

# PROCEEDINGS

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ONLINE JOURNAL OF LEGAL WRITING CONFERENCE PRESENTATIONS

VOLUME 1, ISSUE 2

WINTER 2020

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THE POWER OF EMPATHY:  
CULTIVATING CULTURALLY COMPETENT LAWYERS

EUNICE PARK

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VOLUME 1

ISSUE 2

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## THE POWER OF EMPATHY: CULTIVATING CULTURALLY COMPETENT LAWYERS

EUNICE PARK<sup>1</sup>

The ability to connect with diverse clients and audiences is not a soft skill, but a power skill. This connection is just as important as substantive knowledge and is essential for the competent practice of law. Fostering that connection must start with recognizing one's own positionality. Without that starting point, there can be no way to step beyond and recognize the validity of other positionalities. Thus, one challenge in the classroom is to cultivate this ability to recognize positionality. To use the language of assessments and learning outcomes, how do we cultivate this aspect of cultural competence?

One way is by building empathy. One cannot be culturally competent if one is in a silo, if one lacks empathy. Two ways to be intentional about building empathy in the classroom, as a pathway to cultivating culturally competent lawyers, include (1) modeling awareness as the professor; and (2) integrating culturally meaningful facts into assignments.

### **Modeling by the Professor**

Students respond differently to instructors on the basis of their visible or perceived identity, including race and gender. The responses, at least initially, can include “a sense of trust, affinity,

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authenticity, hope, as well as distrust, alienation, skepticism, or isolation.”<sup>2</sup>

You can begin your modeling when introducing yourself to students by showing your awareness of that positionality, such as racial and social location.<sup>3</sup> Modeling awareness of one’s own positionality allows for understanding, first of all, that such a thing as positionality exists, for those students who may not have considered it before; it also creates space for students to be able to critically evaluate their own.

While no formula can be stated for how to model awareness, conveying humility in one’s narrative will send the important message that you are the professor but also a human being, one who can make mistakes and also is committed to learning from them, and allows room for students to do the same and accept one another.<sup>4</sup>

Ultimately, what one decides to share will be a personal decision based on comfort zone and the makeup of the students. As an example, when I taught LL.M courses and had many international students, I shared a bit about my family’s immigrant background and the fact that I did not speak English when I started attending school. What works “for a white male instructor in a room full of students of color,” might not work for a female person of color “facing mostly white students.”<sup>5</sup>

In sum, sharing one’s own personal narrative invites students “to bring their whole selves to academic settings” and also to see—and have empathy for—other students’ whole selves.<sup>6</sup>

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<sup>2</sup> M. Brielle Harbin, Amie Thurber & Joe Bandy, *Teaching Race, Racism, and Racial Justice: Pedagogical Principles and Classroom Strategies for Course Instructors*, 4:1 *Race and Pedagogy* J. 1, 14 (2019).

<sup>3</sup> *Id.* at 25.

<sup>4</sup> *See id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

### **Integrating Meaningful Cultural Perspectives into Assignments**

“Cultural perspectives” can address race, socioeconomics, gender, institutional structure, industry background, or any other demographics that can comprise positionality. In our increasingly global community, cultural perspectives can include different countries that opposing counsel, co-counsel, or clients may represent.

To teach this power skill, design assignments to incorporate cultural context that meaningfully affects the legal issue or task at hand, to instill awareness of this diversity’s significance. Two ways to do so are to include cultural context that affects (1) critical analysis of a legal issue; or (2) choices one can make about strategies in a skill set, such as negotiations.

#### ***Critical analysis of a legal issue***

The following appellate brief problems are a few examples of assignments that plant culturally meaningful, legally significant facts that could affect the analysis:

*Curtilage.* The issue of whether the defendant’s shack was part of the domicile, under the Fourth Amendment, required the student to look beyond the Western definition of what is a “home” or “domestic use.”<sup>7</sup>

*Confrontation Clause.* The issue of whether the defendant’s Sixth Amendment rights of confrontation was violated gave students the opportunity to address the effect of the witness’s gender, her possibly involuntary role as the defendant’s female companion, and the argument that having a group of men in the courtroom made her fear for her safety.

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<sup>7</sup> Eunice Park, “Establishing Learning Outcomes Under ABA Standard 302: Cultural Competence,” AALS Section on Teaching Methods Newsletter, Fall 2016, at 6.

*Sexual Harassment.* The issue of whether the employer's conduct created a hostile work environment under Title VII included the opportunity to discuss whether the plaintiff's ability to make choices can be hindered by lack of workplace power or socioeconomic standing.

### ***Strategic choices***

Cultural factors also should dramatically affect negotiation strategy when the principals are, for example, from different countries. Differences in how to prepare and approach a negotiation can depend on cultural values, such as the following:<sup>8</sup>

- Goal: Is the goal an immediate substantive outcome, or a long-lasting relationship?
- Formality: What are the expectations regarding the formality of dress code or greetings?
- Communication: How does body language and tone of voice that may simply be typical of a culture affect perception and credibility by an individual from a different culture?
- Risk-Taking Propensity: How risk-averse is one's own, or the other party's, culture?
- View of Time: What are the attitudes held about time and punctuality?

Make students aware of these cultural frameworks and let them know that beginning a negotiation without awareness of such differences in cultural expectations is to undertake professional risk. Beginning with awareness, on the other hand, not only of the other party's cultural expectations but also of one's own cultural

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<sup>8</sup> See Jeswald W. Salacuse, "Negotiating: The Top Ten Ways that Culture Can Affect Your Negotiation," Ivey Business Journal (Sept./Oct. 2004), <https://iveybusinessjournal.com/publication/negotiating-the-top-ten-ways-that-culture-can-affect-your-negotiation/>.

assumptions, requires being informed and empathetic, and will directly, and positively, impact the success of the negotiations.

### **Conclusion**

Cultural competence is a power skill more than ever in the current sociopolitical climate. Cultivating culturally competent lawyers requires us to teach, among other tools, an ability to be empathetic. We can do this in the classroom by modeling awareness of positionality and by integrating culturally sensitive facts into assignments in analytically important ways.