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PLAYS IN THE LAWYERING PROCESS

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EDUCATING CULTURALLY SENSIBLE LAWYERS: A STUDY OF STUDENT ATTITUDES ABOUT THE ROLE CULTURE PLAYS IN THE LAWYERING PROCESS

ANDREA A CURCIO*, TERESA M WARD** AND NISHA DOGRA***

ABSTRACT

Lawyers' cultural experiences, biases, and perspectives may differ from those of clients, colleagues, and judges. Awareness of such differences is critical to effective representation because cultural perspectives may affect numerous aspects of the lawyering process, such as interviewing, counseling, negotiating, strategising, and persuading. Empirical data that informs the debate about the need to teach students to work across cultures is particularly relevant as lawyers serve increasingly diverse populations and transnational practice continues to grow. In this article, we describe a survey developed to provide law faculties with data to help assess the need for cultural competence education and to inform the discussion of what that education might encompass. In this article, we discuss the reasons to consider developing students' abilities to work effectively across cultures, the survey design and methodology, and the survey findings. Initial results indicate that the students surveyed largely want to learn about how culture may affect the lawyering process, generally are aware that culture may affect client behaviours, but may be less aware of the effect culture has on their own perceptions and behaviours. They also indicate that simply taking a survey such as the one described herein has an educational benefit. We discuss the implications of those findings for law teaching. While the work described herein was done in the United States, we believe the issue transcends national borders and we hope this article provokes discussion across borders about the need to develop law students' abilities to work effectively amongst countries' own diverse populations as well as transnationally.

I INTRODUCTION

Today's lawyers practice in a multi-national and multi-cultural world and must be able to interact effectively with people from cultures different than their own. While some legal educators recognise the importance of teaching students to understand and address the role

culture plays in the lawyering process,¹ other legal educators may be less familiar with the importance of developing students' ability to work effectively across cultures. Similarly, medical educators have confronted the need to educate colleagues about the importance of developing students' abilities to work with patients from a wide range of cultural backgrounds.²

In 2000, the Liaison Committee for Medical Education (LCME), the medical school accrediting authority for U.S. medical schools, introduced a cultural-competence standard.³ Development of the standard was prompted by the recognition that 'language and culture affect health care beliefs, choices and treatment'⁴ and that the different

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¹ See, eg, Lisa Bliss, Sylvia Caley and Robert Pettignano, 'Client and Patient Relationships: Understanding Cultural and Social Context' in Elizabeth Tobin Tyler et al (eds), *Poverty, Health and Law Readings and Cases for Medical-Legal Partnership* (Carolina Academic Press, 2011) 125; Susan Bryant, 'The Five Habits: Building Cross-Cultural Competence in Lawyers' (2001) 8 *Clinical Law Review* 33; Anthony O'Donnell and Richard Johnstone, *Developing a Cross-Cultural Law Curriculum* (Cavendish Publishing, 1997); Ascanio Piomelli, 'Cross-Cultural Lawyering by the Book: The Latest Clinical Texts and a Sketch of a Future Agenda' (2006) 4 *Hastings Race & Poverty Law Journal* 131; Antoinette Sedillo Lopez, 'Making and Breaking Habits: Teaching (And Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic' (2008) 28 *Washington University Journal of Law and Policy* 37; Paul R Tremblay, 'Interviewing and Counseling Across Cultures: Heuristics and Biases' (2002) 9 *Clinical Law Review* 373; see also Ellen Grote, Indigenous Higher Education Advisory Council (IHEAC), *Principles and Practices of Cultural Competency: A Review of the Literature* (August 2008) 32-5 <<http://www.deewr.gov.au/Indigenous/HigherEducation/Programs/IHEAC/Documents/PrinciplePracCulturalComp.pdf>> (discussing the Indigenous Law Program at Griffith University and the cultural competence studies that are part of the Justice Studies program at Queensland University of Technology).

² Joseph R Betancourt, 'Cultural Competence – Marginal or Mainstream Movement' (2004) 351 *New England Journal of Medicine* 953; Nisha Dogra and Niranjana Karnik, 'Teaching Cultural Diversity to Medical Students' (2004) 26 *Medical Teacher* 677.

³ Liaison Committee on Medical Education, *Functions and Structure of a Medical School, Standard for Accreditation of Medical Education Programs Leading to the M.D. Degree* (June 2010) 10-1 [ED 21]–[ED 22] <<https://www.med.unc.edu/ome/lcme/Sub-Committees/lcme-documents/LCMEFunctionsStructMS10-11.pdf>>.

⁴ Cindy Brach and Irene Fraserirector, 'Can Cultural Competence Reduce Racial and Ethnic Health Disparities, A Review and Conceptual Model' (2000) 57 Supplement 1

cultural experiences of health care providers and their patients contribute to racial and ethnic disparities in health and health care access.⁵ In the years since that standard was introduced, medical educators have treated development of students' abilities to work with people from a wide range of cultures as an important subject for both pedagogy and research. Health care educators have designed numerous teaching methodologies and cultural-competence learning outcome measurement tools in health education.⁶ Based upon this work, we began exploring whether similar instruments could be developed for legal educators. Before developing an instrument to measure student learning outcomes, we believe it is useful to develop an instrument that measures law students' understandings of, and desires to learn about, how culture affects the lawyering process. The instrument can help inform the debate about the need for educating law students to work across cultures and what that education should encompass – a necessary prelude to conversations about student learning outcomes.

Although 'cultural competence' is the most commonly used term to describe teaching students to work effectively across cultures, we prefer not to use it because that term implies one can become 'competent' in another's culture. We find that problematic because it assumes that culture is possessed by the Other, rather than all people, and because it assumes all people from the same culture act and think alike. In this work, we conceptualise the skill of being able to work effectively across cultures as one that requires: self-awareness of the lawyer's own cultural lens; the ability to understand the cultural forces that affect the lawyer and all those with whom the lawyer communicates; the ability to identify the interaction of those cultural forces; and openness to changing one's perspective based upon what

Medical Care Research and Review 181, 183; see also Michael Paasche-Orlow, 'The Ethics of Cultural Competence' (2004) 79 *Academic Medicine* 347 (discussing the role of cultural and linguistic competency in ensuring valid informed consent).

⁵ Joseph R Betancourt et al, 'Defining Cultural Competence: A Practical Framework for Addressing Racial and Ethnic Disparities in Health and Health Care' (2003) 118 *Public Health Report* 293.

⁶ See, eg, Aysegul Gozu et al, 'Self-Administered Instruments to Measure Cultural Competence of Health Professionals: A Systematic Review' (2007) 19 *Teaching and Learning in Medicine* 18 (reviewing studies on effectiveness of cultural competence curricula and self-assessment tools used to determine the efficacy of cultural competence teaching interventions for health care providers); Desiree A. Lie et al, 'Does Cultural Competency Training of Health Professionals Improve Patient Outcomes? A Systematic Review and Proposed Algorithm for Future Research' (2011) 26 *Journal of General Internal Medicine* 317 (reviewing studies of patient outcomes after health care provider cultural competency training).

has been learned.⁷ Because this construct adopts the ‘cultural sensibility’ model identified by Drs. Dogra and Karnik,⁸ throughout the remainder of this article as we discuss our work, we refer to developing students’ ‘cultural sensibility’ because we believe this term best describes the skills law students need and that the survey attempts to capture.

In Part I, this article briefly explains how cultural sensibility skills permeate all practice areas and undergird a wide range of lawyering skills. Part II provides an overview of medical educators’ work to develop and measure student learning outcomes and briefly discusses the theoretical constructs developed by U.S. clinical legal educators seeking to enhance their students’ abilities to work cross culturally because this work laid the groundwork for the development of our survey instrument. Part III discusses the survey design and methodology. Parts IV and V present findings from a study based upon the survey and discuss those findings in light of both the information learned about law students’ knowledge and attitudes and the implications for developing teaching methods and materials designed to enhance students’ cultural sensibility. Parts VI and VII discuss ways to improve the study instrument as well as potential future studies.

We acknowledge, at the outset, that the survey and its results are merely an initial foray into relatively uncharted waters for legal educators and we do not claim that the survey results are the definitive statement about student attitudes and knowledge about the role culture plays in the lawyering process. Rather, we hope this article sparks discussion about the need for legal educators across the globe to further explore these issues and hope the survey lays the groundwork for others to build upon in that exploration.

II WHY CULTURAL SENSIBILITY IS A NECESSARY LAWYERING SKILL

While definitions of culture are complex, nuanced and varied depending upon context and discipline,⁹ medical educators define

⁷ This conceptualisation was drawn from the work of some U.S. clinical legal educators as well as the work done by Drs. Dogra and Karnik to develop cultural sensibility learning outcomes for medical students. See Bliss, Caley and Pettignano, above n 1; Bryant, above n 1; see also Niranjan S. Karnik and Nisha Dogra, ‘The Cultural Sensibility Model: A Process-Oriented Approach for Children and Adolescents’ (2010) 19 *Child and Adolescent Psychiatric Clinics of North America* 719.

⁸ See, eg, Karnik and Dogra, above n 7, 721.

⁹ John R Bolden et al (eds), *Redefining Culture Perspectives Across the Disciplines* (Lawrence Erlbaum Associates, 2008).

culture as 'integrated patterns of human behaviour that include the language, thoughts, communications, actions, customs, beliefs, values and institutions of racial, ethnic, religious or social groups'.¹⁰ They recognise that culture is multi-faceted and a 'part of all of us and our individual influences (including socioeconomic status, religion, gender, sexual orientation, occupation disability, etc.)'.¹¹ As is clear from that definition, today's lawyers are likely to work with people from cultures different than their own.

What makes developing law students' ability to work across cultures a complex endeavor is that all people have multiple cultural backgrounds and experiences that affect their perceptions and interactions¹² and, of course, all members of a particular race, ethnicity, religion, or social group do not have the same cultural experiences, perceptions, beliefs, or attitudes.¹³ While lawyers cannot become 'competent' in a particular culture¹⁴ they can become 'culturally sensible'. Lawyers can learn to recognise, understand, and effectively deal with how their own and others' cultural beliefs, perceptions, attitudes and understandings affect legal analysis and interpersonal interactions.¹⁵

Lawyers' understandings of, and abilities to deal with, their own and others' cultural perspectives serve as the foundation to support a wide range of other lawyering skills. Because culture affects verbal and non-verbal communication as well as expressions and perceptions of emotions,¹⁶ lack of cultural sensibility skills make it more difficult for lawyers to effectively interview, counsel, negotiate, strategise, or resolve conflicts.¹⁷ For example, in some cultures, it is considered

¹⁰ Association of American Medical Colleges, 'Cultural Competence Education for Medical Students' (Education Paper No 1, Association of American Medical Colleges 2005) <<https://www.aamc.org/download/54338/data/culturalcomp.pdf>>.

¹¹ Joseph R Betancourt, 'Cross-cultural Medical Education: Conceptual Approaches and Frameworks for Evaluation' (2003) 78 *Academic Medicine* 560, 561.

¹² *Ibid.*

¹³ See Angela Harris, 'Race and Essentialism in Feminist Legal Theory' (1990) 42 *Stanford Law Review* 581, 585, 588 (criticising gender, racial and ethnic essentialism, i.e. the notion that there is a unitary 'women's experience' or a monolithic 'black experience' or 'Chicano experience'); Grote, above n 1, 35 (noting Indigenous students' concern that they were often called upon in class to "speak on behalf of all indigenous peoples").

¹⁴ Bliss, Caley and Pettignano, above n 1, 144.

¹⁵ For a description of teaching methodologies designed to enhance law students' ability to enhance students' abilities to work effectively across cultures, see Bliss, Caley and Pettignano, above n 1; Bryant, above n 1; O'Donnell and Johnstone, above n 1; Beverly Moran, 'Disappearing Act: The Lack of Values Training in Legal Education - A Case for Cultural Competency' (2010) 38 *Southern University Law Review* 1; Sedillo-Lopez, above n 1.

¹⁶ See generally William B Gudykunst and Bella Mody (eds), *The Handbook of International and Intercultural Communication* (Sage Publications, 2nd ed, 2002) 69-126.

¹⁷ Marjorie A Silver, 'Emotional Competence, Multi-Cultural Lawyering and Race' (2001-2002) 3 *Florida Coastal Law Journal* 219, 242; see also Tremblay, above n 1; see also Terri

improper to publicly display emotion.¹⁸ Failure to recognise and account for this may leave the lawyer, and the trier of fact, with a misimpression about the client's reaction to a key event. Or, in business law transactions and settlement negotiations, if a lawyer is unaware that in some cultures directly confronting disagreements is considered inappropriate¹⁹ the lawyer may be an ineffective dealmaker and negotiator. In today's multi-cultural world, regardless of practice area, lawyers cannot accurately analyse a case without understanding the context, and they cannot understand the context if they are unaware of the cultural forces that may be in play. Without the ability to understand their own and others' cultural lenses and how such lenses affect interactions, lawyers risk errors in perception and judgment that may harm clients.²⁰ Those risks of miscommunication and misunderstandings may occur when working with under-represented populations or with multi-national industries and law firms. In fact, legal educators have written about the role culture plays in a number of different substantive practice areas, including: international transactional legal work,²¹ mediation,²² domestic litigation,²³ elder law,²⁴ international human rights,²⁵ criminal law,²⁶ health care law,²⁷ and poverty law.²⁸

Farrelly and Bronwyn Carlson, *Towards Cultural Competence in the Justice Sector*, (Report No 3, Indigenous Justice Clearinghouse June 2011) <<http://www.indigenousjustice.gov.au/initiatives/initiative003.pdf>> (discussing the need for cultural competence training of Australian justice system government employees and noting how that lack of training may hamper the lawyer/client interviewing process).

¹⁸ Nathan Yrizarry et al, 'Culture and Emotion' in Leonore Loeb Adler and Uweter Gielen (eds), *Cross-Cultural Topics in Psychology* (Praeger Publishers, 2nd ed, 2001) 131, 136-7 (discussing studies of how facial displays of emotion are modified by cultural display rules).

¹⁹ Lynn E Metcalf et al, 'Cultural Tendencies in Negotiation: A Comparison of Finland, India, Mexico, Turkey and the United States' (2006) 41 *Journal of World Business* 382 (discussing various cultural differences in negotiation approaches).

²⁰ Carwina Weng, 'Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness' (2005) 11 *Clinical Law Review* 369, 374.

²¹ Nancy S Kim, 'Reasonable Expectations in Sociocultural Context' (2010) 45 *Wake Forest Law Review* 641; Lauren R Frank, 'Ethical Responsibility and the International Lawyer: Mind the Gaps' (2000) 2000 *University of Illinois Law Review* 957.

²² Fred D Butler, 'The Question of Race, Gender & Culture in Mediator Selection' (2001) 44 *Dispute Resolution Journal* 26; John Barkai, 'What's A Cross-Cultural Mediator to Do? A Low-Context Solution for a High-Context Problem' (2008) 10 *Cardozo Journal of Conflict Resolution* 43.

²³ Leslie Espinoza Garvey, 'The Race Card: Dealing with Domestic Violence in the Courts' (2003) 11 *American University Journal of Gender, Social Policy & the Law* 287.

²⁴ Helen Y Kim, 'Do I Really Understand Cultural Concerns in Determining Diminished Competency' (2007) 15 *Elder Law Journal* 265.

²⁵ Kathleen Kelly Janus and Dee Smythe, 'Navigating Culture in the Field: Cultural Competency Training Lessons from the International Human Rights Clinic' (2011/12) 56 *New York Law School Law Review* 445.

In many ways, the ability to understand the cultural biases and perceptions at work in a case is akin to the ability to perform legal analysis. In each instance, lack of knowledge may lead to missing or misunderstanding a critical element necessary to accurately analyse the case and devise an appropriate course of action. In developing students' cultural sensibilities, legal educators provide students with tools that allow them 'to incorporate into their knowledge base different considerations, sensibilities and lines of reasoning which serve to exponentially augment their analytical proficiency'²⁹ and to enhance other lawyering skills, all of which prepares law students to better serve their clients.

III WORK DONE BY MEDICAL AND CLINICAL LEGAL EDUCATORS TO DEVELOP STUDENTS' CULTURAL SENSIBILITY

Medical educators have developed a myriad of ways to enhance students' abilities to work with people from different cultures including interactive lectures, videos, simulations, demonstration role plays, workshops, patient interviews, community based service learning and online problem based learning.³⁰ Recognising that the ability to work effectively across cultures occurs on a continuum and that students progress through various stages as they develop their knowledge/attitudes/skills, theoretical models identifying various stages of cultural competence have been developed and adapted by medical educators to help define course and curricular goals.³¹ They

²⁶ Micheal L Perlin and Valerie Rae McClain, 'Where Souls are Forgotten: Cultural Competencies, Forensic Evaluations and International Human Rights' (2009) 15 *Psychology, Public Policy and Law* 257, 265-9 (discussing why cultural competency is important when conducting forensic interviews of criminal defendants, witnesses, and the defendant's family members to develop mitigating factors in capital cases).

²⁷ Bliss, Caley and Pettignano, above n 1, 144-6.

²⁸ Bryant, above n 1; Sedillo Lopez, above n 1.

²⁹ Tanya M Washington, 'The Diversity Dichotomy: The Supreme Court's Reticence to Give Race a Capital "R"' (2004) 72 *University of Cincinnati Law Review* 977, 1008 (arguing why experiential diversity is critical to law student learning).

³⁰ See Sonia J Crandall et al, 'Applying Theory to the Design of Cultural Competency Training for Medical Students: A Case Study' (2003) 78 *Academic Medicine* 588, 589 (listing the numerous forms of cultural competency educational initiatives in medical education); Joseph R Betancourt, 'Cross-cultural Medical Education: Conceptual Approaches and Frameworks for Evaluation' (2003) 78 *Academic Medicine* 560 (discussing various conceptual approaches medical educators use in cross-cultural education).

³¹ Crandall et al, above n 30; Fern R Hauck, 'Cultural Competency in the Curriculum Final Report' (Report, Cultural Competency in the Curriculum Advisory Committee, 18 June 2008) <<http://pages.shanti.virginia.edu/ucare/files/2011/06/cultcompfinalreport.pdf>> (discussing a theoretical model that could be used to track University of Virginia medical school students' cultural competence learning outcomes).

also have identified cultural competence learning outcomes³² and devised numerous instruments to measure medical students' cultural competence learning outcomes.³³ Although methodological problems remain,³⁴ some progress has been made by medical educators who seek to teach their students to work across cultures and to measure the effectiveness of their teaching.

In the United States, some legal educators, largely those working in clinics, have explicitly recognised the need to develop students' abilities to work effectively with people from a wide range of cultural backgrounds and many have articulated numerous theories about how best to teach this skill.³⁵ Over a decade ago, Professor Susan Bryant articulated the need to develop law students' 'cross-cultural competence' by helping students: become aware of, and knowledgeable about, their own cultural assumptions and biases; understand why people use stereotypes and think in ethnocentric ways; and discover new ways to think and behave.³⁶

Building upon Professor Bryant's work, other legal educators in the United States have emphasised the need to help students understand that we all have cultural beliefs and biases that influence our perceptions and actions.³⁷ Grounding their arguments in the social-cognition research that suggests all people operate with an inherent, and often unconscious, set of cultural perceptions and biases, these authors argue that lawyers must not only understand the client's

³² Association of American Medical Colleges, *Tool for Assessing Cultural Competence Training (TACCT)* <<https://www.aamc.org/initiatives/tacct/>>.

³³ See, eg, Mary Catherine Beach et al, 'Cultural Competence A Systematic Review of Health Care Provider Educational Interventions' (2005) 43 *Medical Care* 356 (reviewing the efficacy of a wide range of interventions designed to improve health professionals' cultural competence); Gozu, above n 6 (reviewing studies of cultural competence training that used self-administered tools to assess efficacy of interventions).

³⁴ For critiques of medical educators learning outcomes measurement methodology, see Eboni G Price et al, 'A Systematic Review of the Methodological Rigor of Studies Evaluating Cultural Competence Training of Health Professionals' (2005) 80 *Academic Medicine* 578; Gozu et al, above n 6. For critiques of cultural competence education teaching models and instrument measurement tools, see, eg, Zofia Kumas Tan et al, 'Measures of Cultural Competence: Examining Hidden Assumptions' (2007) 82 *Academic Medicine* 548.

³⁵ Bliss, Caley and Pettignano, above n 1; Bryant, above n 1; Sedillo Lopez, above n 1; Weng, above n 20; see also Piomelli, above n 1 (discussing various clinical textbooks that provide materials and guidance on how to teach cross-cultural lawyering). For a discussion of ways to integrate cross-cultural perspectives throughout the doctrinal curriculum, see generally O'Donnell and Johnstone, above n 1; Moran, above n 15.

³⁶ Bryant, above n 1.

³⁷ Nelson Miller et al, 'Equality as Talisman: Getting Beyond Bias to Cultural Competence as a Professional Skill' (2008) 25 *Thomas M Cooley Law Review* 99, 105-6; Weng, above n 20, 389-99.

cultural perspective, but must also be aware of their own cultural biases and how the two cultural perspectives interact.³⁸ They argue that with this information and understanding, lawyers can appropriately frame problems and propose solutions in ways that best serve the client's interest.³⁹

Although many legal educators accept the need to develop students' cultural sensibility skills, others may not yet be convinced that law schools need to develop those skills. Even amongst legal educators who believe law schools should help students learn how to work effectively across cultures, there may be uncertainty about what skills and attitudes should be developed. We believe the starting point to answering those questions is to explore students' attitudes about, and awareness of, how culture affects the lawyering process. The survey described below begins that exploration process. The data we gathered provides information that may be helpful as legal educators consider whether students need to be educated about the role culture plays in the lawyering process and as they determine what that education might encompass. The data also hopefully provides insights to those who want to identify cultural sensibility learning outcomes and prompts consideration of ways one might measure the achievement of those outcomes.

IV SURVEY INSTRUMENT DESIGN AND DATA ANALYSIS

The survey instrument had multiple objectives:

- 1) To assess law students' attitudes and knowledge, including their general level of knowledge about the role culture plays in the lawyering process, their self-assessment of their ability to recognise their own and others' cultural biases, and their views about whether legal education should include teaching students about how culture affects the work lawyers do;
- 2) To develop a tool that was a valid and reliable measure of those attitudes; and
- 3) To provide law professors with information they could use to develop their cultural sensibility teaching objectives and potential learning outcomes.

A The Instrument

³⁸ Miller et al, above n 37, 105-7; Weng, above n 20, 391-401.

³⁹ Cf Miller et al, above n 37, 106; Weng, above n 20, 378.

Using the work done by Drs. Dogra and Karnik, who have worked to develop cultural sensibility learning outcomes for medical students,⁴⁰ as well as the work done by clinical legal educators,⁴¹ we conceptualised 'cultural sensibility' for law students as the development of self-awareness of the lawyer's own cultural lens, the ability to understand the cultural forces that effect the lawyer and all those with whom the lawyer communicates, and the ability to identify the interaction of those cultural forces.

With that theoretical construct as a guide, we designed a 29-question, anonymous, electronic survey using a 5-point semantic differential response scale (1 = strongly disagree to 5 = strongly agree). The survey also contained a series of open-ended questions seeking information about survey design as well as students' thoughts about the role culture plays in their worldview and interactions. The survey also sought demographic information.

After obtaining Institutional Review Board approval, we administered the survey during the orientation week to incoming law students at a United States urban law school that has both a full- and part-time program. It was also distributed to a small number of upper-level students enrolled in an in-house legal clinic course. Students were told that the survey sought their views about the role culture plays in the lawyering process.

Initially, the survey was distributed during orientation to 120 students enrolled in the full-time program. Students were asked to complete the survey during a designated time period. However, due to a computer glitch, only 31 students were able to do so. Another 36 full-time students completed the survey via an email link provided later that day. Fifty-eight out of 60 incoming students enrolled in the law school's part-time program completed the survey during the designated time period. An additional 13 out of 15 students enrolled in a health law client services clinic completed the survey. A total of 138 students responded, for a total response rate of 71.5%.

Of the 138 student respondents, 71 (51%) were women and 63 were men (the remaining four did not self-identify). Most of the respondents

⁴⁰ See Karnik and Dogra, 'The Cultural Sensibility Model', above n 7; see also Nisha Dogra, 'The Development and Evaluation of a Programme to Teach Cultural Diversity to Medical Undergraduate Students' (2001) 35 *Medical Education* 232; Nisha Dogra, 'Cultural Competence or Cultural Sensibility? A Comparison of Two Ideal Type Models to Teach Cultural Diversity To Medical Students' (2004) 5 *International Journal of Medicine* 223; Nisha Dogra, Sylvia Reitmanove and Olivia Carter-Pokras, 'Twelve Tips for Teaching Diversity and Embedding it in the Medical Curriculum' (2009) 11 *Medical Teacher* 990.

⁴¹ See above nn 36-9 and accompanying text.

(83%) were age 30 and under. Using the same race/ethnicity classifications the United States government requires universities to use when reporting race/ethnicity statistical data,⁴² along with the same instructions to 'choose all that apply', 82% of the respondents self-identified as 'white' and 33% self-identified as belonging to a race/ethnicity other than white because many respondents chose multiple classifications. The survey asked respondents 'what ethnic group do you identify with'. Fifty-eight people (42%) responded, with 20 of those responding self-identifying their ethnicity as Caucasian or white, 7 self-identifying as black or African-American, the remainder identifying their ethnicity as arising from a wide range of diverse backgrounds and with a few respondents self-identifying as having multiple ethnic identities. Respondents' annual family income ranged from under \$25,000 (15%), to \$200,000 (16%), with most respondents identifying a family income of between \$25,000 - \$199,000. Finally, 25% of the respondents reported having lived outside of the United States for periods ranging from six weeks to 13 years.

B Data Analysis

The quantitative data were analysed using SPSS and Stata. Atlas.ti (a computer-assisted qualitative data analytical program) was used to analyse the data derived from the open-ended questions. Although the sample size was low for exploratory factor analysis (EFA), the Bartlett's Test of Sphericity result ($p < .000$) supported the factorability of the data. We did a preliminary EFA to ascertain the patterns associated with inter-item relationships in order to better assess the internal consistency of the instrument. The Kaiser-Meyer Olkin Measure of Sampling Adequacy test result (.713) was acceptable and the EFA indicated that a six-factor solution best accounted for 62% of the variance. The reliability statistic (Cronbach's Alpha) for the six factors ranged from .504 to .817. The EFA was used primarily to aid us in determining which items contributed to the overall conceptual consistency of the instrument and to facilitate further iterations of the instrument.

As noted earlier, the instrument response scale ranged from 1 (strongly disagree) to 5 (strongly agree).⁴³ It should be noted that '3' does not

⁴² Office of Management and Budget (OMB), *Directive No. 15: Race and Ethnic Standards for Federal Statistics and Administrative Reporting* (1997). For a breakdown of respondents' self-identified race/ethnicity, see Appendix A, Table 1. In the United States, law schools must report their students' race and ethnicity to the Department of Education using categories specified by the government's Office of Management and Budget. Those categories are: American Indian/Alaska; Native Asian; Black; Hispanic/Latino(a); Pacific Islander; White; Other.

⁴³ See Appendix B, Table 2.

represent a 'neutral' category, but a mid-point. For reporting purposes, we collapsed numeric categories in reporting percentages (e.g., 1 and 2 are reported as 'disagree' and 4 and 5 are reported as 'agree').

V SURVEY FINDINGS

The quantitative responses are grouped into the key areas that were explored, namely students':

- 1) Views about how culture affects clients;
- 2) Views about how culture affects lawyers and judges;
- 3) Views about how well they can recognise their own cultural perspectives and biases; and
- 4) Desire to learn how culture affects lawyering processes.

Qualitative findings included responses to open-ended questions involving the survey-taking experience and comments on the survey. All quantitative data discussed below are included in Appendix B, Table 2.⁴⁴

A Quantitative Findings

1 Students' Views About How Culture Affects Clients

Almost three-quarters of the respondents (72%) agreed that how legal information is understood and communicated by a client is influenced by the client's race/ethnicity/cultural background. Students also largely agreed (78%) that what an individual believes to be an appropriate legal solution is influenced by his or her background, including factors such as race, ethnicity and culture.

Responses indicated that students were aware that certain types of client conduct could be based upon cultural beliefs and practices. An overwhelming majority (84%) of respondents indicated that they disagreed with the statement 'when a client refuses to look his or her lawyer in the eyes, the lawyer should assume that the client is not being truthful'. Slightly less than half (49%) disagreed with the proposition that if a client shakes hands with a man but refuses to shake hands with a woman it is an indication that the client is sexist.⁴⁵ One-third of the respondents disagreed with the statement 'adult

⁴⁴ Ibid.

⁴⁵ Sayadeh Kasmal-Nazeran, 'Between Gender Equality and Religious Freedom', *Islamic Insights* (online), 23 November 2008 <<http://islamicinsights.com/news/community-affairs/between-gender-equality-and-religious-freedom.html>>. Some Muslims and Orthodox Jews religious beliefs prohibit them from shaking hands with someone of the opposite sex.

clients should not defer legal decision making to other family members',⁴⁶ with almost a quarter agreeing with this statement.

2 Students' Views about How Culture Affects Lawyers and Judges

Although a large majority (76%) of students agreed that, in general, people look at legal problems through their own cultural lens, only slightly more than half (52%) agreed that lawyers look at legal problems through their own cultural lens. Approximately one-quarter of the students disagreed with the statement 'judges often impose their own cultural values on the decisions they make in legal cases', while 41% agreed with that statement. A relatively small percentage of the respondents (34%) agreed that white lawyers bring culturally biased assumptions into the lawyer/client relationship, and an even smaller percentage (25%) agreed with the statement 'Lawyers belonging to racial/ethnic minorities bring culturally-biased assumptions into the lawyer/client relationship'.

3 Students' Views About How Well They Can Recognise Their Own Cultural Perspectives and Biases

A substantial majority of student respondents (72%) believed they could recognise their own culturally-biased assumptions about others who were from different racial/ethnic/cultural backgrounds and only 4% felt that they could not do so. Approximately the same number (73%) also believed that they could generally recognise when their reactions to others were based on stereotypical beliefs with 5% of students feeling that they could not do so. Students rated their own ability to recognise cultural biases and perspectives as much higher than the ability of other people to do the same.

4 Students' Desire to Learn How Culture Affects the Lawyering Process

An overwhelmingly number of students (88%) felt that they should learn about how culture may affect their interactions with clients. An equally high percentage (85%) also agreed that 'lawyers should learn about the perspectives of people from racial/ethnic/cultural backgrounds different from their own', while 68% thought that law professors should discuss cultural assumptions embedded in appellate legal opinions.

B Qualitative Findings

1 Taking the Survey Was an Educational Experience

⁴⁶ Kim, above n 24, 281. In some cultures, the practice is to defer decision-making to respected elders.

In the open-ended questions, students were asked 'In what ways has the questionnaire made you think about the impact of people's racial/ethnic/cultural backgrounds on the lawyer/client relationship?' Half of the respondents (69 of 138) answered that question, with many students noting that they learned something from just taking the survey. For example, one student wrote 'made me think twice about the impact of race, culture, ethical [sic] backgrounds on relationships with future clients. Not something I previously really thought about'.

In a similar vein, a student noted, 'made me think about my own prejudices or stereotypes that I may hold which would affect my ability to effectively represent all people. It opened my eyes to the fact that different cultures may have different identities and ideals that need to be respected and included in the practice of law'. Yet another wrote, 'made me consider how often my decisions are influenced by stereotypes'. A few students specifically noted that questions about cultural practices prompted them to examine their potentially stereotypical beliefs. As one student noted, '[I] don't often think of differences in body language as being cultural - I do often think that if someone avoids eye contact that there is an issue, this made me look at my own conscious stereotyping'.

The educational value of simply taking the survey, and thus prompting students to consider the role race/ethnicity/culture plays in the lawyering process, was consistent with the views of medical students about the educational value of using similar instruments in both the United States and United Kingdom.⁴⁷

2 Comments About The Questionnaire

In the open-ended section of the questionnaire, students were told 'we would appreciate any additional comments or suggestions you may have regarding the questionnaire'. Eighteen percent of the respondents (19 of 138) made comments in this section. Students raised two issues with the survey construction. Firstly, 5 of the 19 people responding to this question raised the concern that the survey conceptualised culture too narrowly in that it focused mainly on race and ethnicity while ignoring other factors, such as religion and gender, cultural factors that played an important role in the students' worldview. Secondly, 3 of the 19 noted that they felt the questions had a 'correct' answer.

VI SURVEY INSTRUMENT: DISCUSSION OF FINDINGS

⁴⁷ Nisha Dogra and Niranjan Karnik, 'First-Year Medical Students' Attitudes Toward Diversity and its Teaching: An Investigation at One UW Medical School' (2003) 78 *Academic Medicine* 1191; Dogra, 'Development and Evaluation', above n 40.

A Openness to Learning About the Role Culture Plays in the Lawyering Process

We were surprised that over 85% of the respondents believed that lawyers should learn about the perspectives of people from cultural backgrounds different than their own and an even higher percentage (88%) felt that law students should learn about cultural issues that may arise when providing legal services to people from cultures different than their own. We are uncertain whether this response rate was due to students' desire to answer in the 'correct' way or because of a genuine desire to learn. The comments tend to indicate the latter. However, because approximately one-quarter of respondents self-selected to reply due to a computer glitch, it may be that these numbers are skewed in favor of students who consider cultural sensibility issues an important component of legal education. Additionally, 90% of the survey respondents were incoming law students and the other 10% were law students enrolled in an in-house clinic. It may be that this cohort is particularly open to learning about this issue. Future studies should further explore both incoming and upper level students' willingness to learn about these issues.

Although survey respondents overwhelmingly indicated openness to learning how culture affects lawyer/client interactions, survey responses indicate that many students felt that they understood their own biases and how those affected their interactions.⁴⁸ Thus, students may want to explore how culture affects clients' behaviours and perceptions, but may be less motivated to examine their own cultural lenses and how these lenses affect their actions and reactions.⁴⁹ As discussed below, helping students acknowledge and understand their own cultural lenses and biases may be the most critical, and the most challenging, aspect of cultural sensibility education.⁵⁰

B Ability to Recognise Others' Cultural Perceptions/Behaviours

Students generally recognised that lawyer/client communication may be affected by cultural beliefs and practices. However, they may

⁴⁸ Appendix B.

⁴⁹ Jerry Kang, 'Trojan Horses of Race' (2005) 118 *Harvard Law Review* 1489, 1529 (noting that to counter the impact bias has on an individual's behaviour, the person must first be aware of the problem).

⁵⁰ See below Part V(D)-(E).

require further education about the need to explore whether specific behaviours or viewpoints may be culturally rooted. While 84% of the students presumably recognised that lack of eye contact may be due to cultural beliefs, students' responses to survey items addressing a client's refusal to shake hands with a woman or deferring decision-making to other adults were more mixed. Even in context of taking a survey they understood was looking at the role culture plays in the lawyering process, many students did not seem to recognise that some behaviours could be based upon a person's cultural beliefs and practices.⁵¹

The different response rates for the questions about eye contact versus shaking hands with a woman or deferring decision-making could be explained by relatively common knowledge that eye contact can be a culturally based practice while the other conduct is not as widely known to have a cultural context. Or, it could be that the questions about shaking hands and deferring decision-making were worded more ambiguously than the question about eye contact and thus somewhat confusing. For example, the survey asked students if they agreed that 'if a client shakes hands with a man but will not shake hands with a woman, this indicates that the client is sexist'. Some students may have felt this statement was true without considering whether the behaviour was culturally-based, although others were clearly prompted to consider the cultural context. As one student noted, 'originally, I was struck by the question suggesting a man may not shake my (a woman's) hand simply because of cultural differences. I think initially I would be extremely insulted and may not take him as my client. After thinking about it, I may have to find the reason why he would not shake my hand before getting upset, or simply get over it and refer him to a male associate'. Nonetheless, the question could be written to more clearly identify whether students understand the cultural prohibition against touching unrelated women.⁵²

Whatever the reasons for students' responses, the survey indicates that many students would benefit from learning not to judge actions through their own cultural lens. As Professor Weng observed, lawyers who approach a legal problem from an ethnocentric model, even an unconscious one, may be unable to perceive and understand clients' different values and worldviews.⁵³ A lawyer may misperceive when

⁵¹ See above nn 45–6 and accompanying text (discussing the fact that refusal to shake hands and deferring decision making to other family members may be culturally based behaviour).

⁵² Kasnai-Nazeran, above n 45.

⁵³ Weng, above n 20, 378.

the client is acting based upon the client's cultural beliefs or practices. Or, a lawyer could act based upon the lawyer's own cultural experiences without recognising how that behaviour may be interpreted by the client. In either instance, the cultural disconnect could result in miscommunication and a less-than-optimal framing of legal problems and strategies.⁵⁴

C Views About the Impact of Culture on Lawyers' Perception/Behaviour

It is unclear why students felt lawyers were less likely than clients to look at problems through their own cultural lens and that lawyers did not approach legal problems through a culturally biased perspective. Perhaps students believe that lawyers, as professionals, can identify and account for their cultural perspective. Or, perhaps they believe that legal training allows one to transcend one's cultural biases. Or perhaps the responses may be explained by the students, as soon-to-be lawyers, wanting to think of themselves as being able to approach their future job in an unbiased manner. Whatever the explanations for these findings, it is clear that students need to be educated that all lawyers and judges approach the world through their own cultural lenses and, like everyone else, have cultural biases that affect how they interpret events and make decisions.⁵⁵

D Views About Their Own Biases

The students surveyed believed that they are generally better than most people at discerning when they hold and act upon cultural biases and stereotypical beliefs. Although many students commented that the survey prompted them to consider their own biases and the impact of these biases on the lawyer/client relationship, an overwhelming majority of respondents (72%) believed they were generally able to recognise their culturally-biased assumptions and an equal number (73%) believed they could identify when their actions were based upon stereotypical beliefs. These results suggest a lack of awareness that we all have biases that often unconsciously affect our interactions. In fact, only 4% of the respondents believed they could not accurately identify their culturally biased assumptions and when they were acting based

⁵⁴ Ibid.

⁵⁵ Jeffrey J Rachlinski et al, 'Does Unconscious Racial Bias Affect Trial Judges' (2009) 84 *Notre Dame Law Review* 1195 (discussing how judges hold unconscious racial biases); Russell K Robinson, 'Perceptual Segregation' (2008) 108 *Columbia Law Review* 1093 (discussing how outsiders and insiders engage in different cognitive processes when interpreting discriminatory events and how those different processes have profound implications for judicial rulings given that the majority of judges in the United States are white males).

upon stereotypical beliefs. This result may be an example of the 'Dunning-Kruger effect' in which those with the strongest skills underestimate themselves while those with the least well-developed skills over-estimate their abilities and lack the metacognitive ability to identify accurately what they don't know.⁵⁶ Or, perhaps students simply are unaware that most people hold, and act upon, unconscious and implicit biases.

Implicit bias has been explained as 'the stereotypical associations so subtle that people who hold them might not even be aware of them'.⁵⁷ Thus, someone may in good faith self-report lack of prejudice while implicit bias tests indicate that the person holds negative attitudes toward a particular group based upon their race, ethnicity, religion, gender, sexual orientation, or other cultural factors.⁵⁸ Implicit bias is much more likely to predict how people act in socially sensitive situations, such as racial interactions, than explicit self-reported measures of bias.⁵⁹ Implicit bias may affect eye contact, seating distance, and how frequently one smiles when interviewing clients and witnesses.⁶⁰ Implicit bias may play a role in how one attempts to persuade a judge or jury.⁶¹ It also may play a significant role in the formulation of laws and policies across a wide spectrum of substantive areas.⁶² The problem with implicit bias is it is just that—implicit. Because it is implicit, it is difficult to recognise.

Students' self-assessed abilities to recognise their cultural biases may be an accurate reflection of their self-perceptions. However, it may not be an accurate reflection of whether they are, in fact, able to regularly recognise when their conduct is based upon their own cultural norms and beliefs.⁶³ In a study described by Professors Greenwald and

⁵⁶ Justin Kruger and David Dunning, 'Unskilled and Unaware of It: How Difficulties in Recognising One's Own Incompetence Lead to Inflated Self-Assessments' (1999) 77 *Journal of Personality and Social Psychology* 1121; Joyce Ehrlinger et al, 'Why the Unskilled are Unaware: Further Explorations of (Absent) Self-Insight Among the Incompetent' (2008) 105 *Organizational Behaviour and Human Decision Processes* 98.

⁵⁷ Rachlinski et al, above n 55, 1196.

⁵⁸ Kang, above n 49, 1513.

⁵⁹ Ibid 1518; Anthony G Greenwald and Linda Hamilton Kreiger, 'Implicit Bias; Scientific Foundations' (2006) 94 *California Law Review* 945, 954-5.

⁶⁰ Greenwald and Kreiger, above n 59, 961.

⁶¹ See, eg, Anna Roberts, 'Re(forming) the Jury: Detection and Disinfection of Implicit Juror Bias' (2012) 44 *Connecticut Law Review* 827 (discussing ways to ameliorate the problem of jurors' implicit bias).

⁶² See Justin D Levinson and Robert J Smith (eds), *Implicit Racial Bias Across the Law* (Cambridge University Press, 2012) (discussing various areas of law impacted by implicit racial bias).

⁶³ See Andrew Scott Baron and Mahzarin R Banaji, 'The Development of Implicit Attitudes: Evidence of Race Evaluations from Ages 6 and 10 and Adulthood' (2006) 17

Kreiger, only one-third of the respondents self-reported a bias in favour of relatively advantaged groups, although the implicit association tests indicated that nearly three-quarters of the respondents had a bias that favoured relatively advantaged groups.⁶⁴

Our survey responses suggest that law students, like others, probably over-estimate their ability to recognise when their reactions are based upon cultural biases and stereotypical beliefs. This is problematic because, as one scholar has stated:

In order to counter otherwise automatic behaviour, one must accept the existence of the problem in the first place. In other words, we must be both aware of the bias and motivated to counter it – if we instead trust our own explicit self-reports about bias – namely that we have none – we will have no motivation to self-correct.⁶⁵

Although it may be difficult, or even impossible, to totally eliminate the effects of implicit bias,⁶⁶ awareness of the problem and motivation to change it can make a difference in how people act and react.⁶⁷ One study indicates that ‘when judges become aware of the need to monitor their own responses for the influence of implicit racial biases, and are motivated to suppress that bias, they appear able to do so’.⁶⁸ Another study indicates that specific interventions may have long-term effects in reducing racial bias, especially in those concerned about discrimination.⁶⁹

Without self-awareness, even if law students learn about their client’s cultural background, they will miss an important piece of the puzzle.

Psychological Science 53, 55–6 (finding that pro-white racial bias exists at an early age but as people become older, they self-report less biased attitudes and by adulthood, people self-report equally favourable attitudes towards whites and blacks); Joshua Correll et al, ‘Measuring Prejudice, Stereotypes and Discrimination’ in John F Dovidio et al (eds), *The SAGE Handbook of Prejudice, Stereotyping and Discrimination* (SAGE Publications, 2010) 45 (noting that studies show explicit measures of bias may be problematic because people do not want to admit bias and may not be fully aware of their own attitudes); Kang, above n 49, 153 (discussing social science literature that indicates a person may honestly self-report positive attitudes toward some social category, such as Latinos, but may still hold negative attitudes toward Latinos which manifest in disparate behaviour toward that social group regardless of explicit commitments in favour of racial equality).

⁶⁴ Greenwald and Kreiger, above n 59, 955.

⁶⁵ Kang, above n 49, 1529.

⁶⁶ *Ibid* 1528–35.

⁶⁷ See, eg, Rachlinski et al, above n 55, 1221 (noting that judges’ conscious awareness of implicit racial bias helped change behaviour).

⁶⁸ *Ibid*.

⁶⁹ Patricia Devine, ‘Long Term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention’ (2012) 48 *Journal of Experimental Social Psychology* 1267.

Students not only need to understand the client's cultural perspective, they need to see how their interpretation of the client's perspective is based upon their own cultural experiences and lenses. They also need to understand the social-cognition theory underlying implicit bias to fully grasp how deeply bias runs, even in well-intended people. It is that multi-level awareness about the role culture plays for both client and lawyer, and the interaction of these perspectives, which facilitates effective cross-cultural lawyering both domestically and internationally.⁷⁰ One could posit that many students lack this awareness based upon students' likely over-estimation of their ability to identify when they are acting based upon stereotypical beliefs or cultural biases. The survey results thus suggest the need to educate students about their potential cultural biases because if they are unaware that they have biases, they will be equally unaware that their perceptions, judgments, and actions are based upon those biases.

E Implications for Cultural-Sensibility Teaching

Cultural-sensibility education involves the steps identified by Professor Bryant a decade ago. Those steps include: developing law students' awareness of, and knowledge about, their own cultural assumptions and biases; helping them understand why people use stereotypes and think in ethnocentric ways; and working with them to discover new ways to think and behave.⁷¹ The survey data suggests law students are open to learning about the role culture plays in the lawyering process and that they recognise that clients see the legal system through their own cultural lens. However, even with this awareness and desire to learn, the data indicates the need for legal educators to help students understand the need to investigate their own, and others', cultural beliefs and practices prior to making judgments. Students would also be likely to benefit from learning to recognise that their own cultural experiences have resulted in the development of a set of cultural values, attitudes, and behavioural norms that influence their perceptions and behaviours.⁷²

One barrier to cultural-sensibility education is students' belief that lawyers do not approach problems from a culturally-biased perspective coupled by the fact that the overwhelming majority of respondents believed that they already recognise their own biases.⁷³ To the extent students believe they already know how their biases affect their interactions, they will be less motivated to explore how their

⁷⁰ Weng, above n 20, 399.

⁷¹ Bryant, above n 1.

⁷² Ibid 40.

⁷³ Appendix B, Table 2.

perceptions, judgments, and actions are based upon cultural biases and less able to counteract the effect of those biases. Unless students accept that they are not 'bad people' because of their biases, they are likely to remain resistant to learning about how their cultural lens affects their perspectives and interactions.

Those interested in teaching students to be 'culturally sensible' may want to expose students to the implicit bias literature⁷⁴ and have students take one or more of the online Implicit Association Tests which measure implicit bias for a wide range of cultural backgrounds, including race, ethnicity, gender, sexual orientation, and religion.⁷⁵ Professors may also want students to review studies that suggest that peoples' cultural experiences may lead them to perceive discriminatory events through different psychological frameworks.⁷⁶ If students understand that all people, including lawyers and judges, have cultural biases and perspectives, it may increase their openness to learning about how their own cultural biases affect their interactions with clients, witnesses, judges, juries, staff, and colleagues, both locally and across borders. It also would be useful to engage students in discussions about culture in the context of their work in clinics and externships as well as to engage students in discussions about cultural assumptions embedded in judicial opinions and legal rules.⁷⁷ Because cultural sensibility skills need to become as second nature as issue spotting and legal analysis if there is any hope that students will internalise the need to investigate their own and others' cultural beliefs and practices, it is our hope that the survey data may help spark discussion about the need for cultural-sensibility education across the law school curriculum.

VII SURVEY LIMITATIONS

The survey sample size was relatively small (138 respondents). Additionally, a computer glitch and subsequent self-selection process and response rate for the full-time students who participated⁷⁸ may have resulted in an over-representation of respondents who believe it

⁷⁴ Professor Kang aptly summarises much of the social science literature on implicit bias, see Kang, above n 49. Students may also benefit from reading Rachlinski et al, above n 55 which discusses the role of implicit bias in judicial decision making. For an excellent summary of the science underlying implicit bias, see Greenwald and Kreiger, above n 59.

⁷⁵ Project Implicit, <<https://implicit.harvard.edu/implicit/demo/selectatest.html>>.

⁷⁶ Robinson, above n 55.

⁷⁷ Moran, above n 15, 45-51; see generally O'Donnell and Johnstone, above n 1 (discussing how to use various doctrinal courses to enhance students' knowledge of the role culture has played in the development and application of legal doctrine).

⁷⁸ See above Part (II)(A).

is important to consider the role culture plays in the lawyering process. The self-selection process may also have resulted in an over-representation of the number of students who want to learn about cultural perspectives as well as an over-representation of students who were aware of behaviours that may be attributable to culture.

A few students critiqued the fact that survey questions focused on race and ethnicity.⁷⁹ This critique echoes some scholars' critiques of health care cultural-competence survey instruments.⁸⁰ Definitions of culture are contextual and steeped in history, economics and politics and it is important to acknowledge that there is not an agreed upon definition of culture.⁸¹ Race, ethnicity and culture are themselves social constructs that will vary between, and even within, a given country or society and are based upon context and history.⁸² While we initially discussed asking questions that isolated numerous facets of culture such as sexual orientation, socio-economic status, and religious background, given the limited number of questions we wanted to ask, and our concerns about students not understanding the broad parameters of culture, we decided to focus mainly on two components of culture that play a significant role in cultural identity in the United States - race and ethnicity. In retrospect, we should have chosen to expand the survey to encompass specific questions that isolated a broader range of cultural factors. In fact, the critique about the survey's focus on race and ethnicity is particularly salient to the extent the survey is to be administered in countries other than the United States, where race has not played as large a role in shaping the dominant culture. Future surveys should make clear that cultural identity is multi-faceted and may include factors such as race, ethnicity, religion, socio-economic background, gender and sexual orientation. This could be done both through providing an initial definition of culture, and asking questions that seek information related to experiences based upon a wide range of cultural factors, including but not limited to, race, ethnicity, socio-economic status, religion, sexual orientation, etc. Ensuring the survey conceptualises culture broadly not only better reflects the cultural sensibility model,⁸³ it also may enhance the survey's educational value by helping students understand the multi-faceted aspects that comprise one's cultural identity.

As with all self-assessment instruments, especially those dealing with socially sensitive material such as views on race and ethnicity, there is

⁷⁹ See above Part (IV)(B)(2).

⁸⁰ Kumas Tan et al, above n 34, 549-51; Gozu et al, above n 6, 187.

⁸¹ See generally Bolden et al, above n 9; see also O'Donnell and Johnstone, above n 1, 6-12.

⁸² O'Donnell and Johnstone, above n 1, 7-8.

⁸³ Dogra, 'Cultural Competence or Cultural Sensibility', above n 40.

a concern that survey respondents will answer in the 'socially desirable' manner.⁸⁴ Future surveys may want to include a validation instrument, such as the Marlowe-Crown social-desirability scale,⁸⁵ to check for social-desirability bias.

Finally, and perhaps most importantly, this type of survey has significant limits, and any results must be used with knowledge of the instrument's limitations. Many aspects of the ways in which culture influences the lawyering process cannot be captured by a short differential-scale survey. It is difficult to draw conclusions or make definitive statements about respondents' attitudes based *solely* upon the survey instrument. The survey instrument is just one way to gather information about students' views and the information should be considered in light of the limitations inherent in a self-assessment survey on a complex and nuanced topic.

VIII FUTURE STUDIES

For future studies, it would be useful to administer this survey to a larger sample of incoming law students to get a sense of whether the results are unique to the students already sampled or are widespread responses to each question. It also would be interesting to administer the survey to both incoming and upper level law students and compare the results to see what, if any, effect legal education has had upon students' knowledge and attitudes about the role culture plays in the lawyering process. A comparative study of students from different countries might also be informative.

Well-documented social-science literature demonstrates that we all approach the world from our own cultural perspectives and that those perspectives influence our communication and interactions.⁸⁶ We also are largely unaware of our own implicit biases.⁸⁷ We suspect it is

⁸⁴ Ann Mallat Killenbeck, 'Bakke, with Teeth?: The Implications of *Grutter v Bollinger* in an Outcomes-Based World' (2009) 36 *Journal of College and University Law* 1, 55; Madonna Constantine and Nicholas Ladany, 'Self-Report Multicultural Counseling Competence Scales: Their Relation to Social Desirability Attitudes and Multicultural Case Conceptualization Ability' (2000) 47 *Journal of Counseling Psychology* 155 (finding high correlation between multi cultural competence self-reports and social desirability scales); Thea F Van de Mortel, 'Faking It: Social Desirability Response Bias in Self-Report Research' (2008) 25 *Australian Journal of Advanced Nursing* 40 (which found that almost half the self-report studies using a social desirability scale found that socially desirable response bias influenced their results).

⁸⁵ William M Reynolds, 'Development of Reliable and Valid Short Forms of the Marlowe-Crown Social Desirability Scale' (1982) 38 *Journal of Clinical Psychology* 119.

⁸⁶ For an overview of some of the social science literature that documents how our cultural perspectives and biases influence our interactions, see Kang, above n 49, 1514-28.

⁸⁷ *Ibid* 1494.

unlikely that 75% of incoming law students are generally aware of their cultural biases and when they are acting based upon stereotypical beliefs. Thus, it would be revealing if this survey was followed by Implicit Association Tests (IAT) in areas such as race, gender, sexual orientation and religion. The results of the survey and the IAT tests could be compared.

The work done with this survey can also be used as a starting point for developing a survey to measure law students' cultural-sensibility learning outcomes. Many questions from this survey were adapted from health care educators' cultural-competence learning-outcome tools. Many of these questions are likely to be useful measures of the impact of a course or teaching module designed to raise students' knowledge and awareness of their own biases and how those impact the lawyering process. We say this with the caveat that to the extent the survey is adapted as a learning-outcome-measurement tool, it is useful to think about it as one tool, not *the* tool. In addition to adapting this survey in order to use it as a pre/post court assessment, learning outcomes for cultural sensibility could also be assessed via hypothetical vignettes, essay questions, and self-reflective journals, as well as through observation of student/client interactions in law school clinics.⁸⁸

IX CONCLUSION

This survey is an initial foray into the exploration of law students' general level of knowledge and attitudes about the role culture plays in the lawyering process. This initial study indicates law students generally are aware that culture plays a role in the lawyering process and they want to learn more about how that occurs. The mere act of taking the survey served an educational purpose in that it prompted students to consider how culture affects lawyers' interactions. Administering the survey may be a useful incoming student orientation exercise, or a useful exercise at the start of clinical courses, because it prompts students to think about the role culture plays in the lawyering process.

⁸⁸ See Beach et al, above n 33 (discussing various methods used to teach cultural competence and measure the efficacy of the teaching methodologies); Crandall et al, above n 30 (discussing methods of cultural competence education used by various medical educators); see also Patricia Hudelson, N Junod Perron and Thomas Perneger, 'Using Clinical Vignettes to Assess Doctors' and Medical Students' Ability to Identify Sociocultural Factors Affecting Health and Health Care' (2011) 33 *Medical Teacher* 564 (discussing use of vignettes to assess knowledge, attitudes, and practices regarding the care of immigrant patients).

The survey results indicate some students may be unaware of the need to investigate others' cultural beliefs and practices before making judgments. It also suggests that students may be unaware of the effect culture has on their own beliefs and behaviours.⁸⁹ Their self-reported awareness of when they are acting based upon cultural stereotypes is inconsistent with social-science data about people's abilities to discern when their actions are predicated upon cultural bias. The students' belief that they already understand their cultural biases and when they operate based upon stereotypical beliefs may lead to resistance to cultural sensibility education as it relates to their own behaviours. If students believe they are bias-free, or that they already know their biases and have ably dealt with them, they will not see a need to explore the impact of their cultural biases on their interactions. Thus a critical piece of cultural-sensibility education requires developing students' awareness that most people have culturally-biased perspectives. This hopefully will allow students the freedom to admit their biases and thus become more aware of how their own cultural beliefs and experiences affect their interactions.⁹⁰ Only when this happens can they begin to understand the role their cultural views, perspectives and biases play in the lawyering process.

For educators already engaged in cultural sensibility education, we hope the survey provides information that will be useful in developing additional curricular materials and teaching methods. For legal educators who are less familiar with the skill of cultural sensibility and the need to teach it, we hope that this article helps inform the debate about whether cultural sensibility should be integrated into the law school curriculum, and provides insights about what some of the cultural-sensibility learning outcomes might encompass.

The survey described in this article is the first small step in developing data about law students' cultural sensibility knowledge and attitudes. As discussed herein, there are many ways in which this survey can be improved. However, the survey demonstrates that it is possible to adapt the work done by medical educators to legal education to begin exploring students' knowledge of, and attitudes about, the role culture plays in the lawyering process. We hope that this article lays the groundwork for others to consider using the work that has already been done by medical and clinical legal educators to further explore cultural-sensibility education and to develop and measure student cultural-sensibility learning outcomes.

⁸⁹ Bryant, above n 1, 76–8; Sedillo Lopez above n 1, 63; Weng, above n 20, 392–6

⁹⁰ See, eg, Weng, above n 20, 390 (noting that the "key to developing multicultural competence is cultural self-awareness").

Appendix A. Table 1. Race/Ethnicity

n = 138*	%
American Indian/ Alaska Native	3.0
Asian	6.1
Black	9.8
Hispanic/Latino(a)	6.8
Pacific Islander	1.5
White	81.8
Other	5.3

*Percentages will be greater than 100.0 due to multiple selections (choose all that apply).

Appendix B. Table 2. Cultural Sensibility Scale Items: Frequencies, Means, and Standard Deviations

	Strongly disagree (1)	2	3	4	Strongly Agree (5)	N	Mean (SD)
<i>Please indicate the extent to which you agree with the following statements:</i>	%	%	%	%	%		
1. My racial/ethnic/cultural background influences my attitudes about the law and legal systems.	10.1	15.2	21.7	41.3	11.6	138	3.29 (1.17)
2. If a client shakes hands with a man but refuses to shake hands with a woman, that is an indication that the client is sexist.	14.6	34.3	24.1	23.4	3.6	137	2.67 (1.10)
3. Lawyers belonging to racial/ethnic minorities bring culturally-biased assumptions into the lawyer/client relationship.	11.6	33.3	31.2	20.3	3.6	138	2.71 (1.03)
4. What an individual believes to be an appropriate way to resolve conflict is influenced by his or her background, including factors such as race, ethnicity, and culture.	2.2	4.3	15.9	44.9	32.6	138	4.01 (0.93)
5. Judges often impose their own cultural values on the decisions they make in legal cases.	1.5	23.4	34.3	36.5	4.4	137	3.19 (0.90)
6. The way clients communicate with their lawyers is influenced by the client's racial/ethnic/cultural background.	.0	6.5	18.8	58.0	16.7	138	3.85 (0.77)
7. Appropriate legal solutions should not vary depending upon the client's race/ethnicity/cultural background.	1.4	15.9	20.3	40.6	21.7	138	3.65 (1.04)
8. When a client refuses to look his or her lawyer in the eyes, the lawyer should assume that the client is not being truthful.	40.6	43.5	11.6	3.6	.7	138	1.80 (0.84)
9. How legal information is understood by a client is influenced by his or her race/ethnicity/cultural background.	.7	15.9	11.6	58.7	13.0	138	3.67 (0.92)
10. In general, people look at legal problems through their	.0	5.1	19.0	60.6	15.3	137	3.86

	Strongly disagree (1)	2	3	4	Strongly Agree (5)		
<i>Please indicate the extent to which you agree with the following statements:</i>	%	%	%	%	%	N	Mean (SD)
own cultural lens.							(0.73)
11. White lawyers bring culturally-biased assumptions into the lawyer/client relationship.	16.1	27.0	22.6	29.9	4.4	137	2.80 (1.16)
12. Most people are unable to recognise when their reactions to other people are based on stereotypical beliefs.	1.4	24.6	28.3	41.3	4.3	138	3.22 (0.92)
13. In general, I am able to recognise when my reactions to others are based on stereotypical beliefs.	1.5	3.6	21.9	56.2	16.8	137	3.83 (0.80)
14. Most people cannot accurately identify their culturally-biased assumptions about others who are from different racial/ethnic/cultural backgrounds.	.7	28.5	35.0	32.8	2.9	137	3.09 (0.87)
15. Law students should learn about cultural issues that may arise when providing legal services to people from different racial/ethnic/cultural backgrounds than their own.	.7	1.5	9.5	40.9	47.4	137	4.33 (0.77)
16. In general, I can accurately identify my culturally-biased assumptions about others who are from different racial/ethnic/cultural backgrounds.	.0	3.7	24.3	64.0	8.1	136	3.76 (0.65)
17. Law professors should discuss cultural assumptions embedded in appellate legal opinions.	3.7	5.9	21.3	50.7	18.4	136	3.74 (0.95)