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Helping Students Develop Affirmative Evidence of Cross-Cultural Competency

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HELPING STUDENTS DEVELOP AFFIRMATIVE EVIDENCE OF CROSS-CULTURAL COMPETENCY

NEIL HAMILTON & JEFF MALESKA*

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I. INTRODUCTION

Legal employers are asking law students some version of the question, “Can you tell me about what you have done to develop your cross-cultural competence?”¹ This article helps professors, staff, and students understand how curriculum can prepare law students to answer such an inquiry: that is, how students can take affirmative steps toward developing cross-cultural competency.

Cultural competence can be broadly defined as the ability to “relate to others comfortably, respectfully, and productively.”² In the context of legal education, however, cultural competence is defined as a lawyer’s “ability to develop knowledge, skills, and values to enable effective representation and communication with individuals from a different race, ethnicity, gender, sexual orientation, age or cultural background.”³ Indeed, cultural competence is necessary to improve intercultural communication between lawyers and their clients.⁴ Accordingly, it is necessary for a lawyer to first identify the various cultures to which he or she belongs in order to understand which cultures are different than the lawyer’s own.⁵

Culture is defined in this context as “the body of customary beliefs, social forms and material traits constituting a distinct tradition of a racial, religious or social group.”⁶ Further, culture can include a person’s age,

1. See Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 48 (2001) (discussing the importance employers place on building cross-cultural skills).

2. Ritu Bhasin, *Cultural Competence: An Essential Skill for Success in an Increasingly Diverse World*, LAWPRO MAG. (Sep. 2014), 9, 10 http://practicepro.ca/LawPROmag/Cultural_Competence_Bhasin.pdf [<https://perma.cc/FZG8-8NZM>]; see also Mitchell R. Hammer et al., *Measuring Intercultural Sensitivity: The Intercultural Development Inventory*, 27 INT’L J. OF INTERCULTURAL REL. 421, 422 (2003) (“We will use the term ‘intercultural sensitivity’ to refer to the ability to discriminate and experience relevant cultural differences, and we will use the term ‘intercultural competence’ to mean the ability to think and act in inter-culturally appropriate ways.”); *Intercultural Knowledge and Competence Value Rubric*, ASS’N AM. C. & U., <http://www.aacu.org/value/rubrics/intercultural-knowledge> [<https://perma.cc/4MTH-CZ7S>] (last visited Feb. 9, 2017) (“Intercultural Knowledge and Competence is a set of cognitive, affective, and behavioral skills and characteristics that support effective and appropriate interaction in a variety of cultural contexts.”) (internal quotations omitted).

3. Mary A. Lynch et al., *Intercultural Effectiveness*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 338–39 (Deborah Maranville et al. eds., 2015).

4. *Id.* at 339.

5. See Bryant, *supra* note 1, at 41 (explaining the importance of a student’s cultural awareness with regard to becoming an effective cross-cultural lawyer).

6. *Culture*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 3a, 552 (Philip Babcock Grove, ed. 1961).

gender, race, ethnicity, sexual orientation, physical ability, nationality, religion, or socio-economic group.⁷ Even if a lawyer shares all of those categories with another person, different regions of the same country may have different cultures.⁸ Different organizations may also have different cultures.⁹ Indeed, “[a] broad definition of culture recognizes that no two people have had the exact same experiences and thus, no two people will interpret or predict [culture] in precisely the same way.”¹⁰

For a lawyer to truly provide competent representation to his or her clients, the lawyer must not only understand the law, but also understand the culture of: (1) the client; (2) the groups with whom the lawyer works to advance the client’s interests; and (3) the adversaries and decision-makers whom the lawyer seeks to influence.¹¹ Without awareness of the various cultures of these stakeholders in a lawyer’s work, a lawyer cannot see how it affects the representation.¹² And, if a lawyer chooses to ignore the cultural differences between the lawyer and his or her clients, it is likely that the representation will not be as effective as it should be.¹³ For example, not considering a client’s culture could cause a misunderstanding of the client’s goals, needs, and personal preferences.¹⁴ The inability to understand a client’s culture can also make it more difficult for the lawyer to build a trusting relationship.¹⁵

Beyond the client context, attorneys also encounter many different cultures, for example, when interacting with coworkers, other firms, oppos-

7. *Id.*; see also *Cultural Respect*, NAT’L INST. OF HEALTH, <https://www.nih.gov/institutes-nih/nih-office-director/office-communications-public-liaison/clear-communication/cultural-respect> [<https://perma.cc/ACE3-XCD6>] (last visited Feb. 9, 2017) (describing various elements involved in the meaning of culture).

8. See Kim A. Zimmermann, *American Culture: Traditions and Customs of the United States*, LIVE SCIENCE (Jan. 15, 2015, 10:23 PM), <http://www.livescience.com/28945-american-culture.html> [<https://perma.cc/AYX7-96Y6>] (acknowledging the different traditions and customs of the five major regions of the United States).

9. *Understanding Organization and Organization Culture*, MSG, <http://www.managementstudyguide.com/organization-culture.htm> [<https://perma.cc/Z2HD-CR7H>] (last visited Feb. 9, 2017).

10. Bryant, *supra* note 1, at 41.

11. *Id.* at 55, 68.

12. See Sylvia Stevens, *Cultural Competency: Is There an Ethical Duty?*, OR. ST. BAR BULLETIN, <https://www.osbar.org/publications/bulletin/09jan/barcounsel.html> [<https://perma.cc/EY4Y-APRL>] (last visited Feb. 9, 2017) (emphasizing cultural competency is about lawyers recognizing their clients’ cultural norms to provide them with quality service).

13. See Bryant, *supra* note 1, at 43 (stressing a lawyer is likely to make representation errors if they ignore differences between themselves and their client).

14. See Stevens, *supra* note 12 (explaining that a lawyer who does not understand a client’s culture and conflict-resolution style cannot effectively achieve the client’s objectives).

15. Bryant, *supra* note 1, at 42.

ing counsel, judges, or support staff.¹⁶ Failing to recognize how different cultures may affect these interactions can lead to confusion, misunderstanding, and even broken relationships.¹⁷ In contrast, cross-cultural competence improves trust, communication, and problem-solving among both peers and others in a lawyer's work for a client.¹⁸

In our view, empathy is at the heart of developing cross-cultural competency for students and lawyers. Empathy is the ability to understand someone else's experiences and perspectives combined with an ability to communicate this understanding and an intention to help.¹⁹ In simpler terms, empathy is the ability to walk in another person's shoes, to view life from his or her perspective, and to communicate that understanding and an intention to help.²⁰

There is an existing literature on engaging law students in a critical examination of how race, ethnicity, sexual identity, socio-economic class and other cultural factors have influenced both the law and the student's own sub-conscious biases.²¹ Engaging students in such a way can generate varying degrees of student resistance that presents a significant barrier to their learning.²² This article assumes that students want meaningful employment. The premise is, if students understand that legal employers value affirmative evidence of cross-cultural competency, a greater proportion of students—motivated by enlightened self-interest—will seek to develop evidence that the student has created and implemented a plan to develop this competency.²³

16. See Jennifer Romig, *Habits of Cross-Cultural Lawyering*, LISTEN LIKE A LAWYER (Feb. 5, 2016), <https://listenlikealawyer.com/2016/02/05/habits-of-cross-cultural-lawyering> [<https://perma.cc/L7SL-D2A7>] (describing a culturally competent lawyer as one who can effectively work with various cultural groups).

17. See Bryant, *supra* note 1, at 42 n.27 (emphasizing that a lawyer who does not understand the cultural differences of the client may fail to provide adequate representation).

18. *Id.*

19. *Empathy*, MERRIAM-WEBSTER ONLINE, <https://www.merriam-webster.com/dictionary/empathy> [<https://perma.cc/TDC7-QRXX>] (last visited Feb. 7, 2017).

20. *Empathy*, PSYCHOLOGY TODAY, <https://www.psychologytoday.com/basics/empathy> [<https://perma.cc/L9EN-TXAU>] (last visited Feb. 7, 2017).

21. See Andrea A. Curcio, *Addressing Barriers to Cultural Sensibility Learning: Lessons from Social Cognition Theory*, 15 NEV. L.J. 537, 556–57, 559 (2015) (recognizing sub-conscious biases ultimately enable students to realize the impact biases have upon the lawyering process).

22. *Id.* at 554 (“Social cognition theory teaches us that not only do most people have unconscious biases, they also have ‘bias blind spots’”). In other words, people tend to believe that, while others are susceptible to bias, they are relatively bias-free. *Id.*

23. See Neil Hamilton, *Professional Formation With Emerging Adult Law Students in the 21-29 Age Group: Engaging Students to Take Ownership of Their Own Professional Development Toward Both Excellence and Meaningful Employment*, J. PROF'L LAWYER

No matter a lawyer's practice area, it is imperative that each lawyer possess the ability to interact and communicate effectively with people from other cultures.²⁴ As Cargill General Counsel Laura Witte emphasizes:

To be truly effective counselors in today's global marketplace, it is not enough to know the law. We must be able to communicate, build relationships, interpret and apply the law in the context of applicable cultural norms, norms that may be very different from our own.²⁵

In the litigation context, law professor Susan Bryan urges, "[l]awyers who explicitly examine the cross-cultural issues in a case will increase client trust, improve communication, and enhance problem-solving on behalf of clients."²⁶ As such, it is strongly in a lawyer's self-interest to develop cross-cultural competence in their everyday work.²⁷ In response to ever-increasing diversity, law schools are beginning to recognize the need to better prepare students for the cross-cultural challenges they will face when dealing with clients, peers, and decision-makers in practice.²⁸ As of June 6, 2016, fifty-five law schools posted learning outcomes on their

125, 125, 127 (2015) (asserting students will take personal responsibility for developing valuable professional skills).

24. See Lynch et al., *supra* note 3 (stressing the importance of developing skills to enable communication and representation of clients from different cultures). We know from recent empirical studies, for example, that legal employers value teamwork and client relationship skills, and an effective cross-cultural competency will contribute to effectiveness with both team and client relationships. Neil Hamilton, *Changing Markets Create Opportunities: Emphasizing the Competencies Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism)*, 65 S.C. L. REV. 547, 567–77 (2014); see also Mary Lynch et al., *Intercultural Effectiveness*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 337 (Deborah Maranville et al. eds., 2015) ("The legal profession has recognized the need for cross-culturally competent lawyers.").

25. E-mail from Laura Witte, Gen. Counsel, Corp. Sec'y, Corp. Vice President, Cargill, to Neil W. Hamilton, Professor of Law, Univ. of St. Thomas Sch. of Law (Sep. 29, 2015, 4:33 PM) (on file with authors).

26. Bryant, *supra* note 1, at 49 n.53.

27. See Andrea A. Curcio et al., *A Survey Instrument to Develop, Tailor, and Help Measure Law Student Cultural Diversity Education Learning Outcomes*, 38 NOVA L. REV. 177, 232 (2014) ("[I]n today's multicultural world, students must develop into culturally sensitive lawyers who understand how their own cultural experiences affect their legal analysis, behaviors, and perceptions . . . [.]").

28. See, e.g., *Vision, Mission, Goals*, OHIO ST. UNIV. MORITZ COLL. OF L., <http://moritzlaw.osu.edu/about/about-moritz/vision-mission-goals> [<https://perma.cc/JGV9-7FEG>] (last visited Feb. 9, 2017) (promoting interpersonal skills and professionalism by recommending that students interact with different groups in the legal realm).

websites and, of those, twenty-one adopted learning outcomes focused on student cross-cultural competency.²⁹

Sections II and III of this article argue that cross-cultural competency is an affirmative competency both law students and legal practitioners can develop in incremental stages throughout their careers. These sections will also show it is in the law student and legal practitioner's enlightened self-interest to grow toward later stages of cross-cultural competence. With practice and continuous reflection, students and legal practitioners can come to identify and understand when their cultural lens, biases, and stereotypes are affecting their relationship with clients and others. Through this affirmative approach, students and legal practitioners can better serve their clients and ensure a result that best suits the client's needs. Section IV gives practical advice and techniques as to how the law student and lawyer can improve his or her cross-cultural competence, and develop a strong narrative and evidence to tell potential employers and clients of the affirmative steps the student or lawyer has taken to develop this competency. Finally Section V explores the experience of several law schools with strong learning outcomes on cross-cultural competence.

II. THE EFFECTS OF CROSS-CULTURAL "INCOMPETENCE"

A good starting point for a discussion on why it is important to develop cross-cultural competence is to examine the negative effects of being cross-culturally "incompetent." A lawyer is most commonly culturally in-

29. See, e.g., *id.* ("To succeed, lawyers need skills such as motivating others, influencing others, working as teams and relating to people who differ culturally, economically, linguistically, or in other ways."); *Vision & Mission*, UNIV. FLA. LEVIN COLL. OF L., <http://www.law.ufl.edu/why-uf-law/about-uf-law/vision-mission> [https://perma.cc/XYA6-485B] (last visited Feb. 7, 2017) (listing the ability to "work with people from diverse backgrounds" as a core competency requirement); *JD Learning Outcomes*, CREIGHTON UNIV. SCH. OF L. (Mar. 4, 2014), <https://law.creighton.edu/sites/law.creighton.edu/files/JD%20Learning%20Outcomes.pdf> [https://perma.cc/5H8E-BK35] (including learning outcomes that promote "[s]trong interpersonal skills, including the ability to work effective across race, ethnicity, culture, gender, religion, and sexual orientation"); *Learning Outcomes and Performance Criteria*, UNIV. DAYTON SCH. OF L. (Nov. 19, 2014), https://www.udayton.edu/law/_resources/documents/academics/learning-outcomes-and-performance-criteria.pdf [https://perma.cc/R45V-VTNU] [hereinafter *Learning Outcomes and Performance Criteria*] (emphasizing the importance of "[d]isplaying diversity skills, including sensitivity to social and cultural differences"); *Student Learning Outcomes*, UNIV. N.M. SCH. OF L., <http://law-school.unm.edu/academics/learning-outcomes.php> [https://perma.cc/46GY-A6WU] (last visited Feb. 7, 2017) [hereinafter *Student Learning Outcomes*] (requesting students "[h]ave the professional skills needed for competent participation as a member of the legal profession including the ability to navigate cultural considerations"); *About St. Thomas*, UNIV. ST. THOMAS SCH. OF L., <https://www.stthomas.edu/law/about> [https://perma.cc/F6J9-79Q6] (last visited Feb. 7, 2017) (explaining graduates will demonstrate the ability to interact and sustain professional relationships with people from other cultures).

competent because the lawyer fails to recognize that a need for cultural competence exists in a given situation.³⁰ Susan Sample better illustrates this point:

Cultural differences can be easy to miss It is particularly important for professionals because they very well may be the person with the highest status in the room, and people with higher status do not necessarily have a lot of experience at looking for cultural differences and adapting to them. For example, if a person is U.S. American, or male, or upper middle class, or European American, or any combination of those things, they may not recognize all the cultural differences in the room because they are inadvertently making everyone conform to them, and thus, their cultural norms.³¹

It is in instances like the one above where problems arise due to a lack of cross-cultural awareness and competency.³²

For example, one major problem that a cross-culturally incompetent attorney may encounter is difficulty establishing trust in the attorney-client relationship.³³ Without trust, a relationship between the lawyer and client cannot work well.³⁴ Trust is not established simply because the client chose the lawyer to represent them; rather, the lawyer must work to establish trust in the relationship.³⁵ Cross-cultural competence can help lawyers signal that they accurately understand the client's goals and behavior, thus building trust.³⁶

A cross-culturally incompetent attorney will also likely miss important information because of failed or misunderstood communication.³⁷ Communication failures can have a detrimental effect on the attorney-client relationship.³⁸ In fact, a client's satisfaction often depends on how lawyers communicate with them.³⁹ When lawyers interpret a client's messages solely through the lawyer's own cultural lens, communication

30. See Bryant, *supra* note 1, at 56 (claiming effective representation depends on a lawyer's awareness of their own cultural biases).

31. Susan Sample, *Intercultural Competence as a Professional Skill*, 26 PAC. MC. GEORGE GLOBAL BUS. & DEV. L.J. 117, 118 (2013).

32. See *id.* (stating cultural differences can be easily overlooked, especially situations where an individual is forced to adapt to the norms).

33. Bryant, *supra* note 1, at 42.

34. *Id.*

35. See *id.* (contending attorney-client trust must be formed in a "culturally sensitive way").

36. See *id.* (recognizing where an attorney and client's cultures are different there may be difficulties establishing trust, goals, and communications).

37. Sample, *supra* note 31.

38. Curcio et al., *supra* note 27, at 192.

39. *Id.*

can easily break down.⁴⁰ Moreover, a lawyer's failure to recognize the inherent differences and nuances of each culture can lead them to make decisions their client may not have made.⁴¹ In fact, "[s]tudies show that client satisfaction often relates as much to how lawyers communicate as to actual results achieved in a given case."⁴² To be effective, lawyers must "recognize, and appropriately respond to, their own and others' cultural perceptions and beliefs because these often play a central role in lawyer-client communications."⁴³

Cross-cultural incompetence also "may impede lawyers' abilities to effectively interview, investigate, counsel, negotiate, litigate, and resolve conflicts."⁴⁴ Not recognizing the impact culture plays on a lawyer's interactions with others can lead the lawyer to ask the wrong questions, suggest an unfavorable course of action, take a bad settlement offer, or even lead to an inability to resolve a conflict.⁴⁵

III. DEVELOPMENTAL STAGES OF CROSS-CULTURAL COMPETENCE

Scholars have attempted to classify the various "stages" a person may fit into on a spectrum of cross-cultural competence.⁴⁶ While not every model can perfectly describe the nuances of the process of developing cross-cultural competence, the models provide useful guideposts that allow a person to self-reflect and gauge where they fall on the spectrum. In addition, although we do not view any one of the models discussed as "best" or complete, each model provides insight into the process of developing cross-cultural competence.

With respect to the stages of development of cross-cultural competency, one challenge is that it is unclear whether such competency is specific to a culture other than that of the student or lawyer, or whether it is generalizable and transferable. Milton Bennett emphasizes that "intercultural learning refers to the acquisition of generalizable (transferable) intercultural competence; that is, competence that can be applied to dealing with cross-cultural contact in general, not just skills useful for dealing

40. See Bryant, *supra* note 1, at 40 (claiming people judge others through their own cultural lens, which includes their own biases and judgments).

41. See *id.* at 33–34 (recognizing that cross-cultural competence can aid a lawyer when making decisions on behalf of their client).

42. Curcio et al., *supra* note 27, at 192.

43. *Id.*

44. *Id.*

45. *Id.* at 191–92.

46. See generally *id.* at 203–04 (discussing the phases of Dr. Milton J. Bennet's theoretical model). The phases are set out in the various models that follow.

with a particular other culture.”⁴⁷ It makes common sense that one’s overarching paradigmatic assumptions about (and skills relating to) other cultures are generalizable; however, one also needs to come up to speed, so to speak, within the context of each specific other culture. In other words, while a student or lawyer can develop later stages of cross-cultural competency regarding specific other cultures, and could thus claim generalizable and transferable competency, they should acknowledge that obtaining such cross-cultural competency takes time and effort.

When reading through the descriptions and examining the figures for each of the models, the law student or lawyer should choose a cross-cultural area—such as gender, race, physical ability, or socio-economic group—and complete a developmental self-assessment using one or more of the models. Once they have completed a self-assessment, they should take these grids and ask at least two others who have previously observed them working in a cross-cultural context to conduct a peer assessment using the same standards. By completing both assessments, the law student and lawyer will have an indication of how others perceive their cross-cultural abilities, which in turn gives them a basis to self-reflect on cross-cultural aptitude. From there, they can use the information gathered to find areas for improvement and to develop a plan to enhance their cross-cultural competence.

A. Milton Bennett’s Model of Cross-Cultural Competence

Milton Bennett created one of the most notable and widely used cultural competency models, the Developmental Model of Intercultural Sensitivity (DMIS), which is set forth in Figure 1.⁴⁸ The underlying assumption of Bennet’s model is that one can develop cross-cultural competency over time as they continue to experience more culturally diverse situations.⁴⁹ The DMIS is made up of six stages: three ethno-centric stages where one experiences their own culture as “central to reality,”

47. Milton Bennett, *Paradigmatic Assumptions and a Developmental Approach to Intercultural Learning*, in *STUDENTS LEARNING ABROAD: WHAT OUR STUDENTS ARE LEARNING, WHAT THEY’RE NOT, AND WHAT WE CAN DO ABOUT IT* 91 (Michael Vande Berg et al. eds., 2012).

48. Milton J. Bennett, *A Developmental Model of Intercultural Sensitivity*, INTERCULTURAL DEV. RES. INST., http://www.idrinstitute.org/allegati/IDRI_t_Pubblicazioni/47/FILE_Documento_Bennett_DMIS_12pp_quotes_rev_2011.pdf [https://perma.cc/PJ6F-TQED] (last visited Feb. 12, 2017) [hereinafter Bennett, *A Developmental Model*].

49. M.J. Bennett, *Towards Ethno-relativism: A Developmental Model of Intercultural Sensitivity*, in *CROSS-CULTURAL ORIENTATION: NEW CONCEPTUALIZATIONS AND APPLICATIONS* 27–29 (R. Michael Paige ed., 1986) [hereinafter Bennett, *Ethno-relativism*].

and three ethno-relative stages where one experiences their own culture as relative to other cultures.⁵⁰

	Stage	Description	Examples
Ethnocentric Stages	1 Denial of Difference	People in this stage are in denial about cultural difference and cannot differentiate culture as a category. They have an inability to perceive or construe data from differing cultural contexts.	“As long as we all speak the same language, there is no problem.” “With my experience, I can be successful in any culture without any special effort. I never experience culture shock.”
	2 Defense Against Difference	People in this stage tend to experience culture as “us vs. them.” They generally feel threatened by those that are different. Generally, they exalt their own culture and degrade other cultures with negative stereotypes.	“Why don’t these people speak my language?” “When I experience other cultures, I realize how much better my own culture is.”
	3 Minimization of Difference	People in this stage recognize cultural differences, but over-emphasize human similarity and universal values. As a result, they tend to believe that it is sufficient to “just be yourself” in cross-cultural situations.	“Customs differ, of course, but when you really get to know them, they are pretty much like us.” “If people are really honest, they will recognize that some values are universal.”
Ethno-relative Stages	4 Acceptance of Difference	People in this stage accept all values, behaviors, and cultures. They recognize alternative cultures. Acceptance of other cultures does not mean agreement with alternative values or cultures.	“Sometimes it is confusing, knowing that values are different in various cultures and wanting to be respectful, but still wanting to maintain my own core values.” “The more difference the better. It is boring if everyone is the same.”
	5 Adaptation to Difference	People in this stage apply their acceptance of difference and recognize the need to interact effectively with people from other cultures. They act in culturally appropriate ways in different cultural contexts.	“I know they are really trying hard to adapt to my style, so it is fair that I try to meet them halfway.” “To solve this dispute, I am going to have to change my approach.”
	6 Integration of Difference	People in this stage are no longer defined by any one culture but are often multi-cultural. They have made a sustained effort to becoming competent in a variety of cultures.	“Whatever the situation, I can usually look at it from a variety of cultural points of view.” “Everywhere is home, if you know enough about how things work there.”

Figure 1 – Milton Bennett’s Developmental Model of Intercultural Sensitivity⁵¹

50. M.J. Bennett, *Becoming Interculturally Competent*, in TOWARD MULTICULTURALISM: A READER IN MULTICULTURAL EDUC. (J.S. Wurzel ed., Newton, MA: Intercultural Res. Corp. 2d ed. 2004) [hereinafter Bennett, *Interculturally Competent*].

51. We created this chart based on Bennett, *A Developmental Model*, *supra* note 48.

Bennett's three ethno-centric stages include denial, defense, and minimization.⁵² Denial is the stage in which one does not recognize any cultural differences and believes their own culture is "correct."⁵³ Second, a person in the defense stage recognizes that other cultures exist, but does not acknowledge that these other cultures are valid.⁵⁴ Third, those in the minimization stage tend to overemphasize the universality of their cultural and minimize the actual differences between different cultures.⁵⁵

People in an ethno-relative stage are considered to have developed more cross-cultural competency than those in an ethno-centric stage.⁵⁶ The first ethno-relative stage in Bennett's model is acceptance.⁵⁷ In this stage, one recognizes and views other cultures as valid and sees their own culture as just one option among many.⁵⁸ Generally, people at this stage tend to be accepting of cultural differences.⁵⁹ The second stage is adaptation.⁶⁰ This stage is one in which people view cultural differences as a good thing and consciously try to adapt to the cultural norms of the surrounding environment.⁶¹ The last stage is integration.⁶² At this stage, one does not feel that they belong to any specific culture, but can adapt and shift between various cultures and worldviews.⁶³ However, the integration stage is not better than the adaptation stage per se, it simply describes the cultural integration process "many members of non-dominant cultures, long-term expatriates, and 'global nomads'" experience.⁶⁴

B. *William Howell's Model of Cross-Cultural Competence*

William Howell developed a different, less-detailed model of cross-cultural competence.⁶⁵ This model consists of four stages: (1) unconscious incompetence, (2) conscious incompetence, (3) conscious competence, and (4) unconscious competence.⁶⁶ Each stage will be discussed in turn.

52. Bennett, *Ethno-relativism*, *supra* note 49, at 32.

53. Bennett, *Interculturally Competent*, *supra* note 50.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. Hammer et al., *supra* note 2, at 425.

65. Curcio et al., *supra* note 27, at 206 (citing William S. Howell, *THE EMPATHIC COMMUNICATOR* 29-33 (1982)); *see also* Bryant, *supra* note 1, at 62-63 (describing the four stages of Howell's model).

66. Curcio et al., *supra* note 27, at 206.

The first stage, unconscious incompetence, is characterized by a total lack of awareness of the impact of culture and a failure to recognize cultural differences.⁶⁷ In the second stage, conscious incompetence, one is aware of the role culture plays in their interactions with others, but they do not possess the skills needed for competent, cross-cultural interaction with others.⁶⁸ In stage three, conscious competence, one possesses the skills necessary to communicate across cultures effectively, but must consciously recognize and implement these skills in their cultural interactions.⁶⁹ In the final stage, unconscious competence, one is able to unconsciously implement and use their cross-cultural competency skills in all of their interactions with others.⁷⁰

C. *The American Board of Internal Medicine's Model of Cross-Cultural Competency*

The American Board of Internal Medicine's (ABIM) Milestone Project defines the key competencies for internal medicine residents and the key stages of development of each competency (called Milestones), and provides insight into the developmental stages of cross-cultural competency.⁷¹ This project defines two developmental stages: "Respond[ing] to Each Patient's Unique Characteristics" and "Professional and Responsible Interaction with Others."⁷² Figures 2 and 3 on the following pages show these stage development grids adapted for the practice of law.⁷³

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. ACCREDITATION COUNCIL FOR GRADUATE MED. EDU. & THE AM. BD. OF INTERNAL MED., *The Internal Medicine Milestone Project*, ACGME.ORG (July 2015), <http://www.acgme.org/acgmeweb/portals/0/pdfs/milestones/internalmedicinemilestones.pdf> [<https://perma.cc/748W-C9FH>] [hereinafter ACCREDITATION COUNCIL].

72. *Id.*

73. See Figures 2 and 3. The authors relied on the basic findings of the ABIM Model and translated it into concepts applicable specifically to lawyers and law students.

Responding to Each Client's Unique Characteristics and Needs				
Critical Deficiencies	Early Learner	Demonstrating Improvement in Performance	Ready for Unsupervised Practice	Aspirational
Is insensitive to differences related to culture, ethnicity, gender, race, age, and religion in the client/lawyer encounter	Is sensitive to and has basic awareness of differences related to culture, ethnicity, gender, race, age and religion in the client/lawyer encounter	Seeks to fully understand each client's unique characteristics and needs based upon culture, ethnicity, gender, religion, and personal preference	Recognizes and accounts for the unique characteristics and needs of the client/lawyer	Role models professional interactions to negotiate differences related to a client's unique characteristics or needs
Is unwilling to modify representation to account for a client's unique characteristics and needs	Requires assistance to modify representation to account for a client's unique characteristics and needs	Modifies representation to account for a client's unique characteristics and needs with partial success	Appropriately modifies representation to account for a client's unique characteristics and needs	Role models consistent respect for client's unique characteristics and needs

Figure 2 – Developmental Stages in Responding to Each Client's Unique Characteristics and Needs⁷⁴

74. Adapted from the ABIM Model Applicable to Residents. ACCREDITATION COUNCIL, *supra* note 71.

Has Professional and Respectful Interactions with Clients and Members of the Inter-Professional Team (e.g. peers, ancillary professionals and support personnel)				
Critical Deficiencies	Early Learner	Demonstrating Improvement in Performance	Ready for Unsupervised Practice	Aspirational
Lacks empathy and compassion for client and the team	Inconsistently demonstrates empathy, compassion and respect for clients and the team	Consistently respectful in interactions with clients and members of the inter-professional team, even in challenging situations	Demonstrates empathy, compassion and respect to clients and the team in all situations	Role models compassion, empathy and respect for client and the team
Disrespectful in interactions with client and members of the inter-professional team	Inconsistently demonstrates responsiveness to client's and the team's needs in an appropriate fashion	Is available and responsive to needs and concerns of clients and members of the inter-professional team to ensure strong representation	Anticipates, advocates for, and proactively works to meet the needs of clients and the team	Role models appropriate anticipation and advocacy for client and team needs
Sacrifices client needs in favor of own self-interest	Inconsistently considers clients' privacy and autonomy	Emphasizes clients' privacy and autonomy in all interactions	Demonstrates a responsiveness to client needs that supersedes self-interest	Fosters collegiality that promotes a high-functioning inter-professional team
Blatantly disregards respect for clients' privacy and autonomy			Positively acknowledges input of members of the inter-professional team and incorporates that input into representation as appropriate	Teaches others regarding maintaining client privacy and respecting client autonomy

Figure 3 – *Developmental Stages in Professional and Responsible Interaction with Others*⁷⁵

D. *A Synthesis Model of Cross-Cultural Competency*

Looking at the Bennett, Howell, and internal medicine models, we synthesized our own developmental model of cross-cultural competency to

75. Adapted from the ABIM Model Applicable to Residents. ACCREDITATION COUNCIL, *supra* note 71.

define stages of cross-cultural competency such that a law student or practitioner could demonstrate affirmative evidence of the competency. Our model also recognizes that it is possible to be at a later stage of cross-cultural competence in a particular area, like gender, while also being at an earlier stage in another area like age or race. Thus, our model first asks the law student or lawyer to identify which cross-cultural area is the focus of the self-assessment.

There are four stages in our alternative model: (1) lack of awareness, (2) recognition, (3) conscious implementation, and (4) proficiency.⁷⁶ In the first stage, lack of awareness, one does not recognize that they lack cross-cultural competency.⁷⁷ Someone in this stage may stereotype people in other cultures or feel uncomfortable interacting with others different from them. In general, this stage reflects ignorance of the role that culture plays in one's interactions with others.

At the second stage, recognition, one acknowledges their lack of cross-cultural competency, but may be unsure of how to develop it.⁷⁸ Indeed, someone at this stage may notice the role culture plays, reflect on how their own culture affects decisions and begin to see the need to develop cross-cultural competency.

At the third stage, conscious implementation, one takes an initial affirmative step toward developing cross-cultural competency in a specific area by refraining from making on-the-spot judgments in unfamiliar situations.⁷⁹ In addition, someone at this stage proactively seeks culturally diverse experiences and feedback from those from a different culture. Moreover, while there may be some initial difficulty or discomfort in these interactions, such a person reflects on the difficulties, discomfort and feedback and seeks greater understanding. What is important are the affirmative steps one takes to become more cross-culturally competent.

At the final stage, proficiency, a person has become educated in the particular culture and could fairly be considered as cross-culturally competent in that area.⁸⁰ A person at this stage is able to interact freely and genuinely within another culture and understands that culture's differing viewpoints and customs. They may have genuine respect and appreciation for the other culture, although they need not wholeheartedly agree with every facet of it.

Before looking at the following model, identify the cross-cultural competency area you wish to focus on (e.g., race, ethnicity, etc.).

76. See Figure 4.

77. See Figure 4.

78. See Figure 4.

79. See Figure 4.

80. See Figure 4.

Stage	Description	Affirmative Evidence	Examples
<p>1 Lack of Awareness</p>	<p>People in this stage are entirely unaware of their insensitivity to other cultures around them; they cannot comprehend the importance of becoming cross-culturally competent or what it even means.</p>	<ul style="list-style-type: none"> - Accepts one's own beliefs as superior to others - Negatively stereotypes others who are different from themselves - Refuses to interact with others who are different or in culturally diverse social situations 	<ul style="list-style-type: none"> - "Anyone who thinks that way is wrong." - "I do not want to be friends with someone who does not speak the same language as me." - "Why would someone dress that way?"
<p>2 Recognition</p>	<p>People in this stage recognize that they lack cultural competence, but are unsure how to develop this into an affirmative skill; they begin to recognize the importance of understanding and accepting other cultures.</p>	<ul style="list-style-type: none"> - Sees the wide variety of cultural diversity around oneself - Recognizes the need to be able to interact with anyone in any situation - Begins to seek out information on how to develop cultural competency 	<ul style="list-style-type: none"> - "I wish I could speak another language." - "I think studying abroad would give me a different perspective on the world." - "I always go to lunch with my group and need to try other groups too."
<p>3 Conscious Implementation</p>	<p>People in this stage begin to take affirmative steps in developing their cross-cultural competency; they seek diverse cross-cultural experiences.</p>	<ul style="list-style-type: none"> - Places him or herself in culturally diverse situations - Begins to break-down previously held stereotypes of different cultures - Seeks feedback - Reflects on experiences and feedback 	<ul style="list-style-type: none"> - "I need to remember that there are many differing opinions and everyone deserves my understanding and respect." - "Even though I might not agree, I can see why they think that way."
<p>4 Proficiency</p>	<p>People in this stage take affirmative steps on a regular basis to understand others and ensure cross-cultural competence; they recognize and account for the unique characteristics and needs of others.</p>	<ul style="list-style-type: none"> - Experience working in multi-cultural teams - Continuing/strong relationships with people from other cultures - Experience living in cultures very different than one's own culture 	<ul style="list-style-type: none"> - "It is important to look at the situation from someone else's shoes." - "We need to understand and respect others' differences so we can work together most effectively."

Figure 4 – A Synthesis Developmental Model of Cross-Cultural Competency

IV. DEVELOPING CROSS-CULTURAL COMPETENCE

Inherent in each of the above models is the idea that one is able both to develop the skills necessary to become more cross-culturally competent and to grow in understanding through the several stages.⁸¹ This idea, however, raises the question of What are the most effective strategies to become more cross-culturally competent and to develop affirmative evidence of this competency?

It is extremely challenging to test empirically whether a specific educational engagement results in measurable development of skills as complex as a person's cross-cultural competency.⁸² The empirical evidence is thin, which leaves us with our best practical judgment on what is most effective.⁸³ From the perspective of a student who is motivated to develop a cross-cultural competency as a way to demonstrate value to potential employers, it would be helpful to ask practitioners about the importance of this competency and how to demonstrate it.⁸⁴ A recent survey of over 24,000 lawyers showed that legal employers greatly value experience demonstrating that a law student actually has the competencies needed to practice law.⁸⁵ Therefore, as a matter of enlightened self-interest, law students should develop cultural competency with the groups of people they will most likely encounter regularly: clients and colleagues.

A. *General Steps Toward Developing Competency with Cultures Different from Your Own*

The first step is for the law student or lawyer to identify the areas of cross-cultural competency that are in their highest enlightened self-interest. For example, a student in the 25–30-year-old age range considering a career in elder law or estate planning could focus initial efforts on cross-cultural competency relating to age and then move on to other cultures they will likely interact with during their career.

Similarly, a student considering a global transactional practice might begin by focusing on specific Latin-American, African, or Asian cul-

81. See Figures 1–4.

82. See Neil W. Hamilton et al., *Empirical Evidence That Legal Education Can Foster Student Professionalism/Professionalism Formation to Become an Effective Lawyer*, 10 U. Sr. THOMAS L.J. 11, 20 (2012) (urging that, while studies have produced empirical data, more work needs to be done to identify effective teaching pedagogies of professional lawyer formation).

83. See *id.* at 18 (suggesting various options to implement programs to foster cultural competency).

84. See *id.* at 12–13 (describing a law firm's evaluation of a new lawyer's skills and competencies can lead to growth and effectiveness in their field).

85. Alli Gerkman, Foundations for Practice Presentation at Educating Tomorrow's Lawyers Conference (Oct. 2, 2015) (on file with authors).

tures—depending on the most likely direction of their interests. A student seeking employment in a large diverse urban center, on the other hand, should learn about various cultural groups living in that area.

The second step is for the law student or lawyer to self-assess and seek feedback on possible biases related to the cross-cultural area on which they are focusing. As previously noted, the self-assessment on an area of cross-cultural competence is based on the law student or lawyer's use of one or more of the stage development models discussed in Section III, and feedback should be sought from at least two individuals who belong to the specific cross-cultural group in question and who have previously observed the law student or lawyer working in that cross-cultural context.⁸⁶ Another useful feedback method is to take Harvard's free implicit association tests in several cross-cultural contexts.⁸⁷

Another important pathway to becoming cross-culturally competent is through careful observation.⁸⁸ Observation is the basis for recognizing differences and understanding another culture's norms, traditions, and behaviors.⁸⁹ It is important to develop a habit of constantly asking, "What is going on here that I do not understand?"⁹⁰

In addition to the need to self-assess, seek feedback, and observe is the need for self-reflection.⁹¹ Professor Susan Bryant highlights the most important types of self-reflection, emphasizing that "[e]ffective cross-cultural interaction depends on the lawyer's capacity to self-monitor his or her interactions in order to compensate for bias or stereotyped thinking and to learn from mistakes."⁹² First and foremost, self-reflection includes identifying one's own culture, stereotypes, and biases.⁹³ Through such self-reflection, one can observe different cultures and understand the similarities and differences between them.⁹⁴ Moreover, this process promotes understanding misperceptions of others and how different cultures may clash.⁹⁵ Note that a habit of seeking feedback to inform reflection is important to mitigate "introspection illusion," which simply reinforces existing self-perception.⁹⁶ Finally, empirical evidence shows that law stu-

86. See Section III *supra*.

87. PROJECT IMPLICIT, <https://implicit.harvard.edu/implicit/selectatest.html> [<https://perma.cc/8LTY-KGX4>] (last visited Feb. 7, 2017).

88. Sample, *supra* note 31, at 119.

89. *Id.*

90. *Id.*

91. See *id.* (recognizing the development of intercultural competence depends on observation which embodies self-inquiry).

92. Bryant, *supra* note 1, at 56.

93. *Id.* at 56–57.

94. *Id.* at 55.

95. *Id.* at 55–56.

96. Curcio, *supra* note 21, at 555–56.

dents believe clients have cultural biases, but law students and lawyers are less susceptible than clients to having and acting on biases.⁹⁷

Empathy is the ability to understand others' experiences and perspectives combined with an ability to communicate this understanding and an intention to help.⁹⁸ Being empathetic thus requires that one make a good faith effort to put themselves into another's shoes so as to understand the other's experiences more fully.⁹⁹ An important aspect of "walking in another person's shoes" involves imagining their perspective in an unbiased and neutral manner.¹⁰⁰ Finally, an empathetic world view also focuses on people's similarities rather than their differences, which acknowledges the basic humanity and dignity of each person.¹⁰¹ As Jonathan Haidt emphasizes:

If you really want to open your mind, open your heart first. If you can have at least one friendly interaction with a member of the 'other,' you will find it far easier to listen to what they are saying and may see a controversial issue in a new light . . . [a]nd if you do truly see it the other person's way – deeply and intuitively – you might find your own mind opening in response."¹⁰²

Empathy is demonstrated by active listening.¹⁰³ According to Hamilton, "effective listening requires not only technical proficiency, but also an empathic ability to connect with the speaker."¹⁰⁴ For the lawyer to be an effective, empathic listener, they should use active listening techniques, which allow the lawyer to show clients that they understand them.¹⁰⁵ Moreover, active listening allows lawyers to orient "the conversation to the client's world, the client's understandings, the client's priorities, and the client's narrative."¹⁰⁶ By focusing on the client, the lawyer can gather culture-sensitive information and use that information to ensure respect for the client's culture and wishes.¹⁰⁷ Gathering and using

97. *Id.* at 540.

98. *Empathy*, *supra* note 19.

99. See Neil Hamilton, *Effectiveness Requires Listening: How to Assess and Improve Listening Skills*, 13 FL. COASTAL L. REV. 145, 151 (2012) [hereinafter Hamilton, *Effectiveness*] (explaining empathy embodies the listener to get involved with another's feelings and forego his or her own self-centered involvement).

100. Curcio, *supra* note 21, at 540–42.

101. *Id.*

102. JONATHAN HAIDT, *THE RIGHTEOUS MIND: WHY GOOD PEOPLE ARE DIVIDED BY RELIGION AND POLITICS* 312 (Pantheon Books 2012).

103. Hamilton, *Effectiveness*, *supra* note 99, at 151.

104. *Id.*

105. *Id.* at 157.

106. Bryant, *supra* note 1, at 73.

107. *Id.* at 73–74.

culture-specific information in this manner helps the lawyer develop a deeper cross-cultural competency and allows them to use such information to guide their conduct in future situations. Taken as a whole, the habits of self-assessing, seeking feedback, observing, active listening, self-monitoring, and self-reflection help develop empathy.

If a law school is implementing an educational engagement to help students develop cross-cultural competency, particularly in the required curriculum, it is critical to recognize that students are at different developmental stages of growth (as indicated in Figures 1–4).¹⁰⁸ As such, an effective curriculum must engage each student at the student's current stage of development.¹⁰⁹

B. *Each Student Should Create and Implement a Written Plan to Develop and Create Evidence of Cross-Cultural Competency*

Law students and lawyers undoubtedly have many commitments, and experience tells us that a mere general intention to improve cross-cultural competency (or any competency for that matter) rarely results in actual changes in conduct and produces no evidence of growth toward later stages of the competency. We strongly recommend each student and practicing lawyer create and implement a written plan to develop cross-cultural competency in a focused area of interest.¹¹⁰ With a written development plan, a student can identify specific experiences, set dates to achieve the desired competency, seek feedback from others on the plan and its implementation, reflect on the student's experiences and the feedback, and periodically revise the plan going forward.¹¹¹ The process of creating a professional development plan also demonstrates other competencies legal employers want, such as initiative and commitment to professional development.¹¹² In turn, the plan and its implementation steps create evidence of the student's growth toward later stages of cross-cultural competency.¹¹³ Later-stage development of cross-cultural competency also supports later-stage development of effective teamwork and client relationship skills.¹¹⁴

108. See Hamilton et al., *supra* note 82, at 18, 28 (recognizing students should be engaged dependent on each student's distinct developmental stages in cross-cultural competency).

109. *Id.* at 21, 28.

110. Neil Hamilton, ROADMAP: THE LAW STUDENT'S GUIDE TO PREPARING & IMPLEMENTING A SUCCESSFUL PLAN FOR MEANINGFUL EMPLOYMENT 2 (ABA Books 2015).

111. See *id.* at 51 (highlighting each component of the Roadmap and how it will enable the student to develop an individualized plan).

112. *Id.* at 80.

113. *Id.* at 99.

114. *Id.*

Because experience is such an important factor in demonstrating evidence of a desired competency, we suggest a student's written development plan for cross-cultural competency include one or more stretch experiences in the area of cross-cultural focus. By "stretch experience" we mean an experience that challenges the student's present level of knowledge and skill with novel, complex, and ambiguous experiences, which in turn generate awareness of cross-cultural competency deficiencies and thus drive the student to improve their competency. In other words, the stretch experience takes the student out of their comfort zone in a particular cross-cultural area, and forces them to get comfortable with some level of discomfort.¹¹⁵ Moreover, although most research focuses on the benefit of stretch experiences in the context of foreign study or work, domestic study or work in cultures different from the student's own should yield similar benefits.¹¹⁶ By engaging in stretch experiences, the student creates "optimal conflict" for themselves by challenging their current assumptions and beliefs while doing so with enough support from instructors, mentors, coaches, peers, and others that prevents them from being overwhelmed.¹¹⁷

For example, a 25–30-year-old student contemplating an elder law and estate planning practice could focus on age as an area of cross-cultural competence. Their professional development plan should first ask for research about the particular cultural issues surrounding age, and the student could plan stretch experiences in relationships with elderly people. On the other hand, a student considering a global transactional practice could initially research the specific geographical area that presents a cultural challenge, such as Latin America, Africa, or Asia, and subsequently plan a stretch experience by living abroad in the relevant culture, learning the language, and developing long-term relationships with people of that culture. In both cases, the student should seek feedback and reflect on the feedback and the experience.

Another example of a stretch experience is to ask whether any of a person's closest advisors are from a very different culture. Does at least one of the student's closest advisors challenge the student's cultural as-

115. See Jeffrey L. Herman, *Self-Concept Complexity of Multicultural Leaders* 16–17 (Apr. 10, 2012) (unpublished Ph.D. dissertation, George Mason University) (suggesting greater stretch quality cross-cultural experiences produce more instances of cognitive schema with multidimensional understanding of leadership concepts).

116. See, e.g., Lisa Dragoni et al., *Developing Leaders' Strategic Thinking Through Global Workforce Experience: The Moderating Rule of Cultural Distance*, 99 *J. APPLIED PSYCHOL.* 867, 876 (2014) ("[T]he relationship between global work experiences and strategic thinking is significantly stronger for those leaders with experience in a more culturally distant country.").

117. Hamilton et al., *supra* note 82, at 21.

sumptions? If not, the student should seek to develop a relationship with such a person.

We suggest that each student write out Figure 5 for each area of cross-cultural competency the student is developing, and then revisit and revise the plan at regular intervals.

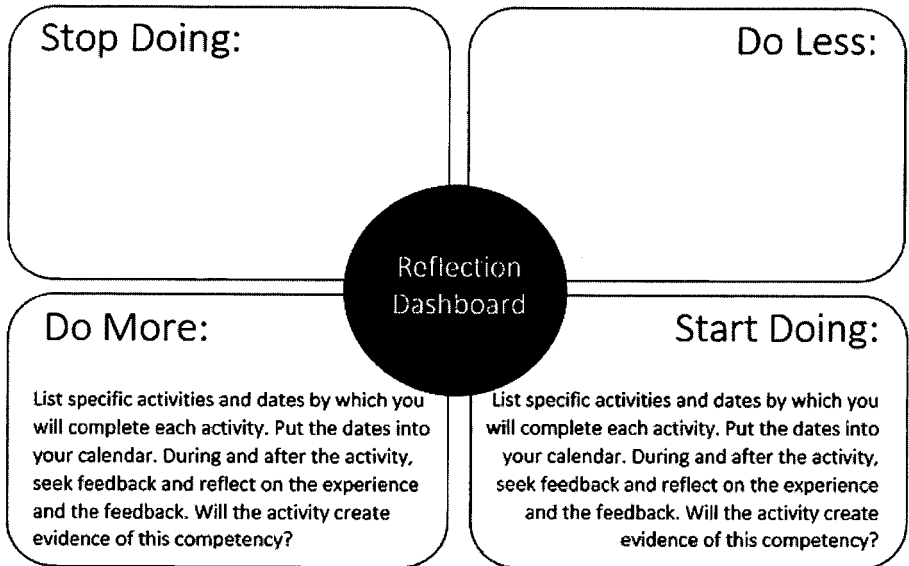


Figure 5 – Plan to Develop Greater Cross-Cultural Competency
in Focus Area: _____¹¹⁸

Note that the creation and implementation of an effective professional development plan in one cross-cultural area is evidence that the student is more likely to be effective in achieving the same results in other areas. Further, the professors, mentors, coaches, and others who provide feedback on the student’s plan and on the student’s experiences can serve as references for the student—that is, they can provide evidence of the student’s growth in cross-cultural competency.¹¹⁹

118. This figure is adapted from a figure created by Ritu Bhasin, Founder and Principal of Bhasin Consulting (2015, used by permission). *Leadership Workshop*, LEADERSHIP COUNCIL ON LEGAL DIVERSITY, http://www.lclldnet.org/media/mce_filebrowser/2015/04/29/bhasin-consulting-Leadership-Workshop-Handout-02.2015.pdf [<https://perma.cc/XL8A-W7JD>] (last visited Feb. 7, 2017).

119. See Hamilton et al., *supra* note 82, at 21 (recognizing that instructors, peers, mentors, and others play a crucial role in helping students engage in cross-cultural competency).

V. GAUGING EFFECTIVENESS OF LAW SCHOOLS EMPHASIZING CROSS-CULTURAL COMPETENCY AS LEARNING OBJECTIVES

In *Building on Best Practices*, Professor Mary A. Lynch and other legal scholars conclude that most law schools “do little to address the insights of [the growing research on cross-cultural competency] . . . [or] student preparation for the multicultural needs of our changing world.”¹²⁰ In particular, “in contrast to health professionals and other educators, legal professionals and legal educators have not spent significant energy and resources exploring and experimenting with assessments of intercultural competence.”¹²¹ Indeed, legal educators are just beginning to understand best practices about teaching cross-cultural competency.¹²² In a 2014 article in *SCIENCE*, Professor Corinne Moss-Racusin and others stated the major challenge across all cross-cultural competency education is that most existing diversity interventions are not evidence-based.¹²³ That is, few of these interventions have been evaluated to determine whether they produce measurable effects.¹²⁴ Thus, the authors urge that every cross-cultural curriculum should include a plan for ongoing rigorous evaluation of the intervention’s efficacy.¹²⁵

This section focuses on law schools that have adopted a strong cross-cultural learning outcome. When a faculty adopts a cross-cultural learning outcome, it is committing itself to helping *every* student develop toward the competency.¹²⁶ Moreover, because every student must demonstrate the competency at some faculty-defined developmental stage, we should focus on the required curriculum rather than the elective curriculum to find what is most effective with students who are at the full spectrum of stages of development. Focusing on the elective curriculum will tend to draw students interested in this competency who will presumptively be at later stages of development.

Of the six law schools with strong cross-cultural learning outcomes mentioned in Section I, the University of Florida, the University of New Mexico, the University of St. Thomas (MN), and the University of Dayton have been experimenting the most in the *required* curriculum with this learning outcome. These four curricula are discussed on the following pages.

120. Lynch et al., *supra* note 3, at 337.

121. *Id.* at 355.

122. *Id.*

123. Corinne Moss-Racusin et al., *Scientific Diversity Interventions*, 343 *SCIENCE* 615, 615 (2014).

124. *See id.* (“Interventions often induce ironic negative effects [such as reactance or backlash] by implying that participants are at fault for current diversity challenges”).

125. *Id.*

126. Lynch et al., *supra* note 3, at 359 (emphasis added).

A. *The University of Florida School of Law's Required Introduction to Lawyering Course in the Fall of the 1L Year*

The University of Florida requires all 1L students to take a two-credit "Introduction to Lawyering" course in the fall of their 1L year.¹²⁷ Nine of the twenty-eight classes raise issues relating to cross-cultural competency, particularly cross-cultural communication.¹²⁸ The readings for each of these classes introduce students to concepts like inclusive thinking, cross-cultural sensitivity, and effective cross-cultural communication.¹²⁹ Students then engage in a simulation exercise that puts them in the role of a lawyer exercising this competency.¹³⁰ While the simulations are observed by faculty, and students get formative feedback on their performance, there is no required empirically-tested formative or summative assessment of cross-cultural competence yet in this course.¹³¹ However, the simulations have helped instructors see that many students are at earlier stages of cross-cultural competency.¹³²

The cross-cultural competency curriculum has received pushback from some students.¹³³ The main pushback is that the curriculum is a waste of time, with some students decrying "we already know this" and "it is just common sense."¹³⁴ In response, the professors' strategy has been to invite lawyers and judges to reinforce the importance of these skills for the practice of law.¹³⁵

127. *1L Courses*, UNIV. FLA. LEVIN COLL. OF L., <https://www.law.ufl.edu/areas-of-study/curriculum-roadmaps/1l-courses> [<https://perma.cc/CV59-YLS4>] (last visited Feb. 14, 2017).

128. *Id.*

129. *Id.*

130. *See generally id.* (describing how each student will become acquainted with lawyering skills).

131. *See* E-mail from Amy R. Mashburn, Assoc. Dean for Acad. Affairs & Professor of L., U. Fla. Levin C. L., to Neil W. Hamilton, Professor of L., Univ. of St. Thomas Sch. of L. (May 9, 2016, 8:29 AM) (on file with authors) [hereinafter Mashburn E-mail] (explaining professors assign an overall grade for the course, but do not grade the simulations other than to provide feedback).

132. *See* Curcio, *supra* note 21, at 544 (finding "bias blind spots" restrict students from becoming aware of their own biases); *see also* Bryant, *supra* note 1, at 40 (reinforcing the importance of students to carefully inspect the impact of their culture as it defines their own judgments and biases).

133. *See* Mashburn E-mail, *supra* note 131 (confirming that students resist being graded in a course for work they view as subjective).

134. *Id.*

135. *Id.*

B. *The University of New Mexico School of Law's Cross-Cultural Competency Curriculum*

The University of New Mexico School of Law adopted a learning outcome that includes each student's ability to navigate cultural considerations.¹³⁶ There are two courses in the required curriculum that engage each student on this learning outcome.¹³⁷ In the fall semester of their 1L year, each student must take a one-credit "Professional Development/Professional Identity Formation" class called "Practicum," which covers many topics, including emotional intelligence and mindfulness practices.¹³⁸ The class generally covers many topics, but one full class period is dedicated to cross-cultural competency.¹³⁹ These classes also attempt to address issues of race, class, gender, sexual identity, etc., as such issues arise in other law classes.¹⁴⁰

Every upper-level student is also required to take a six-credit clinic.¹⁴¹ The rubric for the clinic includes an evaluation of a student's abilities "to see the world through the eyes of others" and "to consider potential cultural issues for clients and cases."¹⁴² The clinical professors foster these abilities in each student through a number of class and individual coaching engagements, and provide feedback to each student based on whether the student is at a novice stage or has developed beyond a novice stage.¹⁴³

C. *The University of St. Thomas (MN) School of Law's Cross-Cultural Competency Curriculum*

The University of St. Thomas has two required curricular engagements on cross-cultural competency.¹⁴⁴ "Foundations of Justice" is a 1L course

136. See *Student Learning Outcomes*, *supra* note 29 (listing student learning outcomes that includes navigating cultural considerations under the professional skills needed for competent participation as a member of the legal profession category).

137. See *generally Our Unique First Year Curriculum*, UNIV. N.M. SCH. L., <http://law-school.unm.edu/academics/curriculum/index.php> [<https://perma.cc/Z4TE-92CJ>] (last visited Oct. 25, 2016) (discussing required practicum and comparative and historical perspectives from first year law courses that include a societal perspective).

138. See *First Year Course Descriptions*, UNIV. N.M. SCH. L., <http://lawschool.unm.edu/academics/curriculum/descriptions/one-L.php> [<https://perma.cc/F3GJ-HVDM>] (last visited Feb. 14, 2017) (summarizing the required first year law practicum on professionalism and various aspects of legal practice).

139. Interview with Aliza Organick, Assoc. Dean of Clinic & Professor of L., Univ. of N.M. Sch. of Law (May 10, 2016) (on file with authors).

140. See *generally id.* (discussing the cross-cultural competency class).

141. *Id.*

142. *Id.*

143. *Id.*

144. *Curriculum*, UNIV. ST. THOMAS SCH. OF L., <http://www.stthomas.edu/law/jd/full-timeprogram> [<https://perma.cc/QAE2-9RQK>] (last visited Feb. 14, 2017).

in which one class session is devoted to cultural competency as an essential skill for lawyers working with increasingly diverse populations.¹⁴⁵ In this class session, students review two articles and have small group and large group conversations about life experiences with people of different cultures.¹⁴⁶ “Mentor Externship” is a 2L course and has one class session wherein students read thought-provoking articles on the elimination of bias, reflect on the readings, and discuss them in small groups.¹⁴⁷ In both classes, students write reflections on experiences inside or outside law school in which cultural competence (or lack thereof) or implicit bias might have manifested.¹⁴⁸ There is no empirically-tested required formative or summative assessment on cross-cultural competence yet in these classes.¹⁴⁹

“Mentor Externship” in 2L year meets in small sections of eleven students. During the 2015–16 school year, Hamilton experimented with his section on eliminating bias. He assigned an earlier draft of this article and asked the students to discuss the questions below:

1. All of us have experienced educational programs on diversity/elimination of bias/cross-cultural competency themes. What is the most effective education program on these topics that you have experienced? Why was it effective?
2. Bring a story of when you were in a culture different from your own (this can be a domestic sub-culture different from your own or a foreign culture).
3. What was the biggest challenge/surprise for you?
4. How did you handle it?
5. What did you learn from the experience?
6. Did anyone from the dominant culture reach out to help you?
7. If one of your potential employers/clients asks you, “What evidence do you have about your cross-cultural competency?” how would you answer the question?

For each question, Hamilton went around the class, asked each student to respond, and wrote the responses on the whiteboard. He then asked the

145. *Id.*

146. *Id.*

147. See University of St. Thomas School of Law, Mentor Externship Laws (2016) (unpublished syllabus) (on file with authors) (outlining a class session on exploring cultural competency and developing an understanding of implicit bias).

148. See *id.* (noting written reflections are required and include a final reflection assignment where the student must look back on their journey of self-directed learning).

149. *Id.*

class to help synthesize general themes in the answers to each question, particularly in light of the analytical framework of this article. With respect to question 1, the biggest surprise was that no student thought they had ever experienced an effective educational program covering diversity/elimination of bias/cross-cultural competency.¹⁵⁰

With respect to questions 2–6, most students focused on a study-abroad experience, but most of these experiences were in a western European country and only lasted for one semester. Further, many of these experiences did not involve learning the language or developing in-depth relationships with any residents of the foreign country. The major competency students learned was how to solve problems creatively when faced with the new challenges presented by international travel. On the other hand, some students did learn a foreign language and gained at least some in-depth understanding of the foreign culture in their study abroad programs. Some also developed in-depth longer term relationships with residents of the foreign culture. Class discussion helped the former group of students realize they were in the “Recognition” stage of Figure 4, while the latter group could see that they were in the “Conscious Implementation” stage and moving toward a “Proficiency” stage of Figure 4. Importantly, the students understood how to develop and obtain affirmative evidence of later stages of cross-cultural competency.

There were three surprising student responses to questions 2–6. One group of students had grown up in cultures completely different from that of law school or the legal profession in general and therefore experienced law school as a different culture altogether. A second group experienced a serious disability and thus entered a culture of similarly-situated people that was totally new. A third group experienced “Teach for America”¹⁵¹ or similar immersion in a domestic culture completely different from their own. Class discussion focused on how these experiences fit within the developmental models of cross-cultural competency laid out in Figure 4. If combined with reflection, such experiences could clearly demonstrate later-stage development of the competency.

With respect to the question 7, at the end of class we urged self-reflection and self-awareness regarding (1) the student’s existing cross-cultural experiences and stage of development and (2) intentionality to create and implement a plan for stretch experiences in other cultures where the student wants experiences that take the student out of her comfort zone and

150. This supports the general theme of student resistance to this type of curriculum discussed in Section V.A. *supra*.

151. Teach for America is an educational organization dedicated to providing access to a quality education to the most vulnerable and marginalized populations in the United States. *About Us*, TEACH FOR AMERICA, <https://www.teachforamerica.org/about-us> [<https://perma.cc/LZ5G-7JFE>] (last visited Feb. 14, 2017).

foster reflection and growth toward later stages of cross-cultural competency. One observant student noted that students could use the law school's fifty-hour public service graduation requirement more intentionally to create a stretch experience with a specific different culture. Further, that every student in the small section contributed comments on each question, led Hamilton to believe the students not only understood the importance of cross-cultural competence and the affirmative tools they could use to develop toward later stages of this competence, they also contained evidence of this growth.

D. *The Missing Step: Ongoing Rigorous Evaluation of a Cross-Cultural Curriculum's Efficacy and the University of Dayton's Intercultural Development Inventory*

Professor Moss-Racusin and others strongly endorse a specific plan for ongoing rigorous evaluation of a cross-cultural competency curriculum's efficacy.¹⁵² There are a number of models and assessments of cross-cultural competence available,¹⁵³ but evaluation of the content, validity, and reliability of each of them is beyond the scope of this article.

During a past 1L orientation, the University of Dayton School of Law used the Intercultural Development Inventory (IDI).¹⁵⁴ The IDI has a strong conceptual and theoretical foundation based on Bennett's Developmental Model of Intercultural Sensitivity¹⁵⁵ and has been shown to be a valid and reliable measure of intercultural competence.¹⁵⁶ All 1L students completed the IDI online, received an individualized IDI profile, and attended a one-hour discussion where an IDI-qualified administrator discussed with the students the major themes from the student responses and fielded questions. Students were curious about their own stage of

152. Moss-Racusin et al., *supra* note 123.

153. See, e.g., David Matsumoto & Hyeisung Hwang, *Assessing Cross-Cultural Competence: A Review of Available Tests*, 44 J. CROSS-CULTURAL PSYCHOL. 849, 854–63 (2013) (evaluating the content, construct, and ecological validity of ten cross-cultural competency tests).

154. See *Learning Outcomes and Performance Criteria*, *supra* note 29 (adopting inclusivity as one of the core Marianist characteristics law students are expected to attain).

155. See Section III.A. *supra*.

156. R. Michael Paige & Michael Vande Berg, *Why Students Are and Are Not Learning Abroad: A Review of Recent Research*, in STUDENT LEARNING ABROAD: WHAT OUR STUDENTS ARE LEARNING, WHAT THEY'RE NOT, AND WHAT WE CAN DO ABOUT IT 29 (Michael Vange Berg et al. eds., 1st eds. 2012). *But see* Matsumoto & Hwang, *supra* note 153, at 860–61 (explaining few studies have provided evidence of IDI's validity with intercultural experience variables). The IDI costs \$11.00 per student plus the cost of a qualified administrator. *Products: IDI Products, Services & Pricing*, INTERCULTURAL DEV. INVENTORY, <https://idiinventory.com/products/idi-products-services-pricing> [<https://perma.cc/59A5-YQTK>] (last visited Jan. 30, 2017).

development of cross-cultural competency and wondered what steps they could take to grow toward later stages. Interestingly, this curriculum was not met with the student resistance typical with this type of engagement. Hamilton intends to use the IDI with his 2L mentor section this upcoming academic year both as a pre- and post-test for the class.

VI. CONCLUSION

This article's goal is to help professors, staff, and students understand how the proposed curriculum can assist students in developing a strong narrative of affirmative steps so the student can answer a potential employer's inquiry into what the student has done to develop their cross-cultural competence. The proposed curriculum can help students understand that legal employers and clients expect attorneys to have this competency, and can also help a student develop the competency and create affirmative evidence that they are at a later stage of development. Moreover, since neither a student's self-proclamation of later-stage development nor a student's participation in a theoretical analysis of diversity actually demonstrate the student's cross-cultural competence, a student's narrative stresses the creation and implementation of a written professional development plan that includes stretch experiences, feedback, and reflection on those experiences. Ideally, a student will receive feedback from professors, experienced attorneys, and judges who can provide references to support the student's narrative.

From the perspective of faculties that have adopted a cultural-competency learning outcomes, the proposed curriculum engages students' self-interest in meaningful employment and helps them to understand it is in their enlightened self-interest to develop the competency. This outcome will mitigate student resistance typical to this type of educational engagement and thereby increase the probability of student learning. A faculty that adopts a cross-cultural learning outcome also defines the stages of development for that learning outcome. Figures 1–4 will be particularly useful to inform the faculty's definition of these developmental stages. Additionally, a faculty that adopts a cross-cultural learning outcome will also design and implement specific, required curriculum engagements to foster each student's development from the student's current developmental stage toward the learning outcome. However, there remains great need for experimentation and rigorous assessment to learn what curricular engagements are most effective. While growing toward cross-cultural competence is a career-long endeavor for faculty, staff, and students, all three would benefit from creating and implementing a professional development plan for cross-cultural competency.