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COMPASSION: A CRITICAL SKILL FOR LAW STUDENTS

By: Stephanie Smith Ledesma, MA, JD, CWLS*

INTRODUCTION

"People of different religions and cultures live side by side in almost every part of the world, and most of us have overlapping identities which unite us with very different groups. We can love what we are, without hating what – and who –

we are not. We can thrive in our own tradition, even as we learn from others, and come to respect their teachings."¹

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¹ Kofi Annan, Former Secretary-General of the United Nations, Nobel Lecture (Dec. 10, 2001).

When I attended law school almost three decades ago, the curriculum looked then, like most law school curriculums look today; Torts I and Torts II; Property I and Property II; Constitutional Law; Civil Procedure I and Civil Procedure II; Bankruptcy; Evidence; Criminal Law; Criminal Procedure; Legal Research and Writing; and Professional Responsibility to name a few. As I served as a trial attorney for over two decades, and now a tenured professor for almost a decade, I reflect over our style and framing of legal education in the United States. What I used to consider to be mere blips on a radar, I now understand are deficiencies as large as the Grand Canyon is long and wide.

The Socratic method, the “black letter law”, essay exams over simulations, legal research skills exalting a style and form of writing that only other lawyers dare to read; and legal writing with its competing theories of organizational forms, IRAC, CRAC, CRuPAC, all designed to highlight and prove rigor of the educational program miss one component, feeling. I now stand in a love relationship of over 30 years with a profession that is my first love and wonder, “How good is our system of legal education if we are systematically, with rigor, dehumanizing our students, turning them in to lean, mean thinking and analyzing machines, with no hearts, no compassion, no empathy and no sense of value for human growth or cultural expansion, only to send them out into the world, responding to the problems of mankind, robotically?”

Does hope, compassion, kindness, respect, appreciation, deference, consideration, and civility no longer have a place in our profession, or even, in our world? Has our world, our realities become so binary that nothing exists except for right and wrong. If I am right, you must be wrong; and if you wrong you must be unworthy; and if you are unworthy, those who are “right”, are justified in silencing you, by any means necessary because no holds are barred? Is common decency no longer “trending”?

Many students come to law school with a sense of humanity, a sense of justice, and a desire to fight for what is equitable and “right”, however that is defined. What classes on the curriculum do they take to stay connected to their humanness, grow in their experience, and transform into service leaders? For students that come to law school without a sense of humanity, who define justice as what works for them, and aspire only to learn more efficient ways to get the world to bend to their individual visions of grandeur, what classes do they take so they may be introduced to the idea of service and advocacy and “paying it forward” for the benefits of others because it is the right thing to do? What happens to all of the students that fall

somewhere in the middle of these two, very real extremes?

To be an effective legal advocate a law student needs more than just competence of the “black letter” and the doctrine law and practical skill.² Law students need compassion³; they need to feel it, they need to give it; they need to be led by it; they need to learn to yield to it. This is neither an article about cultural awareness nor is it another article about cultural competency. However, “In our growing multicultural society, while cultural competence is increasingly important for professionals”,⁴ competence of culture, competence of skill, competence of doctrine is not enough. This article suggests that those entering into the legal profession, (specifically law students for the purpose of this article), a profession that touches every aspect of every life, a profession, one of few that continued to work and remain accessible, even in the midst of the COVID-19 pandemic, are also in need of training in “cultural compassion”⁵.

There are a lot of articles that speak to the importance of the cultural environment within learning institutions, but there are few that discuss the importance of introducing, teaching, and nurturing “cultural respect,”⁶ and even fewer that speak specifically to “cultural compassion” as a component of professional competency.

This article is intended to introduce “cultural compassion” into

² Travis Adams, *Cultural Competency: A Necessary Skill for the 21st Century Attorney*, 4 WM. MITCHELL LAW RAZA J. 2, 16 (2012).

³ For the purposes of this article, compassion is defined as a conscience awareness of the distress or suffering of others coupled with a compelling motivation to cure, end, heal, protect against, advocate for a solution to the suffering or distress.

⁴ Serena Patel, *Cultural Competency Training: Preparing Law Students for Practice in Our Multicultural World*, 62 UCLA L. REV. DISCOURSE 140, 142 (2014).

⁵ “Cultural compassion” is a term that is created by (to the extent that my research shows) and that is being introduced by Professor Ledesma into the discourse of professionalism and experiential education in an effort to describe a hybrid of skill and intuition that this author asserts, every professional, especially attorneys, should understand, incorporate and exercise in their daily practice as they act as service leaders and positive change agents in their communities and society at large.

⁶ *Cultural Respect*, NATIONAL INSTITUTES OF HEALTH, <https://www.nih.gov/institutes-nih/nih-office-director/office-communications-public-liaison/clear-communication/cultural-respect> (last reviewed Feb. 17, 2021) (“Cultural respect” is the term that this author uses to explain culture, which is “often described as the combination of a body of knowledge, a body of belief, and a body of behavior.” It involves a number of elements, including “personal identification, language, thoughts, communications, actions, customs, beliefs, values, and institutions that are often specific to ethnic, racial, religious, geographic, or social groups. For the provider of health information or health care, these elements influence beliefs and belief systems surrounding health, healing, wellness, illness, disease, and delivery of health services. The concept of cultural respect has a positive effect on patient care delivery by enabling providers to deliver services that are respectful of and responsive to the health beliefs, practices and cultural and linguistic needs of diverse patients.”).

the vernacular of legal education and thereby serve as a platform for exploration of what “cultural compassion” is and open discussions and debates about why “cultural compassion” should be taught in law schools as a critical skill.

Before I go further, I wish to take this opportunity to acknowledge the leading scholars in the area of cultural awareness and cultural competence for their scholarship and thank them for their foresight and contributions that have yielded progress on my journey of transformative education. Specifically, I owe my awakenedness, my curiosity, and the compelling need to put these thoughts into words, to scholars like Serena Patel, Kristen B. Gerdy, and Susan Bryant, whose groundbreaking contributions have transformed adult education and legal education alike.

Section I of this article describes the transformative journey toward cultural compassion often travelled, unwittingly, by new law school graduates who find themselves in the protective and nurturing walls of the law school one day, and then thrown into the lion’s den the next, after having passed their bar exam and received their license to practice. I describe the moment that these two worlds collide, law school world and “real practice” world as a “clash of cultures”, at least that was my experience. This “clash” was the moment that I realized that law school DID NOT PREPARE me for the actual practice of law.⁷ This very personal example shows how common it can be to have a conflict of cultures between the lawyer and client that is significant enough to derail the entire professional relationship. In fact, this clash of cultures happens multiple times a day, every day, in every genre of the legal profession. From direct representation of clients, to arbitration, to mediation, to transactional representation of multi-million-dollar businesses, to advice given by agents to their professional athlete clients, and so on. So why didn’t they teach me about this in law school?

Section II defines and discusses the importance of “cultural compassion” as a skill that should be taught in law school. Learning to become “culturally compassionate” is easy right? It is simply a series of sequential steps made by your soul that begins with the understanding of culture, moving step by step to cultural awareness, continuing the transformation through cultural competence, advancing through the potential land mines of empathy and ultimately landing in the heightened awareness called “cultural compassion”, which often leads to compassionate action.

Section III introduces areas of the law school curriculum where

⁷ The term “clash of cultures” is used to describe the violent confrontation of two extremely different cultures.

“cultural compassion” can be introduced to law students and practiced to the point inculcation and mastery. Section III further explains the importance of culture and why good lawyering cannot be blind to cultural realities and why “cultural compassion” is the vehicle needed to transform students into self-actualized persons and “whole lawyers.”

Section IV concludes with the idea that educating lawyers skilled at addressing the legal needs of the 21st century client, a society built in diversity “involves not the fulfillment of a competency as some sort of educational nirvana, but the development of an orientation—a critical consciousness—which places law in a social, cultural and historical context and which is coupled with an active recognition of societal problems and search for appropriate solutions.”⁸ Allow this to be the seed that prayerfully bears much fruit.

It is the hope that this article encourages law schools to partner with law students, members of the bench, members of the bar and especially clients who have received legal representation and be bold, be courageous, and be humble. Engage in open conversations that encourage the free flow of information and ideas about what clients expect from lawyers, what senior counsel expects from new associates, what the bench expects from members of the bar, and how law schools can better prepare, and train law students and newly admitted lawyers to: (1) know their culture; and (2) use their culture in ways that respect and acknowledge the cultures of their clients so that the legal representation and advice that is provided is greater than the total sum of its individual parts.

⁸ Arno K. Kumagai, M.D. & Monica L. Lypson, M.D., *Beyond Cultural Competence: Critical Consciousness, Social Justice, and Multicultural Education*, 84 ACAD. MED. 782 (2009).

A "CLASH OF THE CULTURES:" AN ATTORNEY'S DILEMMA

If I have been charitable in my judgments of my fellow man; if I have tried to help him as best I could; if I have done my utmost to truly understand him, I know why I have taken this course- I could not help it. I have been interested in the study of many, and the motives that move and control his life. I have rejoiced with him, and have grieved with him; I have followed my instincts and feelings and sought to rescue the suffering when I could. But I know that I have done it more or less involuntarily as a part of my being, without choice, and without stopping to weigh which were most deserving or worth saving. If I had paused, I should probably still be wondering and doing nothing. I claim no credit, and I want no praise.⁹

It was springtime, early afternoon in Central Texas where the temperature is usually varying degrees of hot. I sat in the gallery in a District Court courtroom at the then recently renamed Heman Marion Sweatt¹⁰ District Courthouse, with my client on the Child Protective Services docket,¹¹ patiently waiting for their case to be called. When I represented parents in child abuse and neglect cases, I often sat with my parent client¹² in court during other cases. I would translate for my client what was taking place in other cases while we waited for our opportunity to be heard. I interpreted for my client the judge's hand gestures, and the frowns made by either the Attorney ad Litem

⁹ Kristen B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the "Heart" of Lawyering*, 87 NEB. L. REV. 1, 2 (2008).

¹⁰ Heman Marion Sweatt (December 11, 1912 – October 3, 1982) was an African-American civil rights activist is best known for the *Sweatt v. Painter* lawsuit, which challenged the "separate but equal" doctrine of education and was one of the earliest of the events that led to the desegregation of American higher education. The resulting denial of Mr. Sweatt to the University of Texas Law School eventually led to the founding of the Thurgood Marshall School of Law at TSU.

¹¹ The Child Protective Services docket was a weekly docket held in district court of a county that I practiced for many years. On this docket, you could hear removal hearings, status hearings, motions for further temporary order hearings, all things related to child abuse and neglect cases.

¹² During the twenty years that this attorney worked primarily as a Child Welfare attorney representing parties in child abuse and neglect cases, I represented children sometimes and other times I represented either the parent, a grandparent, a fictive kin member, or a foster parent.

for the child or the Guardian ad Litem. I would explain the crossed hands of the respondent parent, and how the cocked hip or raised eyebrow of the parents would be interpreted against the parent. While I did not learn this in law school, even though I participated in several clinics, I knew, I felt that it was my responsibility to help my client understand what the court protocols were, what the expectations were, what questions would be asked, and how best not to fall into carefully laid constitutional vs. best interest argument traps.¹³ I needed my client to understand that this horrible set of circumstances that they were in, circumstances that they themselves may have created, was not unique to them (fighting for their fundamental liberty interest and their constitutional right to raise their children and have their children returned to them).¹⁴ Understanding this simple truth sometimes made it easier to weather a storm; and I needed for my parent clients to understand that there was hope, the power was in their hands, (for many the concept of trauma was familiar, but the concept of empowerment was foreign). Either way, parents accused of abusing and or neglecting their children had to: (1) learn how to read the disposition of the judge and how to decode what was being said; (2) learn how to listen to the concerns of others without being aggressively defensive; (3) learn how to trust those around them enough to communicate their concerns and their needs; and (4) learn how to heal despite the trauma that they had suffered and for many, the trauma that was still on-going.

While waiting for my client's case to be called on this particular day, we sat quietly, with great anticipation, watching another case as it unfolded before the entire court room to see, poorly. At certain points, when the unrepresented parent was speaking to the judge, I closed my eyes and cringed and thought to myself, "I am glad that I am not on THAT case."

Then it happened, the Judge said, "Ms. Ledesma!" In classic fashion, as an un-commissioned soldier would in responding to a commanding officer, I jumped to my feet; fastened the top button on my suit jacket and responded without hesitation, "Yes your Honor." I was being appointed to represent the parent in THAT case, the one that I had just expressed delight in not having been a part of.

¹³ This author often explained to students and young attorneys that being an attorney requires lots of counseling, not just advising. For many of our clients, educating and explaining what is happening, and why it is happening is as important as the giving of advice. Clients cannot be expected to make good decisions about things that they do not know or do not understand.

¹⁴ Safety of children is paramount. There is nothing in my practice or in this article that suggests that children should remain in or should be returned to unsafe circumstances or environments.

My new client, who I was met for the first time, during the course of a hearing, that was designed to either give the State temporary custody of the child, or return the child to the parent from whom the child was removed immediately, was a Respondent Father¹⁵ whose infant child had been removed due to allegations of neglect. It was frequently the practice of this court to appoint attorneys from the gallery to child abuse cases, on the day of the actual removal hearing; so, there was nothing uncommon about this lack of opportunity to prepare or lack of opportunity to be best positioned to zealously represent your client. In my tenure as an attorney in child abuse and neglect cases, I have been appointed to represent lots of fathers as well; hence, there was nothing unusual about the appointment being for the father, either. However, this case was very different, very unusual, and very not normal. My new client was alleged to be a member of a white supremacist organization.¹⁶ So what, you ask? Well, I am an African American woman, and this was my “clash of the cultures” moment. How could I possibly, with zeal and undivided loyalty, represent a client who belonged to an organization who had saw no worth or value in my very existence? Needless to say, there were many cultural differences between my newly appointed client and myself. Logical differences, rational differences, observable differences, cultural differences, differences in our values and differences in our structures of belief. Differences that could easily act as barriers,¹⁷ potentially affecting my relationship with my client and my ability to successfully represent him.

Trust is an important part of creating and sustaining any relationship, especially an attorney-client relationship. I am sure my client was asking himself, “Can I trust her;” as well as I was asking myself, “can I trust him?” Would his values and my values conflict? Would his beliefs require me to fight for something that my beliefs stood against? Would we even speak the same language; (not English, but would our words have different meaning)? How do I see life from his perspective, why would I want to, why would I need to? How do I understand his point of view so that my advice fits within his cultural

¹⁵ Respondent-father, is a term of art, used to describe a father who was the respondent, (defendant) to the lawsuit. Respondent-mother has the same meaning.

¹⁶ For the purpose of this article, “white supremacist organization” is defined as a group of likeminded people who believe that the white race is inherently superior to all other races.

¹⁷ See generally, PAUL J. ZWIER & ANTHONY J. BOCCHINO, *FACT INVESTIGATION: A PRACTICAL GUIDE TO INTERVIEWING, COUNSELING, AND CASE THEORY DEVELOPMENT* (2nd ed. 2015) (explaining that common inhibitors to communication include: 1) ego threat; 2) case threat; 3) role expectations; 4) etiquette barrier; 5) trauma; perceived irrelevance; 6) greater need, etc).

lens? Do I care? Why should I care? Is it ok if I don't care? I understood his socio-economic status, because for an attorney to be appointed to represent a parent in a child abuse hearing, the parent had to appear in opposition to the request of naming the Department of Family and Protective Services as temporary managing conservator; and the parent has to be indigent.¹⁸ But, what are his religious beliefs, does he have any? What does he value, I know or at least I think I know what he does not value? What is important to him? Who is his support network? What does he believe about child rearing? What does he believe about his child? Can he even take care of his child? Should he be allowed to take care of his child? Man...THEY DID NOT TEACH ME HOW TO ADDRESS THIS SITUATION IN LAW SCHOOL!

¹⁸ TEX. FAM. CODE ANN. § 107.013 (West 2015).

THE EVOLUTIONARY PATH TO CULTURAL COMPASSION

"Culture is the whole complex of distinctive spiritual, material, intellectual and emotional features that characterizes a society or a group. It includes creative expressions, community practices and more."¹⁹

The Definition of Culture

The transformation to "cultural compassion" begins with an understanding of the nature of culture. Culture is amorphous; it is invisible, but at times clearly seen; it is silent but at times over stated; it is protective, and yet an agent of instigation at the same time; it is our rise and our fall; it inspires us to be the best that we can aspire to become and the worst that we can sink.

With all its implications, culture connects us, yet divides us. Culture teaches us, while it deceives us. Culture can be the key to our liberation; or it can serve as the inescapable walls of our own personal prisons within the dungeons of our darkest creations. I learned nothing about culture in law school. As a tenured professor today, I reflect and ask myself, what are we teaching law students today about culture?

Culture defines the world to each of us and helps us define the world. What is normal, what is expected, what is acceptable what can be trusted, who can be trusted, who should not be trusted, is all based on what our socialization in our culture teaches us. Culture can comfort us in a sense of belonging or it can cause us to feel ostracized and in fear. What we find to be of value, of great meaning, important we can link to our cultural imprint. What we know to fear and see as dangerous or threatening also comes from the indoctrination of our culture. Culture as a living experience is the exponential concentration of generations of ancestors that is passed along to each new being through the miracle of birth, wrapped in the hope of the future.

Culture, for the purposes of this article is not being used in the anthropological sense, but rather in the sense of differences between individuals that are related to different backgrounds, value systems, religions, classes, ethnicities, races, or other factors that contribute to a person's experience of the world. Culture is not one-dimensional; race alone does not define culture; ethnicity alone does not define

¹⁹ WORLD COMM'N ON CULTURE AND DEV., OUR CREATIVE DIVERSITY (1996).

culture.²⁰ However, culture can influence the way we view events; the importance one places on roles, hierarchy or personal relationships; priorities regarding the rights of individuals compared to the group; conflict resolution emotions and the way emotions are displayed; and one's willingness to discuss intimate or embarrassing issues among other things.²¹

With culture being such a broad experience, to become a cross-cultural lawyer, "students must first become aware of the significance of culture on themselves";²² who they are, culturally. It is important to understand and to teach that "no single characteristic will completely define the lawyer's or client's' culture."²³

Culture can be logical²⁴ and rational²⁵; and at the same time, culture can be personal and emotional. With vastly divergent beliefs and mutually exclusive cultural codes, which one is correct? Does one have to be right and the other wrong?

As we try to define culture enough to recognize it, it is important to note that the law is its own culture with values, attitudes, and norms of behavior.²⁶ "Any law student who has tried to communicate to friends and family, who are not in the legal profession or in law school, and tried to answer the question, 'How class was today' understands the nature of cross-cultural exercises."²⁷ It's almost as though you are speaking two different languages. The legalese and world of *res ipsa loquitur*, rules against perpetuities, IRAC, CRAC, beyond reasonable doubt, abuse of discretion, the difference between moot court and mock trial, in rem jurisdiction vs. long-arm jurisdiction, etc., creates a world of shared experiences and beliefs within law students that is unfamiliar and unshared by anyone outside of the legal profession. While a law student's and a legal professional's assimilation into the culture of the legal profession is important for a

²⁰ Patel, *supra* note 4

²¹ *Id.*

²² Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 *Clinical L. Rev.* 33, 40 (2001).

²³ *Id.* at 41.

²⁴ Logic for the purposes of this article is defined as "a science that deals with the principles and criteria of validity of inference and demonstration: the science of the formal principles of reasoning." *Logic*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/logic> (last visited June 24, 2021).

²⁵ Rationale for the purpose of this article is defined as "having reason or understanding." *Rational*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/rational> (last visited June 24, 2021).

²⁶ Sue Bryant & Jean Koh Peters, *Five Habits for Cross-Cultural Lawyering*, in *RACE, CULTURE, PSYCHOLOGY & LAW* 47, 47 (Kimberly Holt Barrett & William H. George eds., 2005).

²⁷ Adams, *supra* note 3, at 4.

successful career, this journey cannot be complete without the skills needed to recognize and navigate the very existence of the cultural differences.

The Road to Cultural Awareness

“Cultural awareness” occurs when you stand back from yourself and with integrity, honesty and authenticity identify the realities of your cultural values, cultural beliefs and cultural realities and their origins, while at the same time, acknowledge and respect the differences in the cultural values, beliefs and perceptions of others around us. It is similar to an out of body experience, where we take an eyes-wide-open approach, an unfiltered investigative look at who we are; what we believe; what we value and why. This hard, and honest look calls for more than self-reflection, it calls for self-observation; self-questioning; self-scrutiny.²⁸ While cultural awareness can be very personal because it allows us to recognize where we belong and how we fit into any given environment; cultural awareness is also, necessarily a shared experience when our personal identities are tested by way of introduction into an environment that is different than ours and we must determine if we belong and how we fit into that new, different environment.

To be culturally aware is to acknowledge a difference between your culture and the culture of another. To recognize that there is a difference is the first step in the transformative journey to “cultural compassion”. However, this initial recognition of awareness and differences in cultural existence requires a student to know themselves as a cultural being.²⁹ “This self-awareness can be quite powerful,”³⁰

28 The Harvard Implicit Association Test (IAT) is a great way to start the journey of self awareness. “Important disclaimer: In reporting to you results of any IAT test that you take, we will mention possible interpretations that have a basis in research done (at the University of Washington, University of Virginia, Harvard University, and Yale University) with these tests. However, these Universities, as well as the individual researchers who have contributed to this site, make no claim for the validity of these suggested interpretations. If you are unprepared to encounter interpretations that you might find objectionable, please do not proceed further. You may prefer to examine general information about the IAT before deciding whether or not to proceed.” Take a Test, PROJECT IMPLICIT, <https://implicit.harvard.edu/implicit/takeatest.html> (last visited June 24, 2021).

²⁹ See generally 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, 1812 (1993).

³⁰ See 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 (2008). This article is a must read as a foundational method to consider when educators are attempting to help focus supervision and education on effective representation of clients from different cultures as

and quite intimidating. It is not for the faint of heart. It involves the very painful process of being present in each moment and being honest about who we are and why, (is this a belief that you share because you were raised that way and you never questioned it)? To walk through life, unaware and uncaring, mindless, or unconcerned about how you classify, assess value to, judge or respond to “certain” persons should no longer be an acceptable option, especially not as a legal professional.

To be consciously aware of your culture and why you believe what you believe and why you actively value what you value is important because it helps “develop an attitude of respect, openness, and curiosity that will enhance the lawyers’, (students’) ability to develop effective cross-cultural skills”³¹, in addition, this awareness of self and others will also encourage and strengthen the building of trusting relationships with colleagues, cohorts, employers and clients.

One of the challenges in teaching lawyers and law students the value of being culturally aware is that often times, it is too easy to just overlook and not mention the thing that makes us the most uncomfortable, the differences in culture, in values in beliefs. Who wants to actively go on a self-discovery path that may lead you to discover something about yourself that you do not like? Who wants to sit in an office or confined space with someone else and build rapport; develop relationships; learn about the person with whom you sit while they learn about you? Who has time to waste on such “emotional” and non-billable activities? That last question was intended to be rhetorical. Just like learning how to “spot legal issues,” law students and lawyers must learn to identify, learn about, and address cultural issues.

I offer the following “clash of cultures” moment as an example of how, as a recent law school graduate, who had not been introduced to cultural awareness in law school, I could not recognize and was dangerously unaware of a clearly huge cultural awareness issue that stood in the middle of my ability to effectively represent another client in another case, and what is worse, I didn’t even know what I didn’t know.

Again, early in my legal career, I received one of my first court appointments from the local CPS Judge.³² I was appointed to serve

issues arise in the course of legal representation. While a lot of thought has gone into the best practices of how to transfer knowledge from law professors and adjuncts to law students in law clinics. This transformative work must be incorporated across the curriculum, because not every law student takes a legal clinic.

³¹ *Id.* 48.

³² In the county where I began my practice, there was one District Judge that was

as the Attorney³³ of a dually diagnosed³⁴ mother, whose children had been removed³⁵ by Child Protective Services as the result of allegations of abuse and neglect. After being notified of the court appointment, my first step was to review the court file, (at the time, we actually had to travel to the court house and check out a paper file), which included the pleadings and the sworn affidavit that gave rise to the removal of the children. After reviewing the file, I called my new client to make an appointment meet with her.³⁶ After several unsuccessful attempts at reaching my client by phone, I decided to go to my

designated as the "CPS", (Child Protective Services) judge. This is very similar to the "One Judge, One Family" philosophy that is now becoming the current standard in child welfare litigation.

³³ TEX. FAM. CODE ANN. §107 (West 2015).

³⁴ *Dual Diagnosis and Recovery*, DBSA, (Sept. 12, 2017), https://secure2.convio.net/dabsa/site/SPageServer/?pagename=education_brochures_dual_diagnosis#:~:text=Dual%20diagnosis%20is%20the%20term,needs%20its%20own%20treatment%20plan. For the purposes of this article, dually diagnosed is defined as the term used when a person has a mood disorder such as depression or bipolar disorder (also known as manic depression) and a problem with alcohol or drugs. A person who has a dual diagnosis has two separate illnesses, and each illness needs its own treatment plan).

³⁵ TEX. FAM. CODE ANN. §262.112 (West 2015) (Removal is the process whereby a state agency, here, the Texas Department of Family and Protective Services, presents a sworn affidavit to a judge, ex parte and seeks authority to physically take the child, at times with the assistance of law enforcement, from the custody of the parent. Once this physical removal has taken place, the child is placed in foster care, until the parties can go before an judge and either argue to have the children returned to the parent or argue that irreparable harm will occur to the child if returned to the parent and as such, the safest thing for the child is for them to remain in foster care with the Texas Department of Family and Protective Services acting as the Temporary Managing Conservator of the child. During this time, the parent has not right to know where the child is placed, and the only access to the child is limited to usually once a week for an hour or two, under supervised conditions).

(a) The Department of Family and Protective Services is entitled to an expedited hearing under this chapter in any proceeding in which a hearing is required if the department determines that a child should be removed from the child's home because of an immediate danger to the physical health or safety of the child.

(b) In any proceeding in which an expedited hearing is held under Subsection (a), the department, parent, guardian, or other party to the proceeding is entitled to an expedited appeal on a ruling by a court that the child may not be removed from the child's home.)

³⁶ One of the prerequisites for a parent to receive court appointed counsel in a child protective services case is that the parent has to be indigent. Practicing in a jurisdiction where public transportation was challenging at best, I met many of my clients in their homes. There are lots of reasons why meeting my clients in their homes was important to me. One reason is because it was important for clients to understand that I would be willing to come to them. It was also important for the client to meet, especially initially, in a place and in an environment that they felt comfortable, because many of these clients are traumatized. And being in a "safe", known environment is important to help decrease people's anxiety. One other important reason to meet a client in their home is to give me an opportunity to see the "environment" from which the children were removed.

client's home to see if I could reach her.

My client lived on the economically depressed side of town, in a government subsidized housing development.³⁷ I arrived at her home and knocked on the door. I could hear moving on the other side of the door, but there was no answer. I knocked again, a little harder this time. I heard more movement again, but still no answer. I knocked a third time and my extremely frustrated client aggressively pulled the door open and just stared at me. I enthusiastically extended my right hand to shake hers, with my legal pad and pen in my left hand. With a big smile on my face, I introduced myself; told her that I was her attorney; and I was there to help her fight to get her children back from the evil and overreaching arms of the State. My client looked at me, and summarily slammed the door in my face.

This back and forth described the relationship between my client and me over the next several months. I could not understand why she did not take my advice, (she was clearly wasting my time), and why she did not work harder to get her children back. I am sure there were many things about me as well that she did not understand, that is, in retrospect. The relationship between my client and me became so intolerable that I filed a Motion to Withdraw. At the withdrawal hearing, before the Judge denied my motion, he looked at me and said, "Ms. Ledesma, if not you, then who?" "Who will represent people in need?" "Who will be their advocate?" "Who will fight for the rights of the underserved and the forgotten?" "Wow! But was I equipped? Had I been adequately prepared? THEY DID NOT TEACH ME ANY OF THIS IN LAW SCHOOL! How do I defend the rights of my clients and protect the sanctity of family when I did not even understand my client and she surely did not understand me?"

I continued my representation of this client for the next year and one half; and the case concluded with a very positive resolution. But after reflecting on the case, I realized that I was culturally ignorant and devastatingly culturally unaware. Not only about who I was and what I thought I believed and why, but also about my client and who she was and what she believed and why, what her values were and why. Unintentionally and unknowingly I made several ethnocentric judgments and potentially dangerous assumptions about my client, her values, her beliefs and her culture, that would be the demise of my legal career if I did not learn to be more culturally aware, culturally competent; and ultimately culturally compassionate.

What I did not know as a young attorney; (What I was not taught in law school), was that there is a culture about indigence; a culture

³⁷ For those who are not familiar with "government subsidized housing" another term often used is "projects."

about mental illness; a culture about trauma, a culture of substance abuse; and a culture of privilege. Yes, I was the "privileged one", (now when I went to law school my first child was one year old, I drove 200 miles every day back and forth to law school. My husband and I had one car that we shared, he worked at night so that I could use the car and go to law school 200 miles away by day. I spent all of my time either being a mother, a wife or on the road as a commuting law student, but yes, I was very much privileged). I had the benefit of an upbringing that taught me about hard work and perseverance. I had the benefit of an upbringing that explained that there were no limits to my achievements. I had a BS degree, a MS degree and now I was working on a JD, (so many privileges), and I was oblivious, which is often times a symptom of the very privilege itself. The fact that my client and I were of the same gender did not mean we shared the same values, and I had assumed just the opposite. The fact that my client and I were the same race, did not mean that we shared the same belief, I had assumed just the opposite. Me demanding that my values and my beliefs were the "right values" and "right beliefs", did not help me persuade my client that my reality should be her "truth". WOW! I WAS NOT TAUGHT ANY OF THIS IN LAW SCHOOL!

I had more work to do, and as an attorney; it was my responsibility to learn what I did not know, so that I could learn it. And one of the first things that I had to learn first was humility and respect, even if my client had different beliefs than I had, even if my client had different values than I had, even if my client acted differently than I would act, or made different decisions than I would make, and even if they engaged in activity that I would not engage in. I had to learn what my culture allowed my implicit biases to conclude about her culture, a culture that I did not know or even try to understand before I adjudged it flawed.

I did not understand, because I had not been taught that my job as an attorney was not to judge my client and tell them how to be better people, but my job was to meet them where they were, and advocate for them. I had to learn that concepts of credibility are culturally determined; and as such I had to recognize my own judgment, even when I did not know I was passing judgment. I had to learn that a license to practice law alone, does not make one an effective advocate, even if I was a lean, mean critically thinking machine. I also had to learn that once I became aware of these cultural differences between my client and me, between the caseworkers and me, between the judges and me, etc., it was my responsibility to do something, other than point out how everyone else was wrong and I was right.

It is important to re-iterate again that I did not learn any of this

in law school.

ON THE JOURNEY TO CULTURAL COMPETENCE

Recognizing, acknowledging, caring about and being proactively aware of differences in the culture of you and others leads to “cultural competence”.

When an attorney and her client come from different cultural groups, effective advocacy depends on cultural competence, at a minimum. As one scholar stated, “To be effective in another culture, people must be interested in the other culture, be sensitive enough to notice cultural differences, and then also be willing to modify their behavior as an indication of respect for the people of other Cultures.”³⁸

“Cultural competency is an essential skillset for the 21st century attorney who seeks to deliver effective advocacy and serve justice.”³⁹ “Cultural competence” refers to the ability to understand, appreciate, and interact with persons from cultures and or belief systems that are different from their own.⁴⁰ Cultural competence also includes the ability to be respectful of these cultural differences during these cross-cultural interactions. “Molded in professional standards of medicine, mental health, social work, and law, cultural competency demands self-awareness, immersion, repeated revision, open-mindedness, resistance to stereotyping, and attention to detail.”⁴¹ No, cultural competence is not political correctness either.

In response to the increasing diversity of many industrial societies, numerous professional organizations have called for educational efforts aimed⁴² at educating professionals to address the needs of a culturally heterogeneous population. “By teaching students about the influence of culture on their practice of law, we give them a framework for analyzing the changes that have resulted in their

³⁸ *Id.*

³⁹ ADAMS, *supra* note 3.

⁴⁰ *Cultural competence*, Segen's Medical Dictionary (2012), <https://medical-dictionary.thefreedictionary.com/cultural+competence>.

⁴¹ Scharlette Holdman and Christopher Seeds, *Cultural Competency in Capital Mitigation*, 36 HOFSTRA L. REV. 883 (2008).

⁴² KUMAGAI & LYPSON, *supra* note 9.

thinking and values as a result of their legal education."⁴³

Professors who focus on developing cultural competence, encourage students to maintain their "cultural integrity,"⁴⁴ while learning about the cultures of others. It is important to know *who you are* so that you are not threatened when you meet or are called on to represent someone who is "different" than you; who does not look like you; who does not think like you; who does not share your system of values; who is only in your life, because you are their attorney. Cultural awareness focuses on recognizing and acknowledging the differences where culture competence focuses on respecting the differences and understanding them enough to allow them to stand while not impeding the execution of your duties and responsibilities to your client.

"It is important to translate this 'competence' into professional practice, so that all social groups are treated with respect."⁴⁵ Cultural competence training teaches students how to create trusting lawyer-client relationships with clients from different cultures and clients who hold different values and beliefs.⁴⁶ The American Bar Association Standing Committee on Legal Aid and Indigent Defendants has articulated "cultural competence" as one of its standards for providing legal services to the poor.⁴⁷

While providing legal services to the poor is an important and noteworthy obligation and responsibility of the legal profession, cultural competence is not limited to attorneys who provide legal services to the poor. The United States is increasingly a multi-cultural country with a greater understanding that the "melting pot" did not happen.⁴⁸ When people of different cultures mix, their beliefs and

⁴³ BRYANT, *supra* note 23.

⁴⁴ See generally, Gloria Ladson-Billings, *But that's Just Good Teaching! The Case for Culturally Relevant Pedagogy*, 34 THEORY INTO PRACTICE 159, 162-163 (1995).

⁴⁵ *Race, power and privilege*, UNIVERSITY OF THE SUNSHINE COAST, https://www.usc.edu.au/media/1910844/Race-power-privilege_web.pdf.

⁴⁶ See generally, Serena Patel, *Cultural Competency Training: Preparing Law Students for Practice in Our Multicultural World*, 62 UCLA L. REV. DISC. 140, 145 (2014).

⁴⁷ STANDARDS FOR THE PROVISION OF CIV. LEGAL AID § 2.4 (AM. BAR ASS'N. 2006).

⁴⁸ Data from the 2010 Census of the U.S. and associated analyses reveal continued increasing diversity in all fifty states. Melting Pot defined, "The early articulations of the melting pot concept are attributed to J. Hector St. John Crèvecoeur, who wrote in 1782: 'What is the American? He is either an European, or the descendent of an European; hence that strange mixture of blood which you will find in no other country. ... Here individuals of all nations are melted into a new race of men, whose labors and posterity will one day cause great changes in the world' (Gordon, 1964). These thoughts from a French officer turned New York settler reflect the immigration patterns of colonial America, where assimilated Europeans were envisioned as ingredients in a vast melting pot of cultures. The concept of the melting pot was later expanded to include people from different races and backgrounds as it became one of the cornerstones of assimilation theory." Elena Vesselinov

values often times become more distinct and more clearly to define, much more like “gumbo” than the melted fudge where all of the chocolate chips melt together.

Cross-cultural competency training has the goal of enabling lawyers and clients to understand each other’s behaviors and communications.⁴⁹ It is an exercise in trust and a grand opportunity to build rapport, which in the end will make it easier for you to rely on the information that you are receiving from your client and put your client in a position to have cause to rely on the advice that you are giving to the client. Do not stop here; the transformation has only begun. Now that your eyes are open and you are aware of yourself and aware of your client’s cultural values, beliefs and cultural identities; and now that you have done the work to not only respect who you are, you have learned to respect who you are not...there is still work to do.

In the seminal article written by Susan Bryant’s “Five Habits for Building Cross-Cultural Competence in Lawyers,”⁵⁰ Bryant provides a valuable model for cultural competency training for lawyers.⁵¹ And while this is a necessary place to start; we must go deeper.

Compassion Defined

For the purposes of this article, compassion is defined as “a conscience awareness of the distress or suffering of others coupled with a compelling motivation to cure, end, heal, protect against, or advocate for a resolution that ends the distress or suffering.” Note, the conscience awareness alone is not compassion; while the action to heal or remove the suffering alone is not compassion either. The two experiences must be part of the same response; being aware of the distress and acting to relieve the stress.

Ultimately, lawyering is a delicate balancing between a constantly evolving world, and the fundamental principles that define our legal system. It calls upon your compassion as well as your intellect, your heart and [sic] well as your head... [C]aring is as much a part

& Matthew A. Cazessus, *Melting Pot*, in ENCYCLOPEDIA OF SOCIAL PROBLEMS (Vincent Parrillo ed., 2008).

⁴⁹ ELIZABETH TOBIN TYLER, POVERTY, HEALTH AND LAW: READINGS AND CASES FOR MEDICAL-LEGAL PARTNERSHIP 141 (Elizabeth T. Tyler et al. eds., 1st ed. 2011).

⁵⁰ Bryant, *supra* note 23.

⁵¹ *Id.*

of the legal profession as intelligence... [I]t is every lawyer's responsibility in every setting to serve others.⁵²

Some may mistakenly believe that compassion detracts from the ability to practice law,⁵³ but this could not be further from the truth.

The lawyer as nurturer implies a focus on the client's needs encompassing humanistic, analytical and technical approaches to conflict resolution. The metaphor, however, does not imply a "new-age," "feel-good," "touchy-feely," or "warm-fuzzy" approach to lawyering. Proficiency in the intellectual and technical rigors of legal analysis, or "thinking like a lawyer" is fundamental to capable and accomplished lawyering. However, pragmatic. It functions as an essential and practical component of the nurturing practice. Thus, for the nurturing lawyer, ambition to master critical reading, writing, argument, and reasoning skills met with the ambition to cultivate compassion creates the ideal for what it means to be "successful" in the art of legal advocacy and counseling.⁵⁴

"Cultural compassion" Defined.

True, we build not bridges. We raise no towers. We

⁵² GERDY, *supra* note 9 (quoting Karen J. Mathis, President, American Bar Association, Keynote Address at the Drexel University College of Law Inaugural Celebratory Dinner (Sept. 27, 2006)).

⁵³ GERDY, *supra* note 9 (quoting Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients*, 7 HARV. NEGOT. L. REV. 1, 64-65 (2002) (quoting SHARON SALZBERG, *LOVINGKINDNESS: THE REVOLUTIONARY ART OF HAPPINESS* 103 (1997))).

⁵⁴ GERDY, *supra* note 9 (quoting Ingrid N. Tollefson, Comment, *Enlightened Advocacy: A Philosophical Shift with a Public Policy Impact*, 25 HAMLINE J. PUB.L. & POL'Y 481, 501 (2004)).

construct no engines. We paint no pictures-unless as amateurs for our own amusement. There is little of all that we do which the eye of man can see. But we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men's burdens and by our efforts we make possible the peaceful life of men in a peaceful state.⁵⁵

Before we can apply and explain why "cultural compassion" is a necessary lawyering skill in today's multicultural society that should be taught in every law school, it is important to define what "cultural compassion" is and what it is not. "Cultural compassion" is not political correctness. "Cultural compassion" is a conscious showing of humility yielding to respect; while political correctness is a blatant avoidance of realities. This author is not suggesting that people not share their cultural realities, but a person's cultural realities should not choke the life of people who do not share your cultural beliefs or values. We cannot be allowed to annihilate those with whom we disagree. Allowing this disagreement to serve as justification for deviant, and brutal attacks against others and hide behind the lie that this tongue-whipping is a refreshing exercising of speaking one's mind. To protect, improve and pass on a world of hope and opportunity, we must embrace our differences and transcend.

"Cultural compassion" is not cultural awareness. "Cultural compassion" is not cultural competence. "Cultural compassion" is not empathy. Instead, "cultural compassion" is all of these and more. "Cultural compassion" is acknowledging and respecting the difference in cultures; learning about and understanding these differences; recognizing that if those differences result in injustice; being compelled to rise up against that injustice and act on behalf of the one harmed.

Compassion is not at all weak. It is the strength that arises out of seeing the true nature of suffering in the world.

Compassion allows us to bear witness to that suffering, whether it is in ourselves or others, without fear; it allows us to name injustice without hesitation, and to act strongly, with all the skill at our disposal.⁵⁶

⁵⁵ The Young Lawyer Staff, *We Build No Bridges*, THE YOUNG LAWYER (March 17, 2018) <https://www.theyounglawyer.com/we-build-no-bridges/>.

⁵⁶ Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of*

Speaking for those who have no voice; protecting those who need protection; providing refuge for those who are vulnerable; educating those who have been deemed unworthy; counseling those who are deemed undeserving; being of service to those who seek guidance; all are roles of a compassionate lawyer.

The 21st century attorney must feel as well as they reason. As Professor Berger stated, "Effective lawyering must be more than rote memorization of rules of law or 'winning' in court."⁵⁷ "It is a careful consideration of ethics and obligations coupled with an acute awareness of the interests and needs of clients."⁵⁸

To experience "cultural compassion" is to at least, understand the role that a client's culture, their foundational beliefs and values play in their very existence. How these cultural beliefs and values shape their perceptions and their processing of the world. It is to nonjudgmentally understand what it is like to stand in their shoes and to see their options as they see them; to see their reality as they see it, regardless of whether the lawyer's reality is the same or even similar. Once the lawyer has clarity of her client's perspective as shaped by that client's culture, then the lawyer exercises her other skills like legal analysis, fact investigation, problem solving and negotiation on her client's behalf.

"Cultural Compassion" Training in the Law School Curriculum

It is the role, purpose and duty of law schools to prepare law students to enter into and be successful in the legal profession. Legal education is designed to transform lay persons into students and scholars of the sacred doctrines of law and skills of a profession that are indoctrinated into every aspect of everyday life. It stands to reason that law schools are best equipped to execute a uniform plan of legal study that sequentially transforms law students from 1L's to fully informed and thoughtful professionals with compassion and integrity that is fixed on justice and equity for all persons, not just the ones in

Mindfulness Meditation to Law Students, Lawyers, and Their Clients, 7 HARV. NEGOT. L. REV. 1, 64-65 (2002) (quoting SHARON SALZBERG, *LOVINGKINDNESS: THE REVOLUTIONARY ART OF HAPPINESS* 103 (1997)).

⁵⁷ Melissa L. Breger, Gina M. Calabrese, & Theresa A. Hughes, *Teaching Professionalism in Context: Insights from Students, Clients, Adversaries, and Judges*, 55 S.C. L. REV. 303, 320 (2003).

⁵⁸ *Id.*

which your beliefs and values align.

This sequential transformation begins as does any other endeavor in the law school, with self-reflective acknowledgement. For instance, how do you learn legal writing, by understanding what the goal of the writing assignment is, by being aware of your strengths and weaknesses in organization and presentation of written information, and by studying, and incorporating best practices to improve where you are deficient? How do you learn to identify legal issues; study, practice, perform, repeatedly and receive feedback for improvement. How do you learn to interpret rules, or apply rules to relevant facts, the pathway to success is the same? Therefore, by creating a path and a safe environment where law students discover who they are, what they believe, what their values are, and why, for instance by administering the Harvard IAT⁵⁹ or a similar survey, the law student can then be on their way to cultural awareness, cultural competence, empathy and then “cultural compassion”

In fact, on the first day of my Trial Simulation course, a mandatory class for our 2L students, I ask students to take the Harvard IAT on race and gender. Once the students complete the test, they submitted a 1500-word written journal assignment describing what they learned about themselves from the test, and how what they learned about themselves will be used to shape their professional identity. One student wrote that she learned nothing about herself because she said that being a “good lawyer” meant that she needed to be “color-blind” and “neutral to all aspects of culture.” As a result of this exercise, I, as the professor, learned that there are students who intend to seek out a narrow, niche in which he or she can “maintain at least the illusion that sensitivity to diverse perspectives is unnecessary for the successful practice of law”,⁶⁰ but this reality is far from probable. None-the-less, even those who do not seek to challenge the legal system’s claims of objectivity will find it difficult to deny or escape the cultural pluralism of our national identity, because that pluralism often introduces an extra layer of complexity to legal disputes and may create special challenges in representing diverse clients.⁶¹

Good lawyering cannot be “culturally neutral”. Intentionally ignoring a part of who people are, does not make you a more effective

⁵⁹ *About the IAT*, PROJECT IMPLICIT (Sep. 12, 2017), <https://implicit.harvard.edu/implicit/iatdetails.html> (The IAT measures the strength of associations between concepts (e.g., black people, gay people) and evaluation (e.g., good, bad) or stereotypes (e.g., athletic, clumsy). The main idea is that making a response is easier when closely related items share the same response key).

⁶⁰ Charles R. Calleros, *Training a Diverse Student Body For a Multicultural Society*, 8 LA RAZA L.J. 140, 142 (1995).

⁶¹ *Id.*

advocate, it just handicaps you and makes you ignorant of realities that may easily impact your legal representation of your client. If you leave law school entrenched in the same beliefs that you had when you entered, having grown known, explored known, and considered no more than you knew, culturally when you entered law school—the legal academy has failed you. If we fail to open the eyes of our law students and convince them that we are better together than we can be alone; if we fail to instill in law students a sense of value of others; and if we fail to inspire law students to greatness; then we as an institution have surely failed.

Like other skills, “cultural compassion” is not developed just because a student attends class. “Cultural compassion” must be intentionally incorporated as part of an active learning environment. And once discussed in class or experienced in a clinic, or simulation or externship, “cultural compassion” is not something that you master and then move on to the next module. “Cultural compassion,” like any other skill, is the result of active learning, constant self-scrutiny and honest self-evaluation. It is a never-ending exercise of awareness, acceptance, honesty, healing, adjustment and maturing.

Where does this exercise of awareness, acceptance, honesty, healing, adjusting and maturing begin? Unfortunately, for most, not in law school. The traditional law school curriculum devotes little emphasis to teaching students about clients or about the role of empathy and compassion in the practice of law;⁶² while the public often times has the perception that lawyers are at worst, contemptuous, and at best, indifferent, to the people they seek to serve.⁶³ As a result, for most lawyers, this concept of moral responsibility and compassion for our clients is introduced through our Codes of Professional Responsibility. However, since every student is required to study professional responsibility, at some schools beginning in the 1L year, the law school curriculum could very easily include modules on diversity training, cultural awareness and the development of cultural compassion. These professional responsibility, ethics, or professionalism classes could easily work collaboratively with other disciplines to create student learning objectives for these course that assist in the inculcation of professionalism and “cultural compassion”.

Students are also now required to successfully complete a minimum of 6 hours of experiential education courses prior to graduating from law school, the experiential courses could very easily employ client-rounds, similar to patient rounds in medical schools that allow

⁶² Gerdy, *supra* note 9.

⁶³ *Id.* (quoting Karen J. Mathis, President, American Bar Association, Keynote Address at the Drexel University College of Law Inaugural Celebratory Dinner (Sept. 27, 2006)).

past medical patients to share experiences with current medical students.

Why is training in Cultural Compassion Necessary?

Diversity in the United States has continuously increased, with 23.1 million people, or 11% of the population, speaking a language other than English in the home in 1980; 31.8 million people, or 14%, in 1990 and 47 million, or 18% in 2000.⁶⁴ Traditionally, the microculture of the U.S. is largely determined by European-American traditions, which have significantly influenced the social norms and patterns of formal institutions.⁶⁵

However, recently, several micro cultures have come to coexist within the country, characterized by factors such as ethnicity, language and socioeconomic status.⁶⁶ While at one time the national expectation was for these many cultures to assimilate into one homogeneous shared culture characterized as a melting pot, the more modern, culturally responsive metaphor is that of a salad bowl "...a mix in which the individual ingredients are not melted but, rather, retain their flavor and texture."⁶⁷ This orientation embraces the notion that there is inherent value in retaining traditions and distinctions among cultural groups.⁶⁸

Given the society's make-up, it is inevitable that lawyers will have clients from different cultural backgrounds,⁶⁹ as such, it is important that law schools prepare begin to include in the curriculum training that prepares law students now, to be "culturally compassionate".

Law students and newly licensed attorneys should accept the reality that many of their clients may come to their offices with cultural, ethnic, linguistic, racial and social class backgrounds that are different from their own. When faced with a heterogeneous mixture of clients in their offices, lawyers must be prepared to meet the needs of all clients, not just the ones that look like them or just the ones that think like them, or even just the ones that have the same cultural histories

⁶⁴ *Languages*, U.S. CENSUS BUREAU (2003), https://www.census.gov/population/www/cen2000/censusatlas/pdf/8_Language.pdf [https://web.archive.org/web/20120504104107/https://www.census.gov/population/www/cen2000/censusatlas/pdf/8_Language.pdf].

⁶⁵ Shawna Young & Brandon M. Sternod, *Practicing Culturally Responsive Pedagogy in Physical Education*, 1 J. OF MOD. EDUC. REV. 1, 1-9 (2011).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Young and Sternod, *supra* note 65.

⁶⁹ Bryant, *supra* note 22.

or values as them. We must learn to engage the world and others critically, and to do this, we must develop a broader sociopolitical consciousness⁷¹ that encourages us, in fact challenges while compels us to critique the cultural norms, values, mores, and institutions that continues to allow us to classify people as more or less valuable, or more or less worthy. As a member of the human race, we are all worthy.

Those who authentically commit themselves to the people must re-examine themselves constantly. To affirm this commitment but to consider oneself the proprietor of revolutionary wisdom – which must then be given to (or imposed on) the people- is to retain the old ways. The man or woman who proclaims devotion to the cause of liberation yet is unable to enter into communion with the people, whom he or she continues to regard as total ignorant, is grievously self-deceived.⁷²

When lawyers and their clients come from different backgrounds and have different cultural viewpoints, they often have a more difficult time creating a trusting lawyer-client relationship in which both parties feel comfortable sharing honest and accurate information.⁷³ Since trust is an important part of creating any relationship, one of the goals of cultural compassion training must be to teach students how to create a trusting lawyer-client relationship with clients from different cultures than their own.⁷⁴

More importantly, cross-cultural competency training has the goal of enabling lawyers and clients to understand each other's behaviors and communications,⁷⁵ as should cross-cultural compassion training. When people come from different cultural backgrounds, they might attribute different meanings not only to the same set of facts but also to others' body language.⁷⁶ Lawyers must be taught about the potential for misattribution and develop strategies to

⁷¹Billings, *supra* 44.

⁷² See PAULO FREIRE, PEDAGOGY OF THE OPPRESSED 60-61 (50th Ann. ed. 2018).

⁷³ Elizabeth T. Tyler et al., *supra* 49.

⁷⁴ Patel, *supra* note 4.

⁷⁵*Building Community Trust: Improving Cross-Cultural Communication in the Criminal Justice System*, A.B.A. CRIM. JUST. SEC. 1, 59 (2010) [<http://docplayer.net/1688200-Building-community-trust-improving-cross-cultural-communication-in-the-criminal-justice-system.html>].

⁷⁶ *Id.*

check themselves and their interpretations of the facts given to them by clients.⁷⁷

Understanding not only the importance of the client's objectives, a component attorney must also understand how the client's culture supports and directs their objectives. In understanding these cultural foundations and allowing the protections of those cultural foundations to compel the attorney's actions, attorneys will best be suited to brainstorm solutions, help the client rank those solutions, and help the client understand the associated costs, risks, and merits. In fact, lawyers need to develop and express compassion to best serve their clients because "the quality that elevates us from being a great lawyer and moves us into the next level is *simply caring*."⁷⁸ Finally, when the attorney and the client reach the best solution under specific circumstances, that competent attorney can explain the solution and the implications of the solution in a manner that the client can understand and in a manner that honors and holds true the values and beliefs of the client's cultural foundations.

Because understanding client needs and expectations, as well as learning to relate with empathy and compassion to clients, opposing counsel, and decision-makers are such central skills to successful lawyering, helping students to understand and acquire these skills and attributes also should be central to legal education.⁷⁹

The opinions of legal scholars echo the statistics: empathy and compassion must go hand in hand with "thinking like a lawyer," and in fact, caring actually makes analysis stronger.⁸⁰ Every interaction a lawyer has with a client involves an emotional component, and facilitating the client's discussion of her emotions through expressions of empathy is not only appropriate but beneficial to the lawyer-client relationships and ultimately to the legal case itself.⁸¹ Allowing compassion to guide the development of the relationship between the attorney and the client allows the necessary rapport⁸² to begin to

⁷⁷ Bryant, *supra* note 22.

⁷⁸ Robert F. Blomquist, *Ten Vital Virtues for American Public Lawyers*, 39 IND. L. REV. 493, 508 (2006) (quoting Michael N. Dolich, *Finding Joy in the Practice of Law*, 25-FEB. PA. LAW. 34, 38 (2003)).

⁷⁹ Gerdy, *supra* note 9.

⁸⁰ *Id.* (quoting Karen J. Mathis, President, American Bar Association, Keynote Address at the Drexel University College of Law Inaugural Celebratory Dinner (Sept. 27, 2006)).

⁸¹ John L. Barkai & Virginia O. Fine, *Empathy Training for Lawyers and Law Students*, 13 SW. U.L. REV. 505, 516 (1982).

⁸² Rapport as defined for the purposes of this article means, a positive or close relationship between people that requires mutual trust, mutual understanding and compassion. See *Rapport*, Merriam-webster.com, <https://www.merriam-webster.com/dictionary/rapport> (last visited March 26, 2021) ("a relationship characterized by agreement, mutual understanding, or empathy that makes communication possible or easy").

develop between the attorney and the client. Clients who feel that their lawyer understands them are more willing to provide information,⁸³ including information that might be potentially embarrassing.⁸⁴ While there is a lively scholarly debate about the ideal relationship between lawyers and their clients, and the roles that each should play to maximize success,⁸⁵ the unfortunate reality is that too many lawyers treat their clients like they are children who must be supervised, watched over, and occasionally even disciplined. These lawyers believe that they “know what is right” for the client and are willing to impose their views even when the client objects.⁸⁶

Arguing the law from different perspectives is an essential aspect of advocacy and part of our responsibility to zealously advocate for our clients.⁸⁷ Advocacy requires an ability to see different perspectives because it is by nature a cross-cultural experience.⁸⁸

Everyone has the capacity for compassion. The question is are we willing to show that compassion to others who do not look, think, act, value or believe what we do? Law schools have a duty to create and adopt pedagogical models that encourage law students to transform beyond their expectations. This is our call to serve.

⁸³ Barkai & Fine, *supra* note 81.

⁸⁴ Gerdy, *supra* note 9 (quoting Karen J. Mathis, President, American Bar Association, Keynote Address at the Drexel University College of Law Inaugural Celebratory Dinner (Sept. 27, 2006)).

⁸⁵ Gerdy, *supra* note 10 (quoting Robert D. Dinerstein, *Client Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, 506, 555 (1990)).

⁸⁶ Gerdy, *supra* note 9.

⁸⁷ MODEL RULES OF PRO. CONDUCT r. 1.3 cmt. 1 (AM. BAR ASS'N 2011).

⁸⁸ Bryant, *supra* note 22.