

The Role of Law Schools

in Shaping Culturally Competent Lawyers

By Cynthia M. Ward and Nelson P. Miller

fast facts

- Cultural-competence training begins with law school admissions.
- Education in cultural competence involves more than admitting law students of different cultures.
- Other opportunities exist for cultural-competence training in co- and extracurricular activities.

This article discusses the role of law schools in providing cultural-competence training for law students to develop culturally aware lawyers.

The nation's demographics indicate growing racial, ethnic, and cultural diversity. The 2000 United States census identified one-third of the nation's population as minority, with Hispanic Americans at 13 percent of the population, African Americans at 12 percent, and significant percentages of Asian Americans, Native Americans, Alaska Natives, and Pacific Islanders.¹ Minority populations have grown and should continue to grow significantly.²

With an increasingly diverse potential client base, lawyers cannot ignore cultural competence.³ Lawyers must provide competent legal services. Competent service depends on understanding the clients whom lawyers serve. Cultural competence is a "set of academic and personal skills that allow [individuals] to increase [their] understanding and appreciation of cultural differences between groups."⁴ Law schools should play an integral role in the development of cultural competence in their students.

Diversity Education

Diversity education has both a history and prevailing model. Diversity instruction once stressed individual membership in differently situated groups. That binary approach occasionally (and unintentionally) fostered us-versus-them, perpetrator-victim, blame-shame conflicts. Diversity instruction then developed structural critiques of institutions. Although valuable, the structural approach occasionally (and unintentionally) engendered alienation from the means by which individuals might most usefully affect change. Today, diversity instruction tends toward an inter-subjective approach in which it is recognized that everyone has a story, the knowledge and telling of which can be both community building and individually cathartic.⁵

Undergraduate programs instruct in diversity and cultural competence using rich and abundant resources.⁶ Both minority and majority students and graduates of undergraduate programs appreciate appropriately designed diversity instruction.⁷ Indeed, while undergraduate students report satisfaction with their diversity instruction, after graduation many report that their diversity instruction was woefully inadequate for the workplace. Diversity in the workplace proves the globalizing nature of economic and demographic trends.

Professional schools also instruct in diversity and cultural competence. Recognizing the increasing minority population in the United States and attempting to eradicate racial and ethnic disparities in health care, medical schools have long included cultural-competence training in their curricula.⁸

Cultural competence is just as important to the legal profession. Legal education is the most fascinating of intellectual pursuits, not only because it promotes ideals but also because it reflects historical, traditional, and changing cultural norms. Culture refers not only to religious, racial, or ethnic customs and beliefs, but also to social groups created by disability, class, nationality, age, language, sexual orientation, immigration status, and a variety of other characteristics.⁹ “Cultural competence is based on the premise of respect for individuals and cultural differences and the implementation of a trust-promoting method of inquiry, advice, and counsel.”¹⁰

The Clinical Legal Education Association report titled “Best Practices for Legal Education” identified “sensitivity and effectiveness with diverse clients and colleagues” as one of five professional values deserving attention during law school.¹¹ Law graduates should demonstrate professionalism.¹² “Professionalism [not only] encompasses the formal rules of professional conduct, that is, minimally required conduct for lawyers, but it also encompasses what is more broadly *expected* of [lawyers]...by the public and by the...traditions of the legal profession....”¹³

Law School Admissions

Cultural-competence training begins with law school admissions. Law schools “can enhance their students’ abilities to deal sensitively and effectively with diverse [individuals and] groups...

by serving as a model for promoting diversity in law practice and the community, including having in the law school community a critical mass of students...from minority groups that have traditionally been the victims of discrimination.”¹⁴ Michigan’s law schools have an interesting history in this respect. At its inception, the University of Michigan Law School under Dean Thomas M. Cooley pioneered the admission of African-American and international students, consistent with its original mission of access which made it, for a time, the nation’s largest law school.¹⁵ Recently, the U-M Law School successfully defended the affirmative-action aspect of its admissions policy.¹⁶

Just as the U-M Law School was once the premier school of access for law students generally and minority law students in particular, Dean Cooley’s namesake law school, the 35-year-old Thomas M. Cooley Law School, can now make that claim. The Diverse Issues in Higher Education website ranks Cooley first in the nation in law school degrees awarded to minorities (third in African-American graduates behind historically black universities Howard and Texas Southern and high in Hispanic-American and Asian-American graduates).¹⁷

Law schools must address admissions. Despite the encouraging evidence of the election of an African-American lawyer as United States president, for more than a decade, law schools have had declining admissions of African-American students, even though law school enrollment increased significantly overall during that period. Approximately 13 percent of the population is African American, but African-American law school enrollment remains just below 7 percent. While the number of African-American law school applicants increased by 3.2 percent from 9,700 in the fall of 2002



to 10,010 in the fall of 2005, both the number and percentage of African Americans receiving law school acceptances declined in those same years.¹⁸ There are about 2 percent fewer African Americans enrolled in law school today than in 1994–1995, despite an approximately 9 percent increase in law school enrollment over the same period, when demographics would clearly indicate that there should be increasing diversity in law schools.¹⁹

It is not hard to find the culprit. Of 20 law schools with low admission indices that the American Bar Association inspected between the fall of 2002 and the fall of 2005, all 20 raised their LSAT admissions indices while under intensive ABA review, but 19 of the 20 (95 percent) saw a corresponding decline in the percentage of African-American law students enrolled.²⁰ Most law schools in the nation's eight largest law school markets raised their required LSAT scores between 2002 and 2004, and most saw a corresponding decline in African-American enrollment.²¹ The entity that administers the LSAT, the Law School Admissions Council, cautioned that it intended the LSAT to measure a limited set of skills rather than overall merit,²² but its misuse operates as a de facto quota system.²³

Curriculum

Education in cultural competence involves more than admitting law students of different ethnicities and culture. Law schools must also provide increasing opportunities for diversity education and cultural-competence training through their curricula and co- and extracurricular offerings. The law school curriculum provides far-reaching opportunities for intentional cultural-competence training for students. With traditional legal education lasting three years, law schools can integrate cultural-competence training into students' professional development. Any of the traditional first- or second-year courses could incorporate cultural competence into class discussion and lectures. For example, contracts professors could encourage students to consider whether the "meeting of the minds" and "contract formation" analyses change when there are parties of different cultures. Cultural-competence issues are also naturals for law classes like professional responsibility, constitutional law, civil procedure, and interviewing and counseling.

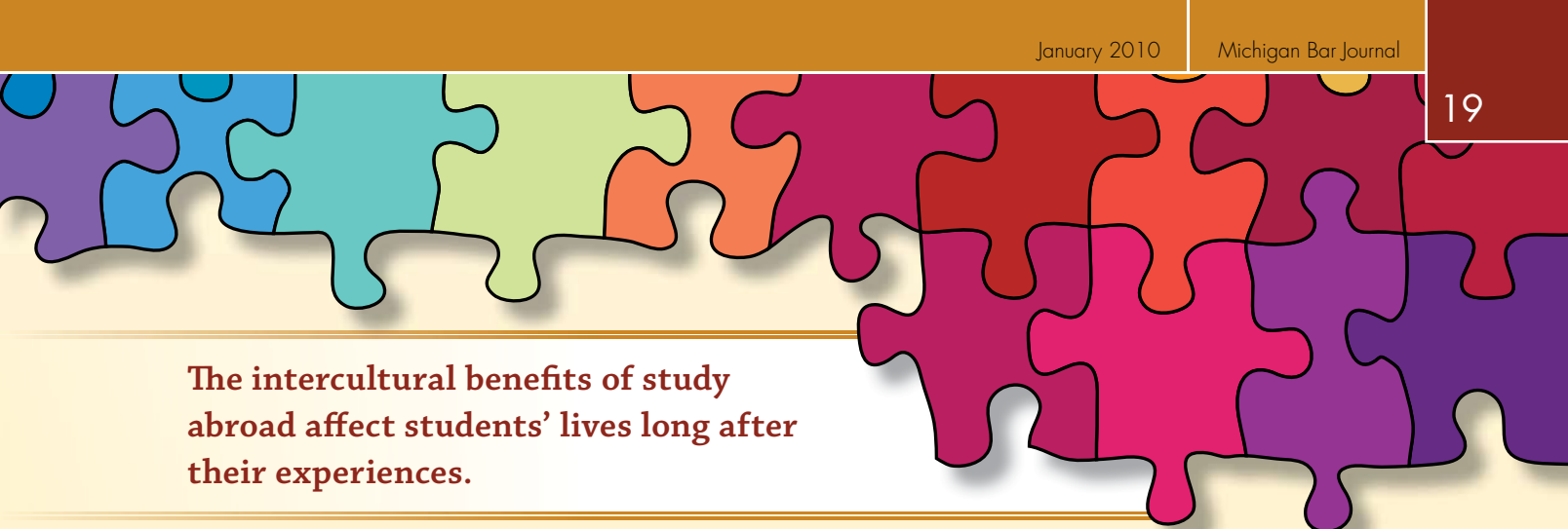
Another way to bring cultural competence into the classroom is to design an elective course such as Cultural Competence and the Law, approved by the faculty at Cooley Law School in July. Through this course, students examine the impact of culture on diverse users of the civil and criminal justice systems. Further, students develop their own cultural awareness as they begin to recognize the importance for them as future lawyers and judges to monitor their cultural lenses to ensure access to justice for all.

Law school clinical programs are another convenient area in which to incorporate cultural-competence training. Externships provide an opportunity for law students to practice law in a legal setting under the supervision of a licensed and experienced attorney. Each term, Cooley Law School places on average 250 externs with diverse interests and cultural backgrounds in various legal settings across the country and internationally. Students are required to write journals reflecting about their experiences and skill development. Faculty supervisors reviewing those journals help students identify and explore journal entries in which there are underlying issues of culture, for example, when students reveal unintentional biases potentially impacting advocacy.

In-house legal clinics often provide students with intercultural practical legal experiences through individual client representation. Students serve diverse populations in clinics for disability law, low-income taxpayers, urban redevelopment, human trafficking, and elder law. Clinics also expose students to other intercultural experiences. Many clinics have a community outreach and education component where students give presentations to community groups. At the Sixty Plus Elderlaw Clinic at Cooley's Lansing campus, the clinic director discerned that certain minority communities underutilized the clinic even though there remained a need for legal services. In an effort to address the issue, the director organized several focus groups in the minority communities attended by clinic students, faculty, and staff. The meetings confirmed that "an advocate who delivers a culturally competent presentation to a particular community group is likely to be viewed more trustworthy, thereby encouraging the advocate's audience to seek help."²⁴ Taking lessons from the focus group meetings, the clinic modified its brochure to reflect the diversity of the communities it serves, made it available in Spanish, and hired an attorney to reach out to low-income African-American communities. Clinic faculty, staff, and students continue their cultural outreach efforts. Students who participated in the focus groups learned about the importance of cultural competence to the attorney-client relationship. Those students should carry that experience into their own practice after graduation.

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Extracurricular Experiences

Other opportunities exist for cultural-competence training in co-curricular and extracurricular programs. For example, law reviews and journals can sponsor symposia on cultural competence in the legal profession. Culturally based student organizations such as the Black Law Students Association or the Jewish Law Society can host workshops and lecture series. Each year, Cooley Law School suspends classes on Martin Luther King, Jr. Day so all students, faculty, and staff can participate in what the school community has come to know as "Equal Access to Justice/MLK Day." Programs are diverse and student driven, reflecting Cooley's commitment to diversity in the law school and profession.

Law schools can also promote helpful extra-institutional programs. Study-abroad programs are one example. A survey commissioned by the Institute for the International Education of Students exploring the long-term impact of study abroad on a student's personal, professional, and academic life shows positive influences on students' career paths, world views, and self-confidence.²⁵ "When questioned about intercultural development, 98 percent of survey respondents said that study abroad helped them to better understand their own cultural values and biases, and 82 percent replied that study abroad contributed to their developing a more sophisticated way of looking at the world."²⁶

The intercultural benefits of study abroad affect students' lives long after their experiences. "Almost all of the survey respondents (94 percent) reported that the experience continues to influence interactions with people from different cultures, and 23 percent still maintain contact with host-country friends. Ninety percent said that the experience influenced them to seek out a greater diversity of friends, and 64 percent said that it also influenced them to explore other cultures."²⁷ Classroom instruction cannot replicate the experience of living and studying in another country.

Law school partnerships with the organized bar are another example. In March 2009, Cooley hosted the diversity conference "We Can, We Will, We Must," organized by the State Bar Equal Access Initiative's Under-Represented Lawyers Workgroup. Law students, lawyers, and diversity experts gathered to learn from one another about diversity needs and solutions.

Cooley's founding membership in the West Michigan College and University Presidents' Diversity Compact is another example. For several years now, representatives of the 12 member institutions, including Grand Valley State University, Ferris State Univer-

sity, Aquinas College, Hope College, Calvin College, Cornerstone University, and several others in addition to Cooley, have met to organize and conduct diversity trainings and conferences drawing on national experts. That work has enriched diversity instruction and programs at Cooley's Grand Rapids campus.

Assessment

Assessment is another key to improving law school diversity education. Law school diversity courses and programs presume two things: (1) that they will expose most or all students to cultural-competence issues and (2) that legal educators know what they are doing when developing cultural competence. Law schools can test the first of these presumptions by a curriculum-mapping process. Once law schools accept intercultural skill as a fundamental lawyer competency, they must then ensure that they teach all students those skills along with the many other lawyer competencies.

To satisfy the second presumption that law schools know what intercultural competence is, law schools must articulate what intercultural competence looks like in a lawyer.²⁸ To that end, several faculty members at Cooley developed an intercultural-competence framework from 45 diversity resources and designed a series of law student workshops under the sponsorship of Cooley's Center for Ethics, Service, and Professionalism.²⁹ There are probably many other useful frameworks. The point is that intercultural-competence training must involve more than mixing law students of different ethnicities and cultures.

Conclusion

There is little question that an increasingly diverse society has had and will continue to have a significant impact on the provision of professional services generally and, more specifically, legal services and the training of lawyers. The need for intercultural skills among professionals naturally grows along with growth in minority populations. Diversity education and instruction in intercultural skills should be part of education at all levels, including professional education.

Students cannot attain cultural competence in one semester by taking a class or participating in a study-abroad program. "Cultural competency evolves over an extended period."³⁰ Its recognition as an important professional skill in legal services suggests that "law schools should incorporate cultural-competence training

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in their curricula as a matter of course.³¹ Cultural-competence training could be included among the many professional skills law schools introduce to law students and help them refine. A student in a clinic or a graduate in practice who is unable to practice in a culturally competent way will not engender a client's trust and may compromise the representation.³²

It is a good time to re-imagine lawyers. The profession has learned much about itself in the past several decades and much about the people, communities, and nation whom lawyers serve. Law schools can now add concepts like wellness, facilitation, and collaboration to time-honored commitments like fairness, process, and justice. They can now also add cultural competence and diversity. No less than the future of the profession depends on it. ■



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FOOTNOTES

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3. See Bryant, *The five habits: Building cross-cultural competence in lawyers*, 8 *Clinical L R* 33 (2001).
4. Archbold, *Medicine spoken here*, *King County Journal Newspapers*, *South County Journal*, pp A1, A5, November 16, 1996, cited in *Cultural Competency and Healthcare*, prepared by the American Medical Student Association. A copy of the paper is available from Cynthia Ward at wardc@cooley.edu.
5. See Tanaka, *The Intercultural Campus: Transcending Culture & Power in American Higher Education* (New York: Peter Lang Publishing, 2003), pp 1, 7–8, 16, 114, 120, 129, 167, 180.
6. See, e.g. Ball, *Multicultural Strategies for Education and Social Change: Carriers of the Torch in the United States and South Africa* (New York: Teachers College Press, 2006).
7. *Id.* at 116, 144.
8. See, e.g., Champaneria & Axtell, *Cultural competence training in US medical schools*, 291 *J Am Med Ass'n* 2142 (May 5, 2004), available at <<http://jama.ama-assn.org/cgi/content/full/291/17/2142>>.
9. Voyvodic, *Lawyers meet the social context: Understanding cultural competence*, 84 *Can B R* 563, 569–570 (2005), available at <http://www.cba.org/cba/Canadian_Bar_Review/pdf/Vol84_025.pdf>.
10. Thao & Tawatao, *Developing cultural competence in legal services practice*, 38 *Clearinghouse R* 244, 245 (September–October 2004) (full article available with subscription).
11. Stuckey, *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Ass'n, 2007), p 88.
12. *Id.* at 79.
13. *Id.* at 79–80.
14. *Id.* at 89.
15. See Carrington, *Stewards of Democracy: Law as a Public Profession* (Boulder: Westview Press, 1999), pp 27–28.
16. *Gutter v Bollinger*, 539 US 306; 123 S Ct 2325; 156 L Ed 2d 304 (2003).
17. *Diverse Magazine*, *Diverse Issues in Higher Education: Top 100 Graduates* <http://diverseeducation.com/top08/top100_graduates.html?appSession=59165015206234>.
18. Nussbaumer, *The disturbing correlation between ABA accreditation and declining African-American enrollment*, 80 *St John's L R* 991, 1000 (2006) [hereinafter *Disturbing Correlation*].
19. Nussbaumer, *Misuse of the law school admissions test, racial discrimination, and the de facto quota system for restricting African-American access to the legal profession*, 80 *St John's L R* 167, 168 (2006) [hereinafter *Misuse*].
20. Nussbaumer, *Disturbing Correlation*, n 18 *supra* at 993.
21. Nussbaumer, *Misuse*, n 19 *supra* at 171.
22. Nussbaumer, *Disturbing Correlation*, n 18 *supra* at 1000.
23. Nussbaumer, *Misuse*, n 19 *supra* at 167.
24. Thao & Tawatao, n 10 *supra* at 245.
25. Dwyer & Peters, *The Benefits of Study Abroad: New Study Confirms Significant Gains*, available at <http://www.transitionsabroad.com/publications/magazine/0403/benefits_study_abroad.shtml>.
26. *Id.*
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30. Thao & Tawatao, n 10 *supra* at 245.
31. *Id.* at 247.
32. *Id.* at 245.