findings showed that there was a statistically significant difference ( $p < .000$ ) in the mean scores for this factor between incoming and upper level students, with upper level students more likely to recognize that cultural experiences and perspectives affect lawyer-client communications and the lawyering process (Table 4). Women were significantly more likely than men to recognize the affect culture has on various aspects of the lawyering process (Table 4). There was also a statistically significant difference between students at the two schools, with the Northern School's students more likely to recognize that lawyers', clients', and judges' cultural backgrounds and experiences influence legal decision-making and representation (Table 4).

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211. Miller et al., *supra* note 6, at 104–07.

212. *See id.* at 104–05.

213. For a discussion of the implications of students' awareness of their culturally biased assumptions and the impact of those assumptions on the lawyering process, see *infra* text accompanying notes 252–256.

Table 4: Comparisons for Factor 1 (Understanding how culture influences lawyers, judges, and clients).

Comparison Variables	N	M(SD)	Sig.
Incoming Law Students	309	4.04 (0.78)	p<.000
Upper Level Law Students	282	4.48 (0.80)	
Female	287	4.39 (0.82)	p<.000
Male	291	4.11 (0.79)	
Asian	46	4.29 (0.81)	
Black	37	4.37 (0.97)	
Latino/a	17	4.31 (0.76)	
White	435	4.22 (0.81)	
Two or More	32	4.29 (0.81)	
Southern Urban School	318	4.05 (0.79)	p<.000
Northern School	273	4.49 (0.78)	

*Note.* Mean range = 1–6 with the higher mean score representing higher level of cultural sensibility.

### **Factor 2: Self-Awareness About the Role Culture Plays in Students' Own Perceptions of the Legal System**

The second factor groups six items that ask students to self-assess whether experiences arising from their own cultural backgrounds have influenced how they view the U.S. legal system.<sup>214</sup> Students of color were more likely than white students to identify experiences arising from their racial identity, ethnic identity, and gender, as influencing their view about the U.S. legal system (Table 5). Women were also more likely than men to indicate that their cultural experiences influenced how they view the legal system (Table 5).

214. Scholars have discussed how individuals' culturally based experiences affect their views and understandings of the legal system. See Marjorie Florestal, *Is a Burrito a Sandwich? Exploring Race, Class, and Culture in Contracts*, 14 MICH. J. RACE & L. 1, 7–8 (2008) (discussing how cultural experiences permeate one's understanding of contracts and contract law); Carolyn Smiley-Marquez, *Bias in the Legal System*, COLO. LAW., Mar. 1996, at 19, 19 (noting that various state task forces on gender and racial bias in the justice system found women's and minorities' experiences led them to view the justice system from a different perspective than their white male counterparts).

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Table 5: Comparison for Factor 2 (Self-awareness about the role culture plays in students' own perceptions of the legal system).

Comparison Variables	N	M(SD)	Sig.
Incoming Law Students	309	3.14 (1.13)	
Upper Level Law Students	282	3.21 (1.19)	
Female	287	3.52 (1.05)	p<.000
Male	291	2.83 (1.15)	
Asian	46	3.52 (1.09)	
Black	37	3.95 (1.07)	
Latino/a	17	3.44 (1.05)	
White	435	3.03 (1.11)	p<.000*
Two or More	32	3.50 (1.33)	
Southern Urban School	318	3.10 (1.15)	
Northern School	273	3.25 (1.16)	

*Note.* Mean range = 1–6 with higher mean score representing higher level of cultural sensibility.

\*Significance test performed on categories White and Non-White (Asian, Black, Latino/a, Two or More).

### **Factor 3: Openness to Learning About the Role Culture Plays in the Lawyering Process**

Factor 3 contains three items related to the importance of learning about how culture affects legal rule-making and the provision of legal services. Overall, students expressed a high degree of interest in learning about the role culture plays in the lawyering process. There was a statistically significant difference in responses between women and men and between white and non-white students' responses to the questions in this factor (Table 6). Women and non-white students expressed a greater openness to learning how culture affects legal rule-making and lawyer-client interactions (Table 6). There also was a difference in attitudes between upper level and incoming students, with incoming students being more receptive to this kind of education (Table 6).

Table 6: Comparison for Factor 3 (Openness to learning about the role culture plays in the lawyering process).

Comparison Variables	N	M(SD)	Sig.
Incoming Law Students	309	4.66 (0.96)	p<.05
Upper Level Law Students	281	4.46 (1.19)	
Female	287	4.83 (0.95)	p<.000
Male	290	4.34 (1.12)	
Asian	46	4.76 (0.81)	
Black	37	5.03 (1.16)	
Latino/a	17	4.92 (0.98)	
White	434	4.50 (1.05)	p<.000*
Two or More	32	4.91 (0.89)	
Southern Urban School	317	4.53 (1.04)	
Northern School	273	4.61 (1.13)	

*Note.* Mean range = 1–6 with higher mean score representing higher level of cultural sensibility.

\*Significance test performed on categories White and Non-White (Asian, Black, Latino/a, Two or More).

**Factor 4: Understanding Differing Cultural Backgrounds and Lawyers' Perceptions About Client Behaviors**

This factor groups three items that deal with students' awareness of the assumptions that lawyers may make if they do not understand that some behaviors may be based upon clients' cultural beliefs and practices.<sup>215</sup> The behaviors chosen were just a small sampling of conduct that may vary between cultures. This factor measures students' understanding that lawyers should examine their own cultural assumptions when assessing client behaviors so as not to misinterpret particular behaviors. Students at the Northern School had a greater level of awareness of the need to assess underlying cultural assumptions in context of lawyer-client relationships (Table 7).

215. The behaviors chosen included: Lack of eye contact, displays of emotion, and refusal to shake hands with a woman. Each of these behaviors may be affected by cultural factors. See Jacobs, *supra* note 39, at app., tbl.1, at 414 (shaking hands with member of opposite sex); Joseph W. Rand, *The Demeanor Gap: Race, Lie Detection, and the Jury*, 33 CONN. L. REV. 1, 23–25 (2000) (displays of emotion); Tremblay, *supra* note 51, at 393–94 (eye contact).

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Table 7: Comparison for Factor 4 (Understanding differing cultural backgrounds and lawyers' perceptions about client behaviors).

Comparison Variables	N	M(SD)	Sig.
Incoming Law Students	309	4.89 (0.77)	
Upper Level Law Students	281	4.88 (0.83)	
Female	287	4.89 (0.82)	
Male	290	4.87 (0.77)	
Asian	46	4.87 (0.79)	
Black	37	4.86 (0.96)	
Latino/a	17	4.73 (0.66)	
White	434	4.87 (0.78)	
Two or More	32	4.98 (0.82)	
Southern Urban School	317	4.79 (0.83)	p<.01
Northern School	273	5.00 (0.74)	

*Note.* Mean range = 1–6 with higher mean score representing higher level of cultural sensibility.

\*Significance test performed on categories White and Non-White (Asian, Black, Latino/a, Two or More).

### **Factor 5: Identifying Own Unconscious Biases and Stereotypes**

Factor 5 has two items that assess students' openness and willingness to admit the difficulty of accurately identifying when reactions are based upon stereotypes and cultural biases.<sup>216</sup> While factors are generally composed of three or more items, we felt that the loading and Eigenvalues,<sup>217</sup> as well as the construct itself, warranted including these two survey items as a factor. Students rated themselves moderately high in terms of their ability to identify both their culturally biased assumptions and when they were reacting based upon stereotypical beliefs (Table 8).<sup>218</sup> For this factor,

216. For a discussion of the implicit bias literature and the potential relationship between the social cognition implicit bias theories and self-perceptions as they relate to students' survey responses, see Curcio et al., *Educating Culturally Sensible Lawyers*, *supra* note 9, at 114–19.

217. In factor analysis, an Eigenvalue represents how much variance is accounted for in a correlation matrix. See BARBARA G. TABACHNICK & LINDA S. FIDELL, *CAL. STATE UNIV., USING MULTIVARIATE STATISTICS* 398 (5th ed. 2007). It is one of several methods used to determine the number of factors or constructs that can be selected from the data. See RICHARD L. GORSUCH, *FACTOR ANALYSIS* 97 (2d ed. 1983); TABACHNICK & FIDELL, *supra* note 217, at 398.

218. This result parallels findings from the pilot study. See Curcio et al., *Educating Culturally Sensible Lawyers*, *supra* note 9, at 112.

southern students were statistically more likely to think that they could identify their own unconscious biases and stereotypes (Table 8).

Table 8: Comparison for Factor 5 (Identifying Own Unconscious Biases and Stereotypes).

Comparison Variables	N	M(SD)	Sig.
Incoming Law Students	309	4.47 (0.84)	
Upper Level Law Students	280	4.33 (0.89)	
Female	287	4.46 (0.87)	
Male	290	4.36 (0.87)	
Asian	46	4.43 (0.85)	
Black	37	4.69 (0.95)	
Latino/a	17	4.50 (1.10)	
White	434	4.37 (0.83)	
Two or More	32	4.48 (1.10)	
Southern Urban School	316	4.46 (0.87)	p<.01
Northern School	273	4.34 (0.88)	

*Note.* Mean range = 1-6 with higher mean score representing higher level of cultural sensibility.

\*Significance test performed on categories White and Non-White (Asian, Black, Latino/a, Two or More).

### **Discarded Item**

A factor analysis groups different items that form patterns. There was one item that was not associated with any other group of items that made up the factors. That item asked students to agree or disagree with the following statement: “If a client’s cultural practice is to defer decision making to others in the client’s family, a lawyer should help the client understand why he or she should make his or her own decisions about the case.” This item was designed to inferentially test whether students believe that a lawyer should impose his or her cultural beliefs upon a client. In retrospect, the question does not lead to a clear answer because it is so context-based. Thus, it is not surprising that it did not load with any factor. We discarded this item in the factor analysis discussion and the question should be eliminated from future surveys.

## V. USING THE SURVEY TO INFORM TEACHING AND DEVELOP LEARNING OUTCOMES

The survey provides information about students’ openness to learning about the role culture plays in the lawyering process, awareness of

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how culture affects others, and awareness of how culture affects them. The survey provides useful information to legal educators considering developing course and institutional learning outcomes.<sup>219</sup> It is also helpful as educators try to get a sense of where their students are on the cultural sensibility continuum.<sup>220</sup> This tool can be used as students enter and leave law school to assess students' progress towards cultural sensibility over the course of their legal education. It can also potentially be used as a pre- and post-course assessment to inform educators about the effect of their teaching on students' cultural sensibility development. Thus, the survey may help educators refine teaching methodologies and materials in light of students' learning.

In context of the learning outcome domains, the survey instrument encompasses students' self-assessments of their knowledge about how culture affects lawyers', judges', and clients' perceptions and reactions, as well as students' understandings of how different value systems and communications styles may affect lawyers' interpretation of clients' reactions and behaviors (knowledge domain).<sup>221</sup> The survey looks at students' awareness of the affect that their own cultural beliefs, experiences, biases, and prejudices have upon their perceptions, and their openness to learning about the role culture plays in the lawyering process (attitudes domain).<sup>222</sup> Finally, this survey assesses students' abilities to apply their understandings of how culture affects the lawyering process to situations in which lawyers' perspectives may be affected by cultural misunderstandings (skills domain).<sup>223</sup> Because learning outcome domains overlap,<sup>224</sup> some factors apply to more than one learning outcome domain.

A. *Students Want to Learn About the Role of Culture in the Lawyering Process*

Factor 3 relates to students' attitudes about the inclusion of cultural sensibility teaching into the law school curriculum. Our findings indicate that law students are generally receptive to learning about the role culture plays in the lawyering process (Table 6) although somewhat more ambivalent about being assessed on the issues (Appendix B). Openness to learning about how one's own and others' socio-cultural beliefs and behaviors affect the lawyering process is one of the key attitude learning

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219. *See supra* text accompanying notes 97–98.

220. *See supra* Part III.

221. *See supra* Part II.A.

222. *See supra* Part II.B.

223. *See supra* Part II.C.

224. *See supra* text accompanying note 96.

outcomes.<sup>225</sup> The data indicates that in this survey cohort, women were statistically significantly more open to learning about how culture affects the lawyering process than men, and those self-identifying as non-white were more receptive to cultural diversity education than those self-identifying as white (Table 6). We do not know why the differences exist, although we suspect that the real world may present more everyday challenges for females and non-white students both within and outside the law school classroom<sup>226</sup> so that the teaching may be less threatening to them, or they have greater interest in raising others' awareness about these issues.<sup>227</sup> White male students may feel more defensive about learning about the role culture plays in the lawyering process as there can be an actual or perceived tendency for cultural and diversity education to dismiss and denigrate their perspective.<sup>228</sup> In discussing culture and diversity, white males may feel that they have the most to lose and may feel uncomfortable, especially if the blame for historical wrongs is laid at their door.<sup>229</sup>

Interestingly, incoming students expressed a greater interest than upper level students in learning about how culture affects the lawyering process (Table 6). It is unclear why this difference exists. Some upper level students may have experienced cultural diversity education in some law school classes that they found alienating. Or, incoming students may be eager to learn about everything while upper level students are more jaded. Or, some other reason altogether could explain this difference. Again, this

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225. Bryant, *supra* note 31, at 50–51.

226. See Celestial S.D. Cassman & Lisa R. Pruitt, *A Kinder, Gentler Law School? Race, Ethnicity, Gender and Legal Education at King Hall*, 38 U.C. DAVIS L. REV. 1209, 1251 (2005) (discussing women's experiences in law school classrooms); Charles E. Daye et al., *Does Race Matter in Educational Diversity? A Legal and Empirical Analysis*, RUTGERS RACE & L. REV., 2012, at 75S, 124S (reporting results of large national survey of law students in which Black students reported experiencing discrimination at much higher rates than their white counterparts).

227. These results are consistent with findings in a study of medical students. See Carol L. Elam et al., *Diversity in Medical School: Perceptions of First-Year Students at Four Southeastern U.S. Medical Schools*, 76 ACAD. MED. 60, 64–65 (2001) (finding that students with the most diverse first year class placed the greatest value on the contributions of diversity to the learning environment. Female students placed more value on the inclusion of diversity issues in the curriculum than did male students and also placed greater value on understanding diversity issues in their future medical practices. In this survey, African-American students were the least likely to think that the curriculum contained adequate information about diversity).

228. David Barnhizer, *A Chilling of Discourse*, 50 ST. LOUIS U. L.J. 361, 378–79 n.40 (2006) (recounting an anecdotal story of the denigration of a white male for expressing opposition to homosexuality).

229. Sharon E. Rush, *Emotional Segregation: Huckleberry Finn in the Modern Classroom*, 36 U. MICH. J.L. REFORM 305, 358 (2003) (noting that white students often are uncomfortable talking about race and often feel defensive about being white).

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question merits further study. Future survey administrations should provide room for student comments that might provide insights into the reasons for these differences.

The survey data provides useful information both in terms of students' general receptivity and desire to learn about the role culture plays in the lawyering process and in terms of potential approaches to teaching. For example, the data indicates varying levels of openness—with women and students of color indicating a higher degree of receptivity to cultural sensibility education.<sup>230</sup> These survey results suggest that educators need to be careful not to alienate students by presenting cultural sensibility education as *political correctness*<sup>231</sup> or give some groups more validity than others. Varying levels of openness to such education also means that educators need to carefully think of how to engage male and white students. When developing teaching modules and methods, educators should focus on how cultural sensibility relates to becoming an effective lawyer.<sup>232</sup> Any teaching needs to engage students and while effective teaching may be—and probably should be—challenging, educators must be wary of presenting the material in a way that creates a defensiveness in students rather than fostering curiosity.<sup>233</sup> Educators must be cautious not to focus on teaching culture as belonging to the *Other*.<sup>234</sup> Rather, educators should help students recognize that everyone comes to the table with multiple cultural experiences that affect perceptions, legal analysis, and interactions.<sup>235</sup>

The survey instrument itself may also serve as a teaching tool. In the open-ended question section of the initial survey, many incoming students noted that simply taking the survey prompted them to begin thinking about how culture may affect the lawyering process.<sup>236</sup> Administering the survey to incoming students sets the stage for discussions during orientation and first year courses about cultural perspectives that influence legal decision-making and individuals' perceptions and actions. Thus, the instrument can be a valuable educational tool, as well as a tool that provides faculty with

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230. See *supra* Table 6; *infra* Appendices D, E.

231. See Sedillo López, *supra* note 51, at 43.

232. Miller et al., *supra* note 6, at 105–08.

233. Sara Gronningstarter, *A Patient's Right to Choose is Not Always Black and White: Long Term Care Facility Discrimination and the Color of Care*, 26 J. CIV. RTS. & ECON. DEV. 329, 353–54 (2012) (noting “Cultural competency teachings are not meant to make care providers feel as if they are incompetent or racist, they are meant to enhance professional development and facilitate the education of care providers on the latest science in communications and communicating effectively across cultures”).

234. Kumas-Tan et al., *supra* note 42, at 551–52; see also Weng, *supra* note 61, at 373.

235. See *supra* text accompanying notes 27–33.

236. Curcio et al., *Educating Culturally Sensible Lawyers*, *supra* note 9, at 113.

information. Administering the survey may also communicate to students that the law school considers cultural sensibility an important lawyering skill.

B. *Understanding How Culture Influences Lawyers, Judges, and Clients*

Factors 1 and 4 relate to students' understanding of how culture may influence lawyers', clients', and judges' perceptions and behaviors. On a scale of 1 to 6, a mean of 4.04 for incoming students and 4.48 for upper level students for Factor 1 suggests that, although incoming students may have a basic understanding that culture plays a role in how lawyers, clients, and judges understand, react to, and communicate about legal problems, students may not fully recognize the extent to which people's cultural experiences affect their perceptions and behaviors.

The difference between upper level and incoming students indicates that upper level students have a greater awareness of the role culture plays in how judges, lawyers, and clients view legal problems and communicate about legal issues. It may be that exposure to the law and legal processes raised students' awareness of how cultural experiences influence legal decision-making and interactions. However, we cannot say for certain that legal education made a difference in students' perceptions because the survey did not track a group of students from law school orientation through their upper level legal education. However, the results do suggest that something may happen to students during law school to increase their awareness of the role culture plays in the lawyering process. Increased awareness may be attributed to exposure to probing questions in doctrinal courses, experiences in clinics or externships, or simply a maturation process. Or, the survey results could be a variation caused by self-selection on the part of upper level students where the response rate was much smaller than for incoming students.<sup>237</sup> Whatever the reason, we found it interesting that at both schools there was a statistically significant difference between incoming and upper level students with regard to this factor. The results also suggest that this instrument is a viable tool for those schools that want to track changes in students' cultural sensibility attitudes from when students enter school to when they graduate.

The responses to individual items provide some insights to educators wishing to use the survey responses to develop cultural sensibility learning outcomes. Students believed white lawyers were more likely than lawyers of color to bring culturally biased assumptions into the lawyer-client relationship (Appendices B–E). This suggests the need to educate students

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237. See *supra* Part IV.B.

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that everyone has cultural biases and brings those biases and perspectives to the table.<sup>238</sup> Students also thought that clients were much more likely than lawyers to be influenced by their cultural backgrounds (Appendices B–E). Students may believe that, as professionals, lawyers are more able to be objective and to put aside their cultural biases and perspectives. These findings suggest that one learning outcome should be to build students’ understanding that cultural experiences affect *all* people and that a particular racial background or profession does not make one more or less likely to be influenced by his or her cultural experiences.

The survey also identified whether students recognized that some behaviors might be based upon cultural practices. In the consent forms and introduction of the survey, students understood they were being asked about the role culture plays in the lawyering process. In this context, there was generally a high level of awareness that some client behaviors may be based upon cultural practices and that lawyers should not make assumptions about those behaviors.<sup>239</sup> Whether that awareness carries over to actual lawyer-client situations was not measured. Also, although students seemed able to easily identify some commonly understood culturally based behaviors, such as refusal to look a lawyer in the eye or lack of visible emotion (Appendices B–E),<sup>240</sup> they were less aware that other behaviors, such as refusal to shake hands with a woman, might also be a cultural practice (Appendices B–E).<sup>241</sup> The inability to recognize potentially lesser-known cultural practices suggests the need for learning outcomes that focus on developing students’ abilities to identify situations in which differing cultural perspectives and practices may arise and may influence their perceptions about a client’s behavior.<sup>242</sup> We do not suggest that the survey results indicate a need to teach more about a litany of cultural practices. Rather, the survey results suggest a need to develop students’ curiosity about client behaviors that may be different than their own and indicate a need to work with students to help them suspend judgment. Students should develop a level of comfort that

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238. See Miller et al., *supra* note 6, at 105–08; Silver, *supra* note 67, at 238–39; Weng, *supra* note 61, at 369, 372–73.

239. See *supra* Table 7. The students’ responses to individual questions aimed at assessing their awareness of the need to avoid assumptions about clients’ behaviors can be found in, *infra* Appendices B–E.

240. See sources cited *supra* note 215.

241. Sayedeh Kasmai-Nazeran, *Between Gender Equality and Religious Freedom*, ISLAMIC INSIGHTS (Nov. 23, 2008), <http://www.islamicinsights.com/news/community-affairs/between-gender-equality-and-religious-freedom.html> (noting that some Muslims’ and Orthodox Jews’ religious beliefs prohibit them from shaking hands with someone of the opposite sex).

242. For examples of a wide array of conduct that may be based upon cultural practices, see Jacobs, *supra* note 39, app. at 413–14 tbl.1.

allows them to ask questions and explore potential cultural practices that might be unfamiliar.<sup>243</sup>

C. *Understanding How Cultural Experiences Affect Perceptions and Actions*

A culturally sensible lawyer understands culture is multi-faceted, and that everyone's worldviews, conduct, perceptions, and actions are based upon a complex compilation of numerous cultural factors and experiences.<sup>244</sup> A culturally sensible lawyer is aware of the need to be self-reflective about the role culture plays in our interactions.<sup>245</sup> Being self-aware and reflective about our own socio-cultural beliefs, and how those beliefs affect our perceptions and actions, is a critical *attitude* learning outcome. Factors 2 and 5 address these concepts.

Factor 2 assesses students' self-awareness about the role culture plays in students' perceptions about the legal system.<sup>246</sup> The mean scores for this factor were 3.14 for incoming students and 3.21 for upper level students (Table 5). These scores suggest that many students do not believe their views about the U.S. legal system are influenced by experiences arising from various cultural factors such as their race, ethnicity, religious identity, socio-economic background, gender, or sexual orientation.<sup>247</sup> The responses to individual items in this factor suggest that although students generally understood that their view of the U.S. legal system was probably influenced by their socio-economic experiences, they were much less likely to recognize that their views about the legal system were affected by their racial identity

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243. This skill was originally identified by Professors Bryant and Koh as a critical one for clinical students to develop. Bryant, *supra* note 31, at 64–78.

244. See Karnik & Dogra, *supra* note 37, at 724, 726–28 tbl.1.

245. *Id.* at 724, 728 tbl.1.

246. See *supra* text accompanying note 214.

247. One way to begin educating students about how experiences based upon race, ethnicity and gender affect people's perceptions of the legal system would be to expose them to the various state and federal court studies on race and gender within the courts. Throughout those studies, women and people of color discuss how their experiences affected their views of the legal system. See generally REPORT OF THE WORKING COMMITTEES TO THE SECOND CIRCUIT TASK FORCE ON GENDER, RACIAL AND ETHNIC FAIRNESS IN THE COURTS (1997), reprinted in 1997 ANN. SURV. AM. L. 117 (1997); THE EFFECTS OF GENDER IN THE FEDERAL COURTS: THE FINAL REPORT OF THE NINTH CIRCUIT GENDER BIAS TASK FORCE (July 1993), reprinted in 67 S. CAL. L. REV. 745 (1994). For an excellent discussion of a survey that looked at how racial experiences affect individuals' perceptions of the justice system, see MARK PEFFLEY & JON HURWITZ, JUSTICE IN AMERICA: THE SEPARATE REALITIES OF BLACKS AND WHITES 28–67 (2010). For a discussion of how religious identity affects one's view of the law and legal systems, see Amy Porter, *Representing the Reprehensible and Identity Conflicts in Legal Representation*, 14 TEMP. POL. & CIV. RTS. L. REV. 143, 155–61 (2004).

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or sexual orientation (Appendices B–E). Perhaps, not surprisingly, non-white students were more likely to believe that experiences arising from their racial identity influenced their views of the U.S. legal system<sup>248</sup> (mean score for non-white students: 4.11; mean score for white students: 2.83) (Appendix D). Students were least likely to believe that experiences arising from their sexual orientation influenced their views (mean score for entering students: 2.31; mean score for upper level students: 2.60) (Appendix B).<sup>249</sup> The responses to this question suggest a need to identify *attitude* learning outcomes that seek to develop students' abilities to identify and be more reflective about their own varied cultural experiences, and how those experiences affect their perceptions and interactions.<sup>250</sup> They also suggest that many students may be in the ethnocentric stages of Bennett's intercultural competence continuum in that they are not aware of how their own values and beliefs have shaped their perceptions.<sup>251</sup>

Factor 5 also relates to students' awareness of the role that their own cultural experiences, biases, and stereotypes play in their perceptions and interactions.<sup>252</sup> A mean of 4.40 (Table 2) suggests that many students felt they were able to identify their culturally biased assumptions and were able to identify when they were reacting based upon stereotypical beliefs. This finding is consistent with the findings in our initial study.<sup>253</sup> This self-assessment could mean that students already understand when and how their unconscious biases and stereotypes affect their perceptions and actions. However, this result may indicate that students do not fully grasp how subconscious cognitive categories and schemas are susceptible to unconscious biases and stereotyping.<sup>254</sup> These results may demonstrate that students do not understand how difficult it is to recognize our embedded

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248. Whites tend not to think about themselves or experiences in terms of race. "Whites' *consciousness* of whiteness is predominantly *unconsciousness* of whiteness." Barbara J. Flagg, "Was Blind, but Now I See": *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 970 (1993).

249. Some courts have formed task forces on how sexual orientation affects fairness within the judicial system document how sexual orientation plays a role in how straight and LGBT people experience the justice system. For a discussion of the findings of some court task forces, see Pamela D. Bridgewater & Brenda V. Smith, *Introduction to Symposium: Homophobia in the Halls of Justice: Sexual Orientation Bias and its Implications Within the Legal System*, 11 AM. U. J. GENDER SOC. POL'Y & L. 1, 3–8 (2002–2003).

250. See *supra* Part II.B.

251. See *supra* text accompanying notes 147–62.

252. See *supra* text accompanying notes 216–18.

253. Curcio et al., *Educating Culturally Sensible Lawyers*, *supra* note 9, at app. B at 127–28.

254. See Kang, *supra* note 123, at 1508; Weng, *supra* note 61, at 394.

assumptions and how those attitudes and assumptions affect our perceptions and interactions.<sup>255</sup>

In self-assessments, people tend to overestimate their abilities.<sup>256</sup> Factor 5 suggests the need for *knowledge* learning outcomes that build students' understandings of subconscious and implicit biases and stereotypes. This data suggests that useful *attitude* learning outcomes might focus on helping students accept that both conscious and unconscious bias and stereotyping affect our perceptions and behaviors. Learning outcomes should emphasize understanding the insidious nature of subconscious and implicit bias, acknowledging the challenges inherent in recognition of subconscious and implicit biases, and realizing the power of subconscious and implicit biases to affect our conduct, communications, and reactions, even if we wish it were otherwise. The associated *skill* learning outcome could be recognition of the drivers and biases behind our own behaviors. Students need to understand that we all have cultural biases. Rather than denying biases, we need to acknowledge they exist and become aware of how they affect our interactions and decision-making processes.<sup>257</sup> If students will not acknowledge they have biases, they cannot develop methods to help avoid being adversely influenced by them in their dealing with others.<sup>258</sup>

The survey results suggest that an important aspect of cultural sensibility teaching is developing students' understanding that we all bring our cultural biases into the legal profession.<sup>259</sup> Without this understanding, students may be unable to move toward an ethnorelative view of the world,

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255. Kang, *supra* note 123, at 1528–29. Recognition of the role played by unconscious biases is critical both in terms of lawyer-client relationships and in terms of adequately representing clients. Professor Justin Levinson conducted two studies demonstrating the impact of biases on jurors' decision making. *See generally* Justin Levinson, *Forgotten Racial Equality: Implicit Bias, Decision Making, and Misremembering*, 57 DUKE L.J. 345 (2007) (discussing the role of implicit bias on jurors' memories of facts presented); Justin Levinson & Danielle Young, *Different Shades of Bias: Skin Tone, Implicit Racial Bias and Judgments of Ambiguous Evidence*, 112 W. VA. L. REV. 307 (2010) (discussing the role implicit bias plays in jurors' interpretation of ambiguous evidence).

256. Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CALIF. L. REV. 945, 955 (2006) (discussing how people are generally unaware of their biases and over-estimate their abilities to identify their biases); Justin Kruger & David Dunning, *Unskilled and Unaware of It: How Difficulties in Recognizing One's Own Incompetence Lead to Inflated Self Assessments*, 77 J. PERSONALITY & SOC. PSYCHOL. 1121, 1121 (1999) (discussing how self-assessments are often inaccurate with those least skilled most likely to over-estimate their abilities).

257. Weng, *supra* note 61, at 396–97; *see also* Silver, *supra* note 67, at 237–39.

258. Kang, *supra* note 123, at 1528–29.

259. *See* Miller et al., *supra* note 6, at 105–07.

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in which they understand that everyone has a multi-faceted cultural perspective and that there is no single good or bad cultural perspective.<sup>260</sup> However, cultural sensibility is not a model that accepts that *anything goes*. While students need to understand that there is no single good or bad cultural perspective, they also need to develop the skills to challenge perceived unjust *cultural norms*, but should do so sensitively and after exploring all perspectives.

D.      *Study Limitations*

This study has several limitations, some of which we discussed above. Additional limitations are discussed below.

First, we acknowledge that there are a wide range of cultural sensibility learning outcomes that are not assessed by this instrument and may not lend themselves to a quantitative self-assessment instrument.<sup>261</sup> This instrument does not address, and is not meant to address, the full range of cultural sensibility learning outcomes necessary to assess whether students are able to effectively work across cultures.

Second, despite efforts to assess the role of social desirability response bias in the data,<sup>262</sup> all self-assessments, including this one, remain vulnerable to self-evaluations based upon students' perceptions of the *correct* response rather than students' actual beliefs and perceptions.

Third, in Factor 4, which assesses students' understanding of the need to be curious about what may be culturally based behaviors, there were likely an insufficient number of examples of various types of behaviors that may be based upon cultural practices.<sup>263</sup> Also, it is difficult to write statements that describe what may be culturally based behaviors outside of any particular context. This factor may thus be inadequately explored via this instrument. This limitation was based upon the necessity of limiting the survey length in order to increase response rate.

Fourth, students' self-assessment of their ability to identify their culturally biased assumptions and when they are acting based upon

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260.      *See supra* Part III (discussing Bennett's stages of intercultural competence).

261.      Others have attempted to measure additional learning outcomes via various self-assessment instruments. *See* sources cited *supra* note 194. However, self-assessment instruments are not, and should not be, the only way students' cultural sensibility learning is assessed. For example, in doctrinal courses, students could be assessed via essay or short answer questions asking them to incorporate cultural perspectives into their analysis. In experiential learning classes students could be assessed via journal entries, simulation exercises and actual interactions with clients and court personnel.

262.      *See supra* text accompanying notes 201–07.

263.      *See supra* Table 3.

stereotypes (Factor 5) presents a difficult dilemma. The data indicates that students, on average, rate themselves moderately highly when it comes to the ability to self-identify when they are acting based upon stereotypes or biases. However, the literature suggests most people underestimate the effect of biases on their behaviors, often because they are unaware of the impact of implicit biases on decision making.<sup>264</sup> Thus, we cannot make the assumption that those who scored highly on this factor are able to accurately self-assess when they are acting based upon stereotypes and biases.

Finally, as stated earlier, there may be a possible effect of nonresponse bias with the Northern School data and upper level student response data in general.<sup>265</sup> It may be that non-responders were not as interested in participating in a survey on the role culture plays in the lawyering process, or conversely, those responding were more interested in the topic.

## VI. CONCLUSION

Whatever the individual views of legal educators might be, learning outcomes will soon become part of the legal education accreditation process.<sup>266</sup> The decision about whether the outcomes include teaching our students to work effectively across cultures will be left to law schools.<sup>267</sup> We believe that in today's multicultural world, students must develop into culturally sensible lawyers who understand how their own cultural experiences affect their legal analysis, behaviors, and perceptions; who do not make assumptions about other cultures or legal systems; and who avoid behaviors based upon cultural domination or superiority of their own perspectives.

The cultural sensibility framework helps legal educators begin to conceptualize learning outcomes related to students' abilities to work effectively across cultures. It also serves as the basis for a statistically reliable survey instrument we developed to help law faculties better

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264. For a summary of various studies demonstrating the impact of implicit bias on the behavior of various actors within the legal system, see Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124 (2012). For a review of the literature on implicit bias and how it potentially relates to the survey results, see Curcio et al., *Educating Culturally Sensible Lawyers*, *supra* note 9, at 117–19.

265. See *supra* Part IV.B. Incoming students at the Southern Urban School took the survey as part of the scheduled orientation process. The other survey cohorts were asked, via email, to complete the survey.

266. See *supra* notes 4, 19–20.

267. See Proposed Standards for Approval of Law Schools, Am. Bar Ass'n, Section of Legal Educ. & Admissions to the Bar, on Chapter 3: Program of Legal Education (Mar. 2014), *supra* note 4.

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understand some aspects of their students' cultural sensibility knowledge, attitudes, and skills. The survey described herein can help faculties gauge their students' receptivity to learning about the role culture plays in the lawyering process and assist educators in identifying where to devote educational time and effort. Additionally, the survey can help faculties identify potential learning outcomes and track students' cultural sensibility development over the course of their legal education. Specifically the instrument can help assess: 1) students' understanding of how culture influences judges, lawyers and clients; 2) students' self-awareness of the influence their cultural experiences have on how they view the legal system; 3) students' desire to learn about the role culture plays in the lawyering process; 4) students' awareness of the need to evaluate whether unfamiliar behaviors may be based upon cultural beliefs and practices; and 5) students' understanding of the difficulty inherent in identifying when we are acting based upon our biases and stereotypes.

Although we do not suggest that the survey instrument discussed herein can, or should, be the sole measure of student cultural sensibility learning outcomes, its statistical reliability and validity and its demonstrated ability to identify differences amongst incoming and upper level students indicates that it may be a useful learning outcome measurement tool for some aspects of cultural sensibility learning.<sup>268</sup> While more work needs to be done to develop a wide range of cultural sensibility learning outcome assessments, the research provided in this paper provides legal educators a starting point as they begin to consider the need for cultural sensibility education, what that education should entail, and whether that education is effective.

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268. This survey may be useful as a pre- and post-course survey. However, faculty must be cognizant of the fact that cultural sensibility learning may not *click* immediately after a course has been completed. Thus, immediate post-course survey results may not indicate the full extent of student learning. Additionally, faculty members must be cautious in how they present the survey to avoid students trying to answer in a way that pleases the faculty member rather than truly reflects the students' own views.

APPENDIX A

*Survey Instrument*

1. Please indicate the degree to which the following influences your views about the U.S. legal system.

Scale: 1=No influence at all to 6=Very strong influence

- 1.1 Experiences arising from your racial identity
- 1.2 Experiences arising from your ethnic identity
- 1.3 Experiences arising from your religious identity
- 1.4 Experiences arising from your socio-economic background
- 1.5 Experiences arising from your gender
- 1.6 Experiences arising from your sexual orientation

2. Please indicate the extent to which you agree with the following statements:

Scale: 1=Strongly disagree to 6=Strongly agree

- 2.1 Clients look at legal problems through their own cultural lens.
- 2.2 Lawyers look at legal problems through their own cultural lens.
- 2.3 How a client communicates with his or her lawyer is not influenced by the client's cultural background.
- 2.4 I do not view the legal system through a culturally-biased lens.
- 2.5 If a client's cultural practice is to defer decision making to others in the client's family, a lawyer should help the client understand why he or she should make his or her own decisions about the case.
- 2.6 A lawyer's socioeconomic background influences how the lawyer perceives a client's behavior.
- 2.7 Legal education should not include education about cultural issues that may arise when providing legal services to people from different cultural backgrounds.
- 2.8 A lawyer should assume that a client's visible lack of emotion means that the client does not feel strongly about what is being discussed.
- 2.9 Judges do not look at legal problems through their own cultural lens.
- 2.10 In general, I am able to recognize when my reactions to others are based on stereotypical beliefs.
- 2.11 How a lawyer communicates with his or her client is not influenced by the lawyer's cultural background.

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2.12 When a client refuses to look his or her lawyer in the eyes, the lawyer should assume the client is not being truthful.

2.13 In general, I can accurately identify my culturally-biased assumptions about others who are from cultures different from my own.

2.14 Lawyers belonging to racial and ethnic minorities bring culturally-biased assumptions into the lawyer/client relationship.

2.15 When a client shakes hands with a male attorney but refused to shake hands with a female attorney, the lawyers should assume the client will not respect advice given by the female attorney.

2.16 White lawyers bring culturally-biased assumptions into the lawyer/client relationship.

2.17 Law professors should discuss with their students the cultural assumptions embedded in appellate legal opinions.

2.18 A law student's ability to recognize cultural diversity issues as they relate to the lawyering process should be assessed during law school.

### 3. Law School Classes

3.1 Have you taken any clinics in law school?

3.2 Please tell us which clinic(s) you have taken.

3.3 Have you taken any law school classes in which the role of culture in the lawyering process was discussed?

3.4 Please tell us which course(s) or professor(s).

3.5 What have you encountered in your classes that has helped to foster, or to inhibit, discussion of the role of culture in the lawyering process?

### 4. Demographics

4.1 Please indicate your current year in law school. [I am a 2L (have completed 29 to 57 law school credit hours]

[I am a 3L (have completed in excess of 57 law school credit hours]

Gender [Female] [Male] [Transgender]

Ethnicity/Race (Choose all that apply.) [American Indian or Alaska Native]  
[Asian] [Black] [Hispanic/Latino(a)] [Hawaiian or Pacific Islander] [White]

Age [20-25] [26-30] [31-35] [36-40] [41-45] [46-50] [over 50]

We would appreciate any comments or suggestions you may have regarding the questionnaire or the topic.

## APPENDIX B: SURVEY ITEM MEANS BY STUDENT LEVEL

Survey Items		N	Mean	SD	Sig.
Experiences arising from your racial identity	Entering law students	309	3.14	1.55	
	2L or 3L	282	3.10	1.66	
	Total	591	3.12	1.60	
Experiences arising from your ethnic identity	Entering law students	309	2.85	1.60	
	2L or 3L	282	2.70	1.62	
	Total	591	2.78	1.61	
Experiences arising from your religious identity	Entering law students	309	3.20	1.59	
	2L or 3L	280	2.95	1.60	
	Total	589	3.08	1.59	
Experiences arising from your socio-economic background	Entering law students	309	3.92	1.43	
	2L or 3L	281	4.10	1.47	
	Total	590	4.01	1.45	
Experiences arising from your gender	Entering law students	309	3.41	1.59	
	2L or 3L	282	3.80	1.61	p<.01
	Total	591	3.60	1.61	
Experiences arising from your sexual orientation	Entering law students	309	2.31	1.54	
	2L or 3L	280	2.60	1.69	p<.05
	Total	589	2.45	1.62	
Clients look at legal problems through their own cultural lens.	Entering law students	309	5.04	0.97	
	2L or 3L	281	5.16	0.95	
	Total	590	5.09	0.97	
Lawyers look at legal problems through their own cultural lens.	Entering law students	307	3.72	1.31	
	2L or 3L	281	4.33	1.18	p<.000
	Total	588	4.01	1.28	
How a client communicates with his or her lawyer is not influenced by the client's cultural background. †	Entering law students	309	5.09	1.06	
	2L or 3L	281	5.30	1.00	p<.05
	Total	590	5.19	1.04	
I do not view the legal system through a culturally-biased lens. †	Entering law students	309	3.66	1.38	
	2L or 3L	280	4.09	1.34	p<.000
	Total	589	3.86	1.37	
If a client's cultural practice is to defer	Entering law students	306	2.82	1.23	
	2L or 3L	278	2.54	1.20	

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Survey Items		N	Mean	SD	Sig.
decision making to others in the client's family, a lawyer should help the client understand why he or she should make his or her own decisions about the case.†	Total	584	2.68	1.22	p<.05
A lawyer's socioeconomic background influences how the lawyer perceives a client's behavior.	Entering law students	307	4.03	1.22	p<.000
	2L or 3L	279	4.58	1.12	
	Total	586	4.29	1.20	
Legal education should not include education about cultural issues that may arise when providing legal services to people from different cultural backgrounds than my own.†	Entering law students	308	5.08	1.13	
	2L or 3L	280	5.04	1.31	
	Total	588	5.06	1.22	
A lawyer should assume that a client's visible lack of emotion means that the client does not feel strongly about what is being discussed.†	Entering law students	305	5.36	0.87	
	2L or 3L	281	5.39	0.99	
	Total	586	5.37	0.93	
Judges do not look at legal problems through their own cultural lens.†	Entering law students	309	4.42	1.24	p<.000
	2L or 3L	279	4.91	1.18	
	Total	588	4.65	1.23	
In general, I am able to recognize when my reactions to others are based on stereotypical beliefs.	Entering law students	307	4.68	0.89	p<.05
	2L or 3L	280	4.52	0.92	
	Total	587	4.61	0.91	
How a lawyer communicates with his or her client is not influenced by the lawyer's cultural background.†	Entering law students	309	4.50	0.96	p<.000
	2L or 3L	280	4.86	0.99	
	Total	589	4.67	0.99	
When a client refuses to look his or her lawyer in the eyes, the lawyer should assume the client is not being truthful.†	Entering law students	307	5.16	0.93	
	2L or 3L	279	5.21	0.91	
	Total	586	5.19	0.92	

Survey Items		N	Mean	SD	Sig.
In general, I can accurately identify my culturally-biased assumptions about others who are from cultures different from my own.	Entering law students	308	4.26	1.01	
	2L or 3L	279	4.14	1.06	
	Total	587	4.20	1.04	
Lawyers belonging to racial and ethnic minorities bring culturally-biased assumptions into the lawyer/client relationship.	Entering law students	309	3.22	1.32	p<.000
	2L or 3L	281	3.65	1.33	
	Total	590	3.42	1.34	
When a client shakes hands with a male attorney but refuses to shake hands with a female attorney, the lawyers should assume the client will not respect advice given by the female attorney. †	Entering law students	308	4.15	1.28	
	2L or 3L	281	4.04	1.35	
	Total	589	4.10	1.31	
White lawyers bring culturally-biased assumptions into the lawyer/client relationship.	Entering law students	309	3.26	1.36	p<.000
	2L or 3L	280	3.93	1.37	
	Total	589	3.58	1.40	
Law professors should discuss with their students the cultural assumptions embedded in appellate legal opinions.	Entering law students	308	4.67	1.08	p<.05
	2L or 3L	279	4.44	1.39	
	Total	587	4.56	1.24	
A law student's ability to recognize cultural diversity issues as they relate to the lawyering process should be assessed during law school.	Entering law students	309	4.23	1.31	p<.05
	2L or 3L	281	3.93	1.54	
	Total	590	4.09	1.43	

† Item was reverse coded

Note. Mean range = 1-6 with higher mean score representing higher level of cultural sensibility.

\*\*Survey Item Means by Student Level (cont.)

## APPENDIX C: SURVEY ITEM MEANS BY UNIVERSITY

Survey Items		N	Mean	SD	Sig.
Experiences arising from your racial identity	Southern Urban	318	3.06	1.61	
	Northern	273	3.19	1.60	
	Total	591	3.12	1.60	
Experiences arising from your ethnic identity	Southern Urban	318	2.85	1.63	
	Northern	273	2.69	1.58	
	Total	591	2.78	1.61	
Experiences arising from your religious identity	Southern Urban	317	3.14	1.57	
	Northern	272	3.00	1.62	
	Total	589	3.08	1.59	
Experiences arising from your socio-economic background	Southern Urban	317	3.86	1.42	
	Northern	273	4.18	1.46	p<.05
	Total	590	4.01	1.45	
Experiences arising from your gender	Southern Urban	318	3.45	1.57	
	Northern	273	3.77	1.65	
	Total	591	3.60	1.61	
Experiences arising from your sexual orientation	Southern Urban	317	2.27	1.51	
	Northern	272	2.66	1.71	
	Total	589	2.45	1.62	
Clients look at legal problems through their own cultural lens.	Southern Urban	317	5.04	0.97	
	Northern	273	5.15	0.96	
	Total	590	5.09	0.97	
Lawyers look at legal problems through their own cultural lens.	Southern Urban	317	3.79	1.28	
	Northern	271	4.27	1.24	p<.000
	Total	588	4.01	1.28	
How a client communicates with his or her lawyer is not influenced by the client's cultural background. †	Southern Urban	317	5.10	1.07	
	Northern	273	5.30	0.99	p<.05
	Total	590	5.19	1.04	
I do not view the legal system through a culturally-biased lens. †	Southern Urban	316	3.61	1.37	
	Northern	273	4.16	1.32	p<.000
	Total	589	3.86	1.37	
If a client's cultural practice is to defer decision making to others in the client's family, a lawyer should help the client understand why he or she should make his or her own decisions about the case. †	Southern Urban	311	2.71	1.25	
	Northern	273	2.65	1.19	
	Total	584	2.68	1.22	
A lawyer's socioeconomic background influences how the	Southern Urban	315	4.03	1.18	
	Northern	271	4.60	1.16	p<.000

Survey Items		N	Mean	SD	Sig.
lawyer perceives a client's behavior.	Total	586	4.29	1.20	
Legal education should not include education about cultural issues that may arise when providing legal services to people from different cultural backgrounds than my own.†	Southern Urban	316	4.99	1.23	
	Northern	272	5.14	1.20	
	Total	588	5.06	1.22	
A lawyer should assume that a client's visible lack of emotion means that the client does not feel strongly about what is being discussed.†	Southern Urban	314	5.30	0.94	
	Northern	272	5.46	0.90	
	Total	586	5.37	0.93	
Judges do not look at legal problems through their own cultural lens.†	Southern Urban	316	4.50	1.28	p<.01
	Northern	272	4.83	1.16	
	Total	588	4.65	1.23	
In general, I am able to recognize when my reactions to others are based on stereotypical beliefs.	Southern Urban	315	4.66	0.90	
	Northern	272	4.55	0.92	
	Total	587	4.61	0.91	
How a lawyer communicates with his or her client is not influenced by the lawyer's cultural background.†	Southern Urban	316	4.47	1.01	p<.000
	Northern	273	4.90	0.91	
	Total	589	4.67	0.99	
When a client refuses to look his or her lawyer in the eyes, the lawyer should assume the client is not being truthful.†	Southern Urban	314	5.08	0.99	p<.01
	Northern	272	5.31	0.82	
	Total	586	5.19	0.92	
In general, I can accurately identify my culturally-biased assumptions about others who are from cultures different from my own.	Southern Urban	315	4.26	1.05	
	Northern	272	4.13	1.03	
	Total	587	4.20	1.04	
Lawyers belonging to racial and ethnic minorities bring culturally-biased assumptions into the lawyer/client relationship.	Southern Urban	317	3.27	1.26	p<.01
	Northern	273	3.60	1.41	
	Total	590	3.42	1.34	
When a client shakes hands with a male attorney but refuses to shake hands with a female attorney, the lawyers should assume the client will not respect advice given by the female attorney.†	Southern Urban	316	3.97	1.35	p<.05
	Northern	273	4.24	1.26	
	Total	589	4.10	1.31	

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Survey Items		N	Mean	SD	Sig.
White lawyers bring culturally-biased assumptions into the lawyer/client relationship.	Southern Urban	317	3.25	1.35	p<.000
	Northern	272	3.96	1.37	
	Total	589	3.58	1.40	
Law professors should discuss with their students the cultural assumptions embedded in appellate legal opinions.	Southern Urban	315	4.51	1.18	
	Northern	272	4.61	1.31	
	Total	587	4.56	1.24	
A law student's ability to recognize cultural diversity issues as they relate to the lawyering process should be assessed during law school.	Southern Urban	317	4.08	1.41	
	Northern	273	4.10	1.45	
	Total	590	4.09	1.43	

† Item was reverse coded

*Note.* Mean range = 1-6 with higher mean score representing higher level of cultural sensibility.

## APPENDIX D\*\*: SURVEY ITEM MEANS BY RACE/ETHNICITY

Survey Items		N	Mean	SD	Sig.
Experiences arising from your racial identity	Non White	132	4.11	1.56	p<.000
	White	435	2.83	1.49	
	Total	567	3.13	1.60	
Experiences arising from your ethnic identity	Non White	132	3.91	1.70	p<.000
	White	435	2.43	1.41	
	Total	567	2.78	1.60	
Experiences arising from your religious identity	Non White	132	3.27	1.73	
	White	433	3.00	1.54	
	Total	565	3.06	1.59	
Experiences arising from your socio-economic background	Non White	131	4.18	1.38	
	White	435	3.95	1.44	
	Total	566	4.00	1.43	
Experiences arising from your gender	Non White	132	3.91	1.72	p<.05
	White	435	3.53	1.56	
	Total	567	3.62	1.61	
Experiences arising from your sexual orientation	Non White	132	2.36	1.74	
	White	434	2.47	1.56	
	Total	566	2.44	1.60	
Clients look at legal problems through their own cultural lens.	Non White	132	5.14	1.05	
	White	435	5.08	0.94	
	Total	567	5.09	0.97	
Lawyers look at legal problems through their own cultural lens.	Non White	132	4.07	1.47	
	White	433	3.97	1.23	
	Total	565	4.00	1.29	
How a client communicates with his or her lawyer is not influenced by the client's cultural background.†	Non White	132	5.13	1.20	
	White	435	5.21	0.99	
	Total	567	5.19	1.05	
I do not view the legal system through a culturally-biased lens.†	Non White	132	3.91	1.37	
	White	434	3.85	1.36	
	Total	566	3.86	1.36	
If a client's cultural practice is to defer decision making to others in the client's family, a lawyer should help the client understand why he or she should make his or her own decisions about the case.†	Non White	131	2.64	1.29	
	White	430	2.69	1.19	
	Total	561	2.68	1.21	
A lawyer's socioeconomic background influences how the	Non White	132	4.33	1.35	
	White	431	4.27	1.15	

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Survey Items		N	Mean	SD	Sig.
lawyer perceives a client's behavior.	Total	563	4.28	1.20	
Legal education should not include education about cultural issues that may arise when providing legal services to people from different cultural backgrounds than my own.†	Non White	131	5.25	1.14	
	White	433	5.03	1.20	
	Total	564	5.09	1.19	
A lawyer should assume that a client's visible lack of emotion means that the client does not feel strongly about what is being discussed.†	Non White	129	5.40	0.98	
	White	433	5.36	0.91	
	Total	562	5.37	0.92	
Judges do not look at legal problems through their own cultural lens.†	Non White	131	4.81	1.20	
	White	434	4.60	1.24	
	Total	565	4.65	1.23	
In general, I am able to recognize when my reactions to others are based on stereotypical beliefs.	Non White	132	4.70	0.99	
	White	432	4.58	0.89	
	Total	564	4.61	0.91	
How a lawyer communicates with his or her client is not influenced by the lawyer's cultural background.†	Non White	132	4.89	1.00	p<.05
	White	433	4.61	0.98	
	Total	565	4.67	0.99	
When a client refuses to look his or her lawyer in the eyes, the lawyer should assume the client is not being truthful.†	Non White	131	5.23	0.96	
	White	432	5.17	0.90	
	Total	563	5.18	0.92	
In general, I can accurately identify my culturally-biased assumptions about others who are from cultures different from my own.	Non White	132	4.35	1.13	
	White	432	4.15	1.01	
	Total	564	4.20	1.04	
Lawyers belonging to racial and ethnic minorities bring culturally-biased assumptions into the lawyer/client relationship.	Non White	132	3.14	1.40	p<.05
	White	434	3.49	1.31	
	Total	566	3.41	1.34	
When a client shakes hands with a male attorney but refuses to shake hands with a female attorney, the lawyers should assume the client will not respect advice given by the female attorney.†	Non White	132	4.02	1.33	
	White	433	4.09	1.31	
	Total	565	4.07	1.31	
White lawyers bring culturally-biased assumptions into the lawyer/client relationship.	Non White	132	3.69	1.38	
	White	433	3.53	1.40	
	Total	565	3.57	1.40	

Survey Items		N	Mean	SD	Sig.
Law professors should discuss with their students the cultural assumptions embedded in appellate legal opinions.	Non White	131	4.89	1.06	p<.01
	White	432	4.49	1.23	
	Total	563	4.58	1.20	
A law student's ability to recognize cultural diversity issues as they relate to the lawyering process should be assessed during law school.	Non White	132	4.55	1.29	p<.000
	White	434	3.97	1.40	
	Total	566	4.11	1.39	

† Item was reverse coded

Note. Mean range = 1-6 with higher mean score representing higher level of cultural sensibility.

## APPENDIX E\*\*: SURVEY ITEM MEANS BY GENDER

Survey Items		N	Mean	SD	Sig.
Experiences arising from your racial identity	Female	287	3.55	1.61	p<.000
	Male	291	2.71	1.49	
	Total	578	3.13	1.61	
Experiences arising from your ethnic identity	Female	287	3.13	1.65	p<.000
	Male	291	2.43	1.50	
	Total	578	2.78	1.61	
Experiences arising from your religious identity	Female	286	3.21	1.54	p<.05
	Male	290	2.93	1.62	
	Total	576	3.07	1.59	
Experiences arising from your socio-economic background	Female	286	4.21	1.35	p<.01
	Male	291	3.79	1.51	
	Total	577	4.00	1.45	
Experiences arising from your gender	Female	287	4.39	1.35	p<.000
	Male	291	2.83	1.45	
	Total	578	3.61	1.60	
Experiences arising from your sexual orientation	Female	286	2.65	1.67	p<.01
	Male	291	2.25	1.53	
	Total	577	2.45	1.62	
Clients look at legal problems through their own cultural lens.	Female	287	5.26	0.92	p<.000
	Male	291	4.93	0.99	
	Total	578	5.10	0.97	
Lawyers look at legal problems through their own cultural lens.	Female	286	4.23	1.29	p<.000
	Male	290	3.77	1.25	
	Total	576	4.00	1.29	
How a client communicates with his or her lawyer is not influenced by the client's cultural background.†	Female	287	5.34	0.96	p<.000
	Male	291	5.038	1.10	
	Total	578	5.19	1.04	
I do not view the legal system through a culturally-biased lens.†	Female	287	4.04	1.34	p<.01
	Male	290	3.67	1.39	
	Total	577	3.85	1.38	
If a client's cultural practice is to defer decision making to others in the client's family, a lawyer should help the client understand why he or she should make his or her own decisions about the case.†	Female	285	2.66	1.18	
	Male	287	2.67	1.25	
	Total	572	2.66	1.21	
A lawyer's socioeconomic background influences how the lawyer perceives a client's behavior.	Female	285	4.40	1.17	p<.05
	Male	289	4.19	1.23	
	Total	574	4.29	1.21	

Survey Items		N	Mean	SD	Sig.
Legal education should not include education about cultural issues that may arise when providing legal services to people from different cultural backgrounds than my own.†	Female	285	5.3439	1.11	p<.000
	Male	290	4.8069	1.25	
	Total	575	5.0730	1.21	
A lawyer should assume that a client's visible lack of emotion means that the client does not feel strongly about what is being discussed.†	Female	285	5.43	.95	
	Male	288	5.32	.91	
	Total	573	5.37	.93	
Judges do not look at legal problems through their own cultural lens.†	Female	286	4.77	1.20	p<.05
	Male	290	4.52	1.26	
	Total	576	4.64	1.24	
In general, I am able to recognize when my reactions to others are based on stereotypical beliefs.	Female	287	4.65	.88	
	Male	288	4.57	.93	
	Total	575	4.61	.91	
How a lawyer communicates with his or her client is not influenced by the lawyer's cultural background.†	Female	286	4.83	1.00	p<.000
	Male	290	4.52	.96	
	Total	576	4.67	.99	
When a client refuses to look his or her lawyer in the eyes, the lawyer should assume the client is not being truthful.†	Female	287	5.24	.90	
	Male	287	5.12	.94	
	Total	574	5.18	.92	
In general, I can accurately identify my culturally-biased assumptions about others who are from cultures different from my own.	Female	286	4.26	1.06	
	Male	289	4.15	1.02	
	Total	575	4.21	1.04	
Lawyers belonging to racial and ethnic minorities bring culturally-biased assumptions into the lawyer/client relationship.	Female	287	3.38	1.41	p<.05
	Male	290	3.46	1.27	
	Total	577	3.42	1.34	
When a client shakes hands with a male attorney but refuses to shake hands with a female attorney, the lawyers should assume the client will not respect advice given by the female attorney.†	Female	287	4.02	1.34	
	Male	289	4.15	1.28	
	Total	576	4.09	1.31	
White lawyers bring culturally-biased assumptions into the lawyer/client relationship.	Female	287	3.74	1.39	p<.05
	Male	289	3.44	1.41	
	Total	576	3.59	1.40	
Law professors should discuss with their students the cultural assumptions embedded in appellate legal opinions.	Female	286	4.79	1.10	p<.000
	Male	288	4.38	1.29	
	Total	574	4.59	1.22	

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Survey Items		N	Mean	SD	Sig.
A law student's ability to recognize cultural diversity issues as they relate to the lawyering process should be assessed during law school.	Female	287	4.38	1.35	p<.000
	Male	290	3.85	1.43	
	Total	577	4.11	1.42	

† Item was reverse coded

*Note.* Mean range = 1-6 with higher mean score representing higher level of cultural sensibility.