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# Chinese Soup, Good Horses, and Other Narratives: Practicing Cross-Cultural Competence before We Preach

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# Chinese Soup, Good Horses, and Other Narratives: Practicing Cross-Cultural Competence before We Preach

*Marci Seville\**

## Introduction

When I learned about the conference on “Vulnerable Populations and Economic Realities,” focused on teaching social justice issues across the curriculum, my first thought was that a panel on cross-cultural competence would be an essential part of the program. We cannot effectively integrate social justice issues into a wide range of doctrinal classes without a keen awareness of how to address issues of race, class, gender, and other differences. Clinical professors have long tackled issues of cross-cultural competence in their teaching, scholarship, and practice, and the experience of those professors could inform the teaching theories at the conference.

I was fortunate to have a talented group of former and current clinical professors participate in the planning and presentation of our panel, *Practicing and Teaching Cross-Cultural Competence: Lessons from the Clinical Trenches*. Many thanks to Shauna Marshall, academic dean and professor of law at Hastings College of the Law; Miye Goishi, clinical professor of law and director of the Hastings Civil Justice Clinic; Christine Zuni Cruz, professor of law at the University of New Mexico and co-director of the Southwest Indian Law Clinic

University; and Margaret Montoya, professor of law at the University of New Mexico.

Before we undertake teaching our students about cross-cultural competence, we need to examine carefully our own practices, and those of our colleagues and institutions, to ensure that we are not complicit in the very practices of cross-cultural “incompetence” that we hope to train our students to avoid. While there is a substantial body of scholarship on teaching this competence to our students, there is less written about practicing it ourselves as teachers and members of academic institutions. This essay will examine the latter subject and will hopefully provide some productive suggestions on ways to expand cross-cultural competence for our law schools and ourselves.

## Examining Our Own Assumptions and Learning from Our Students

Many professors want to address issues of social justice and privilege but are reluctant for various reasons: student resistance to taking the time to do so, backlash that we are imposing “politically correct” viewpoints, and inability to manage the classroom tensions that often arise during these discussions between students from different backgrounds or between students and faculty.<sup>1</sup> Some of us have found that an effective tool to diffuse the tension, and to present issues of privilege in a less heavy-handed way, is the use of “modeling” to demonstrate our critical self-reflection in this area.<sup>2</sup> Or, to put the concept of modeling in more mundane terms, we come clean about our own gaffes with assumptions and cross-cultural competence by using concrete examples. Another critical piece of cross-cultural competence is acknowledging, as I do in the stories below, how we learn from students who bring to the table experiences different from our own.<sup>3</sup>

During my 17 years of clinical teaching in a program that represents low wage and immigrant workers, I have learned that the need for examining privilege is ever present. We confront language, cultural, and class differences on a daily basis, and to borrow a phrase used by Professor Jane Aiken, my own “slips of privilege” have provided many teachable moments.<sup>4</sup> I start with my tale of Chinese soup and move on to other narratives that I share with my students to explain my own challenges with cross-cultural competence.

### *A Tale of Chinese Soup*

Under California law, wage claims for live-in household domestic workers are particularly challenging for students—and lawyers—because they are ex-

tremely fact intensive. The worker's right to overtime pay depends upon whether she is deemed a "personal attendant." To fall outside the personal attendant classification, the worker must spend 20 percent or more of the workweek on duties other than feeding, dressing, and supervising the child, disabled, or elderly person under her care.<sup>5</sup> This requires a sometimes maddeningly detailed inquiry into the worker's weekly tasks to determine when cleaning, cooking, and other chores relate to the individual being cared for, or whether those tasks might fall into the 20 percent or more category of general household tasks.

Our clinic student was representing a monolingual Cantonese-speaking client who worked as a live-in nanny. The client had little time off, so scheduling a lengthy interview when she was not working, at a time when we could find a language interpreter, presented the first challenge to the student's sense of how a real lawyer functions. The interview began on a Sunday morning and lasted many hours. In preparation for the interview, I worked with the student on framing appropriate questions to elicit the necessary information, including how much time was spent only on meal preparation for the children, as opposed to meals for the family as a whole. In discussion with the student, I emphasized the need to work with the client to reconstruct meticulously each day, hour by hour.

The interview progressed with the well-prepared student doing everything she was supposed to do, but with the client and the interpreter looking at one another like we were operating in a "parallel universe," getting increasingly frustrated with the approach the student and I had crafted.<sup>6</sup> Well into the interview, the exasperated interpreter broke out of her traditional role and told us, "We can sit here all day with questions about exactly how much time your client spent cooking, but you will never get the answer you are looking for." She explained that our client was cooking Chinese soup and that one does not cook Chinese soup for a specific amount of time. "You start in the morning, you have to let the soup simmer for hours, coming in and out to stir it; it's different from the way you cook. No matter how many times you ask her about it, she will tell you that she was cooking all day."<sup>7</sup> With apologies to the client, the interpreter, and my student, we moved on to an interview topic other than cooking, and later reassessed how to approach the fact development in the case.

I used the experience with this student—and continue to use it with others—to highlight the importance of cross-cultural understanding and how all of us, including the professors, face unexpected challenges. On more than one occasion, when relating this experience to Chinese American students, they have simply laughed and said, "Of course it was ridiculous to try and pin down a specific amount of time—it's Chinese soup!"<sup>8</sup>

## Hou Ma But Hek Wui Tao Chou— *The Good Horse Won't Eat Back Old Grass*

A bi-lingual Chinese-American student was representing a monolingual Chinese immigrant worker during a mediation in a pregnancy discrimination case against a large hotel. The employee had experienced serious pregnancy-related medical complications, had been denied pregnancy disability accommodation, and eventually lost her job. She had been a hotel housekeeper working with a large group of co-workers, almost all of whom were also Chinese.

During the mediation, the employer argued that our client had failed to mitigate damages because there had been a change in ownership, and our client had a clear opportunity to reapply for her job but failed to do so. The employer also raised the issue of our client returning to work following the mediation. Observing my student and her client, whose reactions to the reinstatement issue seemed to be that it was utterly absurd, I became concerned that I had failed to adequately address the principle of mitigation before the mediation. Shortly after the employer's comments about mitigation, we had an opportunity to caucus. Both the student and the client confirmed my impression that they thought the employer's suggestions of reapplying, and the possibility of reinstatement, were ridiculous. The student quickly said to me, "I don't think you are aware of the ancient Chinese proverb, *Hou Ma But Hek Wui Tao Chou*. Our client could never reapply or return to this job." The student went on to explain the proverb to me with its English translation, "The Good Horse Won't Eat Back Old Grass." The proverb means that a good employee will never go back to work for her former employer. Had she done so, our client would have been shamed among her Chinese co-workers. I learned that I was as culturally incompetent about "eating back old grass" as I had been about cooking Chinese soup.<sup>9</sup>

After some discussion, I suggested that the student might want to educate the employer, opposing counsel, and the mediator about the cultural issues, as she had done with me. The student asked, "Are you serious?" I offered my opinion that there was no down side to raising the issue, and it offered the opportunity to give the client a sense of empowerment after what had been a humiliating and traumatic work experience. The student presented the issue with dignity, there was no negative response expressed by the opponents or the mediator, and we went on to resolve the claim successfully by the end of the day.

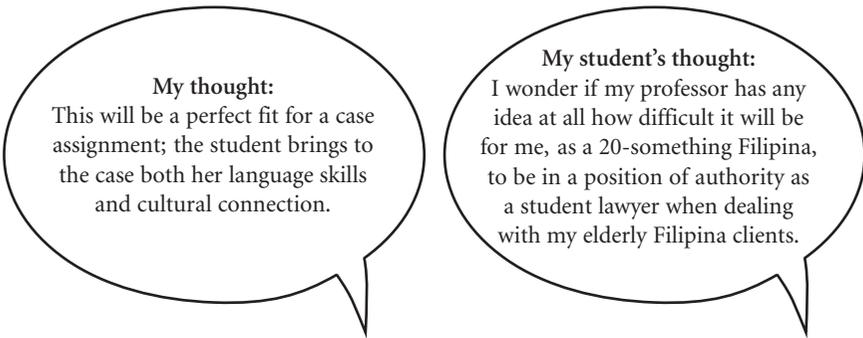
### *Learning about Respect for Elders and Pagmamano*

As part of our clinic's domestic worker advocacy, we took on a minimum wage and overtime case for two older Filipina caregivers in a group home, one

of whom did not speak English. When doing student team assignments at the start of the semester, I was thrilled to have a young Filipina student fluent in Tagalog who could participate in the client representation. This proved to be another cautionary tale about my own cross-cultural competence.

In sharing this story, I will draw liberally on a teaching tool that Professor Christine Zuni Cruz discussed at the “Vulnerable Populations” Conference and the 2010 AALS Conference on Clinic Legal Education—a “thought bubble” exercise for interviewing and counseling. The purpose of the exercise is to explore the hidden and internalized dialogue around issues of difference in lawyer-client interviewing and counseling. The exercise involves students role-playing two scripted interviews between an attorney and client, and the rest of the class then commenting on the two versions of the same interview. The first discussion is of the actual interview; the second interview reveals the thoughts of both the lawyer and the client.<sup>10</sup> I found that a variation on the thought bubble exercise was particularly apt to show the limitations of my thinking in this case assignment.

The following “thought” dialogue took place about the team assignment:



My student was right to wonder about this.

As with the domestic worker case described in the Chinese soup narrative, above, this case involved lengthy interviews with workers not accustomed to detailed record keeping—or any record keeping for that matter—to reconstruct their day-to-day activities. It required interviews where the students had to press the clients to give us clear and consistent accounts of their workdays that did not change from one meeting to the next. The students needed to urge, cajole, and eventually instruct the clients to maintain daily records of their work duties and hours. This required that the students exhibit self-confidence, persistence, and also, that they assume the role of student-lawyer with

some “authority.” Though generally aware of the deep respect for elders in many cultures, it was not as front and center in my mind during the team assignments as it should have been. Through my student being forthcoming in case rounds and during individual supervision meetings, I learned about the strong Filipino culture of respect for elders and eventually about “Pagmamano.” In Filipino culture, respect for and obedience of elders is a fundamental cultural value, manifested, among other ways, by the Pagmamano gesture often done by young people. The younger person gently brings the elder’s right hand to the youth’s forehead and kisses the hand. Despite efforts of the younger generation to greet elders with “Beso Beso” or kisses on the cheek, many elders prefer the longstanding custom.<sup>11</sup> In the three-student team on this case, only the Filipina student had difficulty with her “lawyer” role. The other two students, who were students of color but not Filipina, did not share this cultural challenge.

Here and in many other clinic cases, the students and I had the benefit of partnering with community-based organizations. With the guidance of the Filipino Community Center, we learned that our clients would be most comfortable if addressed as “Tita” or “Auntie.” With guidance from my Filipina student, I was able to work with her to increase her comfort level with her role as the student attorney. But lest I forget the depth of these cultural traditions, I was reminded about them when our “Tita” sent a Hallmark thank you card to the students at the end of the semester. Although our client never asked for Pagmamano, her handwritten greeting to the students read, “My Dearest Beloved Babies.”

### *What a Difference a Word Makes—Electing Chinese Worker Leaders*

When representing several hundred Chinese immigrant garment workers on unpaid wage claims, we agreed with our partner community-based organization, the Chinese Progressive Association (CPA), that we needed two or three workers to take on a leadership role for group decision-making and communication with counsel. At one point, when I was speaking to the group, we talked about the need for “worker leaders.” Unbeknownst to me, the CPA board member serving as the interpreter did not use the term “worker leader,” but instead used “employee representative.” He later took me aside to explain that no workers would come forward to take on the role if they were called leaders. There was too much risk associated with that term from experiences in China, and by calling the position employee representative rather than worker leader, we would have several workers ready and willing to take on the task.

A recent article on worker collective action in China discusses the importance of this terminology, noting that “worker leader” is a term in western discourse about worker movements, compared with the expression “employee representative” used in Chinese discourse. The term “worker leader” refers more to a “spirit of militancy and resistance.”<sup>12</sup> To put the workers’ concerns in the proper cultural context, at the time we were representing these workers, a prominent Chinese worker leader was arrested and imprisoned on charges of subversion of state power and then served a seven-year sentence for his labor activism.<sup>13</sup>

Although we eventually had the benefit of working with a Chinese American graduate law fellow and former student, who spoke both Cantonese and Toisanese and could communicate with almost all of our monolingual clients, she did not have sufficient knowledge of the political context to inform her terminology. Thus, she, too, needed the guidance of the Chinese Progressive Association to understand the nuances of language when communicating with the workers in their native languages.

### *Questioning Assumptions—A St. Louis Story*

Before leaving the narratives, I will include one that Hastings College of Law Academic Dean Shauna Marshall generously shared at the “Vulnerable Populations” panel. She recounted an experience while working as a legal assistant in the 1970s at the St. Louis Legal Aid Society, doing welfare hearings and working on a mobilizing drive to increase job-training opportunities for welfare mothers. Most of the women were Black. As a 20-something Black woman, Shauna felt there would be an automatic bond with the welfare mothers. Her boss, Paulette, was a Southern White woman and Shauna felt sorry for her, assuming the clients would not relate well to her. Shauna was wrong; they clearly preferred the White woman. Although Shauna then did not have terminology to understand what was going on, there was a cultural divide. The women from St. Louis were not only older, but Missouri was a slave state. They understood many of Paulette’s mannerisms and sayings. Shauna, on the other hand, was from New York, with four West Indian grandparents. Her cultural understanding of “Black” was a personal one, growing up in New York, living in a middle class West Indian family. There were no slaves in her immediate family background and although she experienced *de facto* segregation, she had not experienced *de jure* segregation. She and her parents were educated, and she was on her way soon to law school. She was only passing through while this was a permanent home and job for Paulette. Like the clients, Paulette was older and a single mom, slowly working toward her Bachelor’s degree at night. While

Paulette did not suffer skin color discrimination, she did not have the many privileges that Shauna took for granted. Shauna reflected that she needed cultural competence and had to learn it on the job. She did so by finding humility, and by listening, observing, and reading.

### *Reflections on the Narratives*

Each of these narratives provides a lesson about ways that my own cultural boundaries limit my understanding of situations, as Shauna's experience provided a similar lesson for her. In the Chinese soup story, neither my student nor I shared either language or culture with the client, a situation most likely to present cross-cultural barriers. In the Good Horse and Pagmamano stories, I had the benefit of students who shared both language and culture with the client and who could give me insight into how I teach. In the former, because of my lack of cross-cultural understanding, I missed an issue that would present difficulty for the client. In the latter, I missed an issue that would present difficulty for the student. In both, I learned from the cross-cultural competence of my students. In our garment worker case, I lacked shared language, culture, and political context on the worker leader issue, and my student, though she shared language and culture, lacked political context. Like Shauna, I try to learn from each experience, and to listen, observe, and read about the cultural context. I work to value the learner's perspective and the client's perspective, and I share these experiences with my students, so that issues of difference and privilege are an essential part of the conversation in our classroom.<sup>14</sup>

## **Ensuring That Our Own Houses Are in Order**

I titled this essay "practice before we preach" to emphasize the need for faculty to engage in the practice of self-reflection about cross-cultural issues that, as clinicians, we ask our students to do. Reflecting on the ways in which cross-cultural competence is a continuing challenge for me informs my thinking about how to discuss these issues not only with students, but also with faculty colleagues and administration. As may be obvious by now, I share Shauna's view, described in her St. Louis Legal Aid story, that a good dose of humility is needed when tackling issues of privilege. I am as hesitant to say that I have achieved cross-cultural competence as I am to say that I have become fluent in a foreign language; it is far easier to get to a level where you manage to get by than it is to be proficient. We should acknowledge that achieving this competence will always be a work in progress. Cross-cultural issues are not static,

and we have much to learn from colleagues, students, and clients who bring to the table different cultural experiences.

As I noted above, we must ensure our own houses are in order—namely, our own institutions—before we are in a position to “preach” cross-cultural competence to our students. What, then, are some of the lessons for putting our house in order?

### *Avoid Being Complicit by Silence*

With our colleagues, it is incumbent on each of us not to be complicit by silence when we observe troubling assumptions or stereotyping. Experiences that I have had or faculty at other institutions have shared include Asian American women on the faculty and staff being treated as fungible—names and faces often confused regardless of job, areas of expertise, and whether they are of Chinese, Korean, or Filipina background. I recall an Asian American colleague, born and raised on the East Coast, relating a story about a high level university official asking her “Where are you from?” When she responded “New York,” he persisted by saying, “No, I mean where are you *really* from?” While attending a faculty program on teaching students with learning disabilities—an area that many of us are only beginning to understand—a participant (happily not a regular faculty member) posed a question that drew a contrast between the learning disabled students and “normal” students. During faculty hiring, so many of us have experienced colleagues speaking about women applicants or applicants of color with comments like, “She is personable, with interesting ideas, but I am not sure she has scholarly potential.”<sup>15</sup> Similarly, many of us have heard concerns expressed by students of color who feel singled out by professors when issues of race or ethnicity arise in class.

Professor Stephanie Wildman, who has written extensively about privilege, uses her own experience while on jury duty as an example of being complicit by silence:

[P]rivilege may be exercised by silence. At the same time that I was the outsider in jury service, I was also a privileged insider. During voir dire, each prospective juror was asked to introduce herself or himself. The plaintiff’s and defendant’s attorneys then asked supplementary questions. I watched the defense attorney, during voir dire, ask each Asian-looking male prospective juror if he spoke English. No one else was asked. The judge did nothing. The Asian-American man sitting next to me smiled and flinched as he was asked the question.

I wondered how many times in his life he had been made to answer questions such as that one.

I considered beginning my own questioning by saying, “I’m Stephanie Wildman, I’m a professor of law, and yes, I speak English.” I wanted to focus attention on the subordinating conduct of the attorney, but I did not. I exercised my white privilege by my silence. I exercised my privilege to opt out of engagement, even though this choice may not always be consciously made by someone with privilege.<sup>16</sup>

We cannot opt out of engagement with our faculty colleagues because we risk alienating them if we do engage. We all need to take an active role in challenging issues of privilege within our law schools, and we need to be particularly mindful about not leaving this task to the faculty of color, the women, and those not yet tenured.<sup>17</sup>

### *Promote Frank and Ongoing Dialogue about Issues of Race, Class, and Other Differences*

At our “Vulnerable Populations” panel, Shauna Marshall discussed two recent panels held at Hastings College of the Law, dealing with how to address race and ethnicity in the classroom. Students provided the impetus for the discussions, and Shauna’s Academic Dean’s office co-sponsored the programs with faculty leading the discussion.

Are these challenging conversations? Certainly. This was evident from the varied reactions of the Hastings audience. White faculty were worried about being fair to all points of view, not coming across as genuine, handling comments from students who were hostile. Faculty of color showed concern about being fair to all viewpoints; being criticized for wearing race on their sleeve; or affecting their reputations with white students and faculty. Students of color expressed anger about the fact that faculty dance around the topic of race and felt the climate in the classroom puts them on the spot and makes them responsible for carrying the ball on cross-cultural issues. They also felt unsupported and frustrated by the lack of knowledge and understanding of cultural issues by many in the law school community. White students at times felt intimidated, did not want to say the wrong things, felt silenced, and thought students of color were sometimes oversensitive.

Given how these conversations are fraught with difficulty, why go there? Because we must. Shauna expressed her view, from the perspective of Academic Dean, that the law school has an obligation to teach cross-cultural lessons, not only in the context of the vulnerable populations highlighted at our

March 2010 poverty law conference, but for all students in our increasingly global world of legal practice: a lack of understanding of cross-cultural competence will affect a lawyer representing a Vietnamese business client in a contract case, as it will the lawyer representing a Latino immigrant factory worker. Moreover, we have an obligation to teach the law from a perspective that does not degrade some of our students' cultural norms while elevating others. Faculties need to strive to develop cross-cultural competency and to integrate into the mainstream curriculum issues of race, class, and privilege. We cannot marginalize these issues: the message from the start of law school must be that privilege and difference are important to address. Shauna concluded by noting that, as the numbers of faculty of color serving as Deans and Academic Deans grow, more people in these leadership positions will be in positions to pave the way for these discussions as she did at Hastings.

### ***“When in Rome ...”—Drawing Our Scholarly Colleagues into the Conversation by Looking to Scholarship***

When addressing cross-cultural competence, we encounter a range of views among our colleagues. Some work tirelessly to address issues of privilege and difference and to find ways to integrate these issues into their doctrinal classes. Others want to address these issues or at least are open to it, but cannot identify the logical connection to the course materials or are concerned about the challenges that arose in the Hastings panel discussions. Still others think it is irrelevant to the subject matter they teach and to their role as educators.

Fortunately, there is a rich body of scholarship that we can draw upon to help “legitimize” discussion of cross-cultural competence, not that it should need legitimizing. These include the growing legal and scientific scholarship on implicit bias<sup>18</sup> and “stereotype threat,”<sup>19</sup> and the extensive writings on teaching cross-cultural competence.<sup>20</sup>

During the past decade, cognitive psychologists have developed methodologies to demonstrate that we are influenced by racial bias and are often unaware of it. Legal scholars in turn have relied upon that cognitive work to develop legal theories of implicit or unconscious bias that, albeit slowly, are gaining acceptance by some courts.<sup>21</sup> The 2010 Eighth Circuit Judicial Conference recognized the importance of this growing field of scholarship by including a panel discussion on *Implicit Bias: What We Can Learn From The Latest Research*, to address the following:

Implicit biases are the plethora of fears, feelings, perceptions, and stereotypes that lie deep within our subconscious. We unconsciously

act on such biases even though we may consciously abhor them. Courtrooms, law offices and government agencies are not immune from implicit bias. Judges, lawyers, witnesses and jurors bring implicit biases with them when they walk through the courthouse doors. . . . United States District Judges Mark Bennett and Bernice Donald will address things all of us should know, but are seldom discussed.<sup>22</sup>

If the federal judiciary is willing to tackle these things that “all of us should know but are seldom discussed,” then certainly our colleagues might be convinced to do so.

At a 2008 University of Connecticut Symposium, *Unconscious Discrimination Twenty Years Later: Application And Evolution*, Professor Charles Lawrence discussed (and critiqued)<sup>23</sup> the developing legal research and scholarship on implicit bias that has evolved since his 1987 article on unconscious racism.<sup>24</sup> He offered a concise explanation of the recent work:

Legal scholars . . . have explored the implications of this new science for the adjudication of allegations of discrimination, for shaping public policy and for understanding broader patterns of disadvantage in our society. Linda Hamilton Krieger’s groundbreaking article, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment*, introduced the science of cognitive bias to employment discrimination lawyers, demonstrating that a large number of biased employment decisions result not from discriminatory motivation (either conscious or unconscious) but from unintentional categorization-related judgment errors. This scholarly work has in turn been employed by lawyers who have educated judges about unconscious bias even as they have argued anti-discrimination cases within the limited doctrinal regimes that focus on motive rather than impact, and by advocates who have sought directly to educate employers, educators, health care workers, and political constituencies about the importance of recognizing unconscious racism in the fight for equal justice.<sup>25</sup>

The cognitive work on implicit bias is being used in litigation and addressed in scholarship in areas ranging from employment discrimination<sup>26</sup> and family responsibilities discrimination<sup>27</sup> to habeas corpus petitions<sup>28</sup> and jury selection.<sup>29</sup>

A tool often used in connection with unconscious bias is the Implicit Assumption Test or IAT, originally developed by researchers at Yale University and the University of Washington.<sup>30</sup> This test, and others like it, are a humbling experience for any test-taker. As described by Professor Lawrence:

The Implicit Association Test measures unconscious racial bias by linking together words and images to reveal what associations come most easily to mind. When you visit the IAT web site, you are asked to classify a series of faces into two categories, African American and European American. You must then mentally associate the white and black faces with words such as “joy” and “failure” ... These tests have been taken by more than two million people. An analysis of tens of thousands of these tests taken anonymously on the Harvard web site found that eighty-eight percent of white people had a pro-white or anti-black implicit bias; nearly eighty-three percent of heterosexuals showed implicit bias for straight people over gays and lesbians; and more than two-thirds of non-Arab, non-Muslim testers displayed implicit biases against Arab Muslims.<sup>31</sup>

A faculty discussion of implicit bias, with participants taking the IAT in advance, would be an excellent starting point for discussion of cross-cultural competence.

A second and related area, in which existing scholarship can inform thinking about cross-cultural competence, and specifically the interactions in the classroom among students and between faculty and students, is “stereotype threat.”<sup>32</sup> In initial work in this field, psychologist Claude Steele identified stereotype threat as a fear that by performing poorly on exams minority students risk reinforcing negative racial stereotypes associated with race and intelligence. These racial stereotypes create self-doubt and result in lower test scores, and the stereotypes become a self-fulfilling prophecy. Implicit bias and stereotype research support the proposition that subjugated groups internalize the bias directed against them.<sup>33</sup>

Some professors are quick to dismiss an assertion that the performance of students of color might be affected by their “difference.” Particularly at schools that are not top tier, it is easy for faculty to assume that academic shortcomings alone provide the explanation. While some might find it easy to disregard the concept of internalized bias, an honest conversation with many students and faculty of “difference” will quickly provide anecdotal evidence of these experiences.<sup>34</sup>

Betty Hung, a colleague in California low-wage worker advocacy and the daughter of immigrant parents, wrote about her experience as a Yale Law School student:

When I first entered the doors of “the Yale Law School” in 1994, however, I left my smarts outside. Or at least that is how I felt. It did not matter that I had graduated *magna cum laude* from Harvard. Sud-

denly in the midst of a small law school class where every other person seemed to be a Rhodes scholar, related to a federal circuit court judge, or an aspiring politician, I felt tongue-tied, overwhelmed, and lost. I was the first person in my family to go to law school, and growing up, I did not know any lawyers. The language, theory, and practice of the law seemed utterly foreign to me. During classes, I was intimidated by the Socratic method and even more intimidated by how other students, especially male students, seemed unfazed and confident. My progressive politics seemed out of place. I felt like overnight I had become a person who was not intelligent enough and not suited to practicing law because I did not fit the traditional mold of an aggressive, commanding, and savvy lawyer.

During much of law school, I felt voiceless and marginalized. Much literature has been written about how women and people of color experience alienation during law school. It was this literature and the discovery of critical race theory that helped me not just to survive law school, but also to draw upon the dissonances of my experience as a strength that over the years has, I believe, helped me to become a better public interest lawyer. . . . Critical race theory gave me the language and concepts to understand and articulate the truth of what I had experienced since childhood—that sociopolitical and legal institutions, structures, and norms reinforce a status quo where select groups wield power and wealth while many others are disenfranchised.<sup>35</sup>

While there will always be naysayers about the studies on implicit bias and stereotype threat,<sup>36</sup> these concepts are of great value for a faculty willing to look candidly at the dynamics that arise in the classroom among students and between students and faculty.

### *Using the Carnegie Report's Imperative to Teach "Moral Discernment"*

Finally, we should look to the 2007 Carnegie Foundation Report "Educating Lawyers: Preparation for the Profession of Law"<sup>37</sup> to bolster our efforts to make cross-cultural competence an integral part of our law schools' culture and pedagogy. The Report has the attention of both doctrinal and clinical faculty, and in addition to motivating curricular reform, the Report's imperative to teach "moral discernment" can be an avenue for addressing cross-cultural competence.<sup>38</sup> Part of that moral discernment is "a grasp of the social context and cultural expectations that shape practice."<sup>39</sup> While some scholars have cri-

tiqued the Carnegie Foundation for not sufficiently addressing pedagogy dealing with difference-based identity,<sup>40</sup> the Report's focus on teaching moral discernment, in conjunction with the scholarship discussed above, provides a springboard for discussion of practicing and teaching cross-cultural competence.

## Conclusion

We can learn to practice what we hope to preach by building on the model Shauna Marshall described at Hastings College of the Law. We should look to our deans to convene faculty discussions to address issues of privilege and difference at our institutions, incorporating developing theories of implicit bias and stereotype threat, as well as the literature on teaching cross-cultural competence. Where the faculty would benefit from the guidance of an outside facilitator, it should use one. Institutions should consider whether they want initial discussions to be for faculty alone, or whether, as at Hastings, the discussions would be open to students and staff. With the Carnegie Report's emphasis on teaching moral discernment, we have the opportunity to make cross-cultural competence an integral part of what we teach.

Justice Ruth Bader Ginsburg has commented that: "A system of justice is the richer for the diversity of background and experience of its participants. It is the poorer, in terms of evaluating what is at stake and the impact of its judgments, if its members—its lawyers, jurors, and judges—are all cast from the same mold."<sup>41</sup> Legal education is similarly the richer for the diversity and experience of all its participants, the ability of its faculty to recognize the importance of cross-cultural competence, and the willingness to work toward it. We have much work to do.

## Notes

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1. See, e.g., Jane H. Aiken, *Striving to Teach Justice Fairness and Morality*, 4 CLINICAL L. REV. 1, 43, 51–52 (1997) (discussing the difficulties of this teaching and the discomfort and tension in the classroom for both students and faculty); Angela P. Harris & Marjorie M. Shultz, *A(nother) Critique of Pure Reason: Toward Civic Virtue in Legal Education*, 45 STAN. L. REV. 1773, 1801–1802 (1993) (discussing how a course had been the catalyst for an "angry

and racially polarized student brouhaha about the meaning and value of faculty diversity” and how disagreements arise over the proper subject matter of courses, including what should count as “legal” as opposed to “sociological” material).

2. See Aiken, *supra* note 1, at 52 n.176 (“Modeling is a key technique in demonstrating to students how they can incorporate critical self-consciousness of privilege.”); Norman Redlich, *Professional Responsibility of Law Teachers*, 29 CLEV. ST. L. REV. 623, 623–24 (1980) (“We teach best by example, and nothing which the law professor says in class with regard to professional standards can equal in impact the effect of the professor’s own conduct.”). When discussing “modeling” as a teaching technique, it is important to recognize and respect that professors have different boundaries about revealing personal stories and making their own self-reflective behavior the focus of class discussion. See Harris & Schultz, *supra* note 1, at 1795 (“I sense rather than see that my co-teacher is horrified as I open a session of my legal ethics seminar by recounting that my husband and I had a major fight while watching L.A. Law the night before.”). These boundaries are sometimes drawn quite strictly by the professors who are younger, female and/or a person of color, and who may already face their authority being challenged by students in class.

3. Aiken, *supra* note 1, at 50 (discussing the creation of circumstance in which the learner’s perspective is valued in the class).

4. *Id.* at 52. Aiken describes how she examines assumptions by using her own “slips of privilege as fodder for class discussion,” suggesting that learners may be more willing to analyze their own experiences once they see how it happens unintentionally—even to the professor. She offers as an example an analysis she did in class of her own exercise of privilege:

I testified before the South Carolina General Assembly in opposition to a bill that would prevent the acknowledgment of marriages between people of the same sex performed in other states. One of my strategies was to try to convince the legislature that they need not act on this law because gay marriages had not yet been recognized in any state and we were at least two years away from that event. I suggested that we could thereby avoid setting ourselves up for costly litigation, leaving those costs to other states to pay and acting later if necessary. When talking with my class about the constitutionality of such a bill, I told them about my testimony. I said, “It is not a problem yet, we don’t need to fix it.” At the moment I said that, I realized that I had engaged in heterosexual privilege. I had characterized same-sex marriage as a problem. I stopped the class and I pointed out my choice of words and asked the class: “If I had a committed relationship with someone of the same sex, would I have characterized same-sex marriage as a problem? Who benefits from that characterization? How does that characterization reinforce the marginalization of gay people?” I took pains to show them that my choice of words was not intended to have that effect, but that it was important for me to recognize the effect and work from there.

*Id.* Aiken concludes that once students go through an exercise in which she is the focal point, they appear less threatened by a similar analysis of their own comments.

5. Order Regulating Wages, Hours, and Working Conditions in Household Occupations, 8 CAL. CODE REGS. tit. 11150 §§ 1(B), 2(J) (2010).

6. Susan Bryant and Jean Koh Peters have written extensively about “Parallel Universe Thinking,” which asks the student lawyer to imagine other possible explanations or meanings for the clients’ words and actions. This thinking recognizes that cultural norms and practices may result in different interpretations of the same actions. See Susan J. Bryant & Jean Koh Peters, *Six Practices for Connecting with Clients Across Culture: Habit Four, Work-*

ing with Interpreters and Other Mindful Approaches, in *THE AFFECTIVE ASSISTANCE OF COUNSEL: THE LAW AS A HEALING PROFESSION* 183 (Marjorie A. Silver ed., 2006).

7. Should anyone doubt the interpreter's information about some Chinese soup needing all day cooking, consider the eight-hour preparation times for "Shang Tang" Chinese stock and shark fin soup. See *Shark's Fin in Chinese Cooking*, ChineseFood-Recipes, [http://www.chinesefood-recipes.com/food\\_articles/sharks\\_fin\\_chinese\\_cooking.php](http://www.chinesefood-recipes.com/food_articles/sharks_fin_chinese_cooking.php) (last visited June 13, 2010); *Superior stock shang tang*, Homemade Chinese Soups, <http://www.homemade-chinese-soups.com/superior-stock.html> (last visited June 13, 2010).

8. As discussed in notes 9–11 and accompanying text, *infra*, in the clinical setting, partnering with community based organizations can greatly benefit both the students and faculty in understanding cultural norms and can sometimes forestall misunderstandings.

9. Hou Ma But Hek Wui Tao Chou was the subject of much discussion on the blogosphere in spring 2010 after a China spokesperson questioned the proverb's ongoing validity in discussions about China's relationship with Google. Asked about Google's statement that it would no longer censor its Chinese site, even if that meant having to pull out of China, Chinese People's Political Consultative Conference spokesperson Zhao Qizheng, reiterated China's stance that all foreign companies must obey Chinese law. A Wall Street Journal Blog reported: Zhao then tried to turn an established aphorism on its head. Mentioning an old Chinese proverb, "a good horse will never return to graze on grass it has already passed by," he took issue with it. "This saying is crazy. If there is good grass, why give up? A good horse wants to eat good grass. So the horse that returns is a smart horse."

Aaron Back, *CPPCC Spokesman Waxes Metaphorical on U.S.-China Ties, Google*, WALL ST. J. BLOG: CHINA REAL TIME REPORT (Mar. 2, 2010, 9:06 PM), <http://blogs.wsj.com/chinarealtime/2010/03/02/cppcc-spokesman-waxes-metaphorical-on-us-china-ties-google/>. The Wall Street Journal commentator noted: "We're pretty sure Google is the horse, here, China the grass." *Id.*

10. *Answering the Call for Reform: Using Outcomes Assessment, Critical Theory and Strategic Thinking to Implement Change*, CONFERENCE ON CLINICAL LEGAL EDUCATION WORKBOOK 111, available at <http://www.aals.org/clinical2010/booklet.pdf> (describing the "thought bubble" exercise used at the AALS conference).

11. The Pagmamano custom is depicted on Christmas seal stamps in the Philippines. See Republic of the Philippines—Stamps and Postal History, <http://www.philippinestamps.net/Christmas-Cat-page4.htm> (last visited June 5, 2010). I thank my program assistant, Fe Gonzalez, for explaining the Pagmamano custom and the generational debate about Beso-Beso and Pagmamano. Another custom reflecting deference expected from children is the inclusion of the words "po" and "opo" before and after sentences to show the younger person's respect for elders. See Simon Lloyd, D. Restubog & Prashant Bordia, *Workplace Familism and Psychological Contract Breach in the Philippines*, 55 APPLIED PSYCHOL. INT'L REV. 563, 567 (2006).

12. See Tong Wu, *An Interpretative Framework of Grassroots Resistance in Chinese Urban Society—A Case Study of Worker Collective Action*, 3 J.L. & POL. 11, 15 n.6 (2010), available at <http://www.ccsenet.org/journal/index.php/jpl/article/viewFile/5274/4386>.

13. See *No Way Out: Worker Activism in China's State-Owned Enterprise Reforms*, CHINA LABOUR BULLETIN (2008), available at <http://www.clb.org.hk/en/node/100014#37> (discussing the Yao Fuxin case); *Labor Leader Yao Fuxin Is Released after Completing Seven-year Term*, Human Rights in China (Mar.16, 2009), [http://www.hrichina.org/public/contents/press?revision\\_id=147976&item\\_id=143850](http://www.hrichina.org/public/contents/press?revision_id=147976&item_id=143850) (discussing the Yao Fuxin case).

14. Although the focus of these narratives has been on cross-cultural competence when dealing with ethnicity, race, class, or language, the same experiences arise with other “differences” such as gender, disability, sexual orientation, or gender identity.

15. At the *Vulnerable Populations* conference, Shauna Marshall suggested challenging colleagues to finish their sentences differently in these situations. For example, with faculty hiring, an alternative commentary might be, “She is personable, has ideas, and we will mentor her scholarship.” When stereotypes about students surface, faculty might stop and think about alternative conclusions. We sometimes hear, “He went to an Ivy League university and majored in economics; he must be bright,” contrasted with “She is an immigrant, English is her second language, and she started at a 2-year community college; she must be...”

16. Stephanie M. Wildman & Adrienne D. Davis, *Language and Silence: Making Systems of Privilege Visible*, 35 SANTA CLARA L. REV. 881, 892 (1995).

17. When we take on issues of privilege, we also must strive to do so in a way that is as non-judgmental as possible of ourselves and our colleagues. As Susan Bryant has emphasized in her seminal work on cross-cultural lawyering, in dealing with clients one must become non-judgmentally aware of one’s own biases and stereotypes and learn to detect and minimize their impact on interactions. Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyering*, 8 CLINICAL L. REV. 33, 46–59, 65, 92–94, 102 (2001). As when we embrace humility and use our own “slips of privilege” in teaching our students, we can go a long way toward effectively raising issues with colleagues in a non-judgmental way by acknowledging our own on-going challenges in dealing with differences.

18. See sources cited *infra* note 25.

19. See sources cited *infra* notes 32, 34.

20. See Ascanio Piomelli, *Cross-Cultural Lawyering by the Book: The Latest Clinical Texts and a Sketch of a Future Agenda*, 4 HASTINGS RACE & POVERTY L.J. 131 (2006).

21. See sources cited *infra* notes 25–30.

22. *Eighth Circuit Judicial Conference: Lawyering in the 21st Century Agenda* 4 (2010), [https://www.ce8.uscourts.gov/judconf2010/Attorney\\_Agenda.pdf](https://www.ce8.uscourts.gov/judconf2010/Attorney_Agenda.pdf); see also *infra* note 29 (citing an article by U.S. District Court Judge Mark Bennet on implicit bias in jury selection).

23. Charles Lawrence III, *Unconscious Racism Revisited: Reflections on the Impact and Origins of “The Id, The Ego, and Equal Protection,”* 40 Conn. L. Rev. 931, 941–942, 956–966 (2008). While Lawrence noted that legal scholars have used the social science well to educate the courts and the public about unconscious bias, and expressed his gratitude for this work, he also offered the following critique:

[W]hile this scholarship’s focus on the mechanisms of cognitive categorization has taught us much about how implicit bias works, it may have also undermined my project by turning our attention away from the unique place that the ideology of white supremacy holds in our conscious and unconscious beliefs. I find this outcome unfortunate, if unintended, as the ubiquity and invidiousness of racism was the central lesson of my [1987] article. I further express my fear that cognitive psychology’s focus on the workings of the individual mind may cause us to think of racism as a private concern, as if our private implicit biases do not implicate collective responsibility for racial subordination and the continued vitality of the ideology and material structures of white supremacy. In its most extreme manifestation, this view of implicit bias, as evidence only of private, individual beliefs, is expressed as a right to be racist.

*Id.* at 942 (footnotes omitted).

24. Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

25. Lawrence, *supra* note 23, at 958 (footnotes omitted) (citing implicit bias scholarship including: R. Richard Banks, Jennifer L. Eberhardt & Lee Ross, *Discrimination and Implicit Bias in a Racially Unequal Society*, 94 CAL. L. REV. 1169 (2006); Devon W. Carbado & Mitu Gulati, *The Fifth Black Woman*, 11 J. CONTEMP. LEGAL ISSUES 701, 701–04 (2001); Devon Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1260–62, 1267–70 (2000); Jerry Kang & Mahzarin R. Banaji, *Fair Measures: A Behavioral Realist Vision of “Affirmative Action,”* 94 CAL. L. REV. 1063, 1065–66 (2006); Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161 (1995)); *see also* Samuel R. Bagenstos, *Implicit Bias, “Science,” and Antidiscrimination Law*, 1 HARV. L. & POL’Y REV. 477 (2007); Samuel R. Bagenstos, *The Structural Turn and the Limits of Antidiscrimination Law*, 94 CAL. L. REV. 1 (2006); Gary Blasi, *Advocacy Against the Stereotype: Lessons from Cognitive Social Psychology*, 49 UCLA L. REV. 1241 (2002); Theodore Eisenberg & Sheri Lynn Johnson, *Implicit Racial Attitudes of Death Penalty Lawyers*, 53 DEPAUL L. REV. 1539 (2004); Tristin K. Green, *A Structural Approach as Antidiscrimination Mandate: Locating Employer Wrong*, 60 VAND. L. REV. 849 (2007); Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV. 945 (2006); Olatunde C.A. Johnson, *Disparity Rules*, 107 COLUM. L. REV. 374 (2007); Christine Jolls & Cass R. Sunstein, *The Law of Implicit Bias*, 94 CAL. L. REV. 969 (2006); Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489 (2005); Linda Hamilton Krieger & Susan T. Fiske, *Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment*, 94 CAL. L. REV. 997 (2006); Audrey J. Lee, *Unconscious Bias Theory in Employment Discrimination Litigation*, 40 HARV. C.R.-C.L. L. REV. 481 (2005); Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decision making, and Misremembering*, 57 DUKE L.J. 345 (2007); Rachel F. Moran, *Whatever Happened to Racism?*, 79 ST. JOHN’S L. REV. 899 (2005); John A. Powell, *Structural Racism: Building upon the Insights of John Calmore*, 86 N.C. L. REV. 791 (2008); Russell K. Robinson, *Perceptual Segregation*, 108 COLUM. L. REV. 1093 (2008); Michael S. Shin, *Redressing Wounds: Finding a Legal Framework to Remedy Racial Disparities in Medical Care*, 90 CAL. L. REV. 2047 (2002).

26. *Kimble v. Wis. Dep’t of Workforce Dev.*, 690 F. Supp. 2d 765 (E.D. Wis. 2010) (relying on the implicit bias scholarship as a framework for analyzing the treatment of a plaintiff in a Title VII employment discrimination case). The court concluded that stereotypes people create “can bias how they process and interpret information and how they judge other people” and “[a] supervisor’s view of an employee may be affected by such lines and categories whether or not the supervisor is fully aware that this is so.” *Id.* at 776; *see also supra* note 25; Melissa Hart & Paul M. Secunda, *Essay: A Matter of Context: Social Framework Evidence in Employment Discrimination Class Actions*, 78 FORDHAM L. REV. 37 (2009); Jocelyn Larkin, *Stereotypes and Decision Making: Reconciling Discrimination Law with Science*, 192 CAL. PUB. EMP. REL. J. 15 (2008), available at <http://www.impactfund.org/images/photos/file/Class%20Action%20Center%20Resources/Stereotypes%20and%20Decisionmaking.pdf>.

27. Joan C. Williams & Stephanie Bornstein, *The Evolution of “FRED”: Family Responsibilities Discrimination and Developments on the Law of Stereotyping and Implicit Bias*, 59 HASTINGS L.J. 1311 (2008).

28. *Chin v. Runnels*, 343 F. Supp. 2d 891, 906–08 (N.D. Ca. 2004) (despite being constrained to deny the habeas petition because of the limited scope of review, the court offered

a lengthy discussion of stereotyping and the legal scholarship and scientific research in the field of implicit bias).

29. Judge Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of Batson, and Proposed Solutions*, 4 HARV. L. & POL'Y REV. 149 (2010).

30. See Project Implicit, <https://implicit.harvard.edu/implicit/demo/selectatest.html> (last visited June 15, 2010). The Implicit Association Test (IAT) was developed by Dr. Mahzarin Banaji, now at Harvard University, and Dr. Anthony Greenwald of the University of Washington and their colleagues. The Harvard University Project Implicit website allows visitors to take a sample IAT and receive feedback.

31. Lawrence, *supra* note 23, at 956–57 (footnotes omitted); see also Greenwald & Krieger, *supra* note 25, at 952–55 (2006) (discussing the IAT in detail).

32. See Lawrence, *supra* note 23, at 957 n.85–87 for a discussion of stereotype threat (citing Joshua Aronson, et al., *When White Men Can't Do Math: Necessary and Sufficient Factors in Stereotype Threat*, 35 J. EXPERIMENTAL SOC. PSYCHOL. 29 (1999); Thomas Healy, *Stigmatic Harm and Standing*, 92 IOWA L. REV. 417, 456–57 (2007); Kang, *supra* note 25, at 1492–93, 1521–22; Margaret Shih et al., *Stereotype Susceptibility: Identity Salience and Shifts in Quantitative Performance*, 10 PSYCHOL. SCI. 80, 80–83 (1999); Claude M. Steele, *Thin Ice: "Stereotype Threat" and Black College Students*, ATLANTIC MONTHLY, Aug. 1999, at 44; Claude M. Steele, *A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance*, 52 AM. PSYCHOLOGIST 613, 613–18, 620–22 (1997); Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. PERSONALITY & SOC. PSYCHOL. 797, 797–98, 800–01, 805–06, 808 (1995)).

33. Lawrence, *supra* note 23, at 957.

34. Robert S. Chang & Adrienne D. Davis, *An Epistolary Exchange: Making Up is Hard To Do: Race/Gender/Sexual Orientation in the Law School Classroom*, 33 HARV. J.L. & GENDER 1, 55–56 (2010). Professors Chang and Davis recently used the concept of stereotype threat to describe the classroom dynamic that may arise with faculty of color or those who speak with an accent. They call “projected stereotype threat” the mechanism by which “attribution of accent or incompetence affects not just student ratings [of professors] but student comprehension.” *Id.* They spoke of students projecting a stereotype onto the instructor where the students internalize the effect of the instructor’s presumed accent or incompetence by believing consciously or unconsciously that his or her educational experience is being harmed or threatened. The conscious belief can lead to active disruption of the learning process for that student and for others in the class through classroom disruptions and hostile engagement with the instructor. *Id.*; see also Robinson, *supra* note 25, at 1104 (discussing how “outsiders” and “insiders” perceive allegations of discrimination through fundamentally different psychological frameworks).

35. Betty Hung, *Letter to a Young Public Interest Attorney*, 1 L.A. PUB. INT. L.J. 319, 320–21 (2009), available at [http://www.lapilj.org/uploads/1/7/9/9/1799330/hung\\_-\\_final\\_letter.pdf](http://www.lapilj.org/uploads/1/7/9/9/1799330/hung_-_final_letter.pdf).

36. See, e.g., Amy L. Wax, *Stereotype Threat: A Case of Overclaim Syndrome?*, in THE SCIENCE OF WOMEN AND SCIENCE 134 (2009), available at <http://lsr.nellco.org/upenn/wps/216>; Gregory Mitchell & Philip E. Tetlock, *Antidiscrimination Law and the Perils of Mindreading*, 67 OHIO ST. L.J. 1023 (2006); Philip E. Tetlock & Hal R. Arkes, *The Implicit Prejudice Exchange: Islands of Consensus in a Sea of Controversy*, 15 PSYCHOL. INQUIRY 311 (2004); Amy L. Wax, *Discrimination as Accident*, 74 IND. L.J. 1129, 1139–41 (1999); Amy L. Wax, *The Threat in the Air*, WALL ST. J., Apr. 13, 2004, at A20.

37. William M. Sullivan, Anne Colby, Judith Welsh Wegner, Lloyd Bond & Lee S. Shulman, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (John Wiley & Sons, Inc. 2007).

38. *Id.* at 12.

39. *Id.* at 31.

40. See Anthony V. Alfieri, *Against Practice*, 107 MICH. L. REV. 1073, 1075 (2009) (asserting that the Carnegie Foundation's call for the curricular integration of clinical lawyer practices overlooks the pedagogy needed to teach students not only how to understand difference, but also how to represent difference-based clients and communities here and abroad).

41. Ruth Bader Ginsburg, Supreme Court Justice, *The Supreme Court: A Place for Women* (February 6, 2002), *in* 32 SW. U. L. REV. 189 (2003).

