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ARTICLE

PEOPLE FROM THE FOOTNOTES: THE MISSING ELEMENT IN CLIENT-CENTERED COUNSELING

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The development of a client-centered approach to counseling was fueled by a concern that under the traditional approach to lawyering, the client came into the relationship with her lawyer in an unequal and/or subordinate position.¹ As a result, the client was thought to be overwhelmed by the power represented in the lawyer's position and, therefore, subject to manipulation by the lawyer.² Manipulation has been described as having two principal elements.³ First, it is an effort by one person to guide another's thoughts or actions in a direction desired by the person guiding.⁴ Second, the manipulator seeks this goal by means that undercut the other person's ability to

* Associate Professor of Law, University of Florida. My thanks to Stephen Ellmann and the members of the New York Law School Clinical Workshop for their many helpful comments and suggestions on earlier drafts. My thanks as well to the Northeastern Corridor Black Women Law Professors for their time, patience and assistance. I am grateful to Dr. Lisa Brown at the University of Florida, Department of Psychology for her assistance in understanding the empirical work. Finally, I want to thank my research assistants Angelou Chiles and Michele Bryan.

1. Donald G. Gifford, *The Synthesis of Legal Counseling and Negotiation Models: Preserving the Client Centered Advocacy in the Negotiation Context*, 34 UCLA L. REV. 811, 862 (1987) (stating that the traditional model placed the client in a passive role and oppressed the client).

2. Stephen Ellmann, *Lawyers and Clients*, 34 UCLA L. REV. 717, 721-53 (1987) (discussing the role the lawyer's power plays in client manipulation).

3. *Id.*

4. *Id.*

make a choice that is truly his own.⁵ The goal of client-centered counseling was to create an "interactive dynamic that facilitates the development of mutual trust, confidence and respect."⁶ It was thought that behavior which was sensitive to communication dynamics would facilitate disclosure of complete and accurate information and ultimately result in making the lawyer pursue client, rather than lawyer, objectives.⁷

Currently, many clinical programs have adopted models of lawyer-client relationship which employ one of two prevailing client-centered models.⁸ Both models recognize the importance of lawyer-client interaction in decision-making on a non-manipulative basis.⁹ It was perceived that in a traditional lawyer-client relationship the client is manipulated into doing what the lawyer wished, regardless of whether it was what the client actually desired.¹⁰ On the whole, both models provide a good framework for the lawyer (and in our realm, law student) to learn and hone some of the skills of effective communication with his/her clients. However, a major weakness of both models is that they fail to address, in any significant way, the effects of race, class and, to a lesser extent, gender¹¹ on the interaction between lawyer and client. In addition, neither the models' creators nor the clinical community acknowledge that the models may not be applicable for use with clients of color in the lawyer-client counseling relationship or by lawyers of

5. *Id.*

6. Don Peters & Martha M. Peters, *Maybe That's Why I Do That: Psychological Type Theory, The Myers-Briggs Type Indicator, and Learning Legal Interviewing*, 35 N.Y.L.S. L. REV. 169, 171 (1990). [hereinafter *Maybe That's Why I Do That*].

7. *Id.* at 171 n.7.

8. D. BINDER, et al., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (1991) [hereinafter *LAWYERS*]; R. BASTRESS & J. HARBAUGH, *INTERVIEWING, COUNSELING AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION* (1990) [hereinafter *INTERVIEWING*].

9. See *LAWYERS*, *supra* note 8 (discussing the necessity and importance of client autonomy). See also *INTERVIEWING*, *supra* note 8, at 283-285, 288 (stating that lawyers' need for power may lead to client manipulation).

10. See Robert J. Condlin, *Socrates' New Clothes: Substituting Persuasion For Learning in Clinical Practice Instruction*, 40 MD.L. REV. 223, 226 (1981) (describing clinical criticism of traditional practices and arguing that clinical instruction does not cure the problem of manipulation). See also Ellmann, *supra* note 2.

11. There seems to be a hint of recognition in the texts that the client's gender may be important, however, there is no full exploration of why that may be so and how it affects the lawyering process.

color in the clinical supervisor-student relationship.¹² Indeed, there are no references in the texts to how a lawyer's race or gender may affect counseling.¹³ Both models of lawyer-client relationships caution lawyers not to "color" the process with personal feelings, biases or values.¹⁴

In both models client characteristics are essentially presented as interchangeable. The gender of the clients are alternated and sometimes the reader is given enough bare boned facts to enable her to designate class status but rarely anything more.¹⁵ In light of the growing recognition accorded to

12. *But see* Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, 525 n.107 (1990); Robert D. Dinerstein, *Clinical Texts and Contexts*, 39 UCLA L. REV. 697, 722, n.93 (1992) (reviewing LAWYERS, *supra* note 8 and INTERVIEWING, *supra* note 8 and noting the possibility that neither model is compatible with either clients or lawyers of color); Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747 (1994)(book review of Gerald Lopez, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* which criticizes critical race scholars for paying insufficient attention to this issue). It became apparent to me while doing this research that discussions about race and sometimes gender were briefly mentioned or reduced to a footnote. The thought motivated me to move the discussion of the issue of race from the margins of our classes and the footnotes of our texts into the main stream. That was the impetus behind the title of this article. *See also* Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STANFORD L. REV. 581, 591 (1990) (discussing how white feminists relegate exploration of differences between women based on race, class and sexual orientation to the footnotes of their writing) [hereinafter *Race and Essentialism*]; Michelle S. Jacobs, *Legitimacy and the Power Game*, 1 CLINICAL L. REV. 187 (1994)(for a discussion on how other clinical concepts may not be applicable to clinicians of color).

13. *See generally* Naomi R. Cahn, *Styles of Lawyering*, 43 HASTINGS L. J. 1039 (1992) (discussing how gender impacts lawyering). For related views see Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINNESOTA L. REV. 1599 (1991); Mari Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7; Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School"*, 38 J. LEGAL EDUC. 61 (1988).

14. *But see* Ellmann, *supra* note 2, at 733-39; William H. Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WISC. L. REV. 29, 134 (challenging whether not coloring the process is possible).

15. My favorite example of this can be found in LAWYERS. LAWYERS, *supra* note 8, at 25. In the fact pattern, a foreclosure case, the client's name is Mr. Santiago. *Id.* This is the first time a Latino name is used to describe a hypothetical client, but we are told nothing else about him. Is it significant that his name is Santiago? Or, would John Smith have sufficed? Was the use of the surname Santiago designed to allow the Latino student to feel included in the discussion? Or, did the authors recognize Latinos are sometimes clients? What is the instructional value of using the name Santiago? In INTERVIEWING, race or gender seemed to be specifically mentioned on four occasions. INTERVIEWING, *supra* note 8. In two

the importance and validity of client narratives among clinicians as well as traditional academics,¹⁶ the absence of client context within the models seems strangely out of step with prevailing clinical thought.¹⁷ If, after all, the clients are interchangeable, what difference does it make that they each come with their own narrative, with their own individual views of the legal system and different sets of expectations based on their cultural experiences and personal values?

The irony of the models is that they were constructed to return the client to the centrality of the lawyer's work.¹⁸ Yet, even with the best of intentions, lawyers most concerned with preserving the autonomy of client decision-making have, by adopting the "client-centered" model of counseling, continued to place the client, especially the client of color, out at the margin.¹⁹

In this article, I explore the way in which race neutral training of interviewing and counseling skills may actually lead to continued marginalization of clients of color. Part I of this article examines the racially neutral client-centered coun-

of the four, the race mentioned is white. *Id.* In a housing discrimination scenario, we are told the plaintiff is black and another instance, a woman has a sexual harassment issue. *Id.*

16. See generally Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1988) [hereinafter *A Plea for Narrative*] (advocating the importance of client narrative when dealing with non traditional members of the community); Naomi R. Cahn, *Inconsistent Stories*, 81 GEO. L. J. 2475 (1993) (discussing the presence in law of conflicting stories and the difficulty in evaluating them).

17. For a discussion of narrative as a vehicle for the voices of subordinated groups, see *A Plea for Narrative*, *supra* note 16; Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice Theory of Receiving and Translating Client Stories*, 43 HASTINGS L. J. 861, 863 (1992) (asserting that "universalized legal narratives of victim, work, and family impede and constrain the stories that can be heard in legal fora"); Kim L. Scheppele, *Foreword: Telling Stories*, 87 MICH. L. REV. 2073 (1989).

18. Linda F. Smith, *Interviewing Clients: A Linguistic Comparison of the "Traditional" Interview and the "Client-Centered" Interview*, 1 CLINICAL L. REV. 541, 583 (1995) (asserting that the client-centered approach is designed to return power to the client).

19. Serena Stier, *Reframing Legal Skills: Relational Lawyering*, 42 J. LEGAL EDUC. 303 (1992) (reviewing *LAWYERS*, *supra* note 8 and *INTERVIEWING*, *supra* note 8 and criticizing both books for not acknowledging that communication styles may be affected by the attorney or client's race, class or gender). See Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, *supra* note 12.

seling models to highlight the difficulties the models engender by failing to incorporate the concept of race²⁰ particularly as it relates to the models' treatment of the "difficult" client. In Part II, I look at the work of a fellow clinician and ethnographer by revisiting his case analysis to point out the ways in which a race neutral application of client-centered counseling worked to the disadvantage of a black client. Part III explores the empirical data gathered by social scientists operating in a counseling capacity, which demonstrate that race plays a significant role in counselor-client interaction. The data reveal that the race and behavior of the counselor can have an equally serious impact on the relationship as can the race and behavior of the client. Part IV identifies areas of counselor behavior which can be impacted by remedial measures. Finally, in Part V, I suggest combining client-centered counseling skills with a module I call Cross-Cultural Lawyer and Student Self-Awareness Training to enable us to take advantage of interdisciplinary work to broaden our ability to teach effective interviewing and counseling skills.

I. CLIENT-CENTERED OR CLINICIAN-CENTERED

A. HOW THE MODELS DEVELOPED

The critique which prompted the development of clinical programs and courses that focused on fields such as poverty law was that traditional legal education, and our legal system in general, denied "poor and oppressed" people access to the law. Indeed, law teaching seemed to remove all clients from a position of centrality. Clinical legal education was the first in a series of steps designed to reintroduce the client to the centrality of the law both within the law school environment and within the practice of law. Texts were developed specifically for clinical instruction.²¹ As clinicians focused on contextualizing

20. This article is specifically and intentionally focused on race instead of race and gender. In focusing exclusively on race, I am not making any value judgment about the importance of examining the same issue on the gender deficiencies. However, it does appear that some clinical scholars have started looking at the gender issue while few are willing to grapple with the issue of race. For discussions of the impact of gender on a client-centered model of counseling, see Goldfarb, *supra* note 13; Cahn, *supra* note 13. My focus is based both on personal preference and the need for such an exploration in our field.

21. Gary Bellow and Bea Moulton presented the ground breaking casebook

the client and her concerns, they explored theories which would help guide students and lawyers through the difficult task of reintroducing the client to law. A central theme, which advocated lawyering driven by client concerns and goals emerged: client-centered lawyering.²² The texts created by Binder, Bergman and Price and that of Bastress and Harbaugh were the culmination of the client-centered theorists' attempts to provide guidance to students in client-centered methodology. It is believed that the majority of clinical programs in U.S. law schools have adopted client-centered counseling as the normative framework for student/lawyer-client relationships.²³ Notwithstanding the excellent work done in the field of client-centered counseling, the development of the approach and the models used to guide students suffer from the same error that plagued the traditional approach to law teaching. The error is the claim that skills and law can be taught as neutral objective principles. Ann Shalleck describes the way in which traditional law teaching removes the client from the discussion of law and its principles.²⁴ She delineates the way in which classroom discussion focuses on the appellate court's view of the pertinent facts and the court's perspective of the law. Further, the client is reduced to an unproblematic "cardboard" figure.²⁵ The process Shalleck describes is further exacerbated when law faculty invite class discussion on arguments which could be formulated and presented as alternatives to the court's view. No attempt is made to contextualize the argument within

which essentially defined the field. See GARY BELLOW & BEA MOULTON, *THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY* (1978).

22. THOMAS L. SHAFFER & JAMES R. ELKENS, *LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL* (1976); DAVID BINDER & SUSAN PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977)(the forerunner to *LAWYERS*, *supra* note 8).

23. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, *supra* note 12, at 504 n.15 (pointing out that approximately 94 law schools have adopted the Binder, Bergman and Price text).

24. See Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 *STAN. L. REV.* 1731 (1993).

25. *Id.* at 1732. See also Gerald P. Lopez, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 *W. VA. L. REV.* 305, 343 (1989) (stating legal education teaches law students to approach practice as if all people and all social life were homogenous). Lopez states that people either, need not be taken into account, or, may be treated as fungible matter. *Id.*

the framework of the client's experience, needs or wishes.²⁶ In essence, the client becomes irrelevant to any significant discussion of the law. Despite the adoption and employment of a client-centered counseling model in clinical teaching, the client has not been fully returned to the center of the discussion of lawyering. This is clearly evidenced by the essentialist²⁷ construction of the client in the models themselves. Essentializing in the skills model appears most frequently when describing both the client or the lawyer/student. Both are treated as if they were "cardboard" figures. The process of standardizing the client can be partially attributed to the fact that the client-centered models have been developed without "looking to the bottom."²⁸ Looking to the bottom requires those in a position of privilege to adopt the perspective of people who are most adversely affected by the lack of privilege. Perhaps unconsciously imitating traditional decision-making, clinicians and poverty lawyers have decided amongst themselves how best the "poor and oppressed" can be empowered in the lawyering process. This decision continues to be made with little input from the "oppressed" communities they hoped to help.²⁹ The failure to obtain input from the communities themselves occurs despite the fact that communities lacking material wealth or political power still have access to thought and language, and their development of those tools will differ from those of the more privileged.³⁰ These communities can and have in the

26. *Id.* at 1735.

27. By essentialism I mean constructing the client's identity as if clients shared a monolithic experience that is they are stripped of characteristics that relate to race, ethnicity and national origin. See *Race and Essentialism*, *supra* note 12, at 588-89.

28. Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L.REV. 323 (1987) [hereinafter *Looking to the Bottom*]. Recent casebooks for professional responsibility are now considering this issue. See e.g., THE LAW AND ETHICS OF LAWYERING (Geoffrey C. Hazard, Jr. et al., eds. 1994); LEGAL ETHICS (Deborah L. Rhode & David Luban, eds. 1995). My thanks to Muriel Spence for making this observation.

29. See generally Gerald P. Lopez, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992) [hereinafter REBELLIOUS LAWYERING]; Paul E. Lee and Mary M. Lee, *Reflections from the Bottom of the Well: Racial Bias in the Provision of Legal Services to the Poor*, *Clearinghouse Review, Special Issue*, 1993; John A. Powell, *Race and Poverty: A New Focus for Legal Services*, *Clearinghouse Review, Special Issue* 1993.

30. Matsuda, *supra* note 28, at 335. Yet Matsuda herself recognizes the difficulty in valuing the bottom as everything in her own academic schooling has told her there is nothing to learn from the unschooled. Mari J. Matsuda, *Pragmatism*

past formulated plans for their own empowerment.³¹

Historically, the more privileged lawyer chose to help either by providing access to the legal system for greater numbers of oppressed or by directing so called "impact" litigation, where there may have only been a single client but the potential existed to effect public policy on a broader scale. This view was prevalent in the legal services environment where decisions regarding priorities were routinely made without regard for the community's analysis of the areas where services were most needed.³² Since clinical legal education developed partially as a reflection of the legal services model of lawyering, clinicians who were similarly privileged neglected to adjust their decision-making to account for the privilege.³³ Similarly, client-centered models reflect this philosophical approach and assume that clients reach the lawyers in a state of defeat, devoid of resistance and easily subject to manipulation. As clinicians are beginning to discover, the starting analysis may be defective.³⁴ The assumption of defeat is an analysis made without looking at the real client in her full context - culturally, politically and economically. It is an assumption made from a position of privilege without considering the counterbalanc-

Modified and the False Consciousness Problem, 63 S. CAL. L. REV. 1763, 1767 (1990).

31. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L. J. 470 (1976)(discussing strategies developed by grass roots people during the civil rights movement); Regina Austin, *Sapphire Bound!*, 1989 WISC. L. REV. 539.

32. See Paul R. Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 UCLA L. REV. 1101 (1990) [hereinafter *Community-Based Ethic*].

33. See Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L. J. 2107, 2127 (1991) [hereinafter *Reconstructive Poverty Law Practice*]. See also Margaret Martin Barry, *A Question of Mission: Catholic Law School's Domestic Violence Clinic*, 38 HOW. L.J. 5 (1994) (discussing how clinical education adopted the "provision of access" model).

34. Lucie White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990); Lucie E. White, *Goldberg v. Kelly on the Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 1861 (1990); Robert D. Dinerstein, *A Mediation on Theoretics of Practice*, 43 HASTINGS L.J. 971 (1992); Jane Spinak, *Reflections on a Case (of Motherhood)* (1992)(unpublished essay, on file with author); *Reconstructive Poverty Law Practice*, *supra* note 33; Anthony V. Alfieri, *Impoverished Practices*, 81 GEO. L. J. 2567 (1993); Anthony V. Alfieri, *Disabled Clients, Disabling Lawyers*, 43 HASTINGS L. J. 769 (1992); Anthony V. Alfieri, *Stances*, 77 CORNELL L. REV. 1233 (1992); Anthony V. Alfieri, *The Antimonies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y. U. REV. L. & SOC. CHANGE 659 (1987/88).

ing force which allows the client to survive under incredibly oppressive conditions.³⁵ It may simply be that lawyers in a position of privilege, even well-intentioned ones, do not have the tools by which to recognize and measure the skills and the power of resistance.³⁶ As Matsuda points out, the technique of imagining oneself black and poor in some hypothetical world is less effective than studying the actual experience of black poverty and listening to those who have done so.³⁷ Client resistance directed at the lawyer may account for the inability of a clinical or poverty lawyer to establish a working relationship with a client who then becomes labeled difficult.³⁸

B. THE MODELS THEMSELVES

The client-centered counseling models purport to offer the student/lawyer techniques for developing open channels of communication with clients. The underlying assumption is the student/lawyer who follows the models should be able to conduct interviewing and counseling sessions in a way which empowers the client and reduces and reduces manipulation of the client.³⁹ The Binder, Bergman and Price model does recog-

35. Black psychiatrist Chester M. Pierce remarks that in his field as well, the Euro-centric approach is to focus on the illness of the black community but never on the psychological strengths which allow the community to survive. See Chester M. Pierce, *Psychiatric Problems of the Black Minority*, in 2 AMERICAN PSYCHIATRY 512 (S. Arieti ed., 2d ed. 1974).

36. For a discussion on the history of resistance in the black community, see Harlon L. Dalton, *The Clouded Prism*, 22 HARV. C.R.-C. L. L. REV. 435 (1987); Austin, *supra* note 31; PAULA GIDDINGS, WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA (1984) [hereinafter WHEN AND WHERE I ENTER]. For a discussion of the usage of power and how clients use resistance against their lawyers see William L. F. Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 CORNELL L. REV. 1447, 1466 (1992)[hereinafter *Enactments of Power*]. Regina Austin, "An Honest Living": *Street Vendors Municipal Regulation, and the Black Public Sphere*, 103 YALE L.J. 2119 (1994) (describing black street vending as economic resistance); Regina Austin, "A Nation of Thieves": *Securing Black People's Right to Shop and to Sell in White America*, 1994 UTAH L. REV. 147 (1994) (citing conspicuous consumption in the black community as resistance).

37. *Looking to the Bottom*, *supra* note 28, at 325.

38. Felstiner & Sarat point out that many of the tools they observed clients use as resistance against their lawyers are described by Binder, Bergman and Price as client misbehavior, rather than as recognized tactics of resistance. *Enactments of Power*, *supra* note 36, at 1467.

39. Bastress and Harbaugh justify the need for an alternative to the tradition-

nize that there is a class of clients for which the model does not work. This class of clients is known as the "atypical or difficult client."⁴⁰

On its face, there is nothing inherently offensive about the notion that certain limited situations can develop where the models are inapplicable. It is only after one asks what is it

al lawyering model where the lawyer is the omnipotent, provider of answers to a passive, receptive client. Bastress and Harbaugh believe there are "psychological, philosophical and moral dimensions to the lawyer-client relationship and to the practice of law that legal education and lawyers too often fail to recognize. INTERVIEWING, *supra* note 8, at 4. Their goal in setting forth an alternative model is to provide information and structural models to understand interpersonal processes, to help the students develop their skills, and to maintain productive relations with clients and other lawyers. *Id.* The Bastress and Harbaugh text constructs a concept of lawyering that envisions lawyer and client as partners working toward a common goal, with the client responsible for the major decisions and the lawyer functioning as helper, advisor and advocate. To be able to perform in this matter, the student needs an "umbrella" of essential skills that encompass the interrelated skills of interviewing, counseling and negotiating. The authors perceive interviewing, which is comprised of the components of empathy, genuineness, listening and probing as forming the basic building blocks for counseling and negotiation. Proficiency in interviewing allows the student to gather the facts of the case and establish rapport with the client. *Id.* at 5. Counseling is where the student seeks to identify the client's alternatives and priorities and to help the client select the most constructive option. Counseling consists of interviewing skills PLUS creativity, foresight, analysis, explanation, cooperation and advice. Negotiation is the implementation of goals set in counseling.

Rather than define client centered counseling, Binder Bergman and Price set forth six factors which form the parameters of client centered counseling. (1) the Lawyer helps identify problems from a Client's Perspective. It is interesting to note that the authors go to the trouble of indicating how a client's cultural background, religious, ethnic, socio-economic status, etc. may influence the client's perspective. Yet, this fact seems to get lost in the model's application; (2) the Lawyer actively involves a Client in the Process of Exploring Potential Solutions; (3) The Lawyer encourages a client to make those decisions which are likely to have a substantial or nonlegal impact; (4) The Lawyer provides advice based on a Client's Values (another anomalous reference); (5) The Lawyer acknowledges a Client's Feelings and Recognizes their importance; and (6) The Lawyer repeatedly conveys a desire to help. LAWYERS, *supra* note 8, at 19-20. According to Binder, Bergman and Price this method of counseling enhances the likelihood of producing satisfactory resolution. Moreover, it respects the autonomy of the person who "owns" the problem. *Id.* *But see* Ellmann, *supra* note 2 (Ellmann questions whether there is any empirical data to validate the conclusion that this form of counseling produces greater satisfaction); Part II, *infra* (where Client DuJon Johnson expresses his dissatisfaction with his representation).

40. See LAWYERS, *supra* note 8, at 237-56. Binder, Bergman and Price devote an entire chapter to the difficult client. *Id.* Bastress and Harbaugh have no special chapter set aside for such a client, although they do mention problems that can arise with certain clients.

about the individuals in this class that make them different and one studies the examples of the difficult clients which the models present that a red flag of alarm is raised. After reading the description, it became readily apparent that a great majority of the clients seen in my former clinic fall into the category of difficult clients.⁴¹ The question began to form: if the majority of the clinic clients were the exception to the rule, does the problem lie with the clients or in the formulation of the rule? The question led me to examine the characteristics of the "difficult client." Per the models, a difficult client is one who: refuses to participate effectively in the discussion of the case, will not make eye contact with the lawyer and displays an inappropriate lack of concern for the seriousness of the issues which he or she faces.⁴² Such a client, it is said, displays signs of a deeper psychological pathos and needs professional psychiatric assistance that a lawyer is unqualified to give.⁴³ As a person of African descent, each time I read that passage, I cringe. It invokes in my mind the specter of unconscious racism. All too often when African-Americans have made majority members uncomfortable, in class or at work for example, we are described as loud, aggressive, deceptive, conniving, lacking good work ethic, or having inappropriate priorities.⁴⁴ Perhaps by examining the examples within our models one at a time, the potential for bias can be demonstrated.

(1) Among the behaviors that mark a client as difficult are

41. At the time I first began considering the issue, I was a supervising attorney in the Rutgers Urban Legal Clinic, in Newark, New Jersey. Our clinic functioned as a general practice clinic and handled a variety of matters. Approximately 90% of our clientele were poor people of African descent and Latinos. The student enrollment in the clinic was normally 75% white.

42. LAWYERS, *supra* note 8, at 237.

43. INTERVIEWING, *supra* note 8, at 139. *But see* Paul R. Tremblay, *On Persuasion and Paternalism: Lawyer Decisionmaking and the Questionably Competent Client*, 1987 UTAH L. REV. 515, 537. (pointing out that defining and recognizing competence is a concept that remains elusive). Tremblay states "the most important task for the legal standard of competency is to distinguish effectively between foolish, socially deviant, risky, or simply 'crazy' choices made competently, and comparable choices made incompetently." *Id.*

44. Molefi Asante & Alice Davis, *Black and White Communication: Analyzing Work Place Encounters*, JOURNAL OF BLACK STUDIES, Vol. 16, No.1, September 1985, at 77; Rebecca Leonard & Don. C. Locke, *Communication Stereotypes: Is Interracial Communication Possible?*, JOURNAL OF BLACK STUDIES, Vol. 23, No. 3, March 1993, at 332-343.

refusal or reluctance to either commence an interview or refusal or reluctance to discuss a topic. In looking at the issue of refusal to participate in discussions with the lawyer, we first must ask who defines refusal and what acts constitute unreasonable behavior. Binder, Bergman and Price state that client-centeredness assumes a spirit of good faith and cooperation between attorney and client. Client reluctance then disturbs the normative assumption underlying the student/lawyer-client relationship.⁴⁵ There are many reasons why a client may choose not to communicate with her attorney. Indeed, the authors list many inhibitors to conversation such as ego threat,⁴⁶ case threat,⁴⁷ role expectations,⁴⁸ etiquette barriers,⁴⁹ trauma,⁵⁰ perceived irrelevancy,⁵¹ and greater need.⁵² Bastress and Harbaugh accept and agree with the inhibitors identified by Binder, Bergman and Price and point out several others: bias,⁵³ competing time demands,⁵⁴ environment,⁵⁵ memory failure,⁵⁶ and finally unconscious behavior.⁵⁷ It

45. *But see Enactments of Power*, *supra* note 36, at 1455-56 (challenging the notion of that norm and advancing the notion that the norm is one of suspicion and distrust). *See also Reconstructive Poverty Law Practice*, *supra* note 33 at 2107.

46. *LAWYERS*, *supra* note 8, at 35. Ego threat occurs when the clients withhold information they may perceive as threatening to their self-esteem.

47. *Id.* at 36. Case threat occurs when the client withholds information he may feel will "hurt his case."

48. *Id.* The authors define role expectations as the sets of beliefs about what is appropriate behavior within the confines of particular relationships.

49. *Id.* at 38. Etiquette barriers arise from people's desire not to shock, embarrass, offend or to make another uncomfortable. It reflects a person's thinking about the effects of information on a listener. *Id.* Information is perceived to be appropriate for peers but not for those in other groups or roles. *Id.*

50. *Id.* at 39. This occurs when a client wants to avoid thinking and talking about unpleasant past events.

51. *LAWYERS*, *supra* note 8, at 39. This occurs where the client feels that nothing will be gained by providing the information requested and is therefore reluctant to provide it.

52. *Id.* This is the client's need or desire to talk about a subject other than the one of immediate interest to the lawyer.

53. *INTERVIEWING*, *supra* note 8, at 179. Interviewee's prejudices can impede communications. The Interviewer's prejudices are not raised separately as possible inhibitors.

54. *Id.* at 180. Interviewees concerned with other competing matters may be distracted or hurry to finish or both.

55. *Id.* The setting of the interview can affect the interviewee's comfort.

56. *Id.* at 182. Interviewee is unable to recall and is therefore unable to communicate as opposed to unwilling to do so.

57. *Id.* at 183-84. Unconscious behavior is comprised of three items: (1) behavior that is based on habit or custom; (2) reactions to subliminal, nonverbal cues;

should be noted that all of the inhibitors listed by the authors, with the exception of Bastress and Harbaugh's environment, relate to client behavior. The issue of student/lawyer based inhibitors is not raised. The expectation built into the models is that by using empathetic understanding,⁵⁸ fulfilling expectations, use of recognition,⁵⁹ altruistic appeals⁶⁰ and extrinsic reward⁶¹ the student/lawyer can overcome these inhibitors. Yet, if the inhibiting factor is the race of the lawyer, and/or the lawyer's expectations regarding the client and the client's culture, knowledge of the facilitators will not provide the lawyer with the tools to break through the barrier.⁶²

(2) Similarly, on the issue of the hostile or angry client, communication inhibitors can arise out of interracial stereotypes of communication traits. For example, if the student/lawyer shares a commonly held belief among whites that blacks are hostile or aggressive, that belief may lead the student/lawyer to expect hostility from the client and inhibit the ability of the student/lawyer to effectively communicate with

and (3) reactions taken under acute stress.

58. Bastress and Harbaugh state that empathy or empathetic reflection involve two subskills: "understanding" the client, and communication, or reflecting, that understanding back to the client. INTERVIEWING, *supra* note 8, at 116. The authors distinguish empathy from sympathy. *Id.* A sympathetic lawyer shares the client's values or feelings; the empathetic lawyer understands. Bastress and Harbaugh urge the student to place herself in the client's position - "given this client's own values and world view - how would I feel?" *Id.* at 118. They argue this question must be addressed to fully understand and appreciate the client's concerns. *Id.* The authors do not, however, give any suggestions for how the student can become informed as to the client's "worldview".

Binder, Bergman and Price describe empathy in its most fundamental sense as understanding the experiences, behaviors, and feelings of others as they experience them. LAWYERS, *supra* note 8, at 40. Like Bastress and Harbaugh, they give no further elucidation on how the student is to "understand" the experiences of others.

59. *Id.* at 43. The authors suggest that by giving the client recognition, they will be motivated to be more cooperative and open.

60. *Id.* at 43. Asking the client to identify with a higher value or cause that is beyond immediate self-interest.

61. *Id.* at 44. Advising the client that the information sought is in their best interest.

62. See Jay Pomales et al., *Effects of Black Students' Racial Identity on Perceptions of White Counselors Varying in Cultural Sensitivity*, JOURNAL OF COUNSELING PSYCHOLOGY, 1986, Vol. 33, No. 1, at 57-61 (subjects of a study rated the counselor less effective despite the use of empathetic responses when the counselors failed to also exhibit cultural sensitivity) [hereinafter *Effects of Black Students' Racial Identity*].

the client. From the client's perspective the inhibitors to communication can be particularly profound when the client has already received poor treatment at the hands of a previous lawyer.⁶³ Or perhaps, the client is unable to make a distinction between her assigned lawyer and the system the lawyer represents — a system the client may believe is oppressive.⁶⁴ In that scenario, the client's level of participation may be less than what the student/lawyer desires but perfectly justifiable on the part of the client.

(3) Bastress and Harbaugh cite failure to give eye contact as problematic behavior exhibited by clients.⁶⁵ They state:

An inability to sustain eye contact for more than a second or two at a time can be informative. Client persistence in glancing away from you immediately after making eye contact evidences nervousness or, possibly deceit (hence the term "shifty-eyed"). A client who never, or almost never, looks at you indicates a severe state - perhaps a total breakdown in trust, an intense dislike, extreme nervousness, psychiatric or physical illness, or some combination of these.⁶⁶

Since fabrication is a behavior presented by the difficult client, the designation of lack of eye contact as indicative of deceit is problematic. The eye contact analysis is particularly troublesome when applied with clients of color. Limited eye contact is culturally normative in African-American (specifically as opposed to others of African descent or African who may have been raised in a predominantly black environment), Latino,

63. INTERVIEWING, *supra* note 8, at 77 (a client who has previously consulted an attorney may question whether the new lawyer's conduct matches expectations created by the client's past experience).

64. This frequently is the case in a criminal matter where the client has had what she believes to be a previous poor experience with a public defender or assigned counsel. All of us can tell stories about our clients asking for "real" lawyers. To our clients we appeared to be the same entity as the state, and few believed we had their best interests at heart. A client's disappointment with the level of service or perceived sense of lack of commitment from counsel in previous matters, can cause the client to avoid early interaction in the future which may lead to the exacerbation of their legal status in other matters.

65. This is embedded in the discussion of nonverbal cues. INTERVIEWING, *supra* note 8, at 139.

66. *Id.*

and Asian communities.⁶⁷ The reasons for the phenomenon are different in each of the communities.⁶⁸ Yet, no allowance is made for the cultural variance either in the client-centered counseling model nor in our legal system. Rather, the lawyer reaches a conclusion about the legal significance of the interaction with his client, e.g. the client is lying, based on a misinformed cultural interpretation of a nonverbal cue. Clearly, this is an example where majority group lawyers impose their own cultural frame upon the clients' behavior to the detriment of client-centered counseling goals. Moreover, the lawyer's assumptions will inhibit the development of a trustful, cooperative and empowering relationship with the client.

(4) Finally, we reach the element of inappropriate lack of concern for the seriousness of the issues which they face. This too, according to Binder, Bergman and Price, signals the existence of a difficult client. The question which must be asked is who determines what the appropriate level of concern is? Do the lawyers, who will never spend one night in jail, make that determination? And, upon whose value system is that determination made? The lawyer's? The judges? A similarly-situated white client? Regarding this particular element, I am reminded of a recent incident. A rapper and actor by the name of Tupac Shakur, was arrested for shooting at two men in an altercation. The news sound bite announced that a rapper had been charged with the attempted murder of two police officers. A portion of the arraignment was shown on the late night news. Mr. Shakur smirked through the entire proceeding. One could hear his lawyer, not shown on the screen, enter a plea of not

67. See Orlando L. Taylor, *The Effects of Cultural Assumptions on Cross-Cultural Communication* in *CROSSING CULTURE IN MENTAL HEALTH* 18-27 (D.R. Koslowe & E. P. Salett eds. 1989)(exploring cultural and communicative tendencies among four American subgroups).

68. See Richard Majors & Janet Mancini Billson, *COOL POSE: THE DILEMMAS OF BLACK MANHOOD IN AMERICA* 41-42 (1992)(describing the practiced look of indifference worn by young black males when confronted by racism or people in positions of authority). The study undertaken by several African-American sociologists concludes that rather than showing indifference the posturing helps to the young male to protect himself against an environment on ongoing assaults against his psyche. See also *WHEN AND WHERE I ENTER*, *supra* note 36 (discussing how historically African-Americans were punished and sometimes put to death for looking a white person in the eye); Dinerstein, *Clinical Texts and Contexts*, *supra* note 12, at 722 n.93.

guilty on his behalf. Mr. Shakur then swaggered out of the courtroom.⁶⁹ The clip continued until he had walked the full length of the room and exited through the doors. His supporters in the court room made loud noises on his behalf. Initially, I was stunned at Mr. Shakur's lack of respect for the court and the total disdain which he, obviously, held the proceedings. If asked at that moment, I would have said that his behavior displayed an inappropriate lack of concern for the seriousness of the issue. Now, I am not so sure. As it turns out, the police officers were off duty and in plain clothes at the time of the incident. In addition, the police may have started the altercation after a traffic dispute *and* they, not Mr. Shakur, ended up wounded. Mr. Shakur now finds himself looking at two counts of attempted homicide. Maybe he was smirking because he knows what the case is about. It is about a younger black man engaging in an armed struggle with two white men, and winning. Maybe he thought that since he came out on top, the criminal prosecution is the officers' attempt to do what they individually could not do; i.e., force him into submission. Maybe he was smirking because he knows that as a black man, the legal system has no interest whatsoever in protecting his constitutional rights and that the entire proceeding was really a farce.⁷⁰ Maybe I was initially shocked because as a lawyer, even one of color, I do sometimes buy into the illusion that the legal system can work for us — African-Americans, poor people and people of color in general — despite all signs that it does not, cannot and will not work for us.⁷¹ Perhaps it is I, my colleagues and our students who sometimes display inappropriate concern based on values that are ultimately irrelevant to the client's frame of reference or even his/her existence.⁷² Per-

69. "Swaggered" does not quite vividly capture the arrogance with which Shakur propelled himself through the courtroom, but it comes the closest to suggesting his level of bravado.

70. The criminal charges against Mr. Shakur in this case were subsequently resolved in his favor. The individual officers filed a civil action against him. He failed to file an answer to the summons and complaint and a default judgment has been entered against him.

71. Matsuda speaks of the duality of people of color's belief in the law. On one hand, we embrace the law and seek to obtain the promise of equality it offers us. On the other hand, we reject the way in which law has been used to subjugate poor people and people of color. *Looking to the Bottom*, *supra* note 28, at 333.

72. Anthony Alfieri in describing the formalist concept of lawyering notes that formalists believe in neutral, value free judgment but he notes that such a belief ignores the reality that lawyers values are built into the law. Alfieri, *Impoverished*

haps, the only inappropriate behavior is our own, in that we - the lawyers - have disregarded who the client really is.

As the client-centered model presently stands, particularly as it relates to the "atypical" (read perhaps typical indigent) client, it does not leave room to filter the client's actions through the lens of cultural experience. The student/lawyer is not trained to reflect inwardly when probing, empathizing and listening to the client. She is not alerted to the possibilities of her own culpability when the communication dynamic fails. The student/lawyer is set up to conclude, prematurely and frequently erroneously at the initial interview stage that the clients have some pathology. Never is she attuned to engage in critical self-reflection to determine whether some deficiency within her own understanding prohibits her from establishing rapport from the client.⁷³ So long as we have not trained the student/lawyer to engage in critical self-reflection of this nature, we continue to train lawyers to engage in privileged decision-making without reference to the bottom and by so doing subvert the goals of client-centered counseling.

II. THEORETICS OF PRACTICE: RE-EXAMINING THE APPROACHES TO CLIENT-CENTERED COUNSELING

A recent movement among clinicians to re-examine their approaches to client-centered counseling known as "theoretics of practice" developed.⁷⁴ The impetus of the theoretics move-

Practices, supra note 34, at 2602. The notion that we are employing value free judgment is reflected in the journals of the students in the Public defender clinic at the University of Florida. By mid semester the students write that they are annoyed that their clients did not seem to be taking the cases as seriously as the students were. Their observations generated many comments from me asking them to question the values they were applying to their clients.

73. By my comments, I do not mean to suggest that there are not truly "difficult" clients who are in need of a psychiatrist as well as a lawyer. The point simply is that without providing some avenue to account for behaviors that are culturally based or biased from the perspective of either participant, we encourage our students to prematurely and incorrectly classify clients. There are any number of inquiries the student should make before concluding the client is difficult, i.e., "Is there something I said, did or thought which prevented the interview from concluding more positively. Can I detect any factors which have motivated me to evaluate my client in a negative light? Are there gaps in my understanding of my client's experiences and world view that prevent me from fully understanding what my clients needs are?"

74. Naomi Cahn defines "theoretics of practice" as a movement that attempts

ment was supplied by the dissatisfaction clinicians and lawyers felt with their attempts to empower their clients and represent them in a more collaborative, non-manipulative manner.⁷⁵ This quest led law professors both traditional and clinical to experiment with the use of social science methodology to examine lawyer-client interactions. The interdisciplinary approach has particularly attracted clinicians who seek to improve their understanding and interpretation of client narrative and thereby improving the quality of client representation. Indeed, the entire "theoretics of practice" movement is an attempt to explore the intersection of theory and practice in specific lawyer/client situations by using social science methodology. Collaborations between anthropologists and lawyers have particularly interested clinicians.⁷⁶ John Conley, a lawyer-anthropologist and anthropologist William O'Barr, suggested that social culture influences litigants' attitudes and interactions with the law.⁷⁷ Austin Sarat, a sociologist, has engaged in a long collaborative effort with William L. Felstiner, a law professor.⁷⁸ Clinicians are slowly looking to these works to help shed light on clients and how they "can develop (and have developed) their own resistance to dominant legal structures."⁷⁹

to understand the interaction between legal theory and practice. Naomi R. Cahn, *The Looseness of Legal Language: The Reasonable Woman Standard in Theory and in Practice*, 77 CORNELL L. REV. 1398 (1992) [hereinafter *Looseness of Legal Language*]. See also *Reconstructive Poverty Law Practices*, *supra* note 33; Robert D. Dinerstein, *A Mediation on the Theoretics of Practice*, 43 HASTINGS L. REV. 971 (1992).

75. See *supra* notes 1 & 2 and accompanying text.

76. See e.g., Lucie White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G*, *supra* note 34.

77. See Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298, 1530 (1992) [hereinafter *Lawyer as Translator*]. Conley and O'Barr contend that lawyers and litigants speak two different languages. The authors attempted to catalogue the dialogue among the participants and categorize it according to type. The two types they identified were "relational" and "rule oriented". There seems to be a suggestion that women and people of color spoke in relational terms while judges and white men spoke in rule oriented terms. John Conley & William O'Barr, *Rules versus Relationships in Small Claims Disputes* in CONFLICT TALK (A. Grimshaw ed. 1989) cited in White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G*, *supra* note 34, at 17 n.65.

78. See generally *Enactments of Power*, *supra* note 36; Austin Sarat & William L. F. Felstiner, *Law and Strategy in the Divorce Lawyer's Office*, 20 LAW & SOC'Y REV. 93 (1986).

79. Naomi Cahn, *Speaking Differences: The Rules and Relationships of Litigants' Discourses*, 90 MICH. L. REV. 1705, 1712 (1992)(book review). For other

In the work examined in this Part, Clark Cunningham, a clinician who has adopted the client-centered counseling approach, chose to use the discipline of anthropology to assist in his understanding of how a client's narrative was mistranslated⁸⁰. In his article, Cunningham sets out the process by which he and students under his supervision, unintentionally assisted the law in oppressing his client.

Cunningham is a white male law professor who, at the time of the case, was teaching in the clinical program at the University of Michigan. The students were two white men representing a black man who had been arrested and given a citation for disorderly conduct in Ypsilanti, Michigan. The simplified facts of the case are that two state troopers approached DuJon Johnson's vehicle while he was parked at a gas station pump and accused him of running a red light. After the officers demanded his license and registration, Johnson began to question both the reason for his detention and the authority of the officers to require him to submit to a pat down. Johnson was given two citations: (1) driving with a suspended license and; (2) disorderly conduct.⁸¹ Throughout the representation, Cunningham, and presumably his students, worked diligently and conscientiously to provide a translation of the client's story into the language of the law so as to preserve as closely as possible the accuracy and intensity of the client's experience.⁸² Cunningham hoped that through the translation he and the students could provide the client, DuJon Johnson, with a voice in court⁸³.

related works see authorities cited *supra*, note 36.

80. *Lawyer as Translator*, *supra* note 77.

81. These facts are distilled from the more lengthy police file and the author's discussions with both his students and the client. *See id.* at 1303-08.

82. Cunningham used translation as a metaphor to represent the process by which the lawyer takes the client's story and translates it into a foreign language — the law. *Id.* at 1300. This is consistent with Vincent Crapanzano's notion that ethnography like translation is a way of coming to terms with the foreignness of languages. Vincent Crapanzano, *Hermes' Dilemma: The Masking of Subversion in Ethnographic Description*, in *WRITING CULTURE: THE POETICS AND POLITICS OF ETHNOGRAPHY* (James Clifford and George E. Marcus, eds. 1986) [hereinafter *Hermes' Dilemma*].

83. This would be in keeping with the notion that translators enable one to be heard in places where one is otherwise mute. *Id.* at 1299.

The case against Johnson was dismissed on the first day of trial. A suppression hearing had taken place on an earlier appearance date. Cunningham, the students and the client had worked very hard and vested themselves in the case. Yet, the dismissal brought no relief to the client whom, to Cunningham's surprise was just as angry about the level of representation as he was about the initial arrest and his treatment by the arresting officers.⁸⁴ Johnson felt the actions of the students and Cunningham imposed upon him the same injury that had been imposed upon him by the troopers: i.e., they had all acted to deprive him of his right to control his life, his right to equal respect, and his right to be treated like an adult.⁸⁵ Johnson even called Cunningham's actions patronizing.⁸⁶

This interaction with the client spurred Cunningham into re-examining the role lawyers had played in translating Johnson's story. The approach used by Cunningham is called "ethnomethodological."⁸⁷ Presumably the "folk methodology" combines the spirit of the ethnographer's attempts to provide a stratified hierarchy of meaningful structures in which actions are perceived and interpreted.⁸⁸ By using an ethnomethodological approach Cunningham sought to broaden lawyers' understanding of the dynamics of translation and how the very act of translation can change the meaning of the client's story. In Cunningham's clinic, the supervising attorney was not present during the initial interview. The interview was, however, videotaped with client consent. In addition, Cunningham had the transcripts of the court proceedings,

84. *Id.* at 1330.

85. *Lawyer as Translator*, *supra* note 77, at 1329.

86. *Id.* at 1329.

87. The phrase "ethnomethodological" was coined by sociologist Harold Garfinkel, a member of a team evaluating an empirical study of jury deliberations done by the University of Chicago Law School. The phrase describes "folk methodology," the methods used by members of the community in everyday living to analyze, make sense of, and produce recognizable social activities." See *Lawyer as Translator*, *supra* note 77, at 1345 n.111 (quoting Anita Pomerantz & J. Maxwell Atkinson, *Ethnomethodology, Conversation Analysis, and the Study of Courtroom Interaction*, in *PSYCHOLOGY AND LAW* 283, 286 (David J. Muller et al. eds. 1984)).

88. Clifford Geertz. *Thick Description: Toward An Interpretive Theory of Culture*, in *HIGH POINTS IN ANTHROPOLOGY* (Paul Bohannan et al. eds., 1988) [hereinafter *Thick Description*].

particularly testimony at the suppression hearing and both the prosecutor and court's comments on the day of dismissal, all of which he treated as "texts" in the anthropological sense. Cunningham identifies ethnography as instructive for him. Ethnography is the methodology employed by cultural anthropologists which involves observation and recordation of the actions and language of the people observed.⁸⁹ The use of ethnography for the lawyer poses yet another dilemma. Unlike the true ethnographer, the translator, whether lawyer or not, has a slightly separate function. The ethnographer does not simply translate texts as does the translator, the ethnographer must first produce the text.⁹⁰ The legal discourse that Cunningham describes is somewhat different from either that examined by the traditional ethnographer or that examined by the other anthropologist-lawyer works cited by Cunningham and which are described as ethnomethodological because Cunningham's client is not participating in "native" discourse but is forced into the discourse of the legal milieu.⁹¹

The ethnographer studies text, not to solve a particular problem, but simply to understand a particular behavior with hopes that some broader generalization can be made about either the behavior as behavior or what the behavior says about the people exhibiting it or what, if anything, the group's behavior can tell us about behavior of people in general.⁹² The lawyer, on the other hand, listens to the client in an effort to understand the client's current specific problems and objec-

89. Ethnography in its ideal form involves the description of everyday life of a human group in its totality, through observation and through approximation of the cultural categories that are used by the group to organize the different domains of existence and experience. *The Mythology of the Ethnographic Other in Western Tradition* in *INVENTING THE HUMAN OTHER* at 85.

90. *Hermes' Dilemma*, *supra* note 82.

91. For example, in the Sarat and Felstiner work, they examined the dialogue between lawyer and client. Conley and O'Barr looked at the dialogue between pro se litigants, operating without the interference of lawyers. Most of the interaction examined in Johnson's case was that of the participant's in the legal process with occasional interruptions by Johnson, who was the only one not legally trained. A question arises as to whether this was "native" to Johnson for the purposes of learning much from analyzing his interaction in the system. Even if the recordation of the interactions in Johnson's case are viewed as "texts", the ethnographer must adjust his interpretation of the text to take into account the exact structure imposed upon the text. See James Clifford, *ETHNOGRAPHIC AUTHORITY*.

92. This is the sense in which Cunningham uses the methodology.

tives. The lawyer does this to help the client plot a course through the legal culture in order to resolve the problem and/or obtain the objective. Therefore, while the detailed study of text after the fact, may help to unravel the foreignness of language in the future, it will not provide the lawyer with much assistance in counseling the client during the moments when the text is being created. Its utility for guidance may be limited in that regard. In addition, a word of caution is needed here. Within the field of anthropology the same issues which make this article necessary are being debated.

Traditional Western anthropology can point to numerous dark moments in its history where western notions and values were indiscriminately imposed on the interpretation of cultures whose values were inapposite to the culture of the anthropologist. These interpretations in many instances served to legitimate continued colonial and postcolonial oppression of people of color.⁹³ Feminists and anthropologists of color have questioned many of the long held notions of western anthropology. In view of this critique, the use of cultural anthropological methods can perhaps lead to reentrenchment of lawyering which client-centered counseling seeks to avoid. Ethnography as a methodology presents problems in and of its own. Many ethnographers still fail to examine how their individual notions and values impact their work, or if you will, alter the translation of the culture studied.⁹⁴

Inherent in traditional notions of anthropology, is that one studies a foreign culture, the "Other." This difference has distinguished anthropologists from sociologists in that sociologists studies his or her own cultural environment. The anthropologist was presumed to be objective and authoritative because she was not from the culture studied and therefore, was not likely to be blinded by subjective familiarity to peculiarities in the culture.⁹⁵ Cunningham, quite correctly, points out that there is movement within the field for anthropologists to begin

93. Faye V. Harrison, *DECOLONIZING ANTHROPOLOGY* (1991).

94. As Cunningham experiences in his own piece this failure can seriously impact the translation. See *The Lawyer As Translator*, *supra* note 77.

95. Geertz, *Thick Description*, *supra* note 88, at 539. But see Cahn, *Inconsistent Stories*, 81 *GEO. L. J.* 2475, 2512 (1993) (stating feminists challenge the notion that the ethnographer is in fact objective).

looking at their own cultures. However, this anthropological inward-looking creates problems because it becomes difficult for the anthropologist to make the familiar strange.⁹⁶ The difficulty of such an undertaking is noted by anthropologist Ohnuki-Tierney, a Japanese studying Ainu culture, who states that though she herself had been gone from Japanese society for a while, she still found it necessary after a short period of study to distance herself from the familiarity of Japanese society in order to maintain her objectivity.⁹⁷

In Cunningham's examination it is unclear whose familiarity he is distancing himself from. Is Cunningham distancing himself from his own familiarity as a lawyer working within the culture? Or, is it as a white middle class professor culture? Perhaps Cunningham is distancing himself from the clinical client centered culture. Or, could it be his client's culture, assuming he had familiarity with his client's culture? Because we are not clear about what he is claiming as familiar, it is somewhat difficult to determine whether we should hold him responsible for knowing facets of Johnson's life.

Having urged caution in the use of such methodologies, I move on to examine legal ethnography and Cunningham's work to demonstrate how the failure to consider race in performing legal skills affected the representation of a client. By studying the language of the discourse as it unfolded on the videotape, in the transcripts and through discussion with Johnson, Cunningham seeks to determine where he and his students' translation of Johnson's story began to break down. His focus initially, however, is still upon the language of the litigant (Johnson) and not on an analysis of the behavior of the other interactants. By interactants, I mean the officers, the judge, Cunningham and the student themselves. Even though Cunningham's focus is on translation, Johnson — the client — did not see Cunningham as a translator, nor did he perceive the need for a translator. In response to a query from Cunningham about the effectiveness of translation and what Cunningham could have done better, Johnson replies:

96. See generally *The Lawyer as Translator*, *supra* note 77.

97. Ohnuki-Tierney, *Native Ethnologist* in 2 AMERICAN ETHNOLOGIST No. 3, 584-585 (August 1981).

I didn't see you as a translator; in order for me to get even the appearance of my day in court, I needed you guys. The judge wasn't interested in a translation of what I had to say; he was interested simply in justifying the actions of the troopers. You are assuming that the judge - the system - was interested in a translation.⁹⁸

At the very outset Cunningham and Johnson start the relationship with different expectations and understandings of the nature of their relationship. Cunningham assumed Johnson needed a translation and though he is now in the role of distanced observer looking at the normal as strange, it appears that the only person able to recognize the divergence in intentions was the "Other," the client. This divergence is brought about from the failure of the translator to contextualize both the client and the other actors as well.⁹⁹

Going back to his "texts," Cunningham found his second translation flaw was at the initial formulation of the theory of the case. To Cunningham, this was simply an issue of a pretext stop,¹⁰⁰ the legitimacy of which could be challenged in a routine and recognizable legal way: a suppression hearing.¹⁰¹

98. *The Lawyer as Translator*, *supra* note 77, at 1386. Johnson realized what Cunningham saw only after the fact, that even if his translation was cured for the trivialization of race and class, there was no guarantee that the court was prepared to recognize the differences. Alfieri, *Stances*, *supra* note 34, at 1240.

99. Alfieri, *Stances*, *supra* note 34, at 1240. Alfieri suggests that Cunningham ignores the fact that discourse is intimately intertwined with the notions of interpretive violence: marginalization, subordination and discipline and how they govern the rules of legal discourse. *Id.* See also *Looseness of Legal Language*, *supra* note 74 (noting that translations are limited by doctrinal standards). Instinctively, Johnson knew this; his lawyers did not.

100. A pretext stop is a stop made by a police officer without the constitutionally required prerequisite of articulable suspicion. In a pretext stop, the officer then justifies any ensuing arrest or seizure on legitimate legal grounds. Pretext stops are used by police officers to give them an opportunity to question or search individuals who appear "suspicious" to them but have not demonstrated any objective behavior to raise police suspicions to constitutionally mandated levels.

101. The Fourth Amendment of the Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The interesting thing about Cunningham's framing of the theory of the case, is that though he initially thought about the possibility that the pretext stop was made because of Johnson's race, he gave race no further consideration once he began to develop his theory of the case as a routine suppression issue.¹⁰² As Cunningham saw it, at least initially, the Fourth Amendment approach seemed race-neutral and neither the Fourth Amendment nor Cunningham's trial strategy required presenting the client's demand for answers in racial terms.¹⁰³ However, the demand for answers was important because the relief Johnson was seeking was the restoration of his dignity. Though, at first, Cunningham did not fully understand the dignity component, he recognized the limitations of achieving the relief sought by Johnson within the confines of our system. In an effort to help Johnson achieve his objective, and to provide him with a voice in court, they explored the possibility of having Johnson cross-examine the trooper who arrested him. In this way Cunningham hoped to provide a double translation.¹⁰⁴ The opportunity to try the double translation never materialized because the prosecutor eventually dropped the case which set the stage for Johnson to inform Cunningham of his dissatisfaction.¹⁰⁵

U.S. CONST. amend. IV. A pretextual stop violates a defendant's fourth amendment right to be secure against unreasonable searches and seizures. The accused may challenge both the legitimacy of the stop and may move to suppress any evidence seized as a result of the violation.

102. *Lawyer as Translator*, *supra* note 77, at 1370-71. More telling is that Cunningham says as a lawyer he did not talk about the case in that way and, therefore, ceased to think in terms of racial issues. As lawyers, we have been trained in a way that says law is neutral and objective. Issues like race should not have application if we can find the legal principal involved in the case. Yet, to believe so, as Johnson's case discloses, is to ignore the societal context in which law is interpreted. If we continue to train law students by race neutral "objective" methods, even if we call this particular brand "Client-centered," we continue to produce lawyers who will ignore the race issue as it affects development of the theory of the case, thereby foreclosing legal avenues to clients of color.

103. *Id.* at 1371.

104. Cunningham explains that he envisioned the cross-examination as a bridging experience. He wanted to create an event between Johnson and the trooper that was analogous to the arrest so that the jury could see the trooper's reaction to Johnson. Cunningham also wanted to bridge the gap between the relief Johnson wanted and the request for relief that the limited vocabulary of the law enabled them to express. *Id.* at 1327.

105. It is interesting to note that Johnson criticized the lawyers for failing to assist him in the preparation of the cross-examination. Johnson stated that counsel waited too far into the legal process to allow him to become involved seriously in

However, it was only after Cunningham re-analyzed not only what his client said but also what the police officers and the judge had said, in the context of it being a "race" issue, did he begin to fully understand Johnson's explanation of the event as well as the relief Johnson sought. The incident was, after all, not a "routine traffic stop" as the police contended and as Cunningham and his students had framed the case, but the case involved rather two police officers looking at a man who fit the profile of a drug dealer and deciding to investigate to see what might "turn up." Moreover, the fact that Johnson was black made him "out of place" in a white part of town in the middle of the night.¹⁰⁶ Cunningham concludes that by eliminating race from the translation of what happened, they (Cunningham and his students) excluded a possible alternative explanation for the trooper's actions. In reaching this conclusion, Cunningham reasons that they probably distorted Johnson's motivations, because the case was not about a citizen complaining about police breaking a legal technicality, but rather Johnson's case was about a black man being denied the dignity of his citizenry because of his race.¹⁰⁷ This realization allowed Cunningham to finally understand that the dignity of which his client spoke, was the dignity of a black man, to be looked at and treated as a man in this society. Indeed, Johnson was most interested in having his reputation and dignity restored.¹⁰⁸

There were other signals that race was an issue had Cunningham and his students been receptive to them. Cunningham describes the judge who was to handle the case. Cunningham remarks that he had noticed, in court, the judge drew upon his personal familiarity with the litigants when handling disputes. This phenomenon caused Cunningham himself to wonder how many township residents the judge did not know.¹⁰⁹ And yet, there were immediate signals in the

his case. *Id.* at 1384.

106. *Id.* at 1374.

107. Bear in mind that Cunningham is using the client-centered counseling models, which according to its authors, encourage lawyers to consider the relevant experiences of the client, without providing guidance on how this is accomplished.

108. See *The Lawyer as Translator*, *supra* note 77, at 1326.

109. *Id.* at 1313. Cunningham further described the judge as "folksy" but authoritative. *Id.*

judge's handling of Johnson's case that Johnson was to get no such treatment. Both Cunningham and Johnson remark on the judge's demeanor when dealing with Johnson. First, Cunningham relates that during Johnson's testimony at the hearing, the judge's chair was rotated away from the witness stand. The judge could not have looked at Johnson even had he wanted to.¹¹⁰ The judge's action in turning his chair was clearly negative nonverbal behavior, which fully distanced him from Johnson, thereby demonstrating the judge's negative perception of Johnson.¹¹¹ After the representation had concluded, Johnson in his final narrative to Cunningham remarks:

What struck me most about the judge is that he seemed so compassionate [to other parties in other cases I observed] in the 10 months or so that I came to the Courthouse waiting for hearing after hearing to be re-scheduled. I never saw this compassion, I never received the 'I have been there before, I can relate' talks that he frequently gave to those who came before him. I suddenly and unconsciously realized why.¹¹²

What Johnson understood was that he was not going to be afforded the benefits of the system because he is a black man who did not know his place. In fact, the judge said as much after the first part of the suppression hearing ended. The court characterized the arrest and the issuance of a citation that ensued from the arrest as "an attitude ticket" and, eventually, upheld the officer's right to issue it.¹¹³ The court reiterated this position while dismissing the case at the prosecutor's request:

110. *Id.*

111. See Part III, *infra*, for a discussion of nonverbal behavior.

112. *The Lawyer as Translator*, *supra* note 77, at 1387.

113. *Id.* at 1321. Cunningham admits that the judge's open reference to this as an "attitude ticket" and his corresponding willingness to accept the officer's issuance of the ticket despite knowing the officer's actions were clearly outside of the scope of permissible behavior, was "shocking". The judge essentially admitted the only reason the client had received the ticket was because he questioned the officer's authority. The judge saw no inconsistency in finding that the officers did not have reason to believe Johnson was armed and dangerous. Though in Cunningham's story, we do not hear from Johnson on this point, I believe he would not be shocked because, in fact he already knew that was why he got the ticket.

Well, I said on the record from the very beginning that there was no question in my mind that it was an attitude ticket. I'm not saying that's even improper . . . We give a man a badge and a gun and a bunch of training and put him out on the street, we have to assume that they have some discretion and give them some discretion to operate. I think this was an attitude ticket and um, no question about it. If the person behaved in a different manner the ticket never would have happened and I don't fault the Prosecutor in bringing it, I don't find fault with the Prosecutor dismissing it.¹¹⁴

Cunningham recalls that one of two significant comments made to him about Johnson's case came from Derrick Bell, an African-American law professor. Upon hearing Cunningham's recitation of the story, Bell commented the case was really about Johnson being "an uppity nigger."¹¹⁵ It was only later after Cunningham completed his lengthy analysis that he realized how accurate Bell's statement was. Bell's assessment however was not based on the arduous in-depth analysis Cunningham required but rather it was based on Bell's experiences and familiarity with how race becomes a legal impediment for a client expecting to be treated with dignity (and perhaps equality) under the law.

As a lawyer who has represented criminal defendants, many of whom were Black and Latino, I was struck by the number of times Cunningham stated in the article that he was "shocked" by the judge's characterization of the ticket as an "attitude ticket" and how shocked he was by the court's willingness to allow the arrest to stand even though, by the court's own admission, the officers did not meet the constitutionally established standards for such a stop. What Cunningham

114. *Id.* at 1329. The judge then continued and praised the students for all of the effort they put into the case and told them that the case was a great experience for them. Some question has been raised as to what would have transpired between Cunningham and Johnson had the clinic prevailed in the case. Johnson would still have been silenced, but it might not have mattered to Cunningham and the students. See Alfieri, *Stances*, *supra* note 34, at 1239.

115. *Lawyer as Translator*, *supra* note 77, at 1379. Cunningham failed to recognize and acknowledge Johnson's repeated assertions of being treated with disrespect until very late in the representation.

failed to realize is that this behavior goes on every single day in criminal courts across the country. It is the culture of this country. In fact, such stops are so pervasive that many black defendants take such treatment for granted.¹¹⁶ Cunningham himself suspected it, but his own view of the legal relevance of the race issue allowed him to dismiss it as irrelevant to the development of Johnson's legal case.

Translation can only go so far when the listener does not have the ability or desire to hear the translation. Moreover, the translator cannot accurately translate what is said if the event described has no known equivalent in the translator's personal experience.¹¹⁷ The lawyer practicing client-centered counseling and who is sensitive to narrative therefore, has a two prong problem. First, without familiarizing herself with the contextual experience of the client, how can she accurately understand the client's story sufficiently to translate? Second, how can she assist the listener (court, prosecutor, jury) in understanding the client's story when the court itself is unfamiliar with the client's contextual experience?¹¹⁸

The employment of race-neutral analysis, although in a client-centered mode created a crack in the effectiveness of the representation rendered to Johnson from the very beginning when the ability to gather information and establish rapport and explore legal alternatives is at its most critical level.¹¹⁹

116. One television show dedicated an episode to this issue. *20/20: Presumed Guilty* (ABC television broadcast, Nov. 6, 1992). In the episode several 20/20 crew members drove down a street in California. They drove a flashy sports car with approximately 4-5 black males in the car, parked in the parking lot of a fast food restaurant and played music while they ate. The police arrived shortly thereafter to question them on what they were doing in that neighborhood. On a subsequent night, several white male crewmen were sent in a similar car to the same location at the same time and engaged in the same activities. Approximately 23 police cars passed them and not one stopped to question their presence. This would probably constitute a world view for the category of clients who are subject to this treatment. Yet, the lawyers representing Johnson were unaware of the world view.

117. As James White noted in commenting on the Cunningham piece, "The proper duty of the translator is not solely to the language and text of which she works, but runs as well to the language in which she speaks, and to the demands of the social and cultural context in which she functions." James B. White, *Translation as a Mode of Thought*, 77 CORNELL L. REV. 1388, 1395 (1992).

118. See *Looseness of Legal Language*, *supra* note 74, at 1444 (discussing the need to challenge court held stereotypes as well); INTERVIEWING, *supra* note 8, at 66, 77; LAWYERS, *supra* note 8, at 3-4.

119. *Reconstructive Poverty Law Practice*, *supra* note 33, at 2138. See also IN-

According to what we believe we know about client-centered counseling,¹²⁰ its goal is to empower the client, to make the client an active and significant partner in his or her own legal representation. And yet, ironically, in Johnson's case, and I would assert in the cases of many of our clients, it served only to increase the level of his silencing.

III. THE LESSON OF EMPIRICAL RESEARCH

Proponents of neutral skills training argue that it is impossible to fully understand the world view of every single client and that any attempt to do so would destroy a lawyer's ability to represent clients effectively. If the critique of client-centered counseling presented here proposed one single approach to understanding indigent or difficult clients, the neutral skills training argument would be correct. No single theory can help a student/lawyer anticipate the infinite number of client combinations she may encounter in her professional life. There are, however, recognized, and validated methods of assisting professionals in counseling relationships, to identify areas where the difficulty is engendered by race, culture, gender, etc.

There are parallels between medical, psychiatric, psychology and sociology fields and the legal field. From these fields, lawyers and clinicians may seek guidance. In these fields, empirical data are routinely gathered to help assess the nature of the client relationship. Both mental health counseling and lawyering involve the development of confidential relationships with clients. The success of relationships in both of these environments is affected by the degree to which the client feels able to trust the professional. In mental health counseling and lawyering, there is an enormous potential for manipulation of the client/patient/subject because of the power differential which exists and benefits the professional.¹²¹ In both areas of

INTERVIEWING, *supra* note 8; LAWYERS, *supra* note 8; Stephen Ellmann, *Empathy and Approval*, 43 HASTING L.J. 991, 1009 (1992)(stating that the risk of misunderstanding or silencing a client may be most acute in the early phases of a lawyer-client relationship).

120. See Part I, *supra*.

121. *But see Enactments of Power*, *supra* note 36, at 1454, 1456-57 (discussing

counseling, it is common to first encounter the client when she or he is under the pressure of an impending personal crisis.

A difference between the two types of counseling, which may be significant, is that the mental health counselor seeks to assist the client in changing her/his overall behavior, whether it be in helping her/him stop destructive behavior or in developing different responses to stimuli which are destructive to the client's well-being. The lawyer-counselor's role is traditionally perceived as being more limited. In fact, the lawyer may not be concerned at all with the client's future behavior. The traditional lawyer is more concerned with solving the client's current legal dilemma and/or planning a cause of action to help the client avoid legal complications in the future. As long as the lawyer can protect or excuse the client's behavior, she will not be very interested in whether the client's understanding changes or whether the client's behavior can be changed.¹²²

Lawyering can also be distinguished from mental health counseling on a temporal basis because the relationship between lawyer and client is normally of shorter duration than the mental health counselor/client relationship. The temporal difference dovetails with the traditional view of lawyering: the lawyer fixes only the particular legal problem presented by the client without attempting to resolve other problems in the client's life.¹²³ However, because of the increasing complexity

the fluidity of power). They argue that power is not a thing possessed by either the lawyer or the client but rather that the power between the two is in constant negotiation. *Id.* However, even in their analysis they point out the client normally exercises power through resistance and exit, rarely through confronting the authority of the lawyer. *Id.* While power may be fluid, it is unrealistic to assume that it does not "flow" predominately to the benefit of the lawyer.

122. See Ellmann, *supra* note 119, at 10. Some scholars argue lawyers should be concerned with more than the narrow legal view, that we should have some obligation to help our clients develop morally. See Duncan Kennedy, *The Responsibility of Lawyers for the Justice of Their Causes*, 18 TEXAS TECH. L. REV. 1157 (1987). For a different point of view but one which also endorses expanding the concept of lawyering. See generally Lopez, *supra* note 29.

123. Even in the Legal Services area this attitude has been institutionalized. There may be opportunities to help a client on more than one matter but because of the way office numbers are calculated versus resources allocated, there is a disincentive to work on multiple matters for a singular client. The office will not get credit, translating to dollars, for the resolution of multiple legal matters under

of modern society, combined with the rise in civil litigation and the shortage of available civil judges, which is often blamed on overburdened criminal calendars, it is not unusual for civil matters to drag on for two to four years before there is a resolution. In anything less than an uncontested matter, it can take a year to get before a judge for a hearing. It is questionable then, whether it can still be said that the lawyer-client relationship is typically of short duration. During the now extended time period, clients may seek the lawyer's services in other matters which crop up.

There is an additional difference for the clinician. Not only do we concern ourselves with empowering the client, but we believe in empowering the student handling the client's case as well. The dual nature of clinical work can lead to goal inconsistency and tension between the learning experience and client representation.¹²⁴

There have been other instances in which clinicians and lawyers have looked toward mental health counseling for guidance in handling lawyer-client interactions. The client-centered counseling approach is itself an outgrowth of the changing therapeutic approaches in psychology.¹²⁵ Much of the move toward client-centered counseling was influenced by comparisons of methodology in client counseling to the mental health areas.¹²⁶ Although, as clinicians, we have borrowed heavily from the mental health field in accepting the need for a revision of the traditional lawyer-client relationship toward a more client-centered approach, we have not followed the mental

the umbrella of one case number.

124. Robert J. Condlin, *"Tastes Great, Less Filling"; The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45, 56-57 (1986)(arguing that clinical instructors are placed in a position where they may overlook the client's best legal interest to benefit a student's learning experience or may sacrifice the student's learning experience for the sake of the client's legal case).

125. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, *supra* note 12, at 584; Stier, *supra* note 19, at 308.

126. Bastress & Harbaugh devote a chapter entitled "Helping Theories" which examines theories of psychotherapy and their application in lawyer/client relationship. INTERVIEWING, *supra* note 8. There are other notable examples as well: psychological studies of personalities for jury profiles on both civil and criminal matters. See William H. Simon, *Homo Psychologicus: Notes on a New Legal Formalism*, 32 STAN. L. REV. 487, 518-19 (1980) (identifying instances of client-centered psychologist Carl Rogers' impact on legal scholarship).

health field's lead in examining other factors which may affect the lawyer-client relationship. In addressing this need, two areas I examine below are: (1) how the lawyer's unconscious racism and cultural bias may impact the attorney-client relationship; and (2) how the client's cultural experiences and internalization of microaggressions impact the client's view of the relationship with not only the lawyer, but, also, the law.¹²⁷

Social scientists have recognized the necessity of being culturally sensitive in counseling styles. Cultural differences may have several effects. They can lead to misunderstandings between counselor and client. They can interfere with the establishment of rapport and trust between counselor and client. Cultural differences may also alienate the client from the source of help.¹²⁸ Additionally, if the counselor is unaware of cultural differences, the counselor may incorrectly analyze an interaction with the client. Moreover, the counselor may fail to fully appreciate that his/her role is dynamic and impacts on any given interaction with the client.¹²⁹

A. WHAT CULTURAL BAGGAGE DOES THE LAWYER BRING?

Lawyers, law students and law professors, like every other member of society, carry with them preconceived notions rooted in the lawyer's own cultural background.¹³⁰ If the lawyer in question is white¹³¹ which according to statistics is the

127. By law I mean the laws themselves as well as the legal system in which the laws are enforced.

128. Pomales et al., *supra* note 62.

129. Carl O. Word et al., *The Nonverbal Mediation of Self-Fulfilling Prophecies in Interracial Interaction*, JOURNAL OF EXPERIMENTAL SOCIAL PSYCHOLOGY 10, 109-120 (1974) [hereinafter *The Nonverbal Mediation*].

130. There are many definitions of what "culture" means, particularly when the discussion centers on comparing notions cross-culturally. Ronald P. Rohmer, *Towards a Conception of Culture for Cross-cultural Psychology*, JOURNAL OF CROSS-CULTURAL PSYCHOLOGY, Vol. 15, 111-138 (1984) (setting out the various definitions of culture). Without delving into the merits of the various positions, for the purposes of this article, I will adopt his definition that culture is a system of meanings in the heads of multiple individuals within a population.

131. For examples of reports on the numbers of minority clients served by minority lawyers see *Minnesota Supreme Court Task Force on Racial Bias in the Judicial System*, 16 HAMLINE L. REV. 665, (1993); Cheryl E. Amana, *Recruitment and Retention of The African-American Law Student*, 19 N.C. CENT. L. J. 207 n.6

norm, and is working in a legal services, clinical or public interest position, the client-participants are likely to be people of color and/or individuals from a lower socio-economic background than the lawyer or law student. It is also likely that the lawyer or law student carries with him/her elements of unconscious racism.¹³² What we, as clinicians, have failed to examine is how the unconscious racism, or, in other words, the lawyer's or law student's preconceived cultural notions will impact both the lawyer's expectations of the client as well as the lawyer's interpretation and understanding of the client's actions and ultimate objectives.

The potential impact of preconceived notions is demonstrated in a phenomenon known as the self-fulfilling prophecy. In this phenomenon, an originally false definition of a situation can influence the believer of the false definition to act in such a way as to bring about that situation.¹³³ More specifically, the principle establishes that one person's attitudes and expectations about another may influence the believer's actions, which in turn, may induce the other to behave in a way that confirms the original false definition. In their study, the authors focused on detecting possible nonverbal mediators of this phenomenon and on the resulting performances of the interactants. The participants in the study were both black and white job applicants being interviewed by whites. The authors reported data which suggested that attitudes toward individuals are linked with nonverbal behaviors emitted toward the individual. For instance, positive attitudes led to more immediate behaviors.¹³⁴ Discrediting characteristics

(1991); *Cultivating a Diverse Work Force: Firms' Profiles Need To Reflect Reality*, THE NATIONAL LAW JOURNAL, January 10, 1994.

132. Dr. Chester Pierce calls racism one of the largest mental health problems in the United States, affecting virtually the entire population. *Psychiatric Problems of the Black Minority* in AMERICAN HANDBOOK OF PSYCHIATRY, (1974). See also Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning With Unconscious Racism*, 39 STAN. L. REV. 317 (1987); Richard Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, PEACE AND FREEDOM, July/August 1989, at 3.

133. *The Nonverbal Mediation*, *supra* note 129. The authors of the study credit sociologist Robert Merton with focusing attention on this phenomenon. *Id.*

134. Immediacy was defined "as the extent to which communication behaviors enhance closeness to and nonverbal interaction with another . . . greater immediacy is due to increasing degrees of physical proximity and/or increasing perceptual availability of the communicator to the addressee." *Id.* at 110 (citing Mehrabian).

were treated with less immediate behaviors.¹³⁵ The authors sought to determine whether the white interviewers would exhibit nonverbal behavior as well as whether the target (job applicants) would be influenced by the interviewer's nonverbal behavior.

In the first study, the interviewers were naive as to the study's purpose. The "applicants," however, were not; the applicants were confederates.¹³⁶ The authors found that the white interviewers spent twenty-five per cent less time with the black applicants versus the white applicants. Further, the black applicants received less immediate behavior than did the white applicants. For example, the white interviewers physically placed themselves further away from the black applicants versus the white ones, which indicated negative reactions to the black applicants. Overall, the black applicants received a negative total immediacy score while the white applicants received a positive one. In the second study, the authors attempted to determine whether a white applicant, treated similarly to the way black applicants were treated, would reciprocate with less immediacy. In this test, the white applicants did not know the study's purpose. The authors found that white applicants who were treated similarly to the original black applicants had been treated in the first study, performed less well, reciprocated with less immediacy and perceived their interviews to be less adequate.¹³⁷ The authors concluded that the actions of the interviewer could, therefore, influence the behavior of the applicant and have ramifications on the applicant's ability to secure employment.¹³⁸ This finding is significant because issues such as black unemployment were frequently examined from the perspective of the "disposition of the disinherited" (black person), thus, casting blame on the peculiarities of the victim, rather than on an examination of the black-white interaction itself.

Examples of immediate nonverbal behaviors were eye contact, friendliness and establishing physical proximity. *Id.*

135. Examples of discrediting characteristics were physical disability, criminal record, blackness in a white society. *Id.*

136. Confederates are individuals who participate in the study with full knowledge of the factors being researched.

137. *The Nonverbal Mediation*, *supra* note 129.

138. *Id.*

The concept of self-fulfilling prophecy can certainly provide illumination in the area of client-centered counseling. The lawyer or student unaware of her own behavior perceives the client to be exhibiting negative behavior.¹³⁹ One of the insidious dangers of the self-fulfilling prophecy is that since individuals are seldom able to monitor their own behavior, they are more likely to attribute negative behavior from the client, not to their own original nonverbal behavior, but instead to some disposition inherent in the client.¹⁴⁰ Presently, except in one isolated area, skills training material devotes no attention to negative nonverbal behaviors that students and white lawyers in general, might be exhibiting toward their clients. Nor, do we have any idea how clients may decode and reciprocate such behavior.

Client-centered counseling materials do discuss extensively, however, the significance of the physical lay-out of offices to enhance the appearance of lawyer-client proximity to encourage a more positive attorney-client dynamic. In accordance with the Word, Zanna and Cooper study, proper office lay-out reduces the likelihood of several negative nonverbal behaviors like lack of eye contact and physical distancing.

While factors such as office layout, positioning of chairs, and so forth, are important in the overall scheme, it strikes me as unfortunate that so much effort is directed to this topic, without exploring the ways unconscious racism creates the distancing factors. In this part, I address the unconscious predispositions to which the student and lawyer are blind and are, therefore, unable to guard against.¹⁴¹ Similarly, client-centered attempts to employ active listening and empathetic responses, as presently advocated, do not address problems of

139. As can happen under the client-centered counseling model. This client may then be labeled "difficult". See discussion of "atypical" and difficult client in Part I, *supra*.

140. *The Nonverbal Mediation*, *supra* note 128, at 111. The findings of the authors underscore for the clinician the importance of videotaping whenever possible, student interaction with actual clients.

141. When the students are not perceptive enough to detect negative nonverbal behavior from themselves, they are also unable to detect it from other actors in the dyad. In Johnson's case, for example, he was the only one who noticed that the judge was not exhibiting the same body language and familial disposition towards him as towards other white defendants. See Part II, *supra*.

the nature of the self-fulfilling prophecy.¹⁴² As the phenomenon is based on perceptions, the lawyer/student may be unaware of the nonverbal behaviors which her/his expectations produce. S/he is, therefore, unable to compensate for the effects of her/his own nonverbal behavior.¹⁴³

The issue of expectancies on the part of the provider of counseling is quite complicated. Expectancy refers to a belief, hypothesis, theory, assumption or accessible construct that is brought from a previous experience and is used either consciously or unconsciously as a basis for interpreting or generating behavior in the present context. In the medical field, Ditto and Hilton demonstrated in a study that physician expectancy regarding the patient can impact on the physician's ability both to hear what the patient is communicating about his/her symptoms, and also, the physician's ability to convey a diagnosis and plan treatment.¹⁴⁴ In the Ditto and Hilton study it was shown that physicians suffer from a double assumption problem. The double assumption is as follows: the physician first assumes that the patient does not have the sophistication to understand the intricacies of her/his condition. Yet, when the physician explains the condition to the client, the physician relies on medical jargon that the patient, in fact, cannot understand. In relying on the jargon, the physician overestimates the patient's ability to absorb information about her/his medical conditions.¹⁴⁵ This leads to confusion on the patient's part which affirms the physician's original assumption that the

142. See discussion in Part IB, *infra* (counselors who employed empathetic listening were rated less highly than other counselors who employed empathic listening but were also culturally sensitive).

143. Pierce discusses nonverbal cues as the vehicles for racism. *Psychiatric Problems of The Black Minority*, *supra* note 35, at 515. (giving examples of the multiple, on going daily cues which serve to reinforce notions of black inferiority, Pierce discusses a concept called "ease of selection" whereby, it is argued, selection of white over black is made easy because in the United States white will always be selected first). One of the compelling examples he gives describes how waitresses serving a mixed race table will always defer to the white patron first when it is time to order. *Id.* See also Peggy Davis, *Law as Microaggression*, 98 YALE L.J. 1559 (1989)(providing similar examples when speaking of the effects of multiple daily acts of aggression against black people). For a table of possible verbal and nonverbal sources of communication see Appendix, Table 1.

144. Ditto & Hilton, *Expectancy Process in the Health Care Interaction Sequence*, 46 JOURNAL OF SOCIAL ISSUES, 97-124 (1990).

145. *Id.* at 112.

patient could not understand the details of the medical condition. The authors also suggested the physicians assumed that their patients did not want to hear bad news about their conditions. Therefore, the physicians did not completely and thoroughly discuss the patient's condition with the patient.¹⁴⁶ In fact, the authors suggest the physician misinterpreted patient anger over receiving bad health news as not wanting to hear the news. Similarly, Ditto and Hilton found that doctors may also misinterpret a patient's intimidation due to the physician's level of education and socio-economic status as apathy toward her/his medical condition.

The results of the Ditto and Hilton study are particularly relevant to client-centered counseling. One of the frequent complaints heard from the students is that the clients seem apathetic. The students feel that they care more about the client's well-being than does the client himself.¹⁴⁷ Yet, the student/lawyer and the physician share the traits of high levels of education and higher socio-economic status. These factors may be producing, in the legal services client, the same level of intimidation that the lower socio-economic patient feels when visiting a doctor. In fact, it is generally accepted, in client-centered counseling material, that clients may be intimidated by the difference in status between the client and the lawyer.¹⁴⁸ The Ditto and Hilton study demonstrates the importance of examining the impact of this status difference from the perspective of the behavior of the service provider, in our case the student/lawyer behavior, and not just from the perspective of client behavior, as is advocated by the client-centered models.

Similarly, the student/lawyer's expectancy can influence how she diagnoses or frames her client's legal problem; it may also affect how she plans what steps to pursue in the legal strategy. This is one of the insights that Cunningham gained in a review of Johnson's "texts." His expectancies about the

146. *Id.*

147. Initially this was an anecdotal observation, however three consecutive semesters of student journals confirm that this is a complaint commonly voiced by students.

148. INTERVIEWING, *supra* note 8, at 178.

client *and* the legal system led him to frame the case purely as a Fourth Amendment suppression issue without regard to the racial dynamics being played out.¹⁴⁹

Further, enlightenment on the way race may unconsciously affect the provider of services can be gleaned from a study involving physician breaches of patient confidentiality. In this study, 628 white male physicians were asked to complete a survey which sought to determine how frequently physicians breach the confidentiality of patients who were HIV positive by reporting them to public health authorities.¹⁵⁰ There were eight "patients" in the study. Each patient had a different combination of sex, race, and sexual preference. The eight patient histories were identical except for the description of the hypothetical patient. The study found that white male physicians would violate the confidentiality of black homosexual and heterosexual males more often than they would hypothetical patients in other categories. While the authors would not conclusively state that the results were a result of racism, they asserted that the results were consistent with racial prejudice.¹⁵¹ The results are also consistent with studies that show, in hospital emergency room treatment situations, physicians provide different levels of service to black patients than they do to white patients.¹⁵²

The only significant empirical work in the clinical legal education field, specifically dealing with the interaction from the side of the lawyer/student, is the work of Peters and Peters and the testing of personality preference type to determine how typing can affect the skill of information acquisition.¹⁵³ To date, there have been no empirical studies which seek to determine how the perceptions of white law students impact on their ability to represent clients of color, especially black clients. Yet, if we can glean anything from the works in other

149. See Part II, *supra*.

150. J. Schwartzbaum et al., *Physician Breach of Patient Confidentiality Among Individuals with Human Immunodeficiency Virus (HIV) Infection: Patterns of Decision*, 80 AMERICAN JOURNAL OF PUBLIC HEALTH 829 (1990).

151. *Id.* at 833.

152. *Black-White Disparities in Health Care*, JAMA, Vol. 263, No. 17, 2344-2346, 2345.

153. *Maybe That's Why I Do That*, *supra* note 6.

disciplines, it is that such studies could provide lawyers and students interested in client-centered counseling with a wealth of information about how negative nonverbal behavior exhibited by the lawyer and student/lawyer expectancies can influence the nature and quality of the interaction with the client and hamper our ability to give effective representation.

B. WHAT BAGGAGE DOES THE BLACK CLIENT BRING?

As noted in Part I, one of the characteristics of the difficult client is his reluctance to participate in the interviewing process. As discussed, the authors of the client-centered counseling models provided suggestions to encourage client participation. These suggestions, according to the authors, should be successful if the client is not in need of more serious psychological assistance. There are many reasons, however, why clients may be reluctant to participate in the information-gathering process. Although psychological studies examining the client's cultural perceptions are numerous, social scientists of African descent argue that there are not enough studies and that many of the existing studies are not properly focused.¹⁵⁴ Nevertheless, there are studies which present valid data concerning the psyche of the black client, in particular. The issues studied which are most pertinent to the counseling relationship have included the levels of mistrust black clients have for white counselors, black self-disclosure, black client expectations of white counselors, and black clients' perceptions of the competence of white counselors.

Francis and Sandra Terrell have both authored or co-authored numerous studies concerning black clients and mental health counseling.¹⁵⁵ One of their earliest works involved developing a scale to measure a black client's level of mistrust of a white counselor.¹⁵⁶ Later, the Terrells sought to deter-

154. Daudi Ajani Ya Azibo, *Psychology: Research and Methodology Relative to Blacks*, in *AFRICAN AMERICAN PSYCHOLOGY: THEORY, RESEARCH AND PRACTICE* (1992).

155. Dr. Francis Terrell is a professor of psychiatry at North Texas State University. Dr. Sandra Terrell is a professor of psychiatry at the University of North Texas.

156. Francis Terrell & Sandra Terrell, *An Inventory to Measure Cultural Mis-*

mine whether the race of the counselor would lead black clients with a high mistrust level to prematurely terminate therapy.¹⁵⁷ Previous psychological studies established that ethnic differences between client and counselor were related to premature termination of counseling.¹⁵⁸ One explanation for the high drop-out rate among black clients was that black clients did not trust white counselors and as a result often failed to establish a therapeutic alliance with white counselors.¹⁵⁹

The Terrells studied black clients at a local community mental health center. Each client in the study was asked to complete the Terrells' Cultural Mistrust Inventory (CMI). Based on the results, each client was assigned to either the low cultural mistrust category or the high cultural mistrust category. The groups were then randomly assigned for intake by either a white counselor or a black counselor. The study demonstrated that black clients with a high level of cultural mistrust and who were seen by white counselors, had a higher rate of premature termination than did highly mistrustful clients seen by a black counselor.¹⁶⁰ One result which surprised the authors was that highly mistrustful black clients seen by black counselors also demonstrated premature termination though at lesser rates than those seen by white counselors. The authors suggest that a plausible explanation may be that even though the counselor was black, the client may have perceived the situation to be one that was white-oriented.¹⁶¹

A similar study, determined that high mistrust levels among black students affected the students' expectations of counseling. In that study, black students with high mistrust levels expected less from counseling.¹⁶² The authors suggest

trust Among Blacks, THE WESTERN JOURNAL OF BLACK STUDIES, Vol. 5, No.3 (1981). The full Cultural Mistrust Inventory (CMI) can be found in Appendix, Table 2.

157. Francis Terrell & Sandra Terrell, *Race of Counselor, Client Sex, Cultural Mistrust Level and Premature Termination From Counseling Among Blacks*, JOURNAL OF COUNSELING PSYCHOLOGISTS, Vol. 31, No.3, 371-375 (1984).

158. *Id.* at 371.

159. *Id.*

160. *Id.* at 373-374.

161. *Id.* at 374. This gives food for thought to black students and lawyers who may be only moderately more successful than their white counterparts in developing a close rapport with their clients.

162. C. Edward Watkins, Jr. & Francis Terrell, *Mistrust Level and Its Effects*

that in this situation a white counselor may have difficulty establishing him or herself as a trustworthy service provider. The authors also noted that Black clients may "test" white counselors to determine their trustworthiness by displaying open resentment, or ingratiation.¹⁶³ In a follow up to the 1988 study, C. Edward Watkins sought to determine more specifically how cultural mistrust level affected the student's perceptions of counselor credibility, confidence in counselor's ability to help solve problems, and student's willingness to return for a follow-up visit.¹⁶⁴ The students in this study were black college students who were instructed to evaluate counselors in specific skill areas. Here, the significant finding was that there were four areas in which black subjects, who were highly mistrustful, identified white counselors as being less able to help. The four areas were general anxiety, shyness, dating difficulties and feelings of inferiority.¹⁶⁵

If we take the record of Johnson's case and examine the discourse in light of the above-mentioned reluctance to disclose, we can get a clearer understanding of the missteps of the legal team in the Johnson case. We can begin by examining the nature of relief Johnson sought. Recall that Johnson wanted his dignity and respect restored.¹⁶⁶ One of many issues Cunningham discussed with Johnson was why Johnson never told Cunningham or the students that he believed he was stopped because he was black. When questioned about omitting to mention the race issue, Johnson responded:

I did not tell you that it was a racial issue, although I knew from the beginning that it was

on Counseling Expectations in Black-White Counselor Relationships: An Analogue Study, JOURNAL OF COUNSELING PSYCHOLOGY, Vol. 35, No.2, 194-197 (1988).

163. *Id.* Consider the possibilities where negative nonverbal behavior is initiated by the client in an effort to test the trust worthiness of a white lawyer. The lawyer without knowing this may be a client with a high cultural mistrust level, decodes the behavior and reciprocates. The client, unable to observe his or her own original negative nonverbal behavior, perceives the lawyer's behavior as negative and therefore determines the lawyer is untrustworthy!

164. C. Edward Watkins, Jr. et al., *Cultural Mistrust and Its Effects On Expectational Variables in Black Client-White Counselor Relationships*, JOURNAL OF COUNSELING PSYCHOLOGY, Vol. 36, No.4, 447-450 (1989) [hereinafter *Cultural Mistrust*].

165. *Id.* at 449.

166. See Part II, *supra* note 107 and accompanying text.

(my arrest) racially motivated. I would have confided this, but who would have believed me anyway? I felt that on the basis of law itself that I did not have to interject the aspect of racial bias. I knew, legally, that Kiser's [trooper] actions were wrong. And I felt I had taken the higher moral and legal ground.¹⁶⁷

Johnson's response makes sense in the context of the social science data and comports with the Watkins, Miller and Terrell findings that white counselors were perceived as being less able to help dealing with feelings of inferiority.¹⁶⁸ Throughout Johnson's interaction with his legal team, from the initial interview to the end, he repeatedly complained that he was not well-treated and that even the lawyers treated him as if he was "an indigent mentally as well as physically."¹⁶⁹ At one point, Johnson remarks that the students talked to him as if he were a child with no common sense. Then came Johnson's most brutal charge of all, "The way you guys [students] talk to me and approach me - it's a little like the way Trooper Kiser approached me."¹⁷⁰ Johnson indicated that he felt he was required, in essence, to demonstrate that he was worthy of the students help.¹⁷¹ The issue of respect went to the core of Johnson's need to feel equal with any other man. In Johnson's eyes, he was being asked by his own counsel, to prove that he was not inferior. Johnson clearly and, as it turned out, accurately perceived how a claim of discrimination would be received.¹⁷² Raising the claim would have subjected him to another round of the denial of his dignity and his right to exist free from police harassment and, thereby would have reaf-

167. *Lawyer as Translator*, *supra* note 77, at 1385.

168. *See Cultural Mistrust*, *supra* note 164, at 449.

169. *Lawyer as Translator*, *supra* note 77, at 1330.

170. *Id.*

171. He asked: "Why must I qualify myself, reveal my soul to you, convince you that I wasn't there for a good reason?" *Id.* The normative practice of making value judgments in legal services is well entrenched. *See Reconstructive Poverty Law Practices*, *supra* note 33, at 2122 n.55; Michelle S. Jacobs, *Do the Rules of Ethics Require Zealous Representation for Poor People*, 8 ST. THOMAS L. REV. 97 (1995); *Community-Based Ethic*, *supra* note 32.

172. In fact, Cunningham notes that, though Johnson never raised the issue in his testimony, the one time the judge acknowledged Johnson was to angrily deny any suggestion that the trooper's actions were in any way motivated by Johnson's race.

firmed his inferior status.

It is impossible to reconstruct what thought process Johnson went through in reaching his decision not to mention race. He may have reached the decision without any conscious thought whatsoever. His decision may have been a cultural memory imbedded in his experiences. However, whether or not Johnson reached his decision consciously and regardless of whether he mentioned race, the lawyer/students failed to recognize the importance that the race dynamic played in the proceedings. Unfortunately for Johnson, both the troopers and the court engaged in behaviors that were race-based, as was evident from things like the judge's turning his chair away so that he would not have to look at Johnson and denying the legitimacy of the race issue by inferring that race could not have been a factor because one of the Troopers was a Native American. Because the lawyer/students had not recognized the importance of the race dynamic, they were unprepared to counter the court's assertion that the troopers' actions were not based on race.

Client trust and self disclosure are interrelated principles. If the client mistrust level is high, it would not, therefore, be surprising to find low level of client self-disclosure. Self disclosure is the process of making the self known to other persons.¹⁷³ Studies have shown self disclosure is dependent upon the level of client trust.¹⁷⁴ Trust has been found to be influenced by the counselor's attitude toward the client.¹⁷⁵ Several studies have examined the level of distrust in black communities in America. Different terminology has been used to express similar concepts. Because of the socialization process in America, black people exhibit a "healthy cultural paranoia."¹⁷⁶ Alternatively, this phenomenon has been described as "eco-system distrust."¹⁷⁷ Eco-system distrust means that most of the elements in an individual's environment are perceived as being potentially harmful. Furthermore, the person perceives no

173. Charles R. Ridley, *Clinical Treatment of the Nondisclosing Black Client: A Therapeutic Paradox*, AMERICAN PSYCHOLOGIST, Nov. 1984.

174. *Id.*

175. *Id.*

176. *Id.* at 1235.

177. *Id.*

possibility of improving the situation.¹⁷⁸ When compared to whites of the same class and educational level, lower self-disclosure has been found among blacks. I have found no studies that reported greater levels of self-disclosure for blacks than whites.

In his article, Charles Ridley discusses the inhibiting effect an interracial situation may create. Because of mutual fear and distrust, a black person may not open up to a white person. Conversely, a white person may not provide the type of feedback that is most accurate in describing the black individual. Among the problems cited, which exacerbated nondisclosing behavior of black people, are therapist insensitivity, stereotyping, lack of specialized training and failure to establish rapport.¹⁷⁹

Once again, the issue of nondisclosure bears directly upon the relationship established by the student/lawyer and the client. Failure of the client to disclose completely to the lawyer, particularly after the student/lawyer has "assured" the client of confidentiality, leads the student to feel the client has been less than honest with the student/lawyer. The student/lawyer may misinterpret apparent sullenness or hostility on the part of the client as an indication that the client is unwilling to establish a relationship with the student/lawyer. Ridley warns against adopting the view, now discredited in his field, that difficulty in therapy results merely from client resistance. Ridley notes that the theory is no longer viable in explaining away interactive difficulties.¹⁸⁰ This is an insight which lawyers engaged in client-centered counseling would do well to consider since the client-centered counseling models focus so heavily on the client's behavior.

Using a different approach, a study was conducted to determine whether a black student's racial identity affected the student's perceptions of white counselors' cultural sensitivi-

178. Ridley, *supra*, note 173, at 1235.

179. *Id.* at 1237. Thus, the reticence of the client may stem from the counselor's ineffectiveness rather than from the client's conscious or unconscious desire to be "difficult."

180. *Id.*

ty.¹⁸¹ The authors accepted the argument that it is important for counselors working with ethnic minority clients to be sensitive to each client's cultural identity. They wanted to determine the extent to which black students' own racial identity impacts on their evaluation of a counselor who failed to be culturally sensitive. Results of the study showed not only that culturally sensitive counselors' behavior was considered more competent than culture blind behaviors, but also that such perceptions were influenced by the racial identity of the perceivers.¹⁸²

Similar empirical studies have been performed using Asian-Americans, Native-Americans and Latinos (of both American and foreign descent) as subjects.¹⁸³ All showed that, on some level, race or culture played a role, not only in the clients' behaviors but also in their evaluation of white counselors.

Client expectation may also be significant in the context of lawyer counseling. Just as the student/lawyer, like the psychologist or physician may have expectations about the client, so too, does the client enter the relationship with expectations. Ditto and Hilton demonstrated that a patient's expectations about her physician affected her willingness and ability to convey a full description of her symptoms to the physician.¹⁸⁴ The patient perceived the physician to be of a high socio-economic class and expected the physician to be busy. The patient, therefore, did not wish to "waste" the physician's time by relating details of symptoms which the patient assumed the physi-

181. *Effects of Black Students' Racial Identity*, *supra* note 62.

182. Racial identity refers to the stage and degree to which the subject identifies with his/her own ethnicity.

183. Teresa D. LaFromboise & David N. Dixon, *American Indian Perception of Trustworthiness in a Counseling Interview*, JOURNAL OF COUNSELING PSYCHOLOGY, Vol. 28, at 135-139 (1991) (American Indians); Ruth H. Gim et al., *Asian-American Acculturation, Counselor Ethnicity and Cultural Sensitivity, and Ratings of Counselors*, JOURNAL OF COUNSELING PSYCHOLOGY, Vol. 38, No. 1, at 57-62 (1991); Steven Regeser Lopez et al., *Mexican Americans' Initial Preferences for Counselors: The Role of Ethnic Factors*, JOURNAL OF COUNSELING PSYCHOLOGY, Vol. 38, No. 4, at 487-496 (1991); Donald R. Atkinson et al., *Mexican-American Acculturation, Counselor Ethnicity and Cultural Sensitivity, and Perceived Counselor Competence*, JOURNAL OF COUNSELING PSYCHOLOGY, Vol. 39, No. 4, at 515-520 (1992).

184. Ditto & Hilton, *supra* note 144.

cian would find during the course of the physical examination.¹⁸⁵ Additionally, the patient, in an effort to avoid the scorn of the higher class physician overreported desirable behaviors and underreported undesirable behaviors.¹⁸⁶ The behaviors, described above, reflect the inhibitors noted by Binder, Bergman and Price and Bastress and Harbaugh. These are the social etiquette¹⁸⁷ and ego threat¹⁸⁸ inhibitors. As shown by the various studies of interracial situations, empathetic listening and active responses by themselves may be insufficient to address the underlying causes.¹⁸⁹ Unless the student/lawyer is adequately trained to recognize the possibilities of the underlying cause of the threat, how can s/he respond appropriately? As advocates of client-centered counseling, we have elected to borrow the terminology and approach of the social scientists in the development of our own pedagogy. Knowing this, it doesn't seem prudent to then disregard the measurements the social scientists have developed to ensure that clients of color are serviced as meaningfully as clients who are of the same cultural or racial background as the counselor.¹⁹⁰

IV. STUDENT/LAWYER VALUES AND INTERGROUP ANXIETY

As I have demonstrated in Part II and III, lawyers, including clinicians using client-centered counseling, and students have continued the traditional silencing of clients. Lawyers limit the client's legal options both by devaluing racial components of a client's legal claim and through cultural ignorance. My call for empirical study of student/lawyer behavior may appear daunting and overwhelming. It need not be so. Many of the areas of the counseling relationship are being explored by

185. *Id.* at 105, 108-109.

186. *Id.* at 97, 106.

187. *See* Part I, *supra*.

188. *See* Part I, *supra*.

189. Cahn, *supra* note 13 (discusses feminist lawyering and how empathy rarely solves anything).

190. Psychologists appear comfortable with accepting the notion that due to the realities of racial oppression the likelihood that a poor person of color will be able to be treated by a person of color is slim. They have therefore dedicated the resources to ensuring all psychologists who wish to be considered competent have an ability to perceive when racial factors may impact counseling objectives.

sociologist, psychologist, anthropologists and physicians. Instruments which measure behaviors in counseling relationships have already been developed. These instruments can be adapted for use in the legal field. More importantly, social scientists believe changes in attitude and behavior can be achieved in two areas which are important to the counseling relationship: value priorities and intergroup anxiety.¹⁹¹

Both value priorities and intergroup anxiety played a role in the DuJon Johnson case. The lawyer/students' value priorities did not equate Johnson's claim for the restoration of his dignity as being legally important. Nor, did they value the impact racial prejudices and stereotypes would have on his legal claim. Intergroup anxiety, prevented Johnson from disclosing to his lawyer/students, his belief that race played a role in his arrest. Intergroup anxiety may also have contributed to the students' unwillingness to treat Johnson as an equal in the relationship.¹⁹² Fortunately for us, both of these areas have been studied by social scientists. More importantly, social scientists believe that in both of these areas changes in attitude and behavior can be made once the individual becomes self-aware. Milton Rokeach and other social psychologists have studied belief systems among people to determine whether informing them of their belief structure can aid in either stabilizing or changing that belief structure.¹⁹³

Milton Rokeach studied belief systems amongst people to determine whether informing them of their belief structure could aid in either stabilizing or changing that belief structure.¹⁹⁴ In his research, Rokeach demonstrated that value

191. Milton Rokeach, *Inducing Change and Stability in Belief Systems and Personality Structures*, JOURNAL OF SOCIAL ISSUES, Vol. 41, No.1, at 153-171 (1985) [hereinafter *Inducing Change and Stability*]; Milton Rokeach & Sandra J. Ball-Rokeach, *Stability and Change in American Value Priorities 1968-1981*, AMERICAN PSYCHOLOGIST, 1989 [hereinafter *Stability and Change*]; Walter G. Stephan & Cookie White Stephan, *Intergroup Anxiety*, JOURNAL OF SOCIAL ISSUES, Vol. 41, No. 3, at 157-175 (1985).

192. Intergroup anxiety can lead a student to feel uncomfortable interacting with a client from a different class or race. The notion of intergroup anxiety is important to black lawyers/students as well. They may feel anxious that a white client will not view them as competent.

193. Milton Rokeach, VALUE SURVEY 1967; See also authorities cited in Part IV, *supra* note 191.

194. Milton Rokeach, VALUE SURVEY 1967; *Inducing Change and Stability*, *supra*

priorities¹⁹⁵ persist for long periods of time and lead to effects on related social attitudes.¹⁹⁶ Moreover, value and attitude effects are found to have important behavior consequences to the self and to others.¹⁹⁷ Rankings of values have been found to be significantly related to variations in socio-economic status, age, gender, race, religion and lifestyle.¹⁹⁸ Values have been shown to be significant predictors of societal attitudes and beliefs.¹⁹⁹ In his 1975 study, Rokeach divided students into two groups, with one of the groups being deemed a control group.²⁰⁰ Each student was asked to complete Rokeach's Value Survey.²⁰¹ After completing the survey, the students then obtained a comparative list of value priorities for various types of people: racists and antiracist; educated and uneducated, young and old; men and women.²⁰² The students obtained the comparative information from a computer program rather than from a human researcher.²⁰³ They were then able to compare their own value priorities with the information obtained from

note 191; Milton Rokeach, *Long Term Value Change Initiated by Computer Feedback*, JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY, Vol. 32, at 467-476 (1975); *Stability and Change*, *supra* note 191 ; Sandra J. Ball-Rokeach et al., *The Great American Values Test: Influencing Behavior and Belief Through Television*, AMERICAN PSYCHOLOGIST, Vol. 44, No. 5, at 775-784 (1989).

195. Rokeach defines values as two concepts: (1) values are standards of conduct and (2) conceptions of desirable means and ends of action. *Stability and Change*, *supra* note 191, at 775. Value priorities is a hierarchial concept meaning that although the number of values that individuals and society possess is relatively limited, values are capable of being weighed and arranged against one another to lead to a very large number of permutations and combinations of value hierarchies.

196. *Inducing Change and Stability*, *supra* note 191, at 2.

197. *Id.*

198. *Id.* at 776.

199. *Id.*

200. Rokeach, *Long Term Value Change Initiated by Computer Feedback*, *supra* note 194.

201. Rokeach, VALUE SURVEY, 1967. The Value Survey consists of sixteen terminal values and sixteen instrumental values, which are presented to the subject in alphabetical order. The terminal values are the ultimate end-goals of existence, such as wisdom, equality, peace or family security. The instrumental values are the behavioral means for achieving such end-goals, for instance the importance of being honest, ambitious, forgiving or logical. The subject in the study rearranges the values according to his or her own priorities. The survey allows the researcher to determine the dominant values which guide the subject's decision-making. *Stability and Change*, *supra* note 191. For a complete listing of the Rokeach Values see Appendix, Table 3.

202. *Stability and Change*, *supra* note 191, at 166.

203. *Id.*

the computer. The control group was not provided with the comparative information. The students who received the comparative information showed significant changes in their value priorities two months after the experiment.²⁰⁴ Rokeach believed that most people do not know, and are unable to articulate, their own value priorities. However, if they learn what their own value priorities in a self-confrontational way, they will not feel compelled to justify holding those value priorities in order to protect their egos.²⁰⁵ Rokeach stated that through the use of the self-confrontational method, people would be in a better position to ponder and discover for themselves whether their value priorities, and the social attitudes and behaviors they perceive to follow from their value priorities, are compatible with their attempts to maintain and to enhance conceptions they have of themselves as competent and moral people.²⁰⁶ Rokeach suggested that when information, such as the student's own value priorities, are made personal to the student it aides in the ability of the student to learn through self-education.²⁰⁷ Moreover, Rokeach asserted that the self-education process can produce not only change, but, stability as well.²⁰⁸ Rokeach cautioned that research of this nature is not without risks for abuse, however, the importance of self-awareness for those in the counseling field was important enough to encourage the research be prudently done.²⁰⁹

Following the Rokeach model, empirical research can be done to explore whether law students, particularly those interested in practicing in the poverty law area, possess belief systems and values which might lead them to be culturally insensitive toward their client population. In a sense, we would be searching for the degree to which students have already formed a "pre-understanding" about what the nature of the

204. *Id.*

205. *Id.* (stating learning in a self-confrontational way will short circuit ego-defense rationalizations).

206. *Id.* at 166.

207. *Stability and Change*, *supra* note 191, at 161.

208. *Id.*

209. *Id.* at 167 (stating that even in psychology professors are reluctant to let the students discover for themselves or help them discover for themselves, what *they themselves* believe, say or do). Rokeach asserts that by forbidding ourselves to tell our students where they stand, we throw away a teaching weapon - making the subject matter personally relevant to the student. *Id.*

relationship will be with their clients.²¹⁰ Following Rokeach's theory, if we can help a student become self-aware, it may lead the student to reduce the level of cultural insensitivity displayed toward the client. Becoming self-aware may enable the student to display a heightened awareness of possible negative nonverbal cuing she may be transmitting to the client.²¹¹

In an empirical study involving law students and interviewing skills, Peters and Peters were able to detect changes in student behavior after students became aware of their personality types.²¹² Peters and Peters discovered that students' ability to learn interviewing skills was complicated not only by the intricacies of skill application but also by the different preferences students have for cognitive approaches to information acquisition, decision-making and interaction with the external environment.²¹³ Using the Myers-Briggs Psychological Type Indicator, Peters and Peters conducted an empirical study to determine which psychological preference students developed in the areas of perception (information acquisition in terms of awareness) and judgment (decision-making).²¹⁴ Myers and Briggs developed their personality instrument based on the work of therapist Carl Jung.²¹⁵ According to Jung, all conscious mental activity could be classified into four

210. *Reconstructive Poverty Law Practice*, *supra* note 33, at 2123.

211. I am not suggesting that there is some acceptable level of "political correctness" for our students. Nor, am I suggesting that students be compelled or coerced into adopting any particular values or belief system. I am suggesting however, that if a student's personal belief system adversely affects her representation of a client, then corrective measures should be taken, to protect the client. As Rokeach has shown, the student can be made self-aware without the fear of having a human researcher report back that the student harbors values that may be considered for example, racist or elitist. See also Peter Margulies, *The Mother With Poor Judgment and Other Tales of the Unexpected: A Civic Republican View of Difference and Clinical Education*, 88 NW. U. L. REV. 695, 705 (1994)(stating that students may be more willing to reflect about their attitudes toward clients) [hereinafter *The Mother with Poor Judgment*].

212. *Maybe That's Why I Do That*, *supra* note 6, at 173.

213. *Id.* at 705.

214. *Id.* at 175. Don C. Peters is a Professor at Law at the University of Florida. He is the Director of the Virgil Hawkins Civil Law Clinic. Martha Peters has a Ph.D in educational psychology. She directs the Student Resources Program at the University of Florida, College of Law.

215. Don Peters, *Forever Jung: Psychological Type Theory, The Myers-Briggs Type Indicator and Learning Negotiation*, 42 DRAKE L. REV. 1 (1993).

mental functions.²¹⁶ Two functions involve approaches to perception and two constitute differing ways to make decisions.²¹⁷ Perception involves information acquisition in terms of how persons become aware of people, ideas and objects.²¹⁸ Jung believed that a major function of personality involves making judgments about what is perceived.²¹⁹ Jung also believed that how a person interacted with the external world was also a factor of personality type. The MBTI measures outward orientation on the Extroversion (E) or Introversion (I) scale.²²⁰ Myers and Briggs added a fourth scale to Jung's personality types, which measures a preferred attitude or method of dealing with the external world.²²¹ This scale measures a Judging (J) preference or a Perceiving ¶ attitude.²²² Peters and Peters were able to not only, identify the different approaches students used in information gathering and decision-making, but, in instances in which students were made aware of their results, a possible modification of behavior was

216. *Id.* at 12.

217. *Id.*

218. The Sensing-Intuitive Scale measures the process of perception, distinguishing those who rely heavily on the process of sensing (S) and those who prefer the process of intuition (N). *Id.* at 13.

A sensing preference suggests a tendency to perceive by relying on observable facts or happenings through one or more of the five senses. These people value information that is practical and has useful application. *Id.* at 14. An intuitive preference, on the other hand focuses on patterns, possibilities and meanings when gathering information. This process emphasizes concepts, theories, relations and possibilities. *Id.*

219. The MBTI measures judgment by the Thinking-Feeling (T-F) scale. *Id.* at 16. A person with a Thinking preference likes to make decisions impersonally, logically assessing cause and effect relationships regarding data. This approach evaluates ideas and data objectively and values inferences reasonably drawn from events and circumstances more than any other type of evidence. *Id.*

Persons with a preference for Feeling, in contrast, reason about their perceptions more subjectively when making decisions. They tend to emphasize the effect decisions will have on people and interpersonal relationships. *Id.*

220. Peters, *supra* note 215, at 18. Extroverts are more interested in the external world of people and things. They seek to maximize interactions and derive meaning primarily from these connections with their external environment. *Id.*

Introverts, in contrast, tend to be more interested in the internal world of ideas and concepts. Their attention flows inward, they enjoy solitude and introspection, and they derive meaning primarily from withdrawing from external activities and establishing inner order. *Id.*

221. *Id.* at 19.

222. A judging preference leads one to seek to create a structured, scheduled, planned, and controlled environment, while a perceiving attitude prefers a flexible, spontaneous, and adoptive milieu. *Id.*

achieved.²²³ The students' increased awareness of the processes involved in their unconscious choices assisted in overcoming the preference.²²⁴

Other social scientist have established instruments by which they evaluate not only cultural sensitivity but also situations which may produce anxiety in intergroup interactions.²²⁵ Intergroup anxiety is anxiety that can occur in interactions between the members of any two socially defined groups.²²⁶ Stephan and Stephan focus on the inner states of the interacting individuals, specifically on the degree to which contact causes anxiety.²²⁷ Anxiety, they purport, stems from anticipation of negative consequences.²²⁸ There are four types of negative consequences people fear: (1) negative psychological consequences for the self,²²⁹ (2) negative behavioral consequences for the self,²³⁰ (3) negative evaluations by outgroup members,²³¹ and (4) negative evaluations by ingroup members.²³² The antecedents of the intergroup anxiety can be attributed to three categories: (1) prior relations between the groups including the amount and conditions of prior contact, status differences between the groups, and attitudes of significant others toward the outgroup;²³³ (2) prior cognitions concerning the outgroup meaning knowledge of the culture of the

223. *Id.*

224. *Maybe That's Why I Do That*, *supra* note 6.

225. Walter G. Stephan & Cookie White Stephan. *Intergroup Anxiety*, *Journal of Social Issues*, Vol. 41, No.3, at 157-175 (1985).

226. *Id.* at 158.

227. *Id.*

228. *Id.*

229. *Id.* at 159. People fear loss of self-esteem, embarrassment, the feeling of incompetence, confusion or lack of control.

230. Stephan & Stephan, *supra* note 225, at 159-160. Members of the ingroup may fear the outgroup will take advantage of, exploit, or dominate them. They may also fear physical harm or verbal conflict and/or worry about performing poorly in the presence of others.

231. *Id.* at 160. Ingroup members fear rejection in intergroup interactions. Members of low status groups may fear disapproval, ridicule, negative stereotyping or expect the outgroup to act as if the ingroup is inferior.

232. *Id.* at 160. Here, people fear that members of their own group will disapprove of their interactions with the outgroup and that they will be rejected or identified with the outgroup members.

233. *Id.* at 161. Where prior contact has been minimal, future interactions will produce high levels of anxiety. *Id.* Similarly, if prior relations have been characterized by conflict, anxiety may be high. *Id.*

other group, stereotyping and prejudice, and ethnocentrism,²³⁴ and (3) the structure of the interaction.²³⁵ Both the amount of prior contact and the conditions under which the contact occurred affect intergroup anxiety. For example when the encounter between groups has structure, that is when the members of each group have a clearly defined idea of what is expected of group members, the incidence of anxiety is decreased.²³⁶ The data also suggests that cooperative interaction as opposed to competitive lowers intergroup anxiety.²³⁷ In a series of studies Stephan and Stephan were able to demonstrate that it was possible to reduce intergroup anxiety.²³⁸

In their 1992 study, Stephan and Stephan researched an intercultural as opposed to intergroup interaction.²³⁹ Stephan and Stephan included two personality predictors, empathy²⁴⁰ and attributional complexity²⁴¹ in their testing to determine whether they would have an effect on intercultural anxiety. The subjects were American students who were departing on a

234. *Id.* at 162-63. Again, with little prior contact, anxiety about interacting with the other group may be high because each group is ignorant of the others values, norms, roles and nonverbal behavior. *Id.* Negative stereotypes about outgroups create anxiety because they lead ingroup members to expect negative behavior.

235. Stephan & Stephan, *supra* note 225, at 164. Unstructured interactions, for example, evoke more intergroup anxiety.

236. *Id.*

237. Cookie White Stephan & Walter G. Stephan, *Reducing Intercultural Anxiety Through Intercultural Contact*, INTERNATIONAL JOURNAL OF INTERCULTURAL RELATIONS, Vol. 16, at 89-106 (1992).

238. Walter G. Stephan & Cookie White Stephan, *Emotional Reactions to Interracial Achievement Outcomes*, JOURNAL OF APPLIED SOCIAL PSYCHOLOGY, Vol. 7, at 608-621 (1989); Walter G. Stephan et al., *Intergroup Interaction and Self-Disclosure*, JOURNAL OF APPLIED SOCIAL PSYCHOLOGY, Vol. 21, at 1370-1378 (1991)(study to determine whether intergroup anxiety would lead to reduced level of disclosure between ingroup member and outgroup stranger); Stephan & Stephan, *supra* note 237 (studying anxiety of college students interacting with Moroccans; high ethnocentrism and high attributional complexity was associated with increased anxiety).

239. Stephan & Stephan, *supra* note 237.

240. See Part I, *supra* note 58 for definition of empathy. It has been suggested that empathy is associated with successful adjustment and performance in intercultural interaction. Stephan & Stephan, *supra* note 237, at 91.

241. Attributional complexity measures an individual's tendency to attribute complex causes to others' behavior. It has been shown to be associated with lower anxiety and greater effectiveness in intercultural interaction. *Id.*

trip to Morocco. Prior to the students departure from port, they completed a questionnaire, which measured pre-port anxiety, ethnocentrism, empathy, knowledge of Morocco, and attributional complexity.²⁴² On board ship, prior to arrival in the Moroccan port, the students were given a lecture on cultural differences and several classes on the history and culture of Morocco.²⁴³

The results of the Stephan and Stephan study have relevance to client-centered clinicians on several levels. They were able to identify ethnocentrism as the strongest predictor of changes in anxiety.²⁴⁴ In the study it appeared that students who were highly ethnocentric anticipate and then experience anxiety when interacting with outgroup members.²⁴⁵ The reason for the anxiety was that such students consider their own group to be superior and were made uncomfortable when that notion of superiority was challenged by members of other groups who did not consider themselves inferior compared to the ingroup members.²⁴⁶ They also found that nonthreatening contact (sporting events, cultural events, movies, social settings and institutional settings) reduced anxiety while threatening contact (restaurants, nightclubs, cafes, bars, on the streets, in parks, in open markets, in private homes) increased anxiety.²⁴⁷ The contact which seemed nonthreatening was in moderately intimate settings with Moroccans of equal status.²⁴⁸

242. *Id.* at 92.

243. *Id.*

244. Ethnocentrism was measured by six items. The statements were: (1) Americans have been very generous in teaching other people how to do things in more efficient ways; (2) English should be accepted as the international language of communication; (3) Primitive people have unsophisticated social and political systems; (4) The fact that America was able to put a man on the moon is evidence of America's technological superiority; (5) Minority group members within a country should conform to the customs and values of the majority; and (6) In many countries people do not place a high value on human life — to them, life is cheap. To each of these statements the reader had to indicate on a 10 point scale that ran from strongly disagree to strongly agree. *Id.* at 93.

245. Stephan & Stephan, *supra* note 237, at 96 (citing Walter G. Stephan & Cookie White Stephan, *Antecedents of Intergroup Anxiety in Asian-Americans and Hispanic-Americans*, INTERNATIONAL JOURNAL OF INTERCULTURAL RELATIONS, Vol. 13, at 203-219 (1989)).

246. *Id.* at 96.

247. *Id.* at 97.

248. *Id.*

The effects of empathy proved to be nonsignificant, although the authors of the study were not prepared to say that empathy therefore plays no role.²⁴⁹ This is an interesting point in the study for clinicians since client-centered counseling relies so heavily on empathy as a helping factor.²⁵⁰ However, attributional complexity, despite expectations, was shown to be positively associated with increased anxiety.²⁵¹ The authors state these students, because of their analytical nature, may have become more aware of the vast differences between the two cultures. Their own ignorance of Moroccan culture, their incompetence in functioning in it, and the likelihood of causing offense to the Moroccans may be responsible for the increased level of anxiety demonstrated.²⁵²

Overall, Stephan and Stephan found that the American students' anxiety of interaction with the Moroccans was significantly reduced by only a few days of contact with them. The authors assert that intercultural contact programs can best reduce anxiety by attempting to reduce ethnocentrism before contact is made and promoting contact in nonthreatening situations that provide insights into the other culture.²⁵³ Another interesting clinical note is, that the authors found, despite several hours of instruction prior to departure, the college students knew very little about Moroccan culture when they arrived in Morocco.²⁵⁴ It was suggested, that a better way of communicating information, might have been through a combination of programmed instruction and role playing or behavioral interaction.²⁵⁵

Stephan and Stephan's findings that intervention can create a change in intergroup anxiety supports the argument that it will be beneficial to expose law students to more information about the culture and attitudes of their clients and themselves. Increased familiarity with a student's client base

249. *Id.* at 98.

250. See Part I, *supra*, text and accompanying footnotes.

251. Stephan & Stephan, *supra* note 237, at 98.

252. *Id.* at 98.

253. *Id.* at 100.

254. *Id.* at 98. They also cite other researchers who have found lecture material a relatively ineffective way of communicating cultural information. *Id.*

255. *Id.*

will help reduce student anxiety when interacting with the clients. Moreover, it will enable the student to at least recognize that the client may have a perspective which differs from the student's. The idea of role playing and behavioral interaction fit well into clinical methodology and are tools which we normally employ during clinical instruction. Thus, employing instruments which measure intergroup anxiety, and developing corrective materials can be incorporated within our clinical teaching of the client-centered counseling model without much difficulty. Then, when we claim that we evaluate a client's case based on her worldview, there will be substance and reality to the statement.²⁵⁶

V. HOW CAN CLINICIANS MAKE CLIENT-CENTERED COUNSELING MORE EFFECTIVE?

As clinicians teaching client-centered counseling, we must be willing to adjust our approach to counseling methodology to ensure full representation of our clients. Adherence to the client-centered counseling models in their present race neutral constitution have not and can not cure the problem of client-manipulation. Nor, can they provide a solid blueprint for client empowerment, because the clients and their world views are not truly valued within the models. In fact, as previously noted, in many cases, the use of client-centered counseling resulted in further silencing of our clients.²⁵⁷ It is imperative that we move away from the essentialist construction, not only of our client, but of our students as well.²⁵⁸ We have discovered that our clients can resist, do resist and have a rich and full history of resistance.²⁵⁹ As lawyers and students, we must now find ways to understand and to use the client's resistance on their behalf. We can do this by using their resistance to reframe legal issues and to assist in developing legal strategy. We can use their resistance to challenge stereotypical characterizations made by the courts and administrative agencies of our clients and their lives. We must also begin to understand the causes of clients' resistance to their lawyers, and where

256. See *supra* note 58.

257. See Part II, *supra*.

258. *Race and Essentialism*, *supra* note 12.

259. See Part IA, *supra* notes 28-31 and accompanying text.

possible, eliminate the lawyer-created causes of resistance. I believe clinicians should engage in a four part struggle to accomplish these goals.

First, clinicians need to take a larger role in educating the court. I am struck by the notion that so frequently, we excuse lawyer distortion of client narrative, claiming we are constrained to represent the client in a particular doctrinal way. We claim we are forced to distort the narrative because the court will only recognize and value our clients' legal claim if it is presented in the right doctrinal form.²⁶⁰ And yet, we admit at the same time that courts are not seeing our clients in the proper light, nor hearing their stories correctly.²⁶¹ We need to begin educating the courts about our clients' lives and stories, outside of the adversarial context, so that our attempts to "empower" our clients do not become empty rhetoric.²⁶² We need to help the bench and bar recognize that the indigent clients we serve are not just rich clients dressed in cheaper clothes, but are people who have problems that are uniquely their own, problems which until now the legal system has refused to acknowledge.²⁶³

Second, we need to engage more fully in "rebellious lawyering."²⁶⁴ As delineated by Lopez, it is only when we engage in rebellious lawyering that we will truly allow our clients to

260. *Looseness of Language*, *supra* note 74, at 1420-1422. See also *Reconstructive Poverty Law Practice*, *supra* note 33, at 2135 (discussing falsification inflicted on the client's narrative by courts and welfare bureaucracies); *The Mother With Poor Judgment*, *supra* note 211, at 697.

261. *Looseness of Language*, *supra* note 74, at 1422.

262. I have always thought that clinicians should do more to educate the bench and sometimes the bar as well, regarding our clients. The information we have learned about our clients has come as a result of years of sometimes painful study. If, the information we have accrued is not conveyed to the legal institutions in which our clients must appear, we will, in fact, be engaging in empty rhetoric. See Dinerstein, *supra* note 74, at 982-984 (noting that clinicians have not been very successful in serving as a conduit between the legal community and the academic community).

263. See Jacobs, *supra* note 171. See also Lee & Lee, *supra* note 29; John A. Powell, *supra* note 29; Peter Margulies, *Who Are You To Tell Me That*, 68 N.C. L. REV. 213 (1990).

264. Rebellious lawyering is advocated by Gerald Lopez. REBELLIOUS LAWYERING, *supra* note 29. He compares rebellious lawyering to regnant lawyering which is lawyering as we traditionally know it; lawyer manipulates client to do what lawyer thinks is best for client.

participate as equals in decision-making process and thus as equals in the lawyer-client relationship. In his poverty practice, Alfieri accomplished some of this by attending meetings held and run by clients and other foster parents.²⁶⁵ By attending the meetings and watching people in environments in which they were not silenced, he began to see his client in a new light and was able to reform his vision of this client.²⁶⁶ Reflecting back to the case of DuJon Johnson, for example, if Cunningham and his students engaged in rebellious lawyering, they would be required to know something about the history of black-white relations in Ypsilanti, Michigan. If they are doing criminal work, they should be required to be familiar with studies on how racism impacts the criminal justice system and how that might impact on an individual client. This is information they should acquire, not in the course of learning one client's case, but in the course of learning the skills themselves. They should be trained to recognize the court's inability to recognize or value Johnson's story so that *legal* strategy could be developed to counter it. For example, they might have inquired whether the local NAACP maintained statistics on the number of complaints by black men filed against the police for harassment. By engaging in such inquiry, Cunningham and the students could have enlarged Johnson's power base in the sense that his problem could be identified with the problems of many others within his community. Perhaps, the students could have availed themselves of grass roots assistance on this issue. Johnson then could have presented his claim more forcefully to the court.²⁶⁷ Additionally, seeking out community information and support would have enabled the student/lawyers to sensitize themselves to issues that were important to Johnson and his community. Actually seeing the clients in their world can assist the student in extracting partial understanding. To that end, we cannot allow our students to practice on a client without seeing the client's reality.²⁶⁸ For each class of

265. *Reconstructive Poverty Law Practice*, *supra* note at 33.

266. *Id.*

267. See Gerald P. Lopez, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L. J. 1603,1706 (1989)(describing alternative strategies in litigating on behalf of subordinated people, including seeking grass root input).

268. In criminal law, defense lawyers are always counseled to go to the scene of the crime because so much of what a witness perceives or how we evaluate an

students, each semester, clinicians should create opportunities for their students to see the client's reality. In this way, the students will gain a better understanding of the client's strengths, which in turn should help them see the need to work with the clients in a more collaborative fashion.

Third, we should continue to explore the theoretical basis of our work through either the "theoretics of practice" movement or any other theoretical development that can help shed light on the intricacies of our interactions with our clients. It is only through continued reflection on our practices that lawyers can understand how we do violence to our clients and to working toward the development of methodology that will lessen the violence. Anthony Alfieri suggests we engage in reconstructing the poverty law practice.²⁶⁹ He proposes using suspicion,²⁷⁰ metaphor,²⁷¹ collaboration,²⁷² and redescription²⁷³ to combat the ways in which poverty lawyers traditionally do violence to their clients stories.²⁷⁴ Alfieri bases his reconstruction on three underlying assumptions: (1) that

officer's testimony is based on our understanding of the person in a particular time and space. So too it should be with our students and their clients.

269. *Reconstructive Poverty Law Practice*, *supra* note 33, at 2131.

270. Suspicion is the practice of investigating the primary contradiction of the poverty lawyer's interpretive tradition: the image of client dependency. *Id.* at 2134. Alfieri states that in the absence of suspicion the lawyer pursues an advocacy strategy which overlooks his narrative's falsification of the client's story. *Id.* at 2135. If the lawyer has suspicion he can be alert to his as well as the court's falsifications. *Id.*

271. Alfieri urges that through the use of metaphor the lawyer can go beyond the traditional lawyer practice of looking for objective phenomena and search for a deeper, normative meaning alternative meaning of the events of the client's story. *Id.* at 2138.

272. The practice of collaboration commands lawyer-client co-equal participation in the telling of the client's story. *Id.* at 2140. The role of collaborator entitles the client to speak her narratives as a full participant in the storytelling of advocacy. *Id.*

273. Redescription is retelling the client's story consonant with the voices of client narrative. In this retelling, the poverty lawyer discredits traditional images of client dependency by crediting client narratives of daily struggle. *Id.* at 2141.

274. *But see* Lucie White, *Paradox, Piecework, and Patience*, 43 HASTINGS L. J. 853 (1992) (gently chiding Alfieri for being impatient in his efforts to find ways to end the violence of interpretation). White urges clinicians and practitioners to have more patience to review and reflect on their own errors. However, I question whether it is in our clients best interests to continually reflect on issues which are no longer new, such as client silencing, without at least attempting to propose some alternative ways of moving beyond mere reflection into concrete ways of helping the client, as Alfieri has done.

lawyers can free themselves to some extent from predetermined notions about their clients;²⁷⁵ (2) that the lawyers will be able to extract partial understanding of the client's world from the voices of the client narrative;²⁷⁶ and (3) that the lawyers' knowledge will never be complete, in the sense that there will always be some portion of the client's world with which the lawyer will be unfamiliar.²⁷⁷ Alfieri's reconstruction is one of many attempts to find a practical way to resolve the tension between lawyer and client that leads to violence. As Lucie White suggests, this may not be the only way or even the proper way.²⁷⁸ However, it is only through continued theoretical exploration that clinicians will develop solutions to lawyer violence.

Finally, we need to address our failure to engage in self-awareness training within our clinical courses. I address my suggestions for changes to the manner in which client-centered counseling training can be supplemented. I propose that in conjunction with client-centered counseling, we engage in cross-cultural lawyer and student self-awareness training (CCLASS). I propose that all students, particularly those who will be working with either indigent or culturally dissimilar people, be taught how to interact with clients who differ from them.²⁷⁹ Before students counsel any indigent client, the students should have some self awareness and understanding of their value system. Without that awareness, students will not be able to recognize the interpretive violence they can do. I do not believe we can assume that lawyers will be able to either seize a limited autonomy²⁸⁰ or extract partial understandings²⁸¹ unless they are trained to do so.²⁸² Again, let us re-

275. Alfieri terms this "seizing limited autonomy from interpretive practices. *Reconstructive Poverty Law Practice*, *supra* note 33, at 2131.

276. *Id.*

277. *Id.*

278. *See White, supra* note 274.

279. This model would be instrumental for anyone seeking its assistance whether it is a white lawyer dealing with an indigent black client or a wealthy black law student dealing with an indigent black client. The model would recognize that there is no monolithic black or white or indigent experience. Moreover, it would be of assistance to lawyers doing international work. *See Earlene Baggett, Cross-Cultural Legal Counseling*, 18 CREIGHTON L. REV. 1475 (1985)(calling for law schools and bar associations to increase cross-cultural training).

280. *Reconstructive Poverty Law Practice, supra* note 33, at 2131.

281. *Id.*

flect back to DuJon Johnson for application of this notion. In Johnson's case, the students assumed Johnson was being irresponsible when he missed an appointment to talk about whether he would participate in the cross examination of Trooper Kiser.²⁸³ Johnson stated later that he was made to feel as if he was a child who needed to be told what to do²⁸⁴. In fact, on the day of the appointment, Johnson's vehicle had broken down.²⁸⁵ They merely assumed that Johnson was being irresponsible, yet there was nothing in the "texts" Cunningham shares with us, to support the notion that Johnson was an irresponsible client. The students' assumption was based on their internal notions and evaluation of Johnson, his values and his character. The students did not recognize that they made a value judgment about Johnson, based on nothing having to do with Johnson specifically. They did not recognize that, they themselves, were not free from stereotypical assumptions held by some white people about people about black men like Johnson. Similarly, the students could not "extract the partial understanding" that Johnson viewed the case as being about gaining respect because to them respect was not an issue which the law protects and because the students had no way of knowing the importance of respect in Johnson's world.²⁸⁶

The challenge for the clinician is to determine how we can integrate into our class exercises, readings and discussions that will help our student-lawyers grapple with their own limited pre-understandings. On the largest scale, we need to engage in empirical research to determine where the student/lawyer encounters the most difficulty in counseling dissimilar people. The methodology exists to conduct such studies

282. This fact was recognized by Alfieri who states "narrative revelation is made possible only by the lawyer's ability to recontextualize his investigation outside of traditional boundaries." *Id.* at 2139.

283. *Lawyer as Translator*, *supra* note 77, at 1330.

284. *Id.* at 1329.

285. *Id.*

286. See *Reconstructive Poverty Law Practice*, *supra* note 33, at 2123 (stating that traditional lawyering presupposes that narratives of client struggle are unusable in advocacy; poverty lawyers do not see the relevance of client struggle and do not encourage its production and re-enactment).

and we have the population required for the studies.²⁸⁷ Unless we have the courage to look at the behaviors of our student and ourselves, our attempts to improve the lawyer-client relationship through client-centered counseling will remain less than satisfying. We cannot move forward if we are examining only one-half, the client half, of the problem of the lawyer-client dynamic.

Until we can generate the empirical data, there are some ways in which we can begin to help our students reconceptualize themselves and their clients. Exercises exploring values employed during the seminar portion of the clinical class can be very useful, particularly when they are pervasively included in the clinical curriculum. By pervasively included, I mean that we should refrain from adding units to our curriculum that single out issues of race, gender, class, ethnicity and sexual orientation as if those issues existed outside of the scope of our normal clinical subjects. Instead, we need to find ways to integrate discussions of these areas into each segment of our clinical teaching.²⁸⁸ One of the ways we can begin to integrate these materials is right in the beginning of the semester. The students can be given a multiple choice exercise which requires them to answer fairly simple questions, designed to draw out misinformation and stereotypical representations of whatever so-called marginalized group the students will be interacting with.²⁸⁹ Throughout the semester, as the clinic class discusses both the substantive law of their clinics and skills acquisition and application, the clinician can provide the students with reading material containing the correct an-

287. Ethical issues such as the coercive effects of testing ones own students can be eliminated by carefully constructing large scale testing and by engaging in cross-disciplinary collaborative work. Moreover, as demonstrated by the Rokeach studies, student feedback can be designed to make racially revealing information non-threatening, see Part IV, *supra*.

288. This is similar to the argument that professional responsibility should be taught pervasively rather than in an isolated class. To do so, would heighten the law student's awareness that ethical issues are always relevant to whatever inquiry the lawyer makes.

289. See Farai Chideya, DON'T BELIEVE THE HYPE: FIGHTING CULTURAL MISINFORMATION ABOUT AFRICAN-AMERICANS (1995). Chideya provides a multiple choice questionnaire to challenge media created perceptions of race issues and African-Americans. The quiz includes questions about welfare, crime, housing, affirmative action, wage earnings of African-Americans and many other subjects. See Appendix, Table 5 for a copy of the questionnaire.

swers to the quiz, so that the student continues to revisit and work through her original misconceptions about her client base.

Clinicians can also develop a series of hypothetical situations involving indigent clients. The students are asked to determine what level of lawyering service should be rendered to the hypothetical clients. The clinician should include among the hypotheticals, one problem where the client has retained private counsel. The legal problem in this hypothetical should be similar in nature to the legal problem confronting the indigent client.²⁹⁰ The clinician may be surprised to discover that the students render a better level of service to the client they perceive to be wealthier. And even when the race of the paying client is not specifically mentioned in the hypothetical, the students in discussion may give the client the attribute of whiteness. This exercise can be completed at home and returned the day before seminar class. The clinician then compiles the class results and prepares a chart indicating how the group as a whole rendered service to the clients. The entire class is presented with the results. The chart enables the students to be visually confronted by any discrepancies in the level of service provided to the various hypothetical clients. However, by presenting the results in chart-like fashion, no student is placed at risk due to their individual response.²⁹¹ The exercise allows the clinician an opportunity to continue to talk to the students about developing a theory of their client's case, lawyering in general and the way race shapes both the student's view of her client and of her lawyering choices.²⁹² There are numerous other exercises where we can begin to help our students challenge their own assumptions about the ways they view their clients, and they can be done without serious damage to the other parts of our skills curriculum.²⁹³

290. See Appendix, Table 6 for sample lawyering exercise.

291. When using this technique, I allow my students to complete the exercise anonymously. It is my hope that anonymity will encourage them to answer honestly.

292. The use of the exercise points out in a small way for my student/lawyers what the Ditto and Hilton study established for physicians. See Ditto & Hilton, *supra* note 144.

293. Techniques have been developed for use in the corporate environment which allow individuals to become more aware of other cultures' world view as well as the world view of the larger culture. See *e.g.*, Linda Berg-Cross & Ruby

Finally, as clinicians we need to set some aspirational goals for development of our students and ourselves. Once again, our counterparts in psychology have developed characteristics of the culturally skilled counselor.²⁹⁴ The Counseling Section of the American Psychological Association urged the adoption of several measures to increase effectiveness in counseling minorities. Among the recommended measures was the establishment of a threshold for cross-cultural counseling therapy competencies.²⁹⁵ The areas of cross-cultural competency were broken into Beliefs/Attitudes, Knowledge and Skills.²⁹⁶ While the areas are basic, the mere fact that they were recognized as essential to cross-cultural counseling was instructive. For example, among the items mentioned in Beliefs/Attitudes competency was that the counselor be aware of his/her own values and biases and how they may affect minority clients.²⁹⁷ The competent counselor was urged to avoid prejudices, unwarranted labeling and stereotyping.²⁹⁸ A culturally competent counselor was defined as not holding preconceived limitations notions about their minority clients.²⁹⁹ The culturally skilled counselor was one who monitored his functioning through consultation, supervision, and continual education.³⁰⁰

Takushi Chinen, *Multicultural Training Models and the Person-in-Culture Interview* in HANDBOOK OF MULTICULTURAL COUNSELING 333 (J.G. Ponterotto et al., eds. 1995). The instrument developed is called the Person-in-Culture Interview (PICI). The PICI covers 24 items that two people can give one another in a structured context with the goal of furthering cultural understanding. *Id.* at 339. The interview covers basic questions on experiences everyone has. For example, participants are asked to describe enjoyable activities in their lives as well as ways in which their family solves problems. *Id.* at 342. A different part of the interview asks questions based on humanistic needs, such as: Do you have enough money to eat well? Name situations in which you feel safe. *Id.* at 344. After completing the interview participants are asked to talk about their answers. The completion and discussion of the interview allows the participants to see many similarities between each other as well as material differences in the way they look at things. In a clinical setting our students are frequently asked to interact with each other, role play, etc. An exercise such as PICI would be helpful if it could be constructed to present the world views of our client populations.

294. Sue et al., *Cross-Cultural Counseling Competencies*, THE COUNSELING PSYCHOLOGIST, Vol. 10:2, at 45-51.

295. *Id.* at 51.

296. *Id.* at 49.

297. *Id.* at 50.

298. *Id.*

299. Sue et al., *Cross-Cultural Counseling Competencies*, THE COUNSELING PSYCHOLOGIST, Vol. 10:2, at 50.

300. *Id.*

In the Knowledge section, cross-culturally competent counselors were defined as counselors who have knowledge of the role cultural racism plays in the identity and world views among minority groups.³⁰¹ We can compare this racially specific language with the vague reference in our own client-centered materials, which encourage the lawyer/student to take the client's world view into account during the interview process.³⁰² The competent counselor was further defined as one possessing specific knowledge and information about the particular group he/she is working with.³⁰³

In the Skills category, the competent counselor was defined as one who could generate a wide variety of verbal and nonverbal responses and send them accurately and appropriately.³⁰⁴ Further, the skilled counselor must be able to exercise institutional intervention skills on behalf of the client, when appropriate.³⁰⁵

In its position paper, the counseling committee defined "cross-cultural counseling/therapy" as any counseling relationship in which two or more of the participants differ with respect to cultural background, values, and lifestyle.³⁰⁶ The committee explored the history of the APA and its own failure to address the needs of minorities in health counseling. The recommendation of minimal competencies in cross-cultural skills was the latest in a series of steps aimed at increasing both the knowledge of the minority communities by mental health counselors as well as ongoing training in skills to be employed in delivering services to minorities.³⁰⁷

301. *Id.*

302. *See supra* note 58.

303. Sue et al., *Cross-Cultural Counseling Competencies*, THE COUNSELING PSYCHOLOGIST, Vol. 10:2, at 50.

304. *Id.* at 49.

305. *Id.* at 51 (conveying the idea that the counselor may need to give out-of-office assistance which discards the normal counseling model and that the counselor may need to view the problems/barriers as residing outside of the minority client).

306. *Id.* at 47. In their definitions, the authors include variations based not only on race, but on ethnicity, gender, sexual orientation and class. *Id.*

307. *Id.* at 48. It should be noted that social scientists have criticized themselves for devoting too little resources and acquiring insufficient knowledge about their minority client base. *Id.* at 46-48. However, they are years ahead of the legal profession in exploring ways to address their own deficiencies to better address the

Clinicians are uniquely situated within the legal education to develop some aspirational goals for cross-cultural counseling competency. The clinics have frequently been the place where experimentation and bold ventures are tried.³⁰⁸ We can be the first in the law school to squarely face the issues of racism and the legal profession and start moving toward realistic ways of eliminating limitations artificially set on both ourselves and our clients by racism. Hopefully, we can demonstrate that we are capable of empowering our clients and raising our own consciousness as well.³⁰⁹

VI. CONCLUSION

Both psychologist and physicians have noted the need within their own communities to increase their knowledge about the lives and environmental conditions of their patients/clients.³¹⁰ The call for increased knowledge is made, not so much to help resolve an individual, specific problem, but rather, to assist the provider of services in formulating a context that makes sense to the patient/client's reality of existence. As practitioners involved in the client-centered counseling process, we fall behind our peers in other counseling settings in that we have dedicated next to no resources to study our own motivations and reactions in the counseling setting. The subject of counselor behavior in the application of counseling skills comports well with the methodology of empirical research. Moreover, within our walls, we have a pool of subjects who are in the process of completing their final steps toward the ultimate goal of becoming a lawyer. Law students presently are required to demonstrate knowledge in numerous areas before they are sanctioned to represent themselves to the public as competent professionals.³¹¹ Upon entering the pro-

needs of the clients. For a full listing of the competencies, see Appendix, Table 6.

308. Marjorie A. McDiarmid, *What's Going on Down There in the Basement: In-House Clinics Expand Their Beachhead*, 35 N.Y.L. SCH. L. REV. 239 (1990).

309. See Lee & Lee, *supra*, note 29, at 311-321, 316 (criticizing legal services for being slow to recognize that their staff members have the same difficulty building interracial relationships and cross-cultural respect as do people in other workplaces).

310. See *Black-White Disparities in Health Care*, JAMA, Vol. 263, No. 17, 2344-2346, 2345.

311. For example, an increasing number of states require students to either

profession, most lawyers will spend a significant amount of their professional lives interviewing, counseling and negotiating.³¹² Yet, there are no mechanisms to test or evaluate whether they have acquired a level of skill sufficient to enable them to perform these tasks. Not a surprising thought, in view of the fact one could finish three years of law school without any one even mentioning that this was an area lawyers should be concerned about. Though, legal educators appear to assume counseling skills are innate, clinicians would agree that in fact they are difficult to learn and effectively employ.³¹³ As clinicians, we need to be aware that this educational deficiency exists and should actively incorporate these very necessary skills into all facets of teaching our student/lawyers.

Hopefully, this article will stimulate clinicians to think about the possibilities of combining empirical methodology with our own client-centered counseling methodology so that we can begin to understand how we as counselors affect the lawyer/client relationship. At the very least, we must begin to think concretely about the ways race affects lawyers and students' ability to engage in effective client-centered counseling. Our continued failure to examine the issues of race and counseling undermine the the progress that the advocates of client-centered counseling envisioned.

take a course in Professional Responsibility or to take the Multistate Professional Responsibility Exam. In that way they allegedly demonstrate a minimally established level of knowledge of ethical standards to which a lawyer must adhere. They must also take the Bar Exam and an increasing number of states are requiring new lawyers to complete basic skills training courses before they can actually practice.

312. *Maybe That's Why I Do That*, *supra* note 6, at 120. See also Peters, *supra* note 215; Barry, *supra* note 33; INTERVIEWING, *supra* note 8, at xxi; LAWYERS, *supra* note 8 at 3-4.

313. INTERVIEWING, *supra* note 8, at 258; LAWYERS, *supra* note 8.

APPENDIX**TABLE 1****Some Possible Verbal and Nonverbal Sources of Miscommunication Between Cultural Groups****Blacks**

1. Touching of one's hair by another person is often considered as offensive
2. Preference is for indirect eye contact during listening, direct eye contact during speaking as signs of attentiveness and respect.
3. Public behavior may be emotionally intense, dynamic, and demonstrative.
4. A clear distinction is made between "arguing" and "fighting". Verbal abuse is not necessarily a precursor to violence.
5. Asking "personal questions" of someone one has met for the first time is seen as improper and intrusive.
6. Interruption during conversation is usually tolerated. Competition for floor space is granted to the person who is most assertive.
7. Conversations are regarded as private between the recognized participants. "Butting in" is seen as eavesdropping and is not tolerated.
8. Use of expression "you people" is seen as pejorative and racist.

Hispanics

1. Hissing to gain attention may be acceptable.
2. Touching is often observed between two people in conversation.

Whites (Anglo-Saxon)

- Touching of one's hair by another person is a sign of affection.
- Preference is for direct eye contact during listening and indirect eye contact during speaking as signs of attention and respect.
- Public behavior is expected to be modest and emotionally restrained. Emotional displays are seen as irresponsible or in bad taste.
- Heated arguments are viewed as suggesting violence is imminent.
- Inquiring about jobs, family, etc., of someone met for the first time is seen as friendly.
- Rules of turn-taking in conversation dictate that one person at a time has the floor until all points are made.
- Adding points of information or insights to a conversation in which one is not engaged is seen as being useful.
- Use of "you people" is tolerated.

Whites (Anglo-Saxon)

- Hissing is usually considered impolite and indicates contempt.
- Touching is usually unacceptable and may carry sexual overtones.

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3. Avoidance of direct eye contact is sometimes a sign of attentiveness and respect; susatined direct eye contact may be interpreted as a challenge to authoriy.

Direct eye contact is a sign of attentiveness and respect.

4. Relative distance between two speakers in conversation is closer.

Relative distance between two speakers in conversation is further apart.

5. Official or business conversations are preceded by lengthy greetings, pleasantries, and other talk unrelated to point of business.

Getting to the point quickly is valued.

Asians/Vietnamese

Whites (Anglo-Saxons)

1. Touching or hand-holding between males may be acceptable.

Touching or hand holding between males is unacceptable.

2. Hand-holding/hugging/kissing between men and women is unacceptable

Hand-holding/hugging/kissing between men and women in public is acceptable.

3. A slap on the back is insulting.

A slap on the back denotes friendliness.

4. It is not customary to shake hands with persons of the opposite sex.

It is customary to shake hands with persons of the opposite sex.

Orlando Taylor, THE EFFECTS OF CULTURAL ASSUMPTIONS ON CROSS-CULTURAL COMMUNICATION 18-27.

TABLE 2

REVISED CULTURAL MISTRUST INVENTORY (CMI)

Directions

Enclosed are some statements concerning beliefs, opinions, and attitudes about Blacks. Read each statement carefully and give your honest feelings about the belief attitudes expressed. Indicate the extent to which you agree by using the following scale:

0	1	2	3	4	5	6	7	8	9
____	____	____	____	____	____	____	____	____	____
Not in the	Slightly		Moderately	Very much	Entirely				
least	agree		agree	agree	agree				
degree									

The higher the number you choose for the statement, the more you agree with that statement. For example if you "moderately agree" with a statement, you would chose the numbers 4 and 5 which appear above the label "Moderately agree." If you choose the number 5, this means you agree more with the statement than if you had chosen the number 4. The same principle applies for other labels. The higher the number you chose, the more you agree with the statement.

Finally, there are no right or wrong answers, only what is right for you. If in doubt, blacken the space which seems most nearly to express your present feelings about the statement. Please answer all items.

1. Whites are usually fair to all people regardless of race. (BW-)
2. White teachers teach subjects so that it favors Whites. (ET+)
3. White teachers are more likely to slant the subject matter to make Blacks look inferior. (ET+)
4. White teachers deliberately ask Black students questions which are difficult so they will fail. (ET+)
5. There is no need for a Black person to work hard to get ahead financially because Whites will take away what you earn anyway. (BW+)
6. Black citizens can rely on White lawyers to defend them to the best of his or her ability. (PL-)
7. Black parents should teach their children not to trust White teachers. (ET+)
8. White politicians will promise Blacks a lot but deliver little. (PL+)
9. White policemen will slant a story to make Blacks appear guilty (PL+)
10. White politicians usually can be relied on to keep the promises they make to Blacks. (PL-)
11. Blacks should be suspicious of a White person who tries to be friendly. (IR+)
12. Whether you should trust a person or not is not based on his race (IR-)
13. Probably the biggest reason Whites want to be friendly with Blacks is so that they can take advantage of them. (BW+)
14. A Black person can usually trust his or her White co-workers. (BW-)
15. If a White person is honest in dealing with Blacks, it is because of fear of being caught. (BW+)
16. A Black person can not trust a White judge to evaluate him or her fairly. (PL+)
17. A Black person can feel comfortable making a deal with a White person simply by a handshake. (BW)
18. Whites deliberately pass laws designed to block the progress of Blacks. (PL+)
19. There are some Whites who are trustworthy enough to have as close friends. (IR-)
20. Blacks should not have anything to do with Whites since they can not be trusted. (IR+)
21. It is best for Blacks to be on their guard when among Whites. (IR+)
22. Of all ethnic groups, Whites are really the Indian-givers. (IR+)
23. White friends are least likely to break their promise. (IR-)
24. Blacks should be cautious about what they say in the presence of Whites since Whites will try to use it against them. (IR+).
25. Whites can rarely be counted on to do what they say. (IR+)
26. Whites are usually honest with Blacks. (IR-)
27. Whites are as trustworthy as members of any other ethnic group. (IR-)
28. Whites will say one thing and do another. (IR-)
29. White politicians will take advantage of Blacks every chance they get. (PL+)
30. When a White teacher asks a Black student a question, it is usually to get information which can be used against him or her. (ET+)
31. White policemen can be relied on to exert an effort to apprehend those who commit crimes against Blacks. (PL-)
32. Black students can talk to a White teacher in confidence without fear that the teacher will use it against him or her later. (ET-)
33. Whites will usually keep their word. (IR-)
34. White policemen usually do not try to trick Blacks into admitting they committed a crime which they didn't. (PL-)
35. There is no need for Blacks to be more cautious with White businessmen than with anyone else. (BW-)
36. There are some White businessmen who are honest in business transactions with Blacks. (BW-)
37. White store owners, salesmen, and other White businessmen tend to cheat Blacks whenever they can. (BW+)
38. Since Whites can't be trusted in business, the old saying "one in the hand is worth two in the bush" is a good policy to follow. (BW+)
39. Whites who establish businesses in Black communities do so only so that they can take advantage of Blacks. (BW+)
40. Blacks have often been deceived by White politicians. (PL+)
41. White politicians are equally honest with Blacks and Whites. (PL-)
42. Blacks should not confide in Whites because they will use it against you. (IR+)
43. A Black person can loan money to a White person and feel confident it will be repaid. (BW-)
44. White businessmen usually will not try to cheat Blacks. (BW-)
45. White business executives will steal the ideas of their Black employees. (BW+)
46. A promise from a White is about as good as a three dollar bill. (BW+)

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47. Blacks should be suspicious of advice given by White politicians. (PL+)
 48. If a Black student tries, he will get the grades he deserves from a White teacher. (ET-)

KEY: PL refers to items composing the Politics and Law subscale

ET refers to items composing the Education and Training subscale

BW refers to items composing the Business and Work subscale

IR refers to items composing the Interpersonal Relations subscale.

Items followed by a positive sign (+) are positively keyed.

Items followed by a negative sign (-) are reverse keyed.

Francis Terrell & Sandra Terrell, *The Western Journal of Black Studies*, Vol. 5, No.3, 1981.

TABLE 3

Average Rankings of 18 Instrumental and 18 Terminal Values by Four National Samples of Americans in 1968, 1971, 1974, and 1981

Values	1968	1971	1974	1981
Instrumental				
Honest (sincere, truthful)	1	1		
Ambitious (hard-working, aspiring)	2	3		
Responsible (dependable, reliable)	3	2		
Forgiving (willing to pardon others)	4	4		
Broadminded (open minded)	5	5		
Courageous (Standing up for one's beliefs)	6	6		
Helpful (working for the welfare of others)	7	7		
Clean (neat, tidy)	8	10		
Capable (competent, effective)	9	9		
Self-controlled (restrained, self-disciplined)	10	11		
Loving (affectionate, tender)	11	8		
Cheerful (lighthearted, joyful)	12	13		

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Values	1968	1971	1974	1981	
Instrumental					
Independent (self-reliant, self-sufficient)	13	12			
Polite (courteous, well mannered)	14	14			
Intellectual (intelligent, reflective)	15	15			
Obedient (dutiful, respectful)	16	16			
Logical (consistent, rational)	17	17			
Imaginative (daring, creative)	18	18			
Terminal					
A world at peace (free of war and conflict)	1	1	2	2	
Family security (taking care of loved ones)	2	2	1	1	
Freedom (independence, free choices)	3	3	3	3	
Happiness (contentment)	4	6	5	5	
Self-respect (self-esteem)	5	5	4	4	
Wisdom (a mature understanding of life)	6	7	6	6	
Equality (brotherhood, equal opportunity for all)	7	4	12	12	
Salvation (being saved, eternal life)	8	9	10	9	
A comfortable life (a prosperous life)	9	13	8	8	
A sense of accomplishment (lasting contribution)	10	11	7	7	
True friendship (close companionship)	11	10	9	10	

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Values	1968	1971	1974	1981
Instrumental				
National security (protection from attack)	12	8	13	11
Inner harmony (freedom inner conflict)	13	12	11	13
Mature love (sexual and spiritual intimacy)	14	14	14	14
A world of beauty (beauty of nature and the arts)	15	15	15	16
Social recognition (respect, admiration)	16	17	18	18
Pleasure (an enjoyable leisurely life)	17	16	16	17
An exciting life (a stimulating active life)	18	18	17	15

Milton Rokeach & Sandra J. Ball-Rokeach, *American Psychology*, Vol. 44, No. 5, May 1989.

TABLE 4

Characteristics of the Culturally Skilled Counseling Psychologist

Beliefs/Attitudes

1. The culturally skilled counseling psychologist is one who has moved from being culturally unaware to being aware and sensitive to his/her own cultural heritage and to valuing and respecting differences.
2. A culturally skilled counseling psychologist is aware of his/her own values and biases and how they may affect minority clients.
3. A culturally skilled counseling psychologist is one who is comfortable with differences that exists between the counselor and the client in terms of race and beliefs.
4. The culturally skilled counseling psychologist is sensitive to circumstances (personal biases, stage of ethnic identity, sociopolitical influences, etc.) Which may dictate a referral of the minority client to a member of his/her own race/culture.

Knowledges

1. The culturally skilled counseling psychologist will have a good understanding of the sociopolitical system's operation in the United States with respect to its treatment of minorities.
2. The culturally skilled counseling psychologist must possess specific knowledge and information about the particular group he/she is working with.
3. The culturally skilled counseling psychologist must have a clear and explicit knowledge and understanding of the generic characteristics of counseling and therapy.
4. The culturally skilled counseling psychologist is aware of institutional barriers which prevent minorities from using mental health services.

Skills

1. At the skills level, the culturally skilled counseling psychologist must be able to generate a wide variety of verbal and nonverbal responses.
2. The culturally skilled counseling psychologist must be able to send and receive both verbal and nonverbal messages accurately and "appropriately."
3. The culturally skilled counseling psychologist is able to exercise institutional intervention skills on behalf of his/her client when appropriate.

Sue, et al., *The Counseling Psychologist* 10:2

TABLE 5

1. According to a 1993 study, what percentage of network news about African Americans is negative in tone?
 - A. 80%
 - B. 60%
 - C. 50%
 - D. 25%
2. What percentage of newspaper reporters are black?
 - A. 20%
 - B. 12%
 - C. 9%
 - D. 5%
3. What percentage of U.S. newspapers don't have any black reporters on staff?
 - A. 53%
 - B. 45%
 - C. 33%
 - D. 15%
4. How many poor black families and poor white families are there in America?
 - A. 5 million black families, over 2 million white families
 - B. 3 million black families, 3 million white families
 - C. Over 2 million black families, 5 million white families
 - D. 4 million black families, 5 million white families
5. Between 1980 and 1990, in terms of increase for children born to single mothers:
 - A. The black rate grew nine times as much as the white rate
 - B. The white rate grew nine times as much as the black rate
 - C. Both rates are increasing rapidly
 - D. The black rate is increasing and the white rate is decreasing
6. The typical benefit for a family receiving welfare is:
 - A. \$9,800 per year
 - B. Under \$7,500 per year
 - C. Under \$5,000 per year
 - D. \$3,500 per year

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7. The average size of a family on welfare is:
 - A. A mother and five children
 - B. A mother and three children
 - C. A mother and two children
 - D. A mother and one child
8. How long, on average, have families on welfare been receiving benefits?
 - A. 5 years
 - B. 3 years
 - C. 22 months
 - D. 18 months
9. What percentage of the total U.S. Government budget goes to welfare and to Social Security?
 - A. 10% to welfare, 20% to Social security
 - B. 8.5% to welfare, 33% to Social security
 - C. 2.5% to welfare, 19% to Social security
 - D. Less than one percent to welfare, 20% to Social security
10. In a phenomenon called "tipping", white residents of a neighborhood tend to move out when a certain percentage of their neighbors are black. What percentage of black neighbors causes "white flights"?
 - A. 20%
 - B. 15%
 - C. 8%
 - D. 4%
11. What is the best predictor of whether a student will score well on the college entrance exam, the Scholastic Aptitude Test (SAT)?
 - A. Gender
 - B. Race
 - C. Family Income
 - D. Private school attendance

Answers:

1. B 2.D 3.B 4.C 5.B 6.C 7.C 8.C 9.D 10.C 11.C

Excerpts of questions asked in "Test Your Racial IQ" from Farai Chideya, **DON'T BELIEVE THE HYPE: FIGHTING CULTURAL MISINFORMATION ABOUT AFRICAN AMERICANS 1995.**

TABLE 6

1. Lawyer Smith represents an elderly client on a fixed income. Client lives in the same building as her daughter but in a different unit. Client has received eviction notice because she has been paying her rent in cash by slipping an envelope under the superintendent's door and cannot now prove rent was paid. Smith goes to court and gets an extension of time for the client to pay back rent, which client's relatives help pay. Smith discovers client pays cash because she is afraid to go outside and purchase a money order. Smith meets with client's daughter to try and work out a system where daughter purchases money orders so that client will not pay cash in the future.

- (0) Lawyer went beyond what was needed for zealous advocacy
- (1) Lawyer represented client zealously
- (2) Lawyer represented client better than adequately but not zealously
- (3) Lawyer represented client adequately
- (4) Lawyer did not represent client adequately

2. Lawyer Jones represents a Catholic woman who is Hispanic. Client has been called to welfare for a hearing to explain why she is behind in her utility payments since welfare provided sufficient funds for client to pay rent, utilities and necessities. Client tells Jones she spent the money on her daughter's First Communion, a very important and sacred event in Catholicism. Jones tells client First Communion expenses are not necessities and advises her to admit she misspent the money at the hearing and let Jones work out a recoupment plan.

- (0) Lawyer went beyond what was needed for zealous advocacy
- (1) Lawyer represented client zealously
- (2) Lawyer represented client better than adequately but not zealously
- (3) Lawyer represented client adequately
- (4) Lawyer did not represent client adequately

3. Lawyer Davis has a client who lives in a town far outside of the city where the legal services office is located. Davis has some papers the client needs to review and sign so they can be filed in court before a hearing scheduled for the end of the week. Davis asks the client to come into the office to review the papers. Client tells Davis he does not have the bus fare to come into the city twice in one week. Davis insists the client come into the office.

- (0) Lawyer went beyond what was needed for zealous advocacy
- (1) Lawyer represented client zealously
- (2) Lawyer represented client better than adequately but not zealously
- (3) Lawyer represented client adequately
- (4) Lawyer did not represent client adequately

4. Lawyer Brown represents a black woman who has been accused by her former employer of stealing company property. Client was acquitted of the charges at trial. The company has now filed a civil action against the client for the value of the missing property. Brown counterclaims against the employer for malicious prosecution. After discovery and pretrial hearings have taken place, the employer dismisses its action against the client. Client wants to go forward with the counterclaim even though Brown advised her she has less than a 50% chance of prevailing at trial. The client, who has been unable to get a job since she was fired, feels strongly about pursuing the claim. She believes the employer has harassed her and she must go forward to restore her dignity. Brown tells client it is pointless to go to trial on "principle" and that it would be a waste of time and money for everyone. Brown impresses upon client that this is a legal services office and has many deserving clients. Brown strongly recommends client drop counterclaim.

- (0) Lawyer went beyond what was needed for zealous advocacy
- (1) Lawyer represented client zealously
- (2) Lawyer represented client better than adequately but not zealously
- (3) Lawyer represented client adequately
- (4) Lawyer did not represent client adequately

5. Lawyer Green represented a manic-depressive client whose illness prevented her from opening the mail. As a consequence of not opening the mail, she never knew that her landlord initiated an action for eviction. Client did not pay the rent because she would not open the mail to get her pension checks. A warrant for removal was issued. Green gets the warrant stayed and an extension of time for client to pay the arrears. Client and her family raise the money and pay the arrears. The action is dismissed.

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Green discovers through conversation with the client that client is not taking her medication because she is afraid she will become an addict. Her brother is an addict. Client agrees with Green that counseling would help her deal with her fears. Green feels client is qualified for some welfare benefits and might be eligible for counseling at a reduced cost. Green contacts welfare and helps to arrange for additional money for the client.

- (0) Lawyer went beyond what was needed for zealous advocacy
- (1) Lawyer represented client zealously
- (2) Lawyer represented client better than adequately but not zealously
- (3) Lawyer represented client adequately
- (4) Lawyer did not represent client adequately

6. Lawyer Thomas represents a client (the wife) in a visitation action. Husband is seeking additional visitation with son and is representing himself. The couple are separated but not divorced. Thomas observes that the couple still have very strong feelings for each other. There is no history of violence or abuse in the relationship. Client admits that she has a drug problem and that drugs are responsible for the tension between herself and her husband. Client admits that she is not enrolled in any drug treatment program. During a weekend of binging, client and husband have a big argument. Client calls Thomas on Monday and asks her to initiate divorce proceedings. Thomas advises client that she should first consider drug counseling and perhaps marital counseling as well.

- (0) Lawyer went beyond what was needed for zealous advocacy
- (1) Lawyer represented client zealously
- (2) Lawyer represented client better than adequately but not zealously
- (3) Lawyer represented client adequately
- (4) Lawyer did not represent client adequately