

# Beyond Compliance: Unmasking the Gaps in ABA Standard 303(c) for Cultural Competency

ASSATA SMITH\*

I. INTRODUCTION.....	386
II. BACKGROUND .....	389
A. <i>Culture and Cultural Competency</i> .....	389
B. <i>Why Cultural Competency Is Important for Law Students</i> 396	
1. Cross-Cultural Lawyering is Good Lawyering .....	396
2. The Five Habits for Building Cross-Cultural Competence in Law Students.....	398
C. <i>American Bar Association Standard 303(c)</i> .....	403
D. <i>The History of Teaching Legal Ethics and Professional         Responsibility Education</i> .....	410
III. ANALYSIS.....	412
IV. PROPOSED SOLUTIONS .....	415
A. <i>Cultural Competency as a Required Course in the Law         School Curriculum</i> .....	416
B. <i>Making Cultural Competence a Learning Outcome</i> .....	421
V. CONCLUSION .....	422

---

\* Research Editor, Volume 55, and Staff Member, Volume 54, *The University of Memphis Law Review*; Juris Doctor Candidate, University of Memphis Cecil C. Humphreys School of Law, 2025; B.A., Spelman College. Writing this piece has been an emotional and challenging journey, shaped by experiences that tested my strength and resolve. I could not have navigated this path without the unwavering support of my family and friends. Their encouragement, understanding, and presence have been my foundation, lifting me when I felt weighed down and reminding me that I was never alone in this process. To those who stood by me, thank you. This work is as much a reflection of your support as it is of my own journey.

## I. INTRODUCTION

*One of the great liabilities of history is that all too many people fail to remain awake through great periods of social change. Every society has its protectors of status quo and its fraternities of the indifferent who are notorious for sleeping through revolutions. [T]oday, our very survival depends on our ability to stay awake, to adjust to new ideas, to remain vigilant and to face the challenge of change.*<sup>1</sup>

— Martin Luther King Jr.

In the early weeks of the Fall 2023 semester at the University of Memphis Cecil C. Humphreys School of Law (“Memphis Law”), a few student leaders of the school’s Law Review worked together to construct a “trophy” to acknowledge the excellent Bluebook editing work done by Law Review staff each week. The “trophy” was made up of a football, a long black wig, big red lips, and was named “Sheila.” The trophy then sat on display for nearly two weeks in the Law Review suite until a few concerned Law Review members brought to the attention of leadership the resemblance of the trophy to blackface.<sup>2</sup> While none of the individuals involved had any intention of creating something which such insensitive racial connotations, nevertheless, the creation of the trophy was an egregious oversight on the part of all involved to not recognize what the trophy resembled and the potential harm it could cause to members of Law Review. Both the Law Review leadership and the Dean of the law school issued apologies for the “creation, display, and digital sharing of a racist caricature” which was

---

1. MARTIN LUTHER KING, JR., WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY 181 (1967).

2. Blackface became popular after the Civil War as white performers painted their faces black and painted on enlarged, exaggerated red lips as to mimic and imitate enslaved Africans in what they called minstrel shows. In 1830, Thomas Dartmouth Rice, often referred to as the “Father of Minstrelsy” introduces the widely known blackface character named “Jim Crow.” These minstrel shows often would portray Black people as “lazy, ignorant, superstitious, hypersexual, and prone to thievery and cowardice.” Minstrel shows created many of the negative stereotypes prescribed to African Americans today. *Blackface: The Birth of an American Stereotype*, NAT’L MUSEUM OF AFR. AM. HIST. & CULTURE, <https://nmaahc.si.edu/explore/stories/blackface-birth-american-stereotype>.

“extremely traumatic, offensive, and contrary to the core values of [the] law school.”<sup>3</sup>

I was one of the concerned Law Review members who brought Sheila’s offensive nature to the attention of the leadership of Law Review. As an African American woman, I have a deep understanding of minstrel shows, blackface, and its negative impact on the Black community.<sup>4</sup> It is a part of American history that is deeply offensive and insensitive to the African American culture. So, it was disheartening to see that others were so unable to recognize that the “trophy” they were creating bore an uncanny resemblance to such a racist and offensive caricature. This incident prompted me to research the standards for cultural competency education at Memphis Law as I could not understand how, in the process of the trophy’s creation, none of my fellow Law Review members saw its racially offensive nature.

While this incident directly impacted me during my time in law school, it is crucial to recognize that such occurrences are not unique to Memphis Law. Other law schools have faced similarly, if not more severe, offensive incidents involving students, professors, and administration.<sup>5</sup> Marked by bias, racism, and cultural incompetence in higher education, these instances highlight the deficiencies in how law schools educate their students on these issues and how they can subsequently manifest in the legal community. Advocating for a robust and deliberate emphasis on cross-cultural competency and bias

---

3. Email from Katharine T. Schaffzin, Dean, Cecil C. Humphreys Sch. of L., to student body (Sept. 14, 2023, 3:29 PM) (on file with author); *see also* Joe Patrice, *Law Review Creates Blackface Trophy for Bluebooking and It’s as Awful as It Sounds*, ABOVE THE L., (Sept. 19, 2023), <https://abovethelaw.com/2023/09/law-review-blackface-trophy>; Paul Burch, *Blackface Caricature Draws Criticism at Memphis Law School*, TENN. BAR ASS’N, (Sept. 19, 2023), <https://www.tba.org/?pg=LawBlog&blAction=showEntry&blogEntry=96640>.

4. *See* Alexis Clark, *How the History of Blackface Is Rooted in Racism*, HIST. (Mar. 29, 2023), <https://www.history.com/news/blackface-history-racism-origins> (discussing the racist history of blackface and minstrel shows and its impact on Black Americans).

5. *See* Jenna Russell, *In Vermont, a School and Artist Fight over Murals of Slavery*, N.Y. TIMES (Feb. 21, 2023), <https://www.nytimes.com/2023/02/21/us/vermont-law-art-slavery.html> (discussing how Vermont law school displayed two murals which depicted gruesome slavery scenes including “a slave market, a slave owner wielding a whip[,] and an attacking dog.”).

education becomes paramount because future members of the legal community will inevitably interact with a diverse array of clients, colleagues, peers, judges, and superiors. The legal field demands a high level of cultural awareness and sensitivity due to the broad spectrum of individuals involved in legal processes. Ensuring that law schools prioritize these traits is crucial not only for fostering a more inclusive and equitable practice but also for preparing graduates to navigate and contribute positively to the multifaceted legal environment they will encounter. This emphasis on cross-cultural competency is essential for promoting justice and fairness in a profession that operates at the intersection of diverse perspectives and experiences.

To build on the necessity of cross-cultural competency and bias education in legal training, recent developments in accreditation standards underscore this imperative. The American Bar Association (“ABA”) revised the Standards of Approval for Law Schools to require law schools provide education on “bias, cross-cultural competency, and racism” once at the start of student’s legal education and once more before graduation.<sup>6</sup> Culture refers to the shared beliefs, customs, values, and behaviors of a particular group, while cultural competence is the ability to effectively interact and communicate with individuals from diverse cultural backgrounds while respecting and understanding their perspectives.<sup>7</sup> This Note asserts that the revised ABA Standard 303(c) incorporating education on these topics is insufficient and too vague to effectively cultivate cultural competency education for law students. I will discuss a resolution to the insufficiency by explaining that a new course requirement is necessary to truly address the goal of producing a new generation of cross-culturally competent lawyers. Part II defines culture and cultural competency and gives background knowledge on the importance of cultural competency in the legal profession. Part III examines the ways in which ABA Standard 303(c) is insufficient in directing law schools on teaching cultural

---

6. ABA STANDARDS AND RULES OF PROC. FOR THE APPROVAL OF L. SCHS. (Am. Bar Ass’n 2022) [hereinafter ABA STANDARDS], [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/standards/2023-2024/23-24-standards-ch3.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/23-24-standards-ch3.pdf).

7. Christina A. Zawisza, *Teaching Cross-Cultural Competence to Law Students: Understanding the “Self” as “Other,”* 17 FLA. COASTAL L. REV. 185, 193, 197 (2015).

competency. Part IV presents a resolution to the insufficiency of Standard 303(c) by proposing that the Standard must require that cultural competency training be a course requirement and learning outcome for law schools.

## II. BACKGROUND

Understanding the significance of comprehensive cultural competency education in law school curriculum requires an initial grasp of the key concepts of culture and cultural competency while also recognizing their pervasive impact in the legal profession. This Part provides the meaning of culture and cultural competence education, underscores its essential role for law students entering the legal field, and delves into the existing ABA standard that mandates cross-cultural competence education.

### A. Culture and Cultural Competency

Culture is a summation of a person's "ethnicity, race, gender, nationality, age, economic status, social status, language, sexual orientation, physical characteristics, marital status, role in family, birth order, immigration status, religion, accent, skin color or a variety of other characteristics."<sup>8</sup> Culture provides the very foundation for the way that we perceive and experience the world. It is helpful to think of culture as the "software of the mind."<sup>9</sup> Like a computer software program, culture is the software which programs the hard drive of our minds and attaches meaning to the world around us.<sup>10</sup> It influences our perspective of the world, giving us the norms and values that shape our role in society.<sup>11</sup> Because the cultural lens shapes how we understand and navigate the world, culture also affects our understanding of

---

8. Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 41 (2001).

9. GEERT HOFSTEDE ET AL., CULTURES AND ORGANIZATIONS: SOFTWARE OF THE MIND 4-5 (3d ed. 2010).

10. *Id.*

11. Zawisza, *supra* note 7.

others.<sup>12</sup> It is our own cultural understanding that affects the attributions that we make about others.<sup>13</sup> For example, we may perceive another as rude if their behavior does not align with our own culturally contingent understanding of politeness.<sup>14</sup> These perceptions that are based in our own culture can be so deeply ingrained that one can be completely unaware of its influence in our understanding of others.<sup>15</sup> As a society, we all have:

immediate, automatic associations that tumble out before we've even had time to think . . . . The giant computer that is our unconscious silently crunches all the data it can from the experiences we've had, the people we've met, the lessons we've learned, the books we've read, the movies we've seen, and so on, and it forms an opinion.<sup>16</sup>

Thus, these immediate, automatic associations are inextricably tied to culture as it is one's culture that creates unconscious associations in the brain and influences our assessments of others both positively and negatively to form implicit biases.<sup>17</sup>

Recognizing that our perception of others is heavily influenced in our individualized culture, cultural competency has become an essential skill for our multicultural world. Cultural competency is "the ability to accurately understand and adapt behavior to cultural difference and commonality."<sup>18</sup> The Development Model of Intercultural Sensitivity ("DMIS") explains cultural competence as a

---

12. Victoria Wilson, *Cultural Lens: How Our Environment Shapes Our Perspectives*, EXCEPTIONAL FUTURES, <https://www.exceptionalfutures.com/cultural-lens> (last visited Feb. 29, 2024).

13. *Id.*

14. Debra Chopp, *Addressing Cultural Bias in the Legal Profession*, 41 N.Y.U. REV. L. & SOC. CHANGE 367, 371–72 (2017).

15. Honglin Zhu, *From Intercultural Awareness to Intercultural Empathy*, 4 ENG. LANGUAGE TEACHING 116, 116 (2011).

16. MALCOLM GLADWELL, BLINK: THE POWER OF THINKING WITHOUT THINKING 84–85 (2005).

17. *See id.* at 85 (describing how unconscious cultural associations impact how people react to certain social situations).

18. Travis Adams, *Cultural Competency: A Necessary Skill for the 21st Century Attorney*, 4 WM. MITCHELL L. RAZA J. 1, 6 (2012), <https://open.mitchellhamline.edu/lawraza/vol4/iss1/2>.

“developmental continuum” where individuals enhance their understanding and appreciation of cultural differences.<sup>19</sup> This model outlines stages from basic awareness to more sophisticated intercultural interactions, emphasizing growth in sensitivity and empathy toward diverse cultures.

Figure 1: Developmental Model of Intercultural Sensitivity (also called the “Bennett Scale”)<sup>20</sup>



The DMIS progresses from ethnocentric to ethnorelative worldviews in five developmental stages.<sup>21</sup> An ethnocentric perspective of the world is the belief that one’s own race or cultural group is superior to that of other cultural groups.<sup>22</sup> “Ethnocentrism often leads to incorrect assumptions” of others or a belief that another culture is “wrong or immoral.”<sup>23</sup> The DMIS categorizes the first three stages of cultural competence as ethnocentric.<sup>24</sup> The first stage is denial of cultural differences in which one perceives their culture as being the only real culture and others are ignored.<sup>25</sup> The denial stage

19. *Developmental Model of Intercultural Sensitivity*, ORGANIZING ENGAGEMENT (Dec. 19, 2023, 10:47 AM), <https://organizingengagement.org/models/developmental-model-of-intercultural-sensitivity> [hereinafter ORG. ENGAGEMENT].

20. *Id.*

21. *Id.*; see also Adams, *supra* note 18.

22. LISA WORTHY ET AL., CULTURE AND PSYCHOLOGY: HOW PEOPLE SHAPE AND ARE SHAPED BY CULTURE 30 (2020), <https://open.maricopa.edu/culturepsychology>.

23. *Id.*

24. Adams, *supra* note 18, at 8.

25. *Id.* at 9.

is often an overly simplistic view of other cultures which leads to lumping all other cultures together as foreign.<sup>26</sup> This stage is where stereotyping or demeaning others based on their culture often occurs because one assumes that different cultures have “deficiencies in character intelligence, physical ability, work ethic, or other innate traits.”<sup>27</sup>

The next stage is defense against cultural differences in which one recognizes other cultures but views them negatively.<sup>28</sup> This strictly ethnocentric view of culture creates inevitable issues as it focuses on overly simplistic view of one culture’s norms and values being “right” and any other differing norms and values as being “wrong.”<sup>29</sup> Those in the defense stage think of their culture as the only one that is “normal.”<sup>30</sup> This perception of culture creates prejudicial and biased interactions with other, often minority, cultural groups.<sup>31</sup> It is this view of the world and unwillingness to understand other cultures that have led to war and genocide.<sup>32</sup>

The last of the ethnocentric stages is minimization of cultural differences.<sup>33</sup> Individuals in the minimalization stage believe that their culture’s values align with fundamental human values universally, thus they assume that everyone has the same sentiments regarding cultural differences.<sup>34</sup> This belief often leads to a disregard of cultural

---

26. ORG. ENGAGEMENT, *supra* note 19.

27. *Id.*

28. Adams, *supra* note 18, at 9.

29. *Id.*

30. *Id.*

31. *Id.*

32. WORTHY et al., *supra* note 22, at 30–31. For example, historical instances like the Holocaust and the Rwandan Genocide illustrate the extreme consequences of such ethnocentric views. During the Holocaust, Nazi ideology promoted the idea of Aryan racial superiority, which led to the systematic dehumanization and extermination of Jews and other groups deemed inferior. Similarly, in Rwanda, the defense stage mentality contributed to the genocide of the Tutsi population by Hutus, who saw their own ethnic group as superior. These events underscore the potential for severe conflict when cultural differences are perceived through a lens of inherent superiority and inferiority. See Grace Song, *The Role of Ethnocentrism in Obedience and Genocide*, MEDIUM (Sep. 22, 2021), <https://medium.com/@gksong/the-role-of-ethnocentrism-in-obedience-and-genocide-f57ac1a1a44c>.

33. Adams, *supra* note 18, at 10.

34. ORG. ENGAGEMENT, *supra* note 19.



differences rather than acknowledging their importance because they believe that “deep down humans are all alike.”<sup>35</sup> By ignoring the cultural differences intrinsic to a multicultural world, people are enabled to avoid recognizing their own implicit biases or avoid taking the steps necessary to learn of other cultures and their values.<sup>36</sup> Sentiments such as being “color-blind” or the “All Lives Matter” response to the Black Lives Matter movement are examples of minimization.<sup>37</sup>

On the other end of the cultural competence continuum is an ethnorelative mindset.<sup>38</sup> Cultural relativism counters ethnocentrism by promoting an understanding of other culture’s values from the point of view of that culture.<sup>39</sup> Instead of denying, distancing oneself from, or minimizing another culture, a person with an ethnorelative mindset tries to understand cultural differences and avoids making hasty judgments regarding them.<sup>40</sup> Embracing an ethnorelative perspective often involves navigating complex and sometimes conflicting cultural norms and values, which can be inherently unsettling.<sup>41</sup> This discomfort arises because it challenges deeply held beliefs and assumptions about what is “normal” or “correct.”<sup>42</sup> However,

---

35. *Id.*

36. *Id.*

37. *Id.* The Black Lives Matter (“BLM”) movement arose in 2013 as a response to the murder of Trayvon Martin and acquittal of his killer, George Zimmerman. The BLM movement gained prominence as a protest against racial injustice and police brutality, particularly the disproportionate violence against Black people. The phrase “Black Lives Matter” is meant to emphasize the need to address the specific injustices that Black Americans face due to systemic racism and inequality. The phrase “All Lives Matter” has been used in response to the BLM movement, but it has been criticized for dismissing or misunderstanding the message of “Black Lives Matter.” Responding to the BLM movement with “All Lives Matter” protests the specific challenges faced by the Black community. By stating “All Lives Matter” one ignores cultural differences and dilutes the urgency of addressing systemic racism. L-Mani S. Viney, *Here’s Why It Hurts When People Say “All Lives Matter,”* VANITY FAIR (July 19, 2016), <https://www.vanityfair.com/news/2016/07/black-lives-matter-all-lives-matter>.

38. Adams, *supra* note 18, at 11.

39. WORTHY et al., *supra* note 22, at 31.

40. *Id.* at 31–32.

41. *See id.* (“Becoming aware of these new possibilities will ultimately change the people who are exposed to the new ideas.”).

42. *Id.*

individuals with an ethnorelative mindset are willing to engage with this discomfort because they recognize the value in gaining a deeper, more nuanced understanding of diverse perspectives.<sup>43</sup>

The three stages that encompass the ethnorelative perspective are Acceptance, Adaptation, and Integration.<sup>44</sup> The acceptance of cultural differences happens when one recognizes that each culture has different sets of values or behaviors, and that their own culture is just one of many other equally complex cultures globally.<sup>45</sup> Here, one is able to “truly accept[] the relativity of values within cultural context, and experienc[e] the world as organized by different values.”<sup>46</sup> The acceptance stage may manifest into a curiosity in other cultures and desire to learn more about them and how they may differ from one’s own culture.<sup>47</sup> Someone in the acceptance stage may also seek to develop more cross-cultural relationships than an individual with an ethnocentric view because they are able to acknowledge and respect the cultural differences in such relationships.<sup>48</sup>

The next stage of ethnorelativism in the DMIS spectrum is the adaptation to cultural differences which occurs when people are able to adopt the cultural perspectives of another and empathize with another’s culturally different experiences.<sup>49</sup> It is essentially being able to see the world from another’s point of view or putting oneself in another’s shoes.<sup>50</sup> In other words, adaptation involves being a “cultural chameleon” in which a person can recognize cultural differences and change their behavior as appropriate to the different cultural contexts.<sup>51</sup> It is here that intercultural communication thrives because individuals

---

43. *Id.*

44. Adams, *supra* note 18, at 11–14; ORG. ENGAGEMENT, *supra* note 19.

45. ORG. ENGAGEMENT, *supra* note 19; Adams, *supra* note 18, at 11.

46. Adams, *supra* note 18, at 11.

47. ORG. ENGAGEMENT, *supra* note 19.

48. *Id.*

49. *Id.*

50. Adams, *supra* note 18, at 13 (quoting Milton Bennett, *Becoming Interculturally Competent*, in TOWARD MULTICULTURALISM: A READER IN MULTICULTURAL EDUCATION 62, 68 (Jaime Wurzel ed., 2004)).

51. *Id.*; ORG. ENGAGEMENT, *supra* note 19.

are able to appropriately interact with people of different cultures in a way that emphasizes another's cultural experience or perspective.<sup>52</sup>

The last stage of the DMIS continuum is integration of cultural differences in which one is able to incorporate another culture's values, beliefs, or perspectives into their own cultural identity in an authentic way.<sup>53</sup> Integration occurs when "one's experience of self is expanded to include the movement in and out of different cultural worldviews . . . . [P]eople are able to experience themselves as multicultural beings who are constantly choosing the most appropriate cultural context for their behavior."<sup>54</sup> Although this stage does not definitively represent an improvement in cultural competence, such as the other ethnorelative stages, it does describe a shift in one's definition of their own cultural identity.<sup>55</sup>

The DMIS framework illustrates the progression from ethnocentric to ethnorelative worldviews, highlighting the shift from viewing other cultures through a lens of superiority and ignorance to a more nuanced and empathetic understanding.<sup>56</sup> This progression underscores the importance of developing cultural competence, which extends beyond merely recognizing cultural differences to integrating diverse perspectives into one's own identity.<sup>57</sup> Such an advanced level of cultural sensitivity is not only crucial for personal growth but also for effectively navigating and addressing the complexities of diverse environments, particularly in fields like law, where understanding and engaging with cultural differences can significantly impact professional success and social justice.<sup>58</sup>

---

52. ORG. ENGAGEMENT, *supra* note 19. It is important to note that cultural adaptation does not mean cultural assimilation. To assimilate is the process of "abandoning one's cultural identity to adopt a different cultural identity." *Id.* To adapt one does not need to abandon their own cultural identity, but rather effectively navigate interactions that have a different cultural context than one's own culture.

53. *Id.*

54. Milton J. Bennett, *Becoming Interculturally Competent*, in TOWARD MULTICULTURALISM: A READER IN MULTICULTURAL EDUCATION (J.S. Wurzel ed., 2004), [https://www.idrinstitute.org/wp-content/uploads/2018/02/becoming\\_ic\\_competent.pdf](https://www.idrinstitute.org/wp-content/uploads/2018/02/becoming_ic_competent.pdf).

55. *Id.*

56. *See* ORG. ENGAGEMENT, *supra* note 19.

57. *Id.*

58. *See* Adams, *supra* note 18, at 13–14 (addressing the need for heightened cultural sensitivity in fields like law).

### *B. Why Cultural Competency Is Important for Law Students*

Cultural competency is crucial for law students as it empowers them to effectively navigate an increasingly diverse legal landscape. Understanding the nuances of different cultures enables law students to communicate more persuasively, connect with clients on a deeper level, and address biases within the legal system. This Section will dive deeper into why cross-cultural lawyering is good lawyering as well as the Five Habits framework which serves as a practical guide for law students to develop the essential skills needed for cultural competence. By incorporating these habits into their legal education, students not only enhance their ability to represent clients from diverse backgrounds but also to contribute to a more just and inclusive legal system.

#### 1. Cross-Cultural Lawyering is Good Lawyering

The legal field has never been in more need of being in tune with the culture in which it serves than it is now. This is predominantly because the composition of American society is changing rapidly around us. Dramatic shifts in the racial and ethnic minority population in the United States will lead to a historical demographic change that will result in the white population being the racial minority while people of color, collectively, will become the majority population.<sup>59</sup> With the rapidly changing diverse landscape of America, it is inevitable that lawyers will interact with clients of different cultural backgrounds. The very practice of law will be a cross-cultural experience.<sup>60</sup>

Being a culturally competent lawyer means being able to provide legal assistance that is grounded in an awareness of and

---

59. William H. Frey, *The U.S. Will Become 'Minority White' in 2045*, *Census Projects*, BROOKINGS (March 14, 2018), <https://www.brookings.edu/articles/the-us-will-become-minority-white-in-2045-census-projects>; see Eric Jenson et al., *The Chance That Two People Chosen at Random Are of Different Race or Ethnicity Groups Has Increased Since 2010*, U.S. CENSUS BUREAU (Aug. 12, 2021), <https://www.census.gov/library/stories/2021/08/2020-united-states-population-more-racially-ethnically-diverse-than-2010.html> (stating the 2020 Census revealed that the U.S. population is more racially and ethnically diverse than the predicted measurement in the 2010 Census).

60. See Bryant, *supra* note 8, at 49 (explaining that an underlying assumption about good lawyering is that “all lawyering is cross cultural”).

sensitivity to clients of diverse cultural backgrounds.<sup>61</sup> For example, think about the role that cultural competence plays in one of the most crucial skills for an attorney, persuasive storytelling. For a trial attorney, a compelling narrative not only captures the attention of judges and jurors, but also has the power to influence opinions, evoke empathy, and ultimately shape legal outcomes. In the courtroom, a lawyer's ability to tell a persuasive story can be the difference between winning and losing a case; however, that ability is rooted in the lawyer's ability to demonstrate an ethnorelative perspective with both their client and the jurors. For the client, a lawyer's cultural competence becomes vital in developing a deeper understanding of the "why" behind their client's actions. It takes a culturally competent lawyer to decipher when "the facts may be undisputed, but the meaning of the facts offers a completely different explanation for 'what happened.'"<sup>62</sup> When a client's cultural background significantly influences the reasons behind their actions, a dedicated lawyer advocating for their client will bring this to the attention of the jury. However, this will only occur if the lawyer understands the impact of culture on their client's behavior in the first place.

Culturally competent advocacy especially arises in death penalty mitigation in which explaining the defendant's social history and the cultural context of the client's worldview has become standard practice.<sup>63</sup> In capital cases, one of the most prevalent strategies in procuring a capital sentence is to create as much social distance from the defendant and the jurors as possible, effectively alienating the

---

61. Laura Bagby, *5 Ways Attorneys Can Increase Their Cultural Competence*, 2CIVILITY (Mar. 10, 2022), <https://www.2civility.org/5-ways-attorneys-can-increase-their-cultural-competence>.

62. Adams, *supra* note 18, at 19.

63. The Public Interest Litigation Clinic and Missouri-Kansas City School of Law as well as other seasoned litigators created The Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases. These guidelines aim to establish elevated standards for the defense in capital punishment cases, primarily by introducing a mitigation specialist skilled in articulating the client's social history and cultural context. These methods have recently started becoming the norm for death penalty cases. For example, in *Wiggins v. Smith*, the United States Supreme Court noted that social history investigation was "standard practice," and that the trial attorney's failure to investigate and explain the defendant's life history "fell short of the professional standards that prevailed." Adams, *supra* note 18, at 18; *see also* *Wiggins v. Smith*, 539 U.S. 510, 524 (2003).

defendant from the jury.<sup>64</sup> To combat this alienation, the defense attorney must humanize their client by “overcom[ing] one of the great barriers to humanizing a defendant before a jury: stereotyping.”<sup>65</sup> It therefore becomes essential to effectively communicate the cultural context of the defendant’s upbringing, challenges they have faced, and other details of their life to “encourage jurors to understand the defendant’s view of the world and his or her actions.”<sup>66</sup> Here, culturally competent lawyering is not a skill that an attorney should merely view as desirable, rather it is essential as standard practice in mitigating death penalty cases.<sup>67</sup>

Whether in persuasive storytelling, understanding a client’s background, or mitigating death penalty cases, the ability to engage with clients and juries through an ethnorelative lens is crucial.<sup>68</sup> As the legal field continues to evolve, integrating cultural competency into legal training and practice becomes imperative.<sup>69</sup> It is through such dedicated efforts that lawyers can ensure they meet the demands of a diverse society and provide equitable, informed representation.

## 2. The Five Habits for Building Cross-Cultural Competence in Law Students

Law professors Susan Bryant and Jean Koh Peters are credited with pioneering the field of cross-cultural training for lawyers. Their influential article established the groundwork and has been a guiding model for clinical law professors and other legal educators to delve into discussions about culture within the law school setting concerning the provision of legal services.<sup>70</sup> Bryant and Peters’ framework of five habits serves as a practical structure for law professors interested in integrating cross-cultural competency training into their courses and

---

64. Adams, *supra* note 18, at 18.

65. *Id.* at 19.

66. *See id.* at 19 (citing Scharlette Holdman & Christopher Seeds, *Cultural Competency in Capital Mitigation*, 36 HOFSTRA L. REV. 883, 922 (2008)).

67. *See* Adams, *supra* note 18, at 18 (stating that “[i]n the context of mitigation, culturally competent investigation is more than an admirable and desirable skill—it is a standard of performance.”).

68. Adams, *supra* note 18, at 19.

69. *Id.*

70. Bryant, *supra* note 8, at 33.

demonstrates why facilitating discussions about culture within legal education ensures that future lawyers are equipped to provide effective legal services to diverse populations.<sup>71</sup>

Habit One prompts law students to recognize both their similarities and differences with potential clients.<sup>72</sup> These similarities and differences can regard race, socioeconomic background, age, ethnicity, and sexual orientation. After identifying such features, the instructor encourages the class to discuss how these distinctions and likenesses might influence the lawyer's communication with the client to gather legal information.<sup>73</sup> This Habit enables students to grasp various differences and consider how cultural biases and misunderstandings can arise, emphasizing that differences can be as influential as shared cultural backgrounds in establishing connections with clients.<sup>74</sup> Once law students are able to identify similarities and differences between themselves and the client, they can better understand how possible biases or stereotyping may arise and, in turn, prevent any notable differences from becoming barriers to effectively advocating for their client.<sup>75</sup> The crux of competent lawyering is in understanding the client and representing their best interest. Yet, if a lawyer remains oblivious to how implicit biases shape their perception of their client or how cultural factors may impact their case, it significantly obstructs their ability to provide zealous representation for their client.<sup>76</sup>

Habit Two delves deeper into examining the potential implications of similarities and differences among the client, the legal decision-maker, and the lawyer, collectively referred to as the three rings.<sup>77</sup> This process entails linking Habit One analysis of ways that culture may influence a client's case and identifying how cultural

---

71. *Id.* at 34.

72. *Id.* at 64.

73. *Id.*

74. *Id.* at 64–65.

75. *Id.* at 64.

76. Chopp, *supra* note 14, at 373 (“When lawyers are unaware of how culture influences their clients’ behavior or their clients’ values, they risk substituting their own judgement for that of their clients and failing to pursue their clients’ true objectives.”).

77. Bryant, *supra* note 8, at 68.

similarities and differences may impact its success.<sup>78</sup> Law students engage in brainstorming sessions to identify implicit cultural values and norms within the legal system that might be applied to their potential clients.<sup>79</sup> Understanding these cultural underpinnings enables students to grasp how they might impact the attorney-client relationship.<sup>80</sup> For instance, a judge might harbor biased perceptions or stereotypes regarding a defendant which could potentially influence their judgment.<sup>81</sup> Being conscious of this possibility can prompt a lawyer to delve deeper into the client's background and personal history which could be presented to the judge as mitigating circumstances. Moreover, students are encouraged to consider how the similarities and differences among the three rings could influence their legal strategy for the client's case.<sup>82</sup> This involves strategizing how to navigate and leverage these dynamics to advocate effectively for the client within the legal system.<sup>83</sup> By comprehending and proactively addressing these interplays, law students gain insight into crafting more nuanced and effective legal approaches tailored to their clients' unique circumstances and the context of the legal decision-making process.<sup>84</sup>

Habit Three encourages students to delve into various interpretations or parallel universes to better understand client

---

78. *Id.*

79. *Id.*

80. *Id.* at 70.

81. Bernice B. Donald, *Implicit Bias: The Science, Influence, and Impact on Justice*, 22 SEDONA CONF. J. 583, 589 (2021) (noting that even judges who are expected to look beyond stereotypes and biases that may influence their decision-making, to have "a mind trained towards equality" can hold biases against others and attribute negative characteristics to certain demographics); *see also* Amanda Holpuch, *Louisiana Judge to Take Unpaid Leave After Using Racial Slur*, N.Y. TIMES (Dec. 15, 2021), <https://www.nytimes.com/2021/12/15/us/michelle-odinetburglary-racial-slur-sedative.html> ("A Louisiana judge said she would take an unpaid leave of absence after a video recorded her using a racial slur while watching security footage of a foiled burglary outside her home."); Alexandra Klausner, *Judge in Stanford Swimmer Trial Under Fire for New Sex Assault Case*, N.Y. POST (June 27, 2016), <https://nypost.com/2016/06/27/judge-in-stanford-sex-assault-case-gives-immigrant-harsher-sentence> (discussing the disapproval of Santa Clara County Superior Court Judge Aaron Persky who sentenced a Stanford University student to a shorter jail sentence than that of an El Salvador immigrant for similar crimes).

82. Bryant, *supra* note 8, at 68.

83. *Id.*

84. *Id.* at 68–70.



behavior.<sup>85</sup> This practice involves brainstorming multiple possible reasons behind a client's actions, particularly when a student might be inclined to judge a client or their actions negatively.<sup>86</sup> This approach aims to decrease the likelihood of students making incorrect assumptions about why a client behaves in a certain way.<sup>87</sup> For instance, a lawyer might instinctively believe that a client's reluctance to disclose details pertinent to their case indicates dishonesty.<sup>88</sup> However, upon reflection, the client's hesitance might stem from discomfort discussing the matter with a lawyer of a different gender or due to language barriers.<sup>89</sup> Moreover, deeper reasons like past trauma or cultural and religious beliefs might also hinder the client from sharing details.<sup>90</sup> By consciously considering various alternatives and bearing in mind similarities between themselves and the client, students may realize numerous plausible explanations beyond their initial, potentially negative assumptions.<sup>91</sup> This process helps students broaden their perspectives and approach client behaviors with more empathy and understanding.

Habit Four emphasizes fostering culturally sensitive interactions and actively attending to the dynamics of lawyer-client communication, considering elements like culture, customary dialogues, rituals, and client comprehension.<sup>92</sup> While the initial three Habits equip students to adopt a lawyer's perspective, integrating cross-cultural insights into case analysis and client interactions, this Habit prioritizes cross-cultural communication.<sup>93</sup> Students engage in identifying tasks within a typical attorney-client interaction that could pose challenges in cross-cultural encounters and learn to recognize signs of communication difficulties.<sup>94</sup> Failing to recognize and actively mitigate differences in communication can have an influential outcome

---

85. *Id.* at 70–72.

86. *Id.* at 71–72.

87. *Id.*

88. Serena Patel, *Cultural Competency Training: Preparing Law Students for Practice in Our Multicultural World*, 62 UCLA L. REV. DISCOURSE 140, 147 (2014).

89. *Id.*

90. *Id.* at 147–48.

91. Bryant, *supra* note 8, at 72.

92. *Id.* at 72–73.

93. *Id.* at 72.

94. *Id.*

in the case. The George Zimmerman trial exhibited an instance in which the prosecutors' discomfort with the racial implications of the case—and the lead witness, a young, Black woman—negatively affected the direct examination of the witness.<sup>95</sup> The prosecution failed to grasp or empathize with how the witness' cultural background influenced her language and mannerisms, ultimately weakening her testimony.<sup>96</sup> The prosecution's discomfort with a different communication style left her susceptible to a cross-examination that portrayed her as hostile and unreliable.<sup>97</sup> If the prosecution had adequately evaluated the witness' communication style and recognized the significant role her culture played in it, the discomfort that affected the direct examination would likely have been mitigated.<sup>98</sup>

Habit Four encourages consciously focusing on the communication process and preparing before client meetings, so students can pinpoint potential cross-cultural obstacles and warning signs, such as signs of client disengagement, anger, discomfort, or the use of legal jargon.<sup>99</sup> For instance, students may prepare for interviews by devising introductory rituals and scripts tailored to explain the legal process, considering the client's cultural background. Utilizing insights from the initial three Habits, students anticipate potential areas prone to misunderstandings. Moreover, in planning for potential communication issues, students prepare corrective measures to address misunderstandings and bridge gaps between themselves and the client.<sup>100</sup> Maintaining a prescriptive list of culturally sensitive corrective actions assists students in learning remedial strategies.<sup>101</sup> For instance, redirecting the conversation to address the client's concerns or requesting specific examples to illustrate issues and clarify the type of solution sought can be effective strategies identified through this process.<sup>102</sup> This approach helps students adapt their

---

95. Phyllis C. Taite & Nicola Boothe, *Teaching Cultural Competence in Law School Curricula: An Essential Step to Facilitate Diversity, Equity, & Inclusion in the Legal Profession*, 2022 UTAH L. REV. 813, 819–20 (2022).

96. *Id.*

97. *Id.* at 820.

98. *Id.* at 819–20.

99. Bryant, *supra* note 8, at 73, 76.

100. *Id.* at 72.

101. *Id.* at 73, 76.

102. *Id.* at 72.

communication to better align with the client's cultural context, fostering more effective and respectful lawyer-client interactions.

Habit Five revolves around student self-reflection, prompting an exploration of their identities as cultural beings and fostering an awareness of their personal biases.<sup>103</sup> This practice is instrumental because recognizing one's stereotypes and biases enables students to actively mitigate, or at least attempt to mitigate, their influence on lawyer-client relationships.<sup>104</sup> This reflective process should also acknowledge external factors, such as stress, which can interact with existing biases and stereotypes, negatively impacting interactions between lawyers and clients.<sup>105</sup> Habit Five suggests two approaches to address biases and stereotypes: first, creating environments where biases and stereotypes have less influence, and second, promoting reflection and change with the aim of eradicating bias.<sup>106</sup> For instance, given that stress tends to amplify reliance on stereotypes, students might reduce stress during interviews by incorporating breaks. This process of self-analysis empowers students to cultivate respect for clients and adapt their responses to meet individual client needs. By actively engaging in self-reflection, students can strive to foster more equitable and empathetic lawyer-client relationships.

### C. American Bar Association Standard 303(c)

The American Bar Association ("ABA") was founded in 1878 and is the "largest voluntary professional association in the world."<sup>107</sup> One of the ABA's main functions involves accrediting law schools based on the requirements outlined in the Standards for Approval of Law Schools ("Standards"), which established the criteria for obtaining

---

103. *Id.* at 77.

104. *Id.*

105. *Id.* at 77–78.

106. *Id.* at 77.

107. Am. Bar Ass'n, *Consumer FAQs*, [https://www.americanbar.org/groups/professional\\_responsibility/resources/resources\\_for\\_the\\_public/consumer\\_faqs/](https://www.americanbar.org/groups/professional_responsibility/resources/resources_for_the_public/consumer_faqs/) (last visited Dec. 9, 2023); Am. Bar Ass'n, *About the American Bar Association*, [https://www.americanbar.org/about\\_the\\_aba](https://www.americanbar.org/about_the_aba) (last visited Sept. 18, 2024).

and retaining ABA accreditation.<sup>108</sup> A vast majority of states mandate graduation from an ABA-accredited law school for bar exam eligibility, making it an almost universal prerequisite for law students.<sup>109</sup> The Standards for law school accreditation encompass various facets of law school function, including admissions, educational criteria, funding, and faculty.<sup>110</sup> The Standards also include Interpretations that provide guidance on implementing them, which carry the “same force and effect” as a Standard.<sup>111</sup>

To be granted ABA approval, the law school must demonstrate that it is in full compliance with the Standards.<sup>112</sup> After approval, the law school’s compliance is monitored through an Annual Questionnaire and periodical site visits.<sup>113</sup> Through the Annual Questionnaire, law schools provide information regarding its continued compliance such as data regarding its curriculum.<sup>114</sup> ABA approved law schools also undergo site evaluations every seven years in which a site team visits the law school for a three-day period and submits an extensive site evaluation report which covers information pertaining to “faculty and administration, the academic program, the student body and its success on the bar examination and in job placement, student services, library and information resources, financial resources, physical facilities, and technological capacities.”<sup>115</sup>

---

108. Am. Bar Ass’n, *Frequently Asked Questions*, [hereinafter *ABA FAQs*] [https://www.americanbar.org/groups/legal\\_education/resources/frequently\\_asked\\_questions](https://www.americanbar.org/groups/legal_education/resources/frequently_asked_questions) (last visited Dec. 9, 2023).

109. California permits individuals who, without attending law school, have earnestly and in good faith studied law for a minimum of four years to sit for their bar. Additionally, New York, Vermont, Washington, and Wyoming have established criteria allowing individuals without a law degree to sit for the bar with enough qualified experience in the legal field. *Admissions to the Bar*, U.S. Legal, <https://attorneys.uslegal.com/admission-to-the-bar> (last visited Jan. 2, 2024).

110. *ABA FAQs*, *supra* note 107.

111. *Id.*

112. *Id.*

113. *The Law School Accreditation Process*, ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR 1, 8 (Sept. 2016), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/2016\\_accreditation\\_brochure\\_final.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2016_accreditation_brochure_final.pdf).

114. *Id.* at 8.

115. *Id.* at 9.

Both the history of the Annual Questionnaires and the Site Evaluation are reviewed by the Council of the ABA Section of Legal Education and Admissions to the Bar (“Council”) to determine if the law school is in compliance with the Standards required for ABA-accreditation.<sup>116</sup> If the Council determines that a law school meets all the Standards, it will notify the school of its approval status.<sup>117</sup> However, if the Council finds non-compliance with any Standard, or lacks information to make a determination, the decision letter will specify the Standards in question.<sup>118</sup> The law school must then, by a specified deadline, outline its actions toward compliance or provide the necessary information for the Council’s assessment.<sup>119</sup> If the law school does not bring itself into compliance within the specified time granted, the Council’s Accreditation Committee may withdraw the school’s ABA approval.<sup>120</sup>

The Standards set in the ABA Standards for Approval of Law Schools are meant to ensure that law students receiving an education from an ABA-approved law school get a “sound program of legal education.”<sup>121</sup> Each chapter of the Standards focuses on a separate facet of that legal education. Chapter Three of the Standards concentrates specifically on evaluating the quality and rigor of the legal education provided by each school, aiming to prepare law students for the bar exam and to foster their development as “effective, ethical, and responsible” lawyers.<sup>122</sup>

Standard 303(c) of this chapter requires law schools to provide law students with education “on bias, cross-cultural competency, and racism” once at the beginning of their law school education and at least once more before graduation.<sup>123</sup> Standard 303(c) was created to require cultural competency in legal education with a focus on both cultural competency and professional identity.<sup>124</sup> Prior to amending Standard 303(c), the ABA lacked a Standard which required cultural competency

---

116. *Id.*

117. *Id.* at 9–10.

118. *Id.* at 10.

119. *Id.*

120. *Id.*

121. *ABA FAQs*, *supra* note 107.

122. *ABA STANDARDS*, *supra* note 6, at Standard 301(a).

123. *Id.* at Standard 303(c).

124. *Id.*; *ABA STANDARDS*, *supra* note 6, at Interpretation 303–05.

education in law schools.<sup>125</sup> Instead, Interpretation 302-1 of Standard 302 only mentions cultural competency as one of many professional skills that law schools may *choose* to be a learning outcome for their students.<sup>126</sup> Consequently, law schools had the option, but were not required, to provide cultural competency education to their law students prior to graduation.<sup>127</sup> Legal scholars found this to be insufficient and argued that the ABA Standards must make it obligatory for law schools to ensure their students have “the ability to adapt, work and manage successfully in new and unfamiliar cultural settings” as well as effectively work with clients and colleagues from different cultural backgrounds.<sup>128</sup>

The impetus for a change in the ABA Standards also stems from a letter sent from 150 law school deans in July 2020, which emphasized the importance of cultural competence education and requested that the ABA Council adjust the ABA standards to “require, or at least consider requiring, that every law school provide training and education around bias, cultural competence, and anti-racism.”<sup>129</sup> In response to this call for change, the ABA implemented Standard 303(c), which emphasized the importance of cross-cultural competency in the legal profession and asserted that eliminating bias, discrimination, and racism in the law is “among the values and responsibilities of the legal profession to which

---

125. See STANDARDS AND RULES OF PROC. FOR THE APPROVAL OF L. SCHS., Standard 302 (Am. Bar Ass’n 2016) (amended 2022), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017\\_2018\\_aba\\_standards\\_rules\\_approval\\_law\\_schools\\_final.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017_2018_aba_standards_rules_approval_law_schools_final.authcheckdam.pdf) [https://perma.cc/9KRG-9QNJ] (characterizing cultural competence as an “other professional skill” that law schools may determine as a learning outcome).

126. See *id.* (discussing learning outcomes required of ABA approved law schools).

127. See *id.* (requiring in Standard 302(d) mere competency in “[o]ther professional skills needed for competent and ethical participation as a member of the legal profession” for law schools’ curricula).

128. Sylvia Stevens, *Cultural Competency: Is There an Ethical Duty?*, OR. ST. BAR BULL. (Jan. 2009), <https://www.osbar.org/publications/bulletin/09jan/barcounsel.html>.

129. Letter from Law School Deans to Members of the Council of the ABA Section of Legal Education and Admissions to the Bar, <https://taxprof.typepad.com/files/aba-bias-cultural-awareness-and-anti-racist-practices-education-and-training-letter-7.30.20-final.pdf>.

students are introduced.”<sup>130</sup> Under the revised Standard 303(c) of the ABA’s Standards and Rules of Procedures for Approval of Law Schools:

A law school shall provide education to law students on bias, cross-cultural competency, and racism:

- (1) at the start of the program of legal education, and
- (2) at least once again before graduation.

For students engaged in law clinics or field placements, the second educational occasion will take place before, concurrently with, or as part of their enrollment in clinical or field placement courses.<sup>131</sup>

In simpler terms, this Standard mandates that law schools offer training on bias, cultural competency, and racism both at the beginning of a student’s legal education and once more before they graduate. Additionally, for students involved in practical legal experiences like clinics or field placements, this second training should be integrated with their clinical work or scheduled around it.

Along with the revision of this Standard, the ABA provided additional guidance on how providing cross-cultural competency and bias education may be satisfied. Under Interpretation 303-7, law schools have several options for fulfilling the education requirements on bias, cross-cultural competency, and racism. These options include orientation sessions for new students, specialized lectures, dedicated courses, or other educational activities.<sup>132</sup> Importantly, Interpretation 303-7 states:

While *law schools need not add a required upper-division course to satisfy this requirement*, law schools must demonstrate that all law students are required to participate in a substantial activity designed to reinforce the skill of cultural competency and their obligation as

---

130. ABA STANDARDS, *supra* note 6, at Interpretation 303-6.

131. *Id.* at Standard 303(c).

132. *Id.* at Interpretation 303-7.

future lawyers to work to eliminate racism in the legal profession.<sup>133</sup>

As calls for reformation of legal education have been at the forefront, there has also been a growing focus on law school's role in the development of law students' professional identity.<sup>134</sup> Historically, legal education focused on the practical side of lawyering in which students are primarily taught to "think like lawyers" by way of case-dialogue teaching meant to develop their analytical and problem-solving skills.<sup>135</sup> Unlike the education given in other professional fields, such as medical school, legal education "pays relatively little attention to direct training in professional practice" and the skills necessary for such practice, including cultural competence and ethical responsibilities.<sup>136</sup> However, in 1992, the American Bar Association Task Force on Law Schools and the Profession issued a report which urged law schools to reconsider their educational objectives with the practical aspect of the legal field as well as the values of professional lawyering.<sup>137</sup> The report, often referred to as the MacCrate Report, urged law schools to incorporate opportunities for law students to gain practical lawyering skills and clinical education.<sup>138</sup> However, the MacCrate report merely began the discussion of legal education reform and, in the subsequent years after its publication, law schools did not have a drastic movement towards reformation in legal education.<sup>139</sup>

---

133. *Id.* (emphasis added).

134. Harmony Decosimo, *The Symposium Issue: A Taxonomy of Professional Identity Formation*, 67 ST. LOUIS U. L.J. 1, 7 (2022) (citing William M. Sullivan, *Professional Formation as Social Movement*, 23 PRO. L. 26, 27 (2015)).

135. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 5 (2007), [http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary\\_pdf\\_632.pdf](http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary_pdf_632.pdf).

136. *Id.* at 6.

137. Decosimo, *supra* note 134, at 5.

138. *Clinical Legal Education Association (CLEA) Comment to ABA Task Force on the Future of Legal Education* (2013), <https://www.cleaweb.org/Resources/Documents/CLEA%20COMMENT%20TO%20ABA%20TASK%20FORCE.pdf>.

139. John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 332 (2007).



In 2007, the Carnegie Foundation for the Advancement of Teaching issued a report called “Educating Lawyers” which continued to urge law schools to reform legal education by not only teaching students to think like lawyers, but also “combine the elements of legal professionalism—conceptual knowledge, skill and moral discernment—into the capacity for judgement guided by a sense of professional responsibility.”<sup>140</sup> The Carnegie Report made several observations and recommendations about legal education such as expanding the common core of legal education to allow for opportunity for developing professional identity.<sup>141</sup> The Carnegie Report outlined three types of apprenticeships that offer crucial context regarding transitions and the chance to contribute to shaping professional identity.<sup>142</sup> The first apprenticeship involves students learning the substantive knowledge necessary for practicing law, while the second entails students mastering intricate skills necessary for the professional practice such as writing, research, and negotiation.<sup>143</sup> Lastly, the third apprenticeship centers on instilling the values and ideals inherent in the legal profession, synonymous with the formation of professional identity.<sup>144</sup>

Historically, legal education was primarily shaped by the first two apprenticeships.<sup>145</sup> However, in the past fifteen years, following the release of the Carnegie Report, there has been a growing emphasis on the third apprenticeship—integrating professional identity development into legal education.<sup>146</sup> In response to this call, the ABA also officially supported requiring law schools to incorporate “substantial opportunities to students for . . . the development of a professional identity” into the curriculum.<sup>147</sup> The ABA added a provision to Standard 303 about the development of professional identity of law students.<sup>148</sup> ABA Interpretation 303-5 now emphasizes

---

140. SULLIVAN ET AL., *supra* note 135, at 8.

141. *Id.* at 8–9.

142. Megan Bess, *Transitions Unexplored: A Proposal for Professional Identity Formation Following the First Year*, 29 CLINICAL L. REV. 1, 3 (2022).

143. *Id.* at 3–4.

144. *Id.* at 4.

145. *Id.* at 3–6.

146. *Id.* at 6.

147. ABA STANDARDS, *supra* note 6, at Standard 303(b)(3).

148. *Id.*

the importance of developing a strong professional identity for law students.<sup>149</sup> This involves understanding the unique responsibilities and ethical obligations that come with being a lawyer.<sup>150</sup> The development of a professional identity should include exploring core values, guiding principles, and practices essential for a successful legal career.<sup>151</sup> To support this growth, students should have regular opportunities throughout their law school experience—across various courses and extracurricular activities—to reflect on and build their professional identity.<sup>152</sup>

The updates to Standard 303 reinforce a viewpoint that institutions should assume a more extensive role in nurturing professional identity throughout all stages of legal education. The emphasis on an active facilitation of professional identity formation within legal education acknowledges the significant influence a law school has in this aspect of development.<sup>153</sup> Research shows that law students who effectively develop their professional identity are more successful in their practice.<sup>154</sup> This underscores the importance for law schools to focus on integrating professional identity development, including cultural competency, into their curricula and training programs. Ensuring students gain these skills is essential for their long-term success and effectiveness in diverse legal environments.

#### *D. The History of Teaching Legal Ethics and Professional Responsibility Education*

For a long time, the prevailing belief was that teaching ethics in law school was futile.<sup>155</sup> The notion persisted that if law students had not grasped ethical distinctions by the time they entered law school,

---

149. *Id.* at Interpretation 303–05.

150. *Id.*

151. *Id.*

152. *Id.*

153. Bess, *supra* note 142, at 7.

154. Benjamin V. Madison, III & Larry O. Natt Gantt, II, *The Emperor Has No Clothes, but Does Anyone Really Care? How Law Schools Are Failing to Develop Students' Professional Identity and Practical Judgment*, 27 REGENT U. L. REV. 339, 357–58 (2014).

155. Robert M. Ackerman, *Law Schools and Professional Responsibility: A Task for All Seasons*, 88 DICK. L. REV. 202, 205 (1984).

efforts from law professors would not make any difference.<sup>156</sup> However, by the 1970s, legal academia's perspective shifted, increasingly recognizing the significance of professional responsibility codes and the necessity of educating legal professionals about the specifics of these codes.<sup>157</sup> This change emerged in response to growing concerns, both within the legal community and the public, regarding the state of professional responsibility in the legal field.<sup>158</sup> Many expressed concerns about a moral void in the legal profession due to insufficient and inadequate training in professional responsibility.<sup>159</sup> In response to this concern, the ABA revised the Standards to require accredited law schools to provide instruction in the duties and responsibilities of the legal profession.<sup>160</sup> Under Standard 303(a)(1), "[a] law school shall offer a curriculum that requires each student to satisfactorily complete . . . one course of at least two credit hours in professional responsibility that includes

---

156. *Id.*

157. Kathleen Woody, *Professional Responsibility Training in Law School and Its Philosophical Background*, 7 J. LEGAL PRO. 119, 122 (1982), [https://www.law.ua.edu/pubs/jlp\\_files/issues\\_files/vol07/vol07art03.pdf](https://www.law.ua.edu/pubs/jlp_files/issues_files/vol07/vol07art03.pdf).

158. *See* Justice Ruth Bader Ginsburg, Sup. Ct., Supreme Court Pronouncements on the Conduct of Lawyers, Keynote Address at the Hofstra University Law School Conference on Legal Ethics: The Core Issues (Oct. 1, 1996), in J. OF THE INST. FOR THE STUDY OF LEGAL ETHICS. In the aftermath of Watergate, the House of Delegates of the American Bar Association added Standard 302 of the 1973 ABA Standards to include teaching the duties and responsibilities of the legal profession. *See, e.g.*, Charles Frankel, *Review: Code of Professional Responsibility*, 43 U. CHI. L. REV. 874 (1976) (reviewing the American Bar Association's Code of Professional Responsibility); Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. 1 (1975) (examining fundamental moral criticisms of lawyers); Andrew S. Watson, *The Watergate Lawyer Syndrome: An Educational Deficiency Disease*, 26 J. LEGAL EDUC. 441 (1974) (providing further information on the profession's reaction to Watergate); Donald T. Weckstein, *Watergate and the Law Schools*, 12 SAN DIEGO L. REV. 261 (1975) (criticizing apathetic approaches to teaching professional ethics as a contributing factor to ethical disasters like Watergate).

159. *See* Laurel Rigertas, *Post-Watergate: The Legal Profession and Respect for the Interests of Third Parties*, 16 CHAP. L. REV. 111, 111 (2012) (discussing how post-Watergate there was a call for the reformation of the legal profession and legal education).

160. ABA STANDARDS, *supra* note 6, at Standard 303(a)(1).

substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members.”<sup>161</sup>

Today, teaching ethics and professional responsibility in law schools has become widely accepted and is considered “essential to maintaining the integrity of the practice of law and the legal profession.”<sup>162</sup> Recognizing the vital role ethical considerations play in shaping legal practice, law schools have integrated comprehensive ethics courses into their curricula. These courses not only impart knowledge of ethical principles but also provide students with the critical thinking skills necessary to navigate complex ethical dilemmas they may encounter in their legal careers.<sup>163</sup> Furthermore, the Multistate Professional Responsibility Examination (“MPRE”) underscores the commitment of the legal profession to professional responsibility education.<sup>164</sup> Administered by the National Conference of Bar Examiners, the MPRE is a standardized test that assesses candidates’ understanding of the rules “governing the professional conduct of lawyers.”<sup>165</sup> By requiring aspiring lawyers to demonstrate competence in professional responsibility, the MPRE reinforces the importance of ethical behavior and underscores its significance in the legal profession. Through initiatives like the MPRE and the integration of ethics education in law school curricula, the legal profession continues to uphold its commitment to fostering a culture of integrity and ethical practice among its members.

### III. ANALYSIS

While the ABA’s requirement of “bias, cross-cultural competency, and racism” education in law schools is a step in the right direction, there is a need to refine how the Standard suggests law

---

161. *Id.*

162. Philip A. Pucillo, *A Proposal to Place Professionalism and Ethics at the Forefront of a Legal Education*, 101 MICH. B. J. 16, 16 (2022).

163. *Ethical Dilemmas in the Legal Profession: A Critical Examination for Aspiring Lawyers*, LAW CROSSING (July 19, 2023), <https://www.lawcrossing.com/article/900054721/Ethical-Dilemmas-in-the-Legal-Profession-A-Critical-Examination-for-Aspiring-Lawyers>.

164. *About the MPRE*, NAT’L. CONF. OF BAR EXAM’RS, <https://www.ncbex.org/exams/mpre/about-mpre> (last visited Feb. 29, 2024, 7:50 PM).

165. *Id.*

schools approach implementing this education to align more effectively with the Standard's intent.<sup>166</sup> As indicated by the interpretation of Standard 303, this Standard aims to develop the professional identities of law students and emphasize the "importance of cross-cultural competency to professionally responsible representation and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in the law . . . ."<sup>167</sup> However, as of now, the ABA has merely suggested ways in which law schools can satisfy Standard 303(c).<sup>168</sup> Unlike Standard 303(a)(1) which requires a course in professional responsibility, Standard 303(c) only mandates that law schools provide cross-cultural education once at the start of student's legal education, and at least once more before graduation.<sup>169</sup> The Standard then suggests ways in which law schools can provide such education, none of them being a requirement for law schools.<sup>170</sup> Both the deficient frequency of cross-cultural education for law students and the vague implementation of such education fail to reflect the extensive role that law schools have in developing students' professional identity as well as teaching the "special obligations lawyers have to their clients and society."<sup>171</sup>

With the current ABA provision, law schools are only required to provide cross-cultural education twice during the legal education of students. This mandate is grossly insufficient because becoming a more cross-culturally competent law student and future lawyer, necessitates repeated exposure to education on bias, racism, and cross-cultural competence. Research shows that repetition plays a crucial role in knowledge retention.<sup>172</sup> When students "consistently revisit[]

---

166. See ABA STANDARDS, *supra* note 6, at Standard 303(c) (providing broad language requiring a threshold for law schools to meet without more details explaining length or methods for the cultural competency education).

167. *Id.* at Interpretation 303-6.

168. *Id.* at Standard 303(c); see also ABA STANDARDS, *supra* note 6, at Interpretation 303-8 (explaining that "Standard 303 does not prescribe the form or content of the education on bias, cross-cultural competency, and racism required by Standard 303(c).").

169. ABA STANDARDS, *supra* note 6, at Standard 303(c).

170. *Id.* at Interpretation 303-7.

171. *Id.* at Interpretation 303-5.

172. See Robert F. Burner, *Repetition Is the First Principle of All Learning*, PRESENT VALUE: AN INFORMAL COLUMN ON TEACHING (2001) (stating that "[t]he deepest 'aha's' spring from an encounter and then a return. Repeating the encounter

key concepts, skills, and information . . . [they] are more likely to store and recall them effectively.”<sup>173</sup> Therefore, by repeating and reviewing “concepts over time, students develop a more comprehensive understanding” that they can “build upon . . . [and] apply . . . in practical contexts.”<sup>174</sup> This follows the principle that “[w]hat’s repeated gets remembered, and what’s remembered gets repeated.”<sup>175</sup> Consider the methods one would use to learn a new language. It is through repetition and imitation that one would gain the foundational knowledge of the language. Through practical usage one can master the language.<sup>176</sup> Cultural competence is similarly honed through practical application and experience. Like learning any new skill, cross-cultural competency development is a “process rather than an end point” which requires “frequent learning, unlearning, and relearning about diversity.”<sup>177</sup> It is a “lifelong process of increasing self-awareness, developing social skills and behaviors around diversity, and gaining the ability to advocate for others.”<sup>178</sup> Therefore, honing cultural competence as a lawyering skill requires more than two opportunities for cross-cultural education.

---

fuses it into one’s awareness. One of the biggest mistakes a teacher can make is to forego the return or repetition.”); see also Lexia Zhan et al., *Effects of Repetition Learning on Associative Recognition over Time: Role of the Hippocampus and Prefrontal Cortex*, 12 FRONTIERS IN HUM. NEUROSCIENCE 1, 11 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6050388/pdf/fnhum-12-00277.pdf> (finding that multiple learning occasions “significantly increased activation in the hippocampus [of the brain] . . . and led to successful associative memory retrieval.”).

173. Barrie McDermid, *The Power of Repetition in Education: What’s Repeated Gets Remembered and What’s Remembered Gets Repeated*, LINKEDIN (July 9, 2023), <https://www.linkedin.com/pulse/power-repetition-education-whats-repeated-gets-barrie-mcdermid>.

174. *Id.*

175. *Id.*

176. *Importance of Repetition in Learning*, THE CPD CERTIFICATION SERV. (Sept. 15, 2022), <https://cpduk.co.uk/news/importance-of-repetition-in-learning>.

177. Maria Rosario T. de Guzman et al., *Cultural Competence: An Important Skill Set for the 21st Century*, NEBRASKA EXTENSION (Feb. 2016), <https://extensionpublications.unl.edu> (type “G1375” into search bar on homepage); Nat’l Ass’n of Soc. Workers, *Standards and Indicators for Cultural Competence in Social Work Practice*, 25 (2015), <https://www.socialworkers.org/LinkClick.aspx?fileticket=7dVckZAYUmk%3d&portalid=0>.

178. de Guzman et al., *supra* note 177.

Teaching law students how culture will affect their practice as lawyers, especially in issues pertaining to identity, bias, and racism, is not an easy feat. It will entail teaching cultural competence in both a theoretical sense as well as a skill.<sup>179</sup> It will involve ways to “avoid cultural blinders and recover from cultural blunders when they occur.”<sup>180</sup> The purpose and goal of cross-cultural education of law students includes awareness and knowledge of how culture plays a part in lawyering, and developing skillsets based around that knowledge, such as intercultural communication. Cultural competence in legal education should be an ongoing process, enriched with complex understanding of culture as well as acknowledgement of how “racism, power, privilege and stereotyped thinking [can] influenc[e] . . . interactions with clients and case planning . . .”<sup>181</sup> Thus, a mere two opportunities for such education would be inconsequential to students’ development of cultural competence. The ABA even asserts that developing values that are important to the professional identity of law students “requires reflection and growth over time, [and] students should have frequent opportunities for such development during each year of law school and in a variety of courses . . .”<sup>182</sup> It therefore follows that specifically requiring only two occasions of any sort of educational experience having to do with cultural competency is simply insufficient. The repetition needed to understand key concepts on cultural competency as well as give students the opportunity to use their knowledge in a practical sense, simply cannot be done in a single orientation session or lecture. If the goal of ABA Standard 303(c) is to truly educate students on racism, bias, and discrimination in the law and develop the cultural competence skill in law students, as the old saying goes, practice makes perfect. Therefore, a course spanning over a semester would give students a better opportunity to learn and henceforth use culturally competent lawyering skills.

#### IV. PROPOSED SOLUTIONS

To advance cultural competency in law schools, all ABA-accredited institutions need to establish a mandatory curriculum

---

179. Bryant, *supra* note 8, at 50.

180. *Id.* at 35.

181. *Id.* at 55.

182. ABA STANDARDS, *supra* note 6, at Interpretation 303-5.

explicitly aimed at comprehensive cultural competency. This obligatory curriculum would encompass in-class education on implicit bias, cross-cultural understanding, diversity, and social justice. Additionally, the curriculum might integrate out-of-class training requirements, such as mandatory volunteer commitments for underrepresented or underfunded legal services like local legal aid societies, compulsory pro-bono hours, or clinic participation. This approach would afford students real-life exposure to diverse legal matters and clients, while simultaneously contributing to the broader legal community by offering much-needed assistance.

The current inadequacy in ABA Standard 303 lies in its lack of specific guidelines for mandating cultural competency training in law schools, leaving the methods of imparting this education entirely open-ended.<sup>183</sup> One potential remedy for this situation involves the ABA revising Standard 303(c) to stipulate that cultural competency becomes a mandatory one to two-credit course within the law school curriculum, similar to the structure of Professional Responsibility courses. Additionally, another proposed solution is to enforce cultural competency as a defined learning outcome, explicitly setting it in ABA Standard 302. These measures aim to provide clearer directives and ensure that cultural proficiency education becomes an integral and obligatory part of legal education.

#### *A. Cultural Competency as a Required Course in the Law School Curriculum*

Inherent in the study of cultural competence education is the notion that an individual can develop the abilities to enhance their cross-cultural proficiency and deepen their comprehension.<sup>184</sup> However, identifying the precise tools required to foster cultural competence can be challenging in practical terms. To achieve the comprehensive integration of cultural competence within the legal profession, cross-cultural training should arguably start from the beginning of law school education. Numerous legal scholars have observed that the majority of law schools “do little to address the

---

183. See ABA STANDARDS, *supra* note 6, at Interpretation 303-8 (“Standard 303 does not prescribe the form or content of the education on bias, cross-cultural competency, and racism required by Standard 303(c).”).

184. Bryant, *supra* note 8, at 35.



insights of [the growing research on cross-cultural competency] . . . [or] student preparation for the multicultural needs of our changing world.”<sup>185</sup> Nevertheless, a handful of law schools have taken steps to educate their students in cultural competency by implementing mandatory cross-cultural learning programs.<sup>186</sup> For example, the University of Florida mandates a two-credit “Introduction to Lawyering” course for all first-year students, with nine out of twenty-eight sessions specifically addressing cross-cultural competency, especially in the realm of cross-cultural communication.<sup>187</sup> The readings assigned for these classes introduce students to “inclusive thinking, cross-cultural sensitivity, and effective cross-cultural communication” concepts.<sup>188</sup> To put these skills into practice, students engage in simulation exercises where they assume the role of a lawyer employing these competencies.<sup>189</sup>

The University of New Mexico School of Law also incorporated cross-cultural competency in their curriculum in two required courses that develop student abilities to navigate cultural competency.<sup>190</sup> During the fall semester of 1L year, students are mandated to enroll in a one-credit Professional Development/Professional Identity Formation class known as Practicum.<sup>191</sup> This course covers a broad range of topics, incorporating elements like emotional intelligence and

---

185. Neil Hamilton & Jeff Maleska, *Helping Students Develop Affirmative Evidence of Cross-Cultural Competency*, 19 THE SCHOLAR: ST. MARY’S L. REV. ON RACE AND SOC. JUST. 187, 209 (2017) (quoting Mary A. Lynch et al., *Intercultural Effectiveness*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 337 (Deborah Maranville et al. eds., 2015)).

186. *Id.* at 210–13 (discussing cultural competence education implementation in the curriculum for three law schools: The University of Florida School of Law, the University of New Mexico School of Law, and the University of St. Thomas (MN) School of Law); see Andrew Cohen, *Moving Forward: Faculty Approves Race and Law Course Requirement in Order to Graduate*, BERKLEY LAW (Feb. 18, 2022), <https://www.law.berkeley.edu/article/faculty-approves-race-and-law-course-requirement> (discussing Berkeley Law School requiring students to take at least one course on race and the law before graduation).

187. Hamilton & Maleska, *supra* note 185, at 210.

188. *Id.*

189. *Id.*

190. *Id.* at 211.

191. *Id.*

mindfulness practices.<sup>192</sup> While the course encompasses various subjects, a dedicated class session focuses on cross-cultural competency.<sup>193</sup> Further, the assessment criteria for a required six-credit clinic for upper-level students include evaluating a student's capacity "to see the world through the eyes of others" and their ability to consider potential cultural aspects pertaining to clients and cases.<sup>194</sup> The clinical professors nurture these skills in each student through multiple classroom sessions and individual coaching interactions, providing personalized feedback to gauge a student's developmental stage—whether they are at a novice level or have progressed beyond it—in understanding and navigating cultural perspectives relevant to legal practice.<sup>195</sup> The approach to imposing mandatory curricula on law students varies among these schools, but a shared thread exists: a consistent emphasis on cultural competency theory through classes, simulation exercises, or clinics. These initiatives prioritize repeated exposure to cultural competency concepts to better equip students in navigating diverse legal landscapes.

While some law schools include cultural competency education as part of a broader seminar curriculum, many do not offer dedicated courses specifically focused on cultural competency education. A specialized course would provide a more concentrated and in-depth exploration of cultural competence, allowing students to delve deeper into this critical area rather than addressing it as one among many topics in a broader seminar setting. The ABA needs to mandate that law schools have a one or two-credit course specifically devoted to cultural competence training and education on racism and bias in the law. A semester-long seminar for teaching cross-cultural lawyering would be more effective in attaining cultural competence due to the continuousness and repetition of the education. Although complete "unconscious competence" may not be attained in the matter of a fifteen-week semester, this cultural competence course will allow students to acquire foundational cultural sensitivity skills, which can be further developed in subsequent clinical and professional experiences.

---

192. *Id.*

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

194. *Id.* (internal quotations omitted).

195. *Id.*

An effective strategy could involve structuring a cultural competency seminar based on Bryant and Peters' Five Habits, given that these habits were specifically crafted to foster the development of analytical and interaction skills.<sup>196</sup> By embracing these Habits, instructors can steer law students towards honing cultural competency skills that extend beyond simple cultural awareness. The utilization of these Habits may vary in emphasis, depending on the instructor's approach and the diverse backgrounds and skill sets of the students. Hence, the subsequent discussion outlines a professor's potential implementation of this methodology, encompassing exercises from The Five Habits and proposing their adaptation within a law school setting.

During the proposal and implementation of Standard 303(c), several legal scholars contested Standard 303(c) was an "unwarranted intrusion" into the autonomy of law schools with respect to their curriculum, an argument that will surely arise in the proposed solution of mandating a cultural competency seminar.<sup>197</sup> Critics argued that:

[M]andating the specific content of courses for accreditation is an overreach by the ABA accreditation committee. . . . [Critics contended that the ABA] will institutionalize dogma, [and encourage] mandating instruction in matters that are unrelated to any distinctively legal skill, hence intruding on the right and obligation of every professor to determine what to teach in a class and how to teach it.<sup>198</sup>

Interestingly, this same concern arose in the mandating of a professional responsibility course in which critics felt it was unnecessary for law schools to have a role in teaching students about ethics and resented the "ABA's assertion of curricular authority" in

---

196. Bryant, *supra* note 8, at 88.

197. Letter from the current and emeritus holders of Sterling Professorships of L. at Yale L. Sch. to the Council of the ABA Section of Legal Educ. & Admissions to the Bar (June 23, 2021), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/comments/2021/june-2021/june-21-comment-yale-law-school.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/2021/june-2021/june-21-comment-yale-law-school.pdf).

198. *Id.*

teaching such topics.<sup>199</sup> However, after the ABA mandated that law school curriculum incorporate one course of at least two credit hours in professional responsibility, teaching law students the professional ethics and responsibilities of the legal field has been widely accepted as a critical class.<sup>200</sup> In this same regard, it is paramount that the ABA and law schools overcome the argument that cultural competence education is “unwarranted” and “unnecessary,” as this course would also be a vital element of law students’ education.

There likely will be further concerns to making cultural competency a mandatory course in jurisdictions in which Critical Race Theory (“CRT”) teachings are prohibited.<sup>201</sup> Critics argue that the revised Standard 303 creates a tension between state anti-CRT laws that ban discussion of “divisive concepts.”<sup>202</sup> Topics such as conscious and unconscious bias, privilege, discrimination, and oppression would

---

199. Russell G. Pearce, *Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School*, 29 LOY. U. CHI. L. J. 719, 723 (1998) (“Law schools resented the ‘ABA’s assertion of curricular authority.’”) (quoting Mary C. Daly et al., *Contextualizing Professional Responsibility: A New Curriculum for a New Century*, LAW & CONTEMP. PROBS. 193, 195 (1995); Ackerman, *supra* note 155, at 218–19.

200. See Pearce, *supra* note 199; see also Lisa G. Lerman, *Teaching Ethics in and Outside of Law Schools: What Works and What Doesn’t*, 2006 PROF. LAW. 57, 58 (2006) (asserting that at many law schools, a professional responsibility course is typically the only required upper-level course); Warren E. Burger, *The Role of the Law School in the Teaching of Legal Ethics and Professional Responsibility*, 29 CLEV. ST. L. REV. 377, 391 (1980) (contending that a one credit hour course in legal ethics falls far short of the time allocation for covering such an important topic); Shanice Harris, “We Tend to Be Super Nerds, I Would Say, Proud Ethics Nerds”: Professors Wendy Muchman and Mary Foster Revolutionize the Game of Ethics, NW. PRITZKER SCH. OF L. (Apr. 10, 2023), <https://news.law.northwestern.edu/wendy-muchman-and-mary-foster-revolutionize-the-game-of-ethics> (noting that the spotlight on the Watergate scandal in 1972 and the subsequent conviction of many lawyers implicated in the scandal resulted in the ABA implementing the requirement for legal ethics into law schools’ curricula).

201. The jurisdictions in which Critical Race Theory is currently prohibited include states like Tennessee, Idaho, Iowa, Oklahoma, New Hampshire, Texas, Mississippi, and Georgia. See TENN. CODE ANN. § 49-7-1906 (2022); IDAHO CODE § 33-138 (2021); IOWA CODE § 279.74 (2021); OKLA. STAT. TIT. 70, § 24-157 (2021); N.H. REV. STAT. ANN. § 193:40 (2021); TEX. EDUC. CODE ANN. § 28.0022 (2021); MISS. CODE ANN. § 37-13-2 (2022); GA. CODE ANN. § 20-1-11 (2022).

202. Steven W. Bender, *Revised ABA Standard 303: Curricular, Pedagogical, and Substantive Questions*, 47 SEATTLE U. L. REV. SUPRA 1, 13 (2024) (citing and quoting TENN. CODE ANN. § 49-7-1902 (2022)).

effectively have to be excluded from classroom discussion, making a class that is entirely focused on such education nearly impossible to implement.<sup>203</sup> However, lawmakers claim that anti-CRT laws are meant to protect K-12 students from being taught Critical Race Theory and “divisive concepts,” not law students.<sup>204</sup> It can even be argued that with the rise of anti-CRT laws, the extensive education on bias and discrimination that students will need to be effective attorneys must be given to them in law school as it will not have been provided to them in their K-12 education.

### *B. Making Cultural Competence a Learning Outcome*

ABA Standard 302 requires law schools to establish learning outcomes that ensure competence in several key areas: substantive and procedural law, legal analysis and reasoning, legal research, problem-solving, communication skills, and professional and ethical responsibilities.<sup>205</sup> It is from these learning outcomes that law schools will establish their program of legal education that best prepares their

---

203. Ryan Rosenkrantz, *From “Race to the Top” to No Race at All: A First Amendment Challenge to Anti-Critical Race Theory Bills*, 53 U. MEM. L. REV. 439, 450–51 (“While the bills vary on which ‘divisive concepts’ are selected from the original executive order, all bills signed into law prohibit instruction that suggests that one race or sex is ‘inherently superior’ to another, and many also expressly prohibit instruction on conscious and unconscious bias, privilege, discrimination, and oppression.”).

204. See generally TENN. CODE ANN. § 49-7-1906 (2022); IDAHO CODE § 33-138 (2021); IOWA CODE § 279.74 (2021); OKLA. STAT. TIT. 70, § 24-157 (2021); N.H. REV. STAT. ANN. § 193:40 (2021); TEX. EDUC. CODE ANN. § 28.0022 (2021); MISS. CODE ANN. § 37-13-2 (2022); GA. CODE ANN. § 20-1-11 (2022). In fact, Critical Race Theory originated in the 1970s by legal scholars as a “systems-level analysis of the relationship between race and law . . . Critical Race Theory explores the way that racial bias is embedded in the rules and regulations of societal institutions, such as the criminal justice system, the education system, and the healthcare system, and the negative outcomes produced by those systems on non-white individuals.” Rosenkrantz, *supra* note 203, at 444. Anti-CRT supporters argue that the concepts surrounding such a theory are too controversial to be taught in K-12 education. By this logic, law school is likely the very place that this theory needs to be studied. *Id.* at 445 (“While Critical Race Theory is offered as an elective course in some graduate programs and law schools, it is not included in K-12 curriculums; there is no evidence that it has been, and leading Critical Race Theorists assert that it is not.”).

205. ABA STANDARDS, *supra* note 6, at Standard 302.

students for the legal profession. Deans and faculty of the law school are held responsible for evaluating whether their legal program aligns with each learning outcome and shall determine whether students attainment of competency in the learning outcome was achieved.<sup>206</sup> If not, incompetence in any learning outcome begets appropriate changes to improve curriculum.<sup>207</sup>

Although cultural competence is not listed as a required learning outcome prescribed in Standard 302, the ABA suggests that it can be encompassed as an “other professional skill” determined to be pertinent by a law school.<sup>208</sup> Again, this is merely suggestive. However, the ABA should include cultural competence as a required learning outcome to ensure that the education students receive is effective. This mandate would necessitate regular assessment to evaluate whether the training is being successfully implemented and achieving its intended goals. By making cultural competency a learning outcome it would further avoid the proverbial “box-checking” approach to teaching the skill. It would focus more on what law students learned, not just what they must do. Law schools would have to be more intentional about student attainment of cultural competence as it would be evaluated as an indicator of the success of the law school’s program of legal education. Therefore, if we are serious about cross-cultural education among the next generation of attorneys, this learning outcome must be required, much like competency in “professional and ethical responsibilities to clients and the legal system.”<sup>209</sup>

## V. CONCLUSION

The incident involving the “trophy” at Memphis Law highlights a critical gap in cultural sensitivity that could have been mitigated with proper cultural competency training. The creation of the trophy, while unintentional in its offense, underscores how a lack of awareness and understanding of cultural nuances can lead to significant and unintended harm. This situation illustrates the necessity for law schools to integrate cultural competency into their curricula. Had the individuals involved in the creation of the “trophy” been better

---

206. *Id.* at Standard 315.

207. *Id.*

208. *See supra* Section II.C.

209. *Id.*; ABA STANDARDS, *supra* note 6, at Standard 302.

equipped with cultural competency skills, they might have recognized the potential insensitivity and harm their creation would cause. An effective cultural competency course would have provided them with the tools to better understand and navigate cultural sensitivities, thus preventing the incident from occurring.

The failure to provide this crucial education reflects a broader shortcoming in the legal education system. By neglecting to fully teach students about cultural competence, law schools are not only missing an opportunity to prevent potential insensitive incidents but are also inadequately preparing their students for real-world challenges. Effective cultural competency training would enable future lawyers to navigate complex cultural landscapes, avoid inadvertent insensitivity, and build meaningful, respectful relationships with clients from diverse backgrounds.

Considering these substantial advantages, cultural competence training needs to be incorporated as a mandatory course within the curriculum of all law schools nationwide. Offering small seminars using the Five Habits would provide a platform for professors to instruct law students on navigating interactions and problem-solving in scenarios involving diverse clients. Irrespective of the chosen teaching model, cultural competency skills ought to be a staple in legal education, as adeptly representing clients from varied backgrounds significantly contributes to the future success of lawyers. Ultimately, integrating cultural competency into legal education is not merely a corrective measure but a proactive step toward creating a more inclusive and understanding legal profession. By genuinely implementing cultural competency training in legal education, law schools can fulfill their duty to prepare students more effectively for their careers, ensuring they are not only knowledgeable legal professionals but also culturally aware and empathetic advocates. Cultural competence education should not be a mere suggestion or recommendation, but an essential mandate in legal education; without it, law schools are failing their students and jeopardizing their future success in an increasingly diverse world.