

A Rose by Any Other Name?

Enhancing Professionalism through Cultural Competency



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Culture is the “software of the mind.”
—GEERT HOFSTEDE

Culture is the like the air we breathe, it is largely invisible and, yet we are dependent upon it for our very being. Culture is the logic by which we give order to the world.”
—SUE BRYANT AND JEAN KOH PETERS

What is culture and why should the legal profession explore cultural awareness?

Culture plays an important role in each of our lives, whether we realize it or not. Subconsciously, we all use culture as a filter through which we make snap judgments and attach meaning to what we see and hear.¹

Culture is defined as “the deposit of knowledge, beliefs, values, attitudes, [and] meanings...acquired by a group of people in the course of generations through individual and group striving.”² Culture develops not only within countries and regions, but also among social groups, socio-economic levels, gender, religion, professional groups, etc., and so we are each multi-cultural to varying degrees.³

Cultural awareness involves the process of learning and developing sensitivity to the characteristics of another culture. The ultimate goal is to appreciate the similarities and differences of another culture without judgment or assigning of values.⁴ Raymonde Carroll explains: “Very plainly, I see cultural awareness as a means of perceiving as ‘normal’ things which initially seem ‘bizarre’ or strange among people of a culture different from one’s own. To manage this I must imagine a universe in which the ‘shocking’ act can take place and seem ‘normal’ and can take on meaning without ever being noticed. In other words, I must try to enter, for an instant, the cultural imagination of another.”⁵

The importance of cultural awareness stems from increased mobility, global interaction and the idea that effective communication is the underlying key to successful and productive relationships whether those relationships are professional or personal. Certainly communication is fundamental to successful lawyering.

What is the potential impact of the failure to consider cultural differences?

There are many examples in the business world of failed marketing campaigns as a result of a lack of cultural awareness. For example, Pepsodent marketed its toothpaste in Southeast Asia with a “whitens your teeth” campaign only to learn that the local natives chew betel nuts to blacken their teeth which is attractive in their culture.⁶ A Fresca saleswoman in Mexico was confused and later embarrassed when she learned that her audience in Mexico reacted with laughter to her sales presentation because Fresca is slang for lesbian.⁷

These examples are unfortunate failures of cultural awareness, but a more compelling and disturbing example is described by Malcolm Gladwell in his book, *Outliers*.⁸ Chapter 7, “The Ethnic Theory of Plane Crashes,” discusses a study of the tragic number of Korean Airline crashes in the 1990s. The plane crashes were excessive by industry standards and were occurring with little obvious explanation. The study revealed that both the cause and the remedy were primarily cultural. The Korean cultural use of high context, indirect language and respect for the hierarchy of relationships was inhibiting the appropriate and direct communication required between captains, first lieutenants, flight engineers and control tower employees. An American consultant was hired to change the culture — he required English as the primary means of direct communication and was able to alter the culture as it pertained to the Korean aviation industry. The number of crashes decreased dramatically. Cultural competency not only improved performance, but actually saved lives!

SO WHAT IS CULTURAL COMPETENCY?

Cultural competency has been defined in a professional context as “a set of congruent behaviors, attitudes, and policies that come together among professionals and allow those professionals to work effectively in cross-cultural situations.”⁹

There are three main components to cultural competency: attitude/awareness, knowledge and skills. If you want to gauge your level of cultural competency, Stephanie Allen West suggests that you start with the attitude/awareness component by asking yourself four questions: (1) What is your own cultural heritage? (You need to be aware of your own culture to recognize the differences.) (2) What is your comfort level with people who are culturally different? (For instance, do you judge what is different as inferior?) (3) How much do you know about the tendencies of your own mind? (Do you filter information so as to confirm what you already believe?). (4) Do you know that the ways of our culture are not universal? (Confidentiality and self-disclosure are central components to our system of legal mediation, but those concepts may be foreign and nonproductive in another cultural setting.)

After coming to terms with the answers to these questions, acquiring knowledge and skill should be second nature for a lawyer. When researching culture, it may be beneficial to begin with an awareness of the concepts of high and low context communication and the individualist and communitarian definitions of self and others.¹⁰ High context communication is more nuanced and implied. Nonverbal communication may be more significant.¹¹ Low context communication is more direct and dependent upon the literal meanings of the words.

Everyone uses both high and low context communication, but some cultures are defined more by one than the other — for instance, Asian

communication is high context, while American is low context.¹² A lawyer who is interacting with someone from a culture that is predominately high context needs to be aware of the need to look for nonverbal cues, the status of the speaker, the importance of dignity or saving face, and the fact that relationships may need to be developed using indirect routes and over time.¹³

The concept of individualism versus communitarianism is important to conflict resolution because it pertains to whether the culture places the group over the individual.¹⁴ The individualist society values autonomy, individual goal setting and accountability, and personal choice. The communitarian society places an emphasis on group harmony and cohesion, and choices are made in consultation with, and often in deference to, family and authority figures.¹⁵ The individual's actions in a communitarian culture reflect upon the group and behavior is adjusted accordingly. Often low context communication is consistent with individualism and high context communication occurs in communitarian cultures.¹⁶

Once a lawyer determines the type of communication and view of self that exists in an individual's culture, it becomes easier to study the details and nuances of that specific culture or country.¹⁷ After obtaining the requisite knowledge, the appropriate interpersonal skills may be honed to achieve cultural competency.

WHAT ABOUT MANDATING CULTURAL COMPETENCY WITHIN THE "CULTURE" OF THE LEGAL PROFESSION?

The lawyer-client exchange is a cross-cultural one even if the individuals involved have some cultural variables in common. The culture of the legal profession evidences its own values, history, procedures, etc. One reflection of the legal profession's culture is the Code of Professional Responsibility. This Code defines effective, ethical legal representation and includes what may be deemed to be the four main "pillars" of advocacy: competence (4-1.1), diligence (4-1.3), communication (4-1.4), and (4-1.6) confidentiality. However, these "pillars" that support and describe legal representation do not mention cultural awareness or cultural competency. If

cultural competency was mandated, then competence would be defined as not only having the requisite legal skill, but also having an understanding of the culture of the client. Diligence would compel a lawyer to pursue a case in a manner consistent with the cultural values of the client. Communication would result in not only keeping the client informed, but in doing so in a style that is consistent with the client's culture and manner of communication. Confidentiality would be explained and treated in a manner consistent with the individualistic or communitarian viewpoint. Viewing the Code of Professional Responsibility in this manner would increase both professionalism and effectiveness.

How can the legal profession achieve increased cultural awareness and cultural competency?

Susan Bryant of CUNY Law School and Jean Koh Peters of Yale Law School have provided a suggested methodology for achieving increased cultural awareness in the legal profession in their article, *Five Habits for Cross-Cultural Lawyering*.¹⁸ These habits are designed to provide lawyers with a system that is based upon the following principles: (1) A lawyer should be able to identify her assumptions; (2) A lawyer should challenge those assumptions with fact; and (3) A lawyer should practice law based upon fact.¹⁹

The first habit, "Degrees of Separation and Connection," requires a lawyer to identify and record all the difference and similarities between herself and the client. Examples of variables to list are: ethnicity, race, gender, nationality, age, economic status, marital status, social status, role in the family, language, immigration, sexual orientation, religion, physical characteristics, education, time orientation, individualistic/collective and direct or indirect communication style.²⁰ A lawyer should employ the list as an aid to assist in interpreting the client's body language, behavior and words within the context of the client's culture rather than through the lawyer's cultural lens.²¹

The second habit, "The Three Rings," suggests expanding the cultural analysis to include the legal system. How do both the participants in the system and the law impact the client? For instance, is the judge likely to have a sympathetic view of the client based upon not only a legal, but a cultural analysis?²² What are the

similarities or differences between the lawyer and the law and its participants in a particular case? The list should be analyzed to gain insight into the assessment of the legal claim, strategy and credibility.²³ The lawyer should decide whether there is an issue with the state of the law. Can the legal culture be changed to legitimate the client or does the client need to adjust perspective to align with the current state of the law?²⁴

The third habit, "Parallel Universe," asks that a lawyer challenge herself to identify the many alternatives to the interpretations to which she may be tempted to leap on insufficient information.²⁵ For example, a client's tardiness or failure to heed her lawyer's advice may not have anything to do with her attitude towards her case, but rather may be connected to a cultural habit or attitude.

The fourth habit, "Red flags and Remedies," addresses client interaction and how to evaluate a situation in which the communication is not optimal. The emphasis is on remaining "in the moment" and avoiding use of routine answers and scripts.²⁶ "Mindfulness is cultivated by assuming the stance of an impartial witness to one's own experience."²⁷ We each need to become aware of the constant stream of judging and reacting to inner and outer experiences in which we are all normally engaged, and learn to step back and reflect on the current moment.²⁸ If a lawyer remains "in the moment" then she can observe whether there are any of the following red flags: the client appears bored, disengaged or uncomfortable; the client has not spoken in many minutes and the lawyer is dominating; the client is angry; the lawyer is judging the client negatively; or the lawyer is distracted or bored.²⁹

If a red flag is spotted, a lawyer can redirect the conversation in a manner more appropriate to the client's cultural frame of reference. For example, a lawyer's direct questioning of an Aborigine woman who stabbed her boyfriend yielded little information. The aboriginal culture is not one of direct questioning. Privacy is respected, communication is indirect and there is an exchange of personal information by both parties before getting to the matter at hand.³⁰ Once the interaction was modified to comply with the woman's culture, she volunteered that

she had stabbed her abusive boyfriend to protect her niece from being raped.

Finally, the fifth habit, "The Camel's Back,"³¹ acknowledges that there are numerous factors, beyond just cultural ones, in play in any interaction. Sometimes a "perfect storm" of variables conspire to derail the lawyer-client relationship. Habit five asks a lawyer to locate and evaluate the proverbial straw that broke the camel's back. A lawyer can then combine this evaluation with the analysis that takes place in habit one to correct not only cultural misunderstanding, but other variables that are within her control, such as hunger, tiredness and distraction.³²

CONCLUSION

Cultural awareness and the practice of law are both fundamentally concerned with human beings communicating with one another to achieve understanding and the resolution of differences. Empathy and knowledge are vital keys to cultural competence and result in more effective and professional lawyering.³³ The four pillars of effective representation: competence, diligence, communication and confidentiality, are enhanced through an increased awareness, understanding, and application of cultural competence in everyday legal practice. ■

"People fail to get along because they fear each other. They fear each other because they don't know each other. They don't know each other because they have not properly communicated with each other." —MARTIN LUTHER KING

¹ Stephanie Allen West, "Why I left My Heart in San Francisco: California Lawyers Expand Their Cultural Awareness," *Lawyer Hiring & Training Report*, Vol. 15, No. 4, April 1995.

² Larry A. Samovar & Richard E. Porter, *Communication Between Cultures* (5th ed. 2003) (defining culture as the customary beliefs, social form, and material traits of a racial, religious, or social group).

³ Culture is acquired by a learning process. French psychiatrist and cultural anthropologist Clotaire Rapaille explains that emotion is required for learning and that our emotional responses give rise to imprints on our brains. This psycho-emotional phenomenon explains why individuals know where they were when they learned that President Kennedy was assassinated and other major dramatic events.

Rapaille studies culture to assist corporations

in marketing products and does so by use of focus groups that ask individuals not what they would like in a product, but rather what is their earliest association to a product. In other words, Rapaille believes that you cannot believe what people say; rather, you have to determine what they mean. In this manner, he concluded that Americans' "code" for Jeep is horse and therefore a successful marketing campaign ensued that essentially used a Jeep in a western setting in which a horse might have been used. Interestingly, when the Nestlé Corporation was struggling to create a market for coffee in Japan in the 1970s, Rapaille determined that the Japanese had no early association for coffee and therefore Nestlé would be doomed to failure. Nestlé developed an alternative strategy that involved introducing coffee flavored children's desserts in Japan and twenty years later, after having provided an entire generation with a positive association with coffee, there was a significant market for coffee in Japan. Clotaire Rapaille, *The Culture Code: An Ingenious Way to Understand Why People Around The World Buy and Live As They Do* (2006).

⁴ *Id.*

⁵ Raymonde Carroll, *Cultural Misunderstandings*, University of Chicago Press, Chicago, 1988: pg 2.

⁶ Neil Payne, "Results of Poor Cross Cultural Awareness," available at <http://ezinarticles.com/?Results-of-Poor-Cross-Cultural-Awareness&id=47&opt=print>

⁷ *Id.*

⁸ Malcolm Gladwell, *Outliers: The Story of Success* (1st ed. 2008).

⁹ "How does Cultural Competency differ from Cultural Sensitivity/Awareness?" available at http://cecp.air.org/cultural/Q_howdifferent.htm.

¹⁰ Michelle LeBaron, "Communication Tools for Understanding Cultural Differences," available at http://www.beyondintractability.org/essay/communication_tools (June 2003).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ LeBaron, *supra* n. 92.

¹⁷ *Id.*

¹⁸ Susan Bryant, "The Five Habits: Building Cross-Cultural Competence in Lawyers," 8 *Clinical Law Review* 33 (2001).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Bryant, *supra* n. 100.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Jon Kabat-Zinn, *Full Catastrophe Living: Using the Wisdom of Your Body and Mind to Face Stress, Pain and Illness* 32 (1990).

²⁸ *Id.*

²⁹ Bryant, *supra* n.100.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Stephanie Quappe & Giovana Cantatore, "What is Cultural Awareness Anyways? How do I Build It?" available at Culturocity.com (2005).

MEMBER NEWS

► **Kimberly D. Webb** has been appointed to the Board of the National Conference of Women's Bar Associations. A former president of CFAWL, she works for Littler Mendelson, P.C. She has been an active FAWL member since 2003.



► **Jana McConnaughay** has been appointed to the Safeguard our Seniors Task Force by state CFO Alex Sink, created to raise awareness and better protect Florida's seniors against financial fraud, with an initial focus on annuity fraud. She practices elder law with the McConnaughay Law Group.



Mattie Belle Davis Society

We wish to commend the following members of the Mattie Belle Davis Society for their contribution this past year to State FAWL through an established membership level honoring the late Judge Davis and her extraordinary lifelong commitment to FAWL and the women lawyers of Florida.

- **C. Kim Banister**
- **Harvey Baxter**
- **Tasha K. Dickinson**
- **Sherri Johnson**
- **Gigi Rollini**
- **Siobhan H. Shea**
- **Rebecca H. Steele**
- **Kimberly D. Webb**
- **Laura Wendell**

Membership in the society begins at \$100 and is separate from regular dues. Access the FAWL website to join, or forward payment to: FAWL, P.O. Box 15998, Tallahassee, FL 32317-5998. ■

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