



# Culturally-Competent Lawyering

Erin Lain, J.D., Ph.D.

Associate Dean for Academic Affairs

Drake Law School

---

# CLE Requirement- Rule 41.3(2)

---

Beginning January 1, 2021, the 15 hours required by rule 41.3(1) must include a minimum of 1 hour devoted exclusively to the area of legal ethics and 1 hour devoted exclusively to the area of either attorney wellness or diversity and inclusion.

# THE FIVE HABITS: BUILDING CROSS-CULTURAL COMPETENCE IN LAWYERS

SUSAN BRYANT\*

“Yet the challenge confronts us: Build a unified society without uniformity.”<sup>1</sup>

*This article describes a process called “the Habits” that was developed by Professors Bryant and Jean Koh Peters that can be used by lawyers to increase their cross-cultural competence. By outlining*

---

\* Associate Professor, City University of New York School of Law (CUNY). As described in the epilogue, this article grows out of a collaborative project with Jean Koh Peters, to whom I am deeply grateful. In our work on developing the Habits and the teaching module to teach the Habits, Jean and I were aided by many wonderful colleagues, students, and staff. I want to thank those colleagues who first worked with me on issues of diversity in AALS presentations, including Victor Goode, Isabelle Gunning, Steve Hardwell, and Jennifer Rockow. Jean and I have wonderful colleagues who have taught cross-cultural lawyering using these materials or watched us use them and given us feedback on the Habits and these materials. They include my colleagues at CUNY: Beryl Blaustone, Rhonda Copelon, Sam Dulberg, Ellen Fried, Gail Gray, Pamela Goldberg, Sharon Hom, Ron Lindeman, Steve Loffredo, Joe Rosenberg, and Susan Taylor; and Jean’s colleagues at Yale: Carroll Lucht, Michael Pinard, Jay Pottenger, and Steve Wizner. Jean’s colleague and our friend, Kathleen Sullivan, passed away before this article was published. She was an enthusiastic supporter and contributor to our work. She is missed  
published. She was an enthusiastic supporter and contributor to our work. She is missed  
published. She was an enthusiastic supporter and contributor to our work. She is missed  
published. She was an enthusiastic supporter and contributor to our work. She is missed

# WHAT IS CULTURE AND WHY DOES IT MATTER FOR PRACTICING LAW

- Culture is like the air we breathe - it is largely invisible and yet we are dependent on it for our very being.
- Culture gives us our values, attitudes and norms of behavior.
- We are constantly attaching culturally-based meaning to what we see and hear, often without being aware that we are doing so.
- Through our invisible cultural lens, we judge people to be truthful, rude, intelligent or superstitious based on the attributions we make about the meaning of their behavior.



Attorney: Hi, my name is Lisa Reiner, an attorney with Main Street Legal Services.

Client's Brother: [Spanish]

Translator: [Spanish]

Attorney: This is Bernice Cohn. She is here to translate.

Translator: [Spanish]

Attorney: And your name again?

Client: Lisa Rodriguez.

Attorney: And you're the one who called to make the appointment?

Translator: [Spanish]

Client: Si.

Attorney: And this is your...?

Client's Brother: I'm her brother.

Attorney: Have a seat. The basic problem that you have?

Translator: [Spanish]

Client: [Spanish]

Translator: She got a notice from her landlord.

Client: [Spanish]

Translator: He says that she has to leave the apartment.

The background consists of a repeating pattern of speech bubbles in various colors (red, yellow, purple, grey) on a teal background. Each speech bubble contains a dark blue question mark. The text is centered over this pattern.

Why is the brother there? (type in the chat)



## What is Cross Cultural Lawyering?

Cross-cultural lawyering occurs when lawyers and clients have different ethnic or cultural heritages and when they are socialized by different subsets within ethnic groups. By this definition, everyone is multi-cultural to some degree.



# NEED TO AVOID REINFORCING STEREOTYPES

- No single characteristic will completely define the lawyer's or client's culture.
- For example, if we think about birth order alone as a cultural characteristic, we may not see any significance to this factor.
- If the client (or lawyer) comes from a society where "oldest son" has special meaning in terms of responsibility and privilege, identification of the ethnicity, gender or birth order alone will not be enough to alert the lawyer to the set of norms and expectations for how the "oldest son" is expected to behave.
- Instead, the lawyer needs to appreciate the significance of the combination of ethnicity, birth order, and gender to fully understand this aspect of the client's culture.
- A woman from the same culture may understand these responsibilities and privileges better than an outsider and yet, because her experiences are different, still may not fully understand.



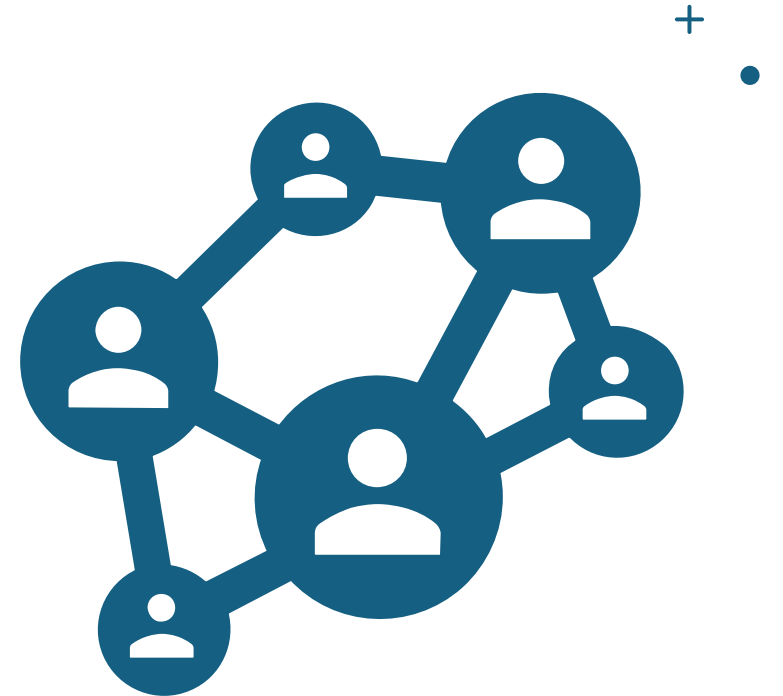


A broad definition of culture recognizes that no two people can have exactly the same experiences and thus no two people will interpret or predict in precisely the same ways.

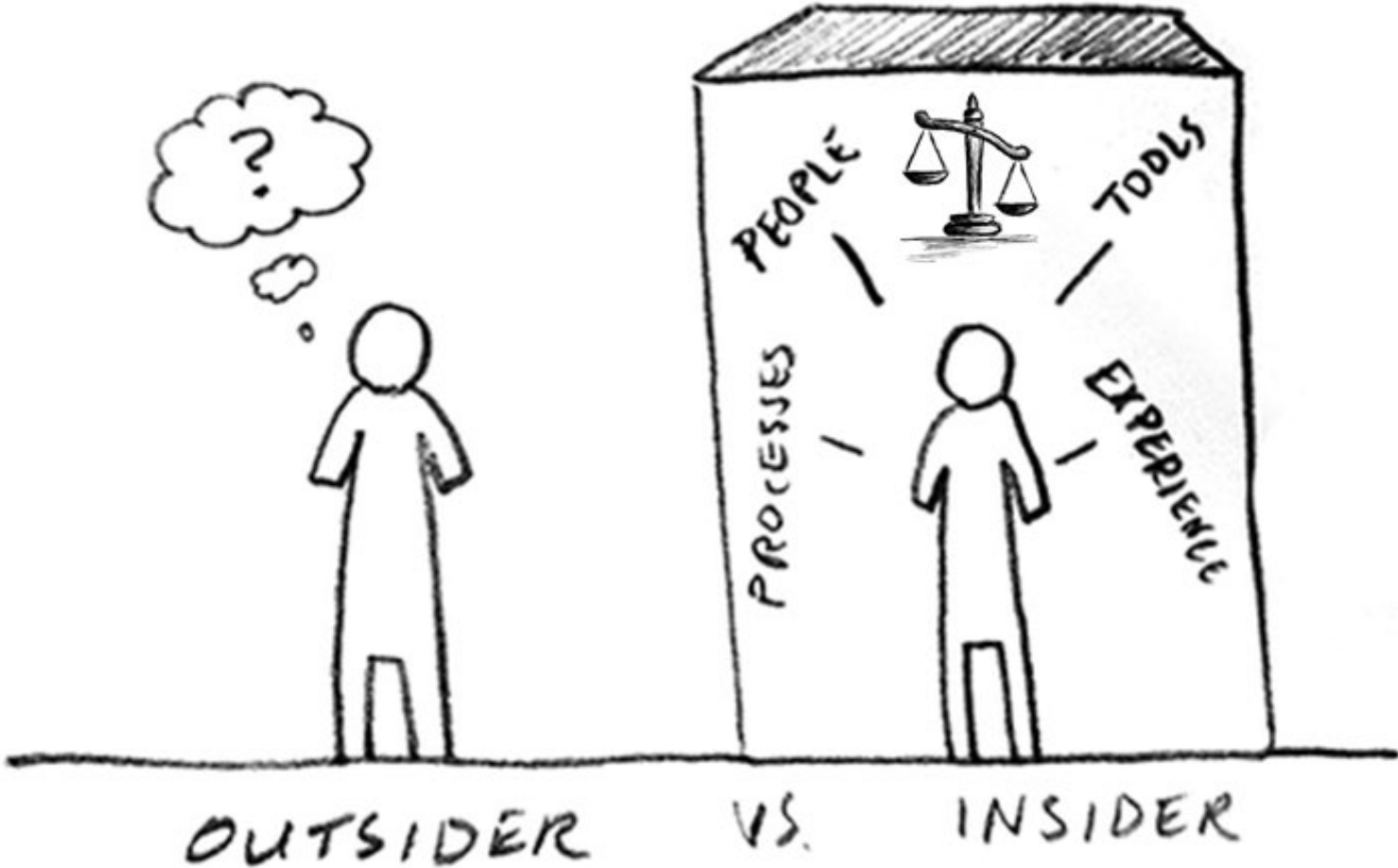
---

## WHEN LAWYERS AND CLIENTS COME FROM DIFFERENT CULTURES IT CAN IMPACT...

- Trusting relationships
- Evaluating credibility
- Developing client-centered case strategies and solutions
- Gathering information and to attribute the intended meaning from behavior and expressions



# Insider v. Outsider



# Goal of Cross-Cultural Lawyering

---

Isomorphic attributions, i.e., to attribute to behavior and communication that which is intended by the actor or speaker.

# Challenges when not attuned to Cultural Differences

---



# CHALLENGES OF MAKING ERRORS IN ATTRIBUTION

---

Imagine a lawyer saying to a client, "If there is anything that you do not understand, please just ask me to explain" or "If I am not being clear, please just ask me any questions."

The lawyer might assume that a client who does not then ask for clarification surely understands what the lawyer is saying.

However, many cultural differences may explain a client's reluctance to either blame the lawyer for poor communication (the second question) or blame himself or herself for lack of understanding (the first question).

Clients from some cultures might find one or the other of these results to be rude and, therefore, will feel reluctant to ask for clarification for fear of offending the lawyer or embarrassing himself.

# CHALLENGES IN MISPERCEIVED BODY LANGUAGE

---

- Take nodding while someone is speaking. In some cultures, this gesture indicates agreement with the speaker; in others, however, it simply indicates that the listener is hearing the speaker.
- Another common example involves eye contact. In some cultures, looking someone straight in the eye is a statement of open and honest communication while a diversion of eyes signals dishonesty. In other cultures, a diversion of eyes is a sign of respect. Lawyers need to recognize these differences and plan for a representation strategy that takes them into account.



# CREDIBILITY IS CULTURAL

- In examining the credibility of a story, lawyers and judges often ask whether the story makes "sense" as if "sense" were neutral.
- Consider a client who explains that the reason that she left her native country was that God appeared to her in a dream and told her it was time to leave. If the time of departure is critical to the credibility of her story, how will the fact-finder evaluate the client's credibility?
- Does the fact-finder come from a culture where dreams are valued, where an interventionist God is expected, or where major life decisions would be based on these expectations or values?
- Will the fact-finder, as a result of differences, find the story incredible or indicative of a disturbed thought process or, alternatively, as a result of similarities, find the client credible?

# DIFFERENT TIME AND SPACE ORIENTATION

- If a lawyer whose culture is oriented to hour, day, month, and year tries to get a time-line from a client whose culture is not oriented that way, she may incorrectly interpret the client's failure to provide the information as uncooperative, lacking intelligence, or, worse, lying.
- Clients who are unable to tell a linear time-related story may also experience the same reaction from judges and juries if the client's culture is unknown to the fact finders.



---

## Individual vs. Collective Cultures

- Majority Culture in the U.S. has been identified as the most individualistic culture in the world.
- Our legal culture reflects this commitment to individualism.
- For example, ethical rules of confidentiality and conflict of interests often require a lawyer to communicate with an individual client in private and may prohibit the lawyer from representing the group or taking group concerns into account.
- There might be potential conflicts that may arise between a client's culture and the legal strategy designed for an adversarial, individualistic system. Lawyers who understand this are better able to address the problems it creates for those clients who come from or embrace a more collective culture.

# Example

---

A lawyer negotiated a plea to a misdemeanor assault with probation for a battered Chinese woman who had killed her husband and who faced a 25-year sentence if convicted of murder. The client, who had a strong self-defense claim, refused to plead to the misdemeanor charge because she did not want to humiliate herself, her ancestors, her children and their children by acknowledging responsibility for the killing. Her attorneys did not fully comprehend the concept of shame that the client would experience from such a plea until the client was able to explain that the possibility of 25 years in jail was far less offensive than the certain shame that would be experienced by her family (past, present and future) if she pled guilty. These negative reactions to what the lawyers initially viewed as an excellent result allowed the lawyers to examine the meaning of pleas, family, responsibility and consequences within a collective cultural context that was far different than their own.

# Cross-cultural learning takes place



cognitive



behavioral



emotional

# ASSUMPTIONS ABOUT GOOD LAWYERING:

All lawyering is cross-cultural

A non-judgmental approach towards yourself and client promotes learning and good lawyering

Remaining present with the individual client is an essential part of cross-cultural competence

Knowing yourself as a cultural being is an ongoing and necessary process for cross-cultural competence.

---

# Habit One: Degrees Of Separation And Connection

---

Mary, an Irish-Catholic thirty-year old lawyer in a domestic violence clinic, submits two client-intake memos. In one she describes an intake interview that she had with Razia, a recent immigrant from Pakistan. Razia has been subjected to spousal abuse and is preparing to leave the marital home. The memo provides a detailed description of Razia's family and reports that she has intentionally isolated herself from her large extended family which does not support her decision to leave her husband. Razia cannot rely on family members to attend court proceedings with her or to provide any assistance. In another memo which describes an interview with another client, Maureen, who is a recent immigrant from Ireland, Mary reports little information about Maureen's family, other than to report that she has moved in with her sister to escape spousal abuse.

Why does the lawyer have extensive information about one client's family and little about another's? Is it the influence of the questions the lawyer asked or the story the client volunteered?

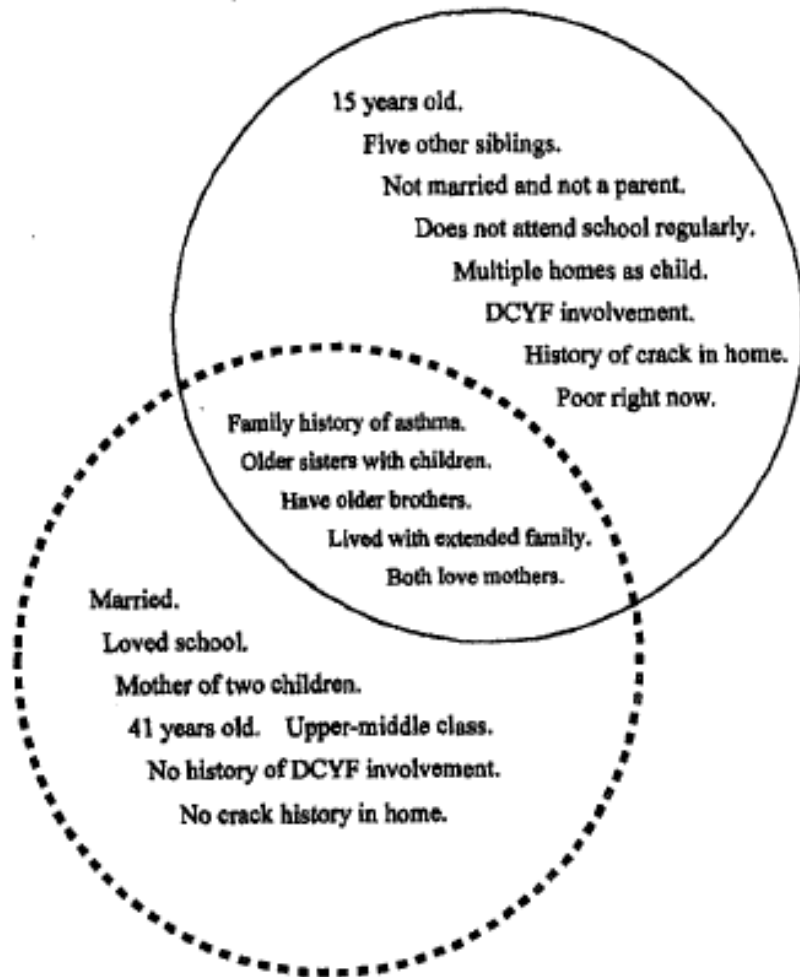


# Habit One: List Similarities and Differences.

---

- Habit One gives lawyers a framework within which to analyze these questions regarding how similarities and differences between the lawyer and client may influence lawyer-client interactions, especially information gathering.
- Habit One first asks lawyers to list and diagram similarities and differences between themselves and their clients and then to explore the significance of these similarities and differences.
- By asking lawyers to identify differences, we focus consciously on the possibility that cultural misunderstanding, bias and stereotyping may occur.





# Venn Diagram

---

By pondering this question, lawyers can recognize that even though similarities promote understanding, misunderstanding may flow from an assumption of precise congruence.

A row of five wooden figures on a white surface. The figure in the center is red, while the others are white. The figures are simple, rounded shapes with a spherical head and a conical body.

# BACK TO OUR FIRST HYPOTHESIS

Mary may have probed the first client about her failure to seek family support because Mary believes that her own family would support her decision to leave an abusive relationship.

These differences may arise out of cultural differences in family relationships, assessment of appropriate uses of the law or outsiders to resolve problems, responses to violence, or a number of other explanations.

Mary leaves unexplored the report that Maureen has moved in with her sister to escape the spousal abuse because Mary imagines taking similar steps if she were in such a situation and implicitly makes a host of assumptions about cultural values that relate to Maureen's family, her family values and her sister and their relationship.

The fact that Maureen shares a common ethnic background with Mary may contribute to these assumptions of similarity.

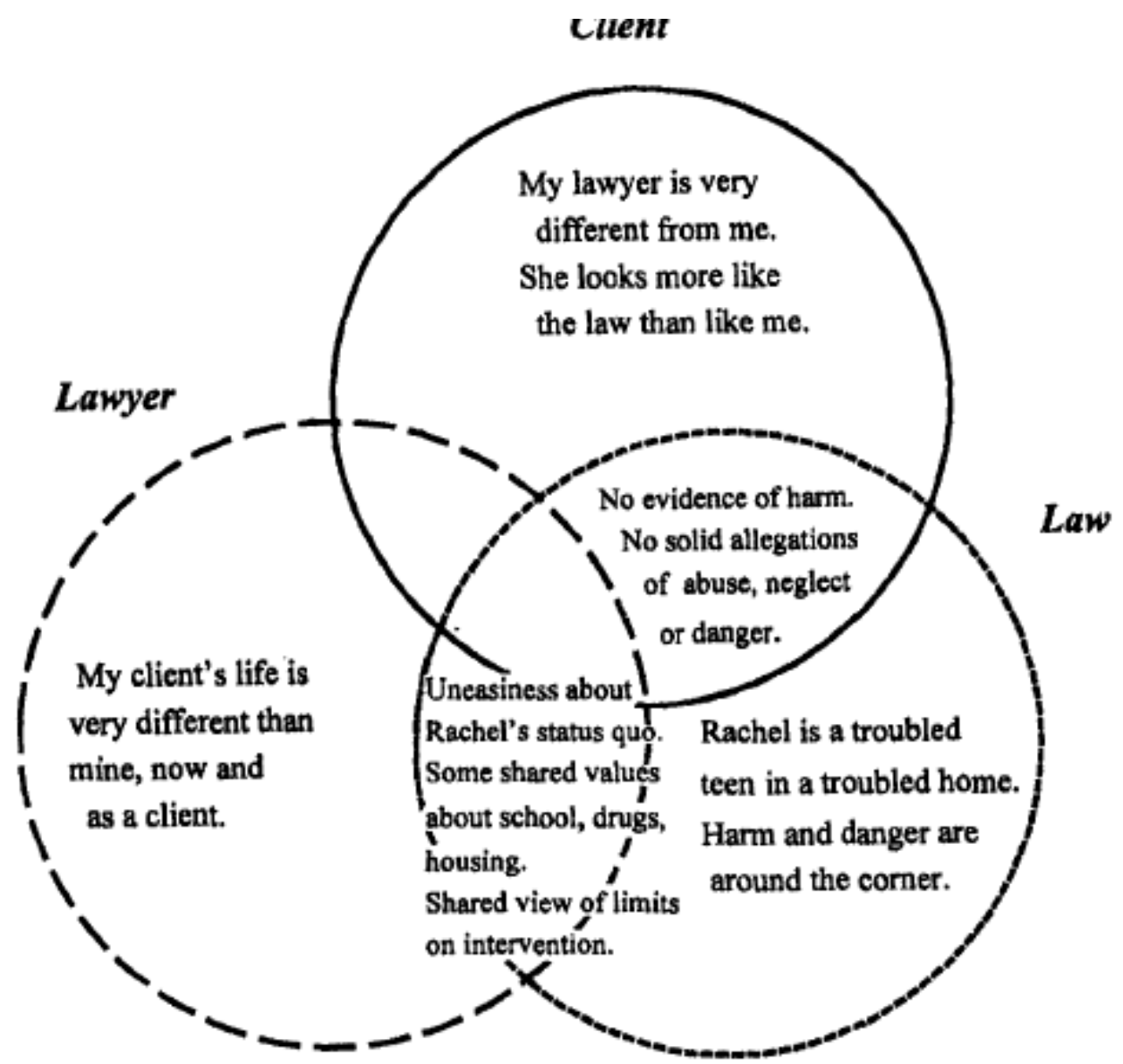
# Habit Two: The Three Rings

- Habit Two asks the lawyer first to identify the differences and similarities between the client and the legal system and between the lawyer and the legal system.
- Habit Two links this analysis to the Habit One analysis to explore all the ways in which culture may influence a case.
  - What does a successful client look like to this decision-maker?
  - How similar or different is the client from this prototype of a successful client?
  - What are the cultural values and norms implicit in the law that will be applied to the client?
  - Does the client share these values and norms or do differences exist?

# Habit Two: The Three Rings

In focusing on the lawyer-legal system dyad, the lawyer is asked to compare himself or herself to the legal system.

- To what extent does the lawyer share the values and norms of the law and legal decision-makers?
- What are the similarities and differences between the lawyer and these decision-makers?
- To what extent has the lawyer become acculturated to the law and legal culture?
- How much overlap is there between the lawyer's view of the "successful" client and the views of the law and legal decision-makers?





The lawyer can gain insight into why a judge is bothered by a particular issue, or why a client is resisting the lawyer's advice. Lawyers might also begin to understand why clients are prone to view the lawyer as part of a hostile legal system when there is a high degree of overlap between the lawyer and the legal system but only a small degree of overlap between the client and legal system.

# Habit Three: Parallel Universes

Mary, a 40-year-old Polish-American, is seeking custody of her 8-year-old child, Alison. Mary has been the primary caretaker for Alison and has not worked outside the home since her oldest daughter was born 15 years ago.

Mary's husband George, works as a factory worker in a local plant. Mary's lawyer, Annette, is a 40-year-old immigrant from the Dominican Republic who came to the United States at age 10.

Annette advises Mary that she should seek counseling for her 8-year-old daughter as recommended by the court. Annette has her 12-year-old son in counseling and has found it very useful.

Annette tells Mary that the court believes that therapy is necessary to help Alison adjust to the separation of her parents and to improve Alison's relationship with her father.

Mary agrees to seek counseling. One month later, Annette learns that Mary has not set up an appointment for Alison with a therapist.

Angry, Annette believes that Mary either does not care enough about her case or that she does not credit Annette's assessment that Mary's case will improve if she arranges counseling for Alison.



# "PARALLEL UNIVERSES"

- The habit of "parallel universes" thinking invites lawyers to look for multiple interpretations, especially at times when the lawyer is judging the client negatively.
- This habit asks the lawyer to examine whether there are alternative explanations for the behavior.
- Habit Three teaches lawyers to ask themselves this question and gives them a cultural framework for analyzing possible explanations for their judgments.



# EXAMPLE REVISITED

One can imagine many different explanations for the client's behavior:

1. The client has never gone to a therapist and is frightened;
2. In the client's experience, only people who are crazy see therapists;
3. The client has no insurance and is unable to pay for therapy;
4. The client cannot accept that the court will ever grant custody to the husband, given that he was not the primary caretaker;
5. Or the client did not think that she needed to get her child into therapy immediately, etc.

Race and class differences between the lawyer and client may account for Mary's failure to follow her attorney's advice, or her inaction may simply be the product of a tendency to procrastinate.



The point of the parallel universe habit is to become accustomed to challenging oneself to identify the many alternatives to the interpretations to which we may be tempted to leap, on insufficient information.



One way to reduce the stress in cross-cultural interactions is to ask, "I wonder if there is another piece of information that, if I had it, would help me interpret what is going on?"

# HABIT FOUR: PITFALLS, RED FLAGS AND REMEDIES

Jeff, an experienced lawyer who is Jewish and fourth generation Austrian-American interviews his client Charles, an 8-year-old African-American, the subject of a child-neglect proceeding.

Charles, who lives in a low-income housing project, has been described by social workers as "a bright, verbal boy."

In their first meeting, Jeff gives Charles his standard explanations of "protective hearings," "pleas," and "neglect."

In his interactions with Jeff, Charles is subdued and reticent to talk other than saying, "I did not do anything wrong."

Thinking of the many children who blame themselves for neglect proceedings against their parents, Jeff explains that neglect proceedings are brought by the state against his parents and not against him.

After a court proceeding that occurs later in the representation, Charles asks Jeff why there were no police in the courtroom. In response to Jeff's question about why Charles thought there would be police, Charles replies, "You only get a lawyer if you've done something wrong." He explains that everyone whom he knows who had a lawyer was put in jail.

How do we encourage lawyers to recognize problem conversations in the moment and plan for corrective steps that avoid some of the problems Jeff and Charles had in this encounter?



What did Charles mean by "I did not do anything wrong?"



Lawyers need to engage in "attentive listening" to the client's story and voice.



Habit Four orients the conversation to the client's world, the client's understandings, the client's priorities, and the client's narrative.



For example, had Jeff explored even briefly the client's response to the situation, Jeff may have learned the source of the client's apprehensions.

Habit Four teaches the lawyer that cross-cultural encounters can generate anxiety for the lawyer and/or the client.



Lawyers can lessen client anxiety by using the active listening technique of providing feedback to the client.



Lawyer need to look for culturally sensitive feedback from the client.



Many lawyers are amazed or hurt that a client is unwilling to seek information or clarification.



The lessons of Habit Four ask the lawyer to develop a broader repertoire for determining client understanding.

**PARAPHRASE.**



**LISTENING MAY BE ENOUGH.**



**ASK QUESTIONS.**



**EVALUATE THE CONVERSATION.**



**USE POSITIVE BODY LANGUAGE.**



**DON'T GIVE ADVICE TOO QUICKLY.**



**SHOW EMPATHY.**



**AVOID JUDGMENT.**



**8**  
Tips for  
**ACTIVE LISTENING**

# Habit Five: The Camel's Back

---

A woman client, with a horrible story of torture, whom the lawyer had very limited time to prepare for trial (because the client lived out of town), was talking in a rambling fashion. The lawyer, who was just back from vacation, was thinking angry thoughts about the client. Under the extreme stress caused by time pressure and by listening to the client tell about horrible violence that she had suffered, the lawyer was falling back on very disturbing old conditioning: against people who are of a different race, people who are overweight, people who "talk too much." What is the lawyer to do with these reactions?

For most of us, when experiencing the anger that the lawyer feels, the hard part is recognizing that our reaction to the client stems from bias rather than justified anger.

Habit Five asks the lawyer to acknowledge his every thought, including the ugly ones, and find a way to investigate and control for those factors that influence lawyering in unacceptable ways.





- Habit Five suggests that lawyers take simple proactive steps to lessen stress, including the type of stress the lawyer in the above example probably feels
  - taking a break, having food and drink and identifying what is interfering with his interaction with the client before the interview resumes.
- By taking these simple steps, the lawyer will gain a greater capacity to monitor and hopefully avoid a biased reaction.
- Habit Five asks the lawyer to engage in self-analysis rather than self-judgment.

- Because culture is very complex, lawyers should be encouraged to gingerly use the new knowledge they are acquiring.
- When we learn "specific cultural rules," we have to be careful to apply them correctly and to guard against substituting them for information about the client.
- The client may or may not follow the "rules." Thus, the lawyer who has worked with two or three clients from a particular group should scrupulously avoid generalizing from this experience to conclude that all people from this group are (you can fill in the blank).

# FOUR STAGES OF GROWTH FOR CROSS-CULTURAL COMPETENCE

---

## “Unconscious incompetence”

Lawyers are not aware of what they do not know

## “Conscious incompetence”

Lawyers are aware that culture affects the way they attribute meaning and practice law, but they are unable to use culture theory and skills to develop competent interaction with others.

## “Conscious competence”

Lawyers in this stage function competently in the range of skills necessary for cross-cultural lawyering, but only after they have adopted a mindful approach to using the skills.

## “Unconscious competence”

Lawyers unconsciously incorporate the cross-cultural skills and perspectives as in their interactions with clients.