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CULTURALLY PROFICIENT LAWYERING: A FRAMEWORK AND RUBRIC SUPPORTING LEARNING OUTCOMES AND OBJECTIVES

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ISSN 0041-9915 (print) 1942-8405 (online) • DOI 10.5195/lawreview.2024.1048

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CULTURALLY PROFICIENT LAWYERING: A FRAMEWORK AND RUBRIC SUPPORTING LEARNING OUTCOMES AND OBJECTIVES

Anastasia M. Boles,^{*} Demetria D. Frank,[†] Darrell D. Jackson,[‡]
Jamila E. Jefferson^{§**}

ABSTRACT

Culturally Proficient Lawyering is an important guide for legal educators who are employing cultural proficiency course objectives in accordance with new American Bar Association (“ABA”) accreditation Standard 303(c). The recently adopted Standard 303(c) requires that law schools educate students about “bias, cross-cultural competency, and racism.” This Article is among the first to propose a comprehensive curricular framework that supports Standard 303(c) outcomes and

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^{**} The authors would like to thank the legal educators and administrators who engaged with us on the content of this Article during and following its presentation at the Association of American Law Schools 2024 Annual Conference. We also extend our gratitude to the contributors of the Herff Chair of Excellence 2023 Symposium at the University of Memphis and the 2023 Critical (Legal) Collective Inaugural Convening, hosted by the Duke Law Center on Law, Race & Policy (“CLRP”). Finally, we wish to acknowledge our colleagues, students, and friends who participated in many meaningful conversations throughout this process of development.

objectives. It includes an important resource for law professors with a sample exercise and a rubric tool that will aid in assessing students' culturally proficient lawyering awareness, knowledge, and skills.

Table of Contents

Introduction	6
I. Background: Emerging Cultural Competence Requirements	7
A. ABA Standard 303(c).....	8
B. The NextGen Bar Exam	11
C. The Case for Cultural Proficiency in Lawyering	12
D. Cultural Proficiency Pedagogy.....	14
II. Setting Cultural Proficiency Learning Outcomes and Objectives	23
A. Difficulties in Assessing Cultural Proficiency	26
B. Frameworks Support Curricular Outcomes and Course Objective Development	31
C. Rubrics Support Outcomes and Course Objective Development.....	34
III. The Culturally Proficient Lawyering Framework.....	37
A. Awareness	40
1. Professional Obligations: Evaluate Professional Obligations in Cultural Proficiency and Within the Context of Professional Identity Formation (Objective 1)	40
2. Cultural Self-Awareness: Understand Culture, Identity & Demonstrate Cultural Self-Awareness (Objective 2).....	41
3. The Cultural Proficiency Toolbox: Understand Cultural Competence as a Skill, the Cultural Competence Continuum, and the Five Essential Elements of Cultural Proficiency (Objective 3).....	43
4. Proficiency Inhibitors: Describe Cultural Proficiency Inhibitors, Including Implicit Associations, and Practice Strategies to Overcome Them (Objective 4)	45
5. Humility and Sensitivity: Demonstrate Cultural Sensitivity and Humility, Understanding How Various “isms” Perpetuate Privilege, Inequity, and Exclusion (Objective 5)	48
B. Knowledge	49
1. Historical Context: Evaluate How the Legacy of Slavery, Segregation, and the Imposition of Second-Class	

	Citizenship on People of Color Through the Use of Law and Policy Continues to Permeate Society Today (Objective 6).....	50
2.	Structural Racism: Understand the Social Construct of Race and How Institutionalized Racism Perpetuates a Racial Caste System that Relegates People of Color to the Bottom Tiers (Objective 7).....	52
3.	Systemic Oppression: Understand Social Constructs Beyond Race and How They Are Used to Maintain Hierarchies and Privileges Within Society (Objective 8)	53
4.	Intersectionality: Understand the Ways in Which Class, Race, Gender, Sexuality, Ability, and Other Identities May Intersect with One Another to Impact Individuals' Perspectives and the Challenges Faced by the Communities to Which Those Individuals Belong (Objective 9)	54
5.	Lived Experience: Understand the Importance of Lived Experience and the Interplay Between Those Experiences, Social Status, Decision Making, and Legal Consequences (Objective 10).....	55
C.	Skills	55
1.	Integrate Cultural Proficiency Principals into Legal Practice: Practice Engaging the Cultural Proficiency Toolbox Within the Context of Lawyering (Objective 11).....	56
2.	Inclusive Communication and Interaction: Demonstrate Communication Skills that Manage Cultural Conflict and Adapt to Diversity in Lawyering Situations (Objective 12)	57
3.	Build an Inclusive Lawyering Skills Paradigm: Create a Lawyering Skills Model that Integrates Culturally Proficient Lawyering (Objective 13).....	58
4.	Wellness and Culturally Proficient Lawyering: Develop a Plan for Incorporating Self-care and Mental Wellness into Legal Practice (Objective 14).....	58
5.	Culturally Proficient Leadership: Develop a Sustainable Plan for Culturally Proficient Lawyering (Objective 15)	60
IV.	The Cultural Proficiency Lawyering Rubric.....	61
A.	Using the CPL Framework and Rubric	62

B. Example Framework and Rubric Use: Self Awareness (Cultural Self-Awareness and “Self” As a “Cultural Being”—CPL Framework Objective 2)..... 63

C. Example Learning Framework and Rubric Use: Systemic Oppression (Understand Social Constructs Beyond Race and How They Are Used to Maintain Hierarchies and Privileges Within Society—CPL Framework Objective 8) 65

D. Example Framework and Rubric Use: Inclusive Communication and Interactions (Demonstrate Communication and Inclusive Interaction Skills that Manage Cultural Conflict and Adapt to Diversity in Lawyering Situations—CPL Framework Objective 12)..... 67

Conclusion..... 70

INTRODUCTION

The American Bar Association (“ABA”) recently adopted accreditation Standard 303(c) requiring law schools to “provide education to law students on bias, cross-cultural competency, and racism.”¹ This mandated accreditation standard highlights as an important lawyering skill the ability to interact effectively across cultures. The ABA’s adoption of Standard 303(c) underscores two important concepts: (1) the necessity of cultural competence in legal practice and (2) that future lawyers must be equipped with the skills to navigate diverse cultural contexts while addressing issues related to bias and racism in the legal profession.

As law schools come to terms with the substantial need for cross-cultural competence in legal education, it is imperative to discuss appropriate learning objectives in an organized fashion that provides guidance on how institutions should produce culturally proficient law students. It is also necessary to focus on student outcomes to separate the professional skill of cultural competency from the “indoctrination,” often referred to by opponents of cross-cultural education.² Moreover, cultural competence in legal education is most effective when it is linked to clear learning objectives with well-defined outcome expectations and supported by effective assessment measures.

This Article contributes to the discussion regarding ABA Standard 303(c) by suggesting several targeted learning objectives and an assessment framework that

¹ AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2023–2024, at 18 (2023), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/NEUROPSYCHOPHARMACOLOGY2023-2024-aba-standards-rules-for-approval.pdf [<https://perma.cc/NEUROPSYCHOPHARMACOLOGYAZ83-SAEY>] [hereinafter 2023–2024 ABA STANDARDS AND RULES].

² The adoption of 303(c) was not without concern and criticism by members of the legal academy. Most concerns took on the following themes related to ABA overreach and interference with law school policies and curricula; imposition of certain ideology and corresponding First Amendment issues; academic freedom; accusations that discussion on these topics fails to incorporate differing perspectives; and differences in opinion on common theories that may be taught and the effectiveness of training in bias, cross-cultural competency, and racism. See *Notice and Comment: May 2021*, ABA, https://www.americanbar.org/groups/legal_education/resources/notice_and_comment/ [<https://perma.cc/YFE4-NKZ9>] (last visited Mar. 5, 2024). Nevertheless, the standards were adopted with minor changes mostly aimed at addressing some of those concerns. Memorandum on Proposed Changes to Standards 205 and 206, 303 and 508, and 507 from the Standards Comm. of the Am. Bar Ass’n to the Council of the Am. Bar Ass’n 7–9 (May 7, 2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/may21/21-may-standards-committee-memo-proposed-changes-with-appendix.pdf [<https://perma.cc/ZF38-78S6>] [hereinafter Proposed Changes].

supports cultural proficiency in students. To meet the needs of the legal profession and the new ABA Standard 303(c), law schools should emphasize institution-wide³ learning outcomes that deepen student awareness, knowledge, and skills in pursuit of culturally proficient lawyering. At a minimum, legal education institutions should assess students' ability to demonstrate the following:

- (A) appropriate social and cultural awareness in the context of lawyering professional identity;
- (B) relevant cultural knowledge and capacity to challenge normalized cultural assumptions; and
- (C) cultural proficiency skills in cross cultural interactions.

This Article proceeds as follows: Part I provides background that explores the new legal education cultural competence requirement mandated by ABA Standard 303(c), reviewing the existing literature on cultural proficiency in legal education and other professional disciplines. Part I also examines the relevance of cultural competence under Standard 303(c) to the NextGen bar exam.⁴ Finally, Part I explores the key concepts and pedagogical reasoning underlying the adoption of the Cultural Proficiency Lawyering (“CPL”) Framework proposed in this Article and the detailed learning objectives that correlate to each aspect of the Framework. Part II addresses the difficulties in assessing cultural proficiency and discusses the necessity of developing a framework for cultural proficiency and adopting relevant rubrics. Part III proposes the CPL Framework as one that supports the development of cultural proficiency in law students. Part IV illustrates the utility of the CPL Framework and CPL Rubric as vital tools in developing student cultural proficiency.

I. BACKGROUND: EMERGING CULTURAL COMPETENCE REQUIREMENTS

In addition to the changes to legal education mandated by the new requirements under Standard 303(c), legal education is poised to shift in response to the NextGen

³ Throughout this Article, the term “institution” and derivatives of it refer to the law school rather than the university as a whole. Authors do note, however, that universities as a whole could benefit from the ideas set forth in this Article.

⁴ The NextGen bar exam, which will be given beginning in July 2026, places a heavy emphasis on lawyering skills, including interpersonal skills, such as client counseling and relationship management. *See infra* Section I.B.

bar exam, which will debut in 2026.⁵ The assessment redesign of the NextGen bar exam will incorporate evaluation of interpersonal skills such as negotiating, counseling, and dispute resolution, along with the traditional issue spotting analysis of previous incarnations of the bar exam.⁶ Together, these two developments represent a growing trend toward the acquisition of practice-ready skills in legal education.⁷ These skills include not only the “hard” skills of drafting documents, such as briefs or pleadings, but also “soft” or interpersonal skills.⁸ The interpersonal skills emphasized on the NextGen bar exam must necessarily be practiced in the context of the cultural competency skills required under 303(c). Given this new emerging focus in legal education, it is essential to examine both 303(c) and the NextGen bar exam as harbingers of the need for an accessible framework for culturally proficient lawyering.

A. *ABA Standard 303(c)*

The American Bar Association requires that law schools “maintain a rigorous program of legal education that prepare [their] students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.”⁹ Further, a law school must “establish and publish learning outcomes designed to achieve these objectives”¹⁰ and must “utilize both formative and summative assessment methods in its curriculum to measure and

⁵ *NCBE Announces NextGen Exam Structure, Sunset of Current Bar Exam*, NAT’L CONF. OF BAR EXAM’RS (Aug. 28, 2023), <https://www.ncbex.org/news-resources/ncbe-announces-nextgen-exam-structure-sunset-current-bar-exam> [https://perma.cc/78CD-4TA5] [hereinafter *NextGen Exam Structure Announcement*].

⁶ *Id.*

⁷ Teresa Biviano, *Practical Lawyering: Intervention in Law School Curriculum Requirements to Prepare New Lawyers for Ethically Competent Practice*, 30 GEO. J. LEGAL ETHICS 619, 626–27 (2017) (“The legal community’s widespread acceptance that law students need some level of practice-oriented experience to develop practical lawyering skills is consistent with the modern law school trend in adopting practical-skills course requirements for the J.D. curriculum.”); Allison Korn & Laila L. Hlass, *Assessing the Experiential (R)Evolution*, 65 VILL. L. REV. 713, 730 (2020) (“[S]chools have undertaken . . . categories of experiential curriculum changes which all point to experiential curriculum expansion”); see Robert E. Kuehn, *Pricing Clinical Legal Education*, 92 DENV. U. L. REV. 1, 2 (2014) (“For decades, reports have called for more clinical training in law school so that graduates, in addition to learning to think like a lawyer, would be prepared to carry on the day-to-day tasks of lawyers upon graduation.”).

⁸ *NextGen Exam Structure Announcement*, *supra* note 5.

⁹ 2023–2024 ABA STANDARDS AND RULES, *supra* note 1, at 17 (Standard 301(a)).

¹⁰ *Id.* (Standard 301(b)).

improve student learning and provide meaningful feedback to students.”¹¹ Legal education, however, has not traditionally emphasized or required learning outcomes related to interpersonal skills such as cross-cultural competence.¹² Prior to the adoption of ABA Standard 303(c), the ABA accreditation standards only permissively encouraged cultural proficiency, among a variety of other interpersonal skills essential to effective lawyering.¹³ While law schools were required to establish learning outcomes and assess the objectives of legal education as described above, there was no explicit mandate that law schools offer students exposure to cross-cultural competence in legal education.¹⁴ For years, cultural proficiency advocates surmised that this was a missed opportunity to make improvements in the legal profession, starting in law school.¹⁵

The ABA’s new Standard 303(c) explicitly requires that law schools “*shall* provide education to law students on bias, cross-cultural competency, and racism.”¹⁶ At a minimum, the Standard requires such training “at the start of the program of legal education, and at least once again before graduation.”¹⁷ Despite this progressive

¹¹ *Id.* at 26 (Standard 314).

Formative assessment methods are measurements at different points during a particular course or at different points over the span of a student’s education that provide meaningful feedback to improve student learning. Summative assessment methods are measurements at the culmination of a particular course or at the culmination of any part of a student’s legal education that measure the degree of student learning.

Id. (Interpretation 314-1).

¹² Christine Cerniglia Brown, *Professional Identity Formation: Working Backwards to Move the Profession Forward*, 61 LOY. L. REV. 313, 313 (2015) (“The traditional curriculum is not designed to analyze modern issues in our profession. Conversely, the curriculum instills habits and values antithetical to client representation and professionalism.”).

¹³ See Proposed Changes, *supra* note 2, at 7.

¹⁴ See 2023–2024 ABA STANDARDS AND RULES, *supra* note 1, at 17 (Standard 302(d)) (“A law school shall establish learning outcomes that shall, at a minimum, include competency in . . . [o]ther professional skills needed for competent and ethical participation as a member of the legal profession.”); see also *id.* at 18 (Interpretation 302-1) (“For the purposes of Standard 302(d), other professional skills are determined by the law school and may include skills such as, interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation.”).

¹⁵ See Brown, *supra* note 12, at 314.

¹⁶ 2023–2024 ABA STANDARDS AND RULES, *supra* note 1, at 17 (emphasis added) (Standard 303(c)).

¹⁷ *Id.* (Standards 303(c)(1)–(2)).

addition, the ABA provides minimal guidance on how to execute the requirements under Standard 303(c), only noting that they may be satisfied by:

- (1) Orientation sessions for incoming students [on bias, cross-cultural competency, and racism];
- (2) Lectures on [bias, cross-cultural competency, and racism];
- (3) Courses incorporating these topics; or
- (4) Other educational experiences incorporating these topics.¹⁸

In addition to approving new Standard 303(c), the ABA adopted Interpretation 303-6 of Standard 303(a)(1).¹⁹ Standard 303(a)(1) mandates “one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members.”²⁰ Interpretation 303-6 stresses the importance of cross-cultural competence in the required course in professional responsibility:

With respect to 303(a)(1), the importance of cross-cultural competency to professionally responsible representation and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in the law should be among the values and responsibilities of the legal profession to which students are introduced.²¹

By explicitly mandating the inclusion of bias, cross-cultural competency, and racism training, the ABA now aims to ensure that law schools prioritize and integrate these critical elements into their curricula. The ABA’s updated Standard is designed to promote a more inclusive and equitable legal profession that is better equipped to address the needs and challenges of a diverse clientele.²² This change acknowledges

¹⁸ *Id.* at 19–20 (Interpretation 303-7). Standard 303(c) does, however, provide additional instruction regarding when such training should take place for students who have client contact: “For students engaged in law clinics or field placements, the second educational occasion [for training and education] will take place before, concurrently with, or as part of their enrollment in clinical or field placement courses.” *Id.* at 18.

¹⁹ See Proposed Changes, *supra* note 2, at 8.

²⁰ 2023–2024 ABA STANDARDS AND RULES, *supra* note 1, at 18 (Standard 303(a)(1)).

²¹ *Id.* at 19.

²² See Proposed Changes, *supra* note 2, at 7.

the significance of interpersonal skills like cross-cultural competence in a lawyer's professional tool kit as they increasingly encounter diverse clientele and work within a multicultural society that is continually growing in its interconnectedness.

B. *The NextGen Bar Exam*

Along with Standard 303(c), law schools in Uniform Bar Exam jurisdictions must evaluate whether the school's program of legal education prepares students for the skills-focused NextGen bar exam that is launching in July 2026.²³ The articulated goal of the NextGen bar exam is to move from an assessment of knowledge of "discrete practice areas" to an assessment of "knowledge and skills that are of foundational importance to numerous practice areas."²⁴ The NextGen bar exam will focus on seven "foundational lawyering skills":²⁵ (1) issue spotting and analysis; (2) investigation and evaluation; (3) client counseling and advising; (4) negotiating and dispute resolution; (5) client relationship and management; (6) legal research; and (7) legal writing and drafting.²⁶ In developing the exam, the Testing Task Force of the National Conference of Bar Examiners recognized "cultural competence" as a skill essential to three of the seven foundational skills to be assessed by the NextGen Bar Exam: client counseling and advising, investigation and analysis, and client relationship and management.²⁷ It is, therefore, reasonable to assume that the ability

²³ Currently, thirty-nine states and the District of Columbia are UBE jurisdictions. *See UBE Jurisdictions*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/ube/list-ube-jurisdictions> [<https://perma.cc/C7ZT-KN8W>] (last visited Mar. 10, 2024). This list will undoubtedly grow with the rollout of the NextGen exam. Press Release, Nat'l Conf. of Bar Exam'rs, NCBE Announces NextGen Exam Structure, Sunset of Current Bar Exam (Aug. 28, 2023), <https://www.ncbex.org/news-resources/ncbe-announces-nextgen-exam-structure-sunset-current-bar-exam> [<https://perma.cc/A8A2-Z39J>]. The NextGen exam will be offered concurrently with the current bar exam until July 2028. Press Release, Nat'l Conf. of Bar Exam'rs, NCBE Announces Update to NextGen Exam Content, Extends Availability of Current Bar Exam (Oct. 25, 2023), <https://www.ncbex.org/news-resources/update-nextgen-exam-content-extends-availability> [<https://perma.cc/XGC8-LJYF>].

²⁴ *Final Report of the Testing Task Force*, NAT'L CONF. OF BAR EXAM'RS 2 (Apr. 2021), <https://nextgenbarexam.ncbex.org/themencode-pdf-viewer/?file=https://nextgenbarexam.ncbex.org/wp-content/uploads/TTF-Final-Report-April-2021.pdf> [<https://perma.cc/3KF3-686R>] [hereinafter *NextGen Final Report*].

²⁵ *NextGen Exam Structure Announcement*, *supra* note 5.

²⁶ *Id.*; *see also Bar Exam Content Scope*, NAT'L CONF. OF BAR EXAM'RS 1–3 (May 2023), <https://nextgenbarexam.ncbex.org/pdfviewer/ncbe-nextgen-content-scope-may-24-2023/> [<https://perma.cc/563A-2FXH>].

²⁷ *See NextGen Final Report*, *supra* note 24, at 16.

to engage in culturally proficient lawyering will be assessed throughout the NextGen bar exam.

It is not yet clear whether, and to what extent, culturally competent lawyering skills will be assessed as the NextGen Bar Exam evolves. Despite this uncertainty, law schools should be mindful of the connection between Standard 303(c) and the NextGen Bar Exam, and the important intersections between the types of curricular changes needed for the implementation of ABA Standard 303(c) and those needed to prepare students for the NextGen Bar Exam.²⁸

C. *The Case for Cultural Proficiency in Lawyering*

The need for law student cultural proficiency is well-documented, especially as it is related to preparing lawyers to work effectively in an increasingly diverse world.²⁹ Cultural proficiency not only allows lawyers to communicate more effectively cross-culturally with clients, but also with witnesses, judges, and other legal professionals.³⁰ Law students must, therefore, also learn to navigate the cross-cultural world of various legal decision-makers, participants in the justice system, and other stakeholders.³¹

In a dynamic and interconnected legal world, legal professionals often engage with clients who bring distinct perspectives, values, and experiences.³² Cross-cultural competence is crucial for lawyers to understand and effectively communicate with clients and others from unfamiliar cultural backgrounds. Moreover, understanding cultural norms, values, and communication styles enables lawyers to build trust and establish better relationships with clients. Thus, developing cultural proficiency ensures that lawyers can provide appropriate legal advice and representation.³³ Cultivating cultural proficiency should, therefore, begin in the law

²⁸ L. Danielle Tully, *What Law Schools Should Leave Behind*, 2022 UTAH L. REV. 837, 861 (2022) (noting that incorporation of more summative assessments allows law schools to help students develop “soft skills” like cultural competence while better preparing students to take the NextGen bar exam).

²⁹ Serena Patel, *Cultural Competency Training: Preparing Law Students for Practice in Our Multicultural World*, 62 UCLA L. REV. DISCOURSE 140, 140 (2014); Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 33–34 (2001); Tully, *supra* note 28, at 840–41.

³⁰ Patel, *supra* note 29, at 156.

³¹ *Id.*

³² Bryant, *supra* note 29, at 39.

³³ *Id.*; Patel, *supra* note 29, at 142; Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373, 373 (2002); Mark Novak & Sean M. Novak, *Clear Today*,

school setting so that once law students enter legal practice, they are able to effectively navigate cultural complexities and provide competent legal representation.³⁴

In diverse societies, the legal system often encounters cases involving cultural clashes or unique cultural issues.³⁵ Culturally competent lawyers can navigate these complexities to better ensure fair and just outcomes.³⁶ Legal academics have also documented how culturally competent lawyering is crucial for ensuring equitable access to justice.³⁷ Cultural and language barriers can hinder individuals from seeking legal help or understanding their legal rights.³⁸ Lawyers with cultural proficiency can bridge these gaps, making the legal system more accessible and inclusive.³⁹

Legal working environments have created more demand for attorneys with a culturally proficient lawyering skill set.⁴⁰ Culturally proficient lawyering enhances the effectiveness of legal advocacy, because understanding cultural context can be vital in constructing persuasive arguments, presenting evidence, and developing case strategies.⁴¹ Lawyers with cross-cultural competence are better equipped to resolve conflicts between parties with different cultural perspectives, values, and expectations.⁴² Moreover, culturally proficient lawyers can navigate complex cultural dynamics and promote alternative dispute resolution methods that respect diverse viewpoints.⁴³

Uncertain Tomorrow: Competency and Legal Guardianship, and the Role of the Lawyer in Serving the Needs of Cognitively Impaired Clients, 74 N.D. L. REV. 295, 295–96 (1998).

³⁴ Patel, *supra* note 29; Tremblay, *supra* note 33, at 379; Novak & Novak, *supra* note 33, at 298–99, 311–12.

³⁵ Alex J. Hurder, *The Pursuit of Justice: New Directions in Scholarship About the Practice of Law*, 52 J. LEGAL EDUC. 167, 170–71 (2002).

³⁶ *Id.* at 174–75.

³⁷ *Id.* at 170–71.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Travis Adams, *Cultural Competency: A Necessary Skill for the 21st Century Attorney*, 4 W. MITCHELL LA RAZA J. 2, 3 (2012).

⁴¹ Hurder, *supra* note 35, at 174–75.

⁴² Cynthia Pay, *Teaching Cultural Competency in Legal Clinics*, 23 J.L. SOC. & POL'Y 188, 191 (2014).

⁴³ See Hurder, *supra* note 35, at 182.

Cultural competence is also linked to legal ethics and lawyer professional obligations.⁴⁴ A lawyer's ethical duties include providing competent representation to clients.⁴⁵ A lack of cross-cultural interpersonal skills can result in inadequate legal advice or representation, leading to ethical offenses.⁴⁶ Moreover, cultural competence helps lawyers avoid making assumptions or relying on stereotypes about clients with whom they do not share the same background.⁴⁷ Unconscious biases can impact legal decision making,⁴⁸ and being culturally competent can mitigate these biases.⁴⁹

D. Cultural Proficiency Pedagogy

A solid grasp of the existing literature on cultural proficiency pedagogy in legal education is essential for effectively delivering Standard 303(c) education, preparing students for the NextGen bar exam, and equipping them for culturally proficient legal practice. By examining the foundations, theories, and practices established by scholars in the field, we aim to provide a solid contextual framework for our

Many of the examples in clinical scholarship are drawn from litigated cases, but it is also possible that the process of framing a story would enhance the communication between lawyer and client in planning a transaction or drafting a document. Stories that integrate a client's economic, moral, and legal needs can help clients make decisions and explain them to others.

Id.

⁴⁴ Bryant, *supra* note 29, at 74.

⁴⁵ MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS'N 1983) ("Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.").

⁴⁶ See, e.g., MODEL RULES OF PRO. CONDUCT r. 1.2(a) (AM. BAR ASS'N 1983) ("A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify."); MODEL RULES OF PRO. CONDUCT r. 1.4(a)(2) (AM. BAR ASS'N 1983) ("A lawyer shall . . . reasonably consult with the client about the means by which the client's objectives are to be accomplished . . ."); MODEL RULES OF PRO. CONDUCT r. 1.4(b) (AM. BAR ASS'N 1983) ("A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.").

⁴⁷ See Bryant, *supra* note 29, at 41–42; see also Demetria D. Frank, *The Proof Is in the Prejudice: Implicit Racial Bias, Uncharged Act Evidence & the Colorblind Courtroom*, 32 HARV. J. RACIAL & ETHNIC JUST. 1, 26 (2016) ("[I]mplicit associations systematically reinforce the association between particular attributes and social categories creating associative learning that perpetuates the cycle of stereotyping.").

⁴⁸ Frank, *supra* note 47.

⁴⁹ Debra Chopp, *Addressing Cultural Bias in the Legal Profession*, 41 NYU REV. L. & SOC. CHANGE 367, 406 (2017).

subsequent discussion by providing documented approaches and emerging trends in cultural proficiency pedagogy. A foundational component of this literature revolves around the acknowledgment that cultural proficiency goes beyond mere awareness of cultural differences.⁵⁰ It extends to the development of knowledge, skills, and strategies that enable legal professionals to effectively engage with clients, colleagues, and communities with varying perspectives and experiences.⁵¹ This review serves as a compass, guiding us through the rich tapestry of insights and perspectives that have shaped this critical aspect of legal education.

Early work on cultural proficiency in legal education was led by clinical law professors and was rooted in the recognition of the legal profession's need to better serve marginalized communities.⁵² Clinical law programs, which provide law students with hands-on, experiential learning opportunities, played a pivotal role in shaping the development of cultural proficiency in legal education.⁵³ Thus, existing literature on cross-cultural competence development in legal education overwhelmingly highlights the value of experiential learning methods, such as clinical programs, simulations, and role-playing exercises, to aid in the development of cultural proficiency among law students.⁵⁴ Engaging with real-world scenarios involving clients who do not share the same cultural background allows students to practice their cultural competence skills in a safe and supportive environment.⁵⁵ The real-world scenarios of clinical education create environments where students are able to develop cultural proficiency skills in cultural context.⁵⁶ Student community

⁵⁰ See, e.g., Charles R. Calleros, *Training a Diverse Student Body for a Multicultural Society*, 8 LA RAZA L.J. 140, 147–48 (1994); Jane H. Aiken, *Striving to Teach "Justice, Fairness, and Morality,"* 4 CLINICAL L. REV. 1, 31, 43 (1997); Christine Zuni Cruz, *[On the] Road Back in: Community Lawyering in Indigenous Communities*, 24 AM. INDIAN L. REV. 229, 262–63 (1999); Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L.J. 219, 241 (2002); Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 AM. U.J. GENDER SOC. POL'Y & LAW 161, 162, 167 (2005).

⁵¹ Calleros, *supra* note 50; Cruz, *supra* note 50; Johnson, *supra* note 50, at 162, 167.

⁵² See Calleros, *supra* note 50, at 143, 148–49; Johnson, *supra* note 50, at 165–66.

⁵³ See Calleros, *supra* note 50, at 148–49.

⁵⁴ Pay, *supra* note 42, at 218.

⁵⁵ See Patel, *supra* note 29, at 50–51 (explaining that while support is necessary to decrease students' resistance to learning, challenge is necessary to educate students and prevent them harming their future clients).

⁵⁶ *Id.*

engagement and service-learning initiatives can also provide practical learning experiences in working with cultural differences.⁵⁷

Cultural humility is also an essential concept in the pedagogy of cross-cultural competence.⁵⁸ The cultural humility framework, which was pioneered in the field of medical education, recognizes that everyone has a cultural background and context that impacts perceptions, values, and decision-making.⁵⁹ Cultural humility fosters a more respectful and open approach to working cross-culturally because it promotes open-mindedness and a willingness to learn and adapt to bridge cultural differences.⁶⁰ Cultural humility also emphasizes the importance of cultural self-awareness and self-reflection in professional service delivery.⁶¹ Because cultural humility recognizes that individuals within any given group can have a variety of experiences, values, and perspectives, it deemphasizes learning specific information about specific demographic groups.⁶² Instead, it prioritizes a broader focus on self-awareness, active listening, and a willingness to engage in ongoing, respectful dialogue.⁶³ Cultural humility, therefore, encourages students to examine their own cultural biases and assumptions, which can lead to a deeper understanding of the impact of culture on legal interactions.⁶⁴

⁵⁷ Adams, *supra* note 40, at 16 (“Service learning, practicums, and clinic experience in culturally diverse environments must be a part of a culturally competent attorney’s training.”).

⁵⁸ Deleso A. Alford, “A Time to Train” the Next Generation of Legal Professionals to Become Culturally Competent While Practicing Humility, 1 LSU L.J. SOC. JUST. & POL’Y 1, 5 (2022).

⁵⁹ See Nisha Dogra & Khalid Karim, *Diversity Training for Psychiatrists*, 11 ADVANCES PSYCHIATRIC TREATMENT 159, 159–60 (2005).

⁶⁰ Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U.L. REV. 345, 382, 390–91, 401 (1997).

⁶¹ Tariq El-Gabalawy, *Cultural Humility: A Guiding Principle for Changing Approaches to Teaching Criminal Law*, 25 UC DAVIS SOC. JUST. L. REV. 60, 62 (2021); Jann L. Murray-Garcia & Victoria Ngo, “I Think He’s Nice, Except He Might Be Mad About Something”: Cultural Humility and the Interruption of Scripts of Racial Inequality, 25 UC DAVIS SOC. JUST. L. REV. 73, 96 (2021).

⁶² Murray-Garcia & Ngo, *supra* note 61, at 88.

⁶³ *Id.*

⁶⁴ For purposes of this discussion, culture is defined as “the norms and understandings of acceptable and desirable practice, inscribed and reinforced by rules, routines, incentives, rewards, and patterns of behavior.” Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 522 (2007). More specifically, this Article addresses a form of “internal legal culture,” which refers to the ideas and practices of legal professionals. *Id.*; David Nelken, *Using the Concept of Legal Culture*, 29 AUSTL. J. LEGAL PHIL. 1, 8 (2004); Lorraine

An important element of cultural proficiency pedagogy, developed in the field of education, focuses on developing the five essential elements of the skills and awareness needed for culturally proficient interactions.⁶⁵ The first element is “assessing culture,” which involves teaching students to critically examine the cultural backgrounds and perspectives of both clients and themselves.⁶⁶ “Valuing diversity”—the second element—emphasizes the importance of recognizing and respecting the differences among individuals and communities.⁶⁷ The third element, “managing cultural conflict” teaches strategies for navigating conflicts arising from cultural differences and biases.⁶⁸ The fourth element, “adapting to diversity,” involves honing cross-cultural communication skills and adapting legal representation to align with clients’ cultural values.⁶⁹ Lastly, “institutionalizing cultural knowledge” emphasizes integrating cultural proficiency into the legal profession’s norms, practices, and ethical standards.⁷⁰

Legal ethics require lawyers to avoid discrimination and bias in their interactions with clients, opposing parties, and witnesses.⁷¹ Cultural proficiency

Bannai & Anne Enquist, *(Un)Examined Assumptions and (Un)Intended Messages: Teaching Students to Recognize Bias in Legal Analysis and Language*, 27 SEATTLE U. L. REV. 1, 3 (2003).

⁶⁵ See RANDALL B. LINDSEY, KIKANZA NURI-ROBINS, RAYMOND D. TERRELL & DELORES B. LINDSEY, *CULTURAL PROFICIENCY: A MANUAL FOR SCHOOL LEADERS* 144–45 (4th ed. 2019).

⁶⁶ *Id.* at 145–46.

⁶⁷ *Id.* at 146–47.

⁶⁸ *Id.* at 147.

⁶⁹ *Id.* at 147–48.

⁷⁰ *Id.* at 148–49; see also Bonita London, Vanessa Anderson & Geraldine Downey, *Studying Institutional Engagement: Utilizing Social Psychology Research Methodologies to Study Law Student Engagement*, 30 HARV. J.L. & GENDER 389, 391 (2007) (“The creation of inclusive environments requires that institutions be able to identify institutional barriers to full citizenship and participation of its members, with the goal of ultimately removing them.”).

⁷¹ MODEL RULES OF PRO. CONDUCT, r. 8.4(g) (AM. BAR ASS’N 1983).

It is professional misconduct for a lawyer to: . . . (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.

Id.

Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and

helps lawyers recognize and address implicit biases and stereotypes that may influence their decision-making, thus upholding the principle of equal treatment under the law.⁷² The pedagogical literature in this area highlights the ethical imperatives associated with cultural proficiency in legal education.⁷³ It underscores the responsibility of lawyers to provide culturally competent representation and to address systemic inequities within the legal system.⁷⁴ Further, the scholarship in this area notes that legal professionals have an ethical duty to understand and respect their clients' cultural values, beliefs, and preferences.⁷⁵ Moreover, cultural proficiency enables lawyers to provide more effective and empathetic representation by considering the unique cultural contexts of their clients.⁷⁶

Scholars have explored the ethical dimensions of cultural proficiency, examining the potential consequences of cultural insensitivity and advocating for a commitment to social justice within legal practice.⁷⁷ They have examined how cultural biases and insensitivity can lead to unequal treatment, perpetuate systemic injustices, and undermine the core principles of fairness and justice in the legal system.⁷⁸ These scholars have emphasized the ethical imperative for lawyers to develop cross-cultural competence as a means of rectifying historical inequities, reducing disparities in legal outcomes, and ensuring that every individual, regardless of their cultural background, receives fair and equitable representation under the

participating in bar association, business or social activities in connection with the practice of law.

Id. at cmt. 4.

⁷² Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLINICAL L. REV. 195, 220–21 (2002).

⁷³ *Id.* at 215.

⁷⁴ *Id.* at 226–27.

⁷⁵ Adam M. Ansari, *Cultural Competency and the Practice of Law in the 21st Century*, AM. BAR ASS'N (Mar. 1, 2017), https://www.americanbar.org/groups/real_property_trust_estate/resources/probate-property/2016-2022/cultural-competency-practice-law-21st-century/ [<https://perma.cc/N5BQ-LG77>]; Adams, *supra* note 40, at 14–15; see L. Danielle Tully, *The Cultural (Re)Turn: The Case for Teaching Culturally Responsive Lawyering*, 16 STAN. J.C.R. & C.L. 201, 224, 233 (2020).

⁷⁶ Ansari, *supra* note 75; see Tully, *supra* note 75, at 206.

⁷⁷ Shahrokh Falati, *The Makings of a Culturally Savvy Lawyer: Novel Approaches for Teaching and Assessing Cross-Cultural Skills in Law School*, 49 J.L. & EDUC. 627, 628 (2020).

⁷⁸ See *id.* at 628–29; Tully, *supra* note 75, at 237.

law.⁷⁹ In doing so, they advocate for a commitment to social justice within the legal profession, promoting not only the ethical obligations of lawyers, but also the broader goals of a just and inclusive society.

Unfortunately, the literature on cultural proficiency often overlooks the voices and experiences of the communities that should be central to discussions about cultural proficiency. The examination of structural inequities, systemic racism, and power dynamics within the legal system is vital for lawyers to comprehend the historical and ongoing reinforcement of racial disparities and injustices by laws and legal institutions.⁸⁰ Lawyers who challenge systemic inequity are better equipped to advocate for marginalized communities by identifying and challenging racially discriminatory policies, practices, and systems in a way that better addresses their concerns.⁸¹ This involvement helps build trust and enables lawyers to provide more effective legal representation.⁸² Students should also be exposed to how they can use their legal skills to advocate for social justice and racial equity.⁸³ This awareness is crucial for lawyers to situate their practice within a broader context, emphasizing their commitment to addressing issues of race, power, and social justice.⁸⁴

Cultural proficiency encourages lawyers to critically interrogate legal doctrine and jurisprudence from a racialized perspective and explore systemic oppression more broadly.⁸⁵ We must accept that the law is not neutral and can perpetuate racial,

⁷⁹ Adams, *supra* note 40, at 4.

⁸⁰ See Imai, *supra* note 72, at 197–98.

⁸¹ Falati, *supra* note 77, at 644; Chopp, *supra* note 49, at 400, 403–06.

⁸² Falati, *supra* note 77, at 671.

⁸³ Critical Race Theory (“CRT”) has played a pivotal role in inspiring legal activists and advocates to push for legal reforms that address racial injustice. Janel George, *A Lesson on Critical Race Theory*, AM. BAR. ASS’N (Jan. 11, 2021), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/a-lesson-on-critical-race-theory/ [<https://perma.cc/3Z2Y-9ZWD>]. Lawyers who are culturally proficient can be effective agents for change within the legal system. See Phyllis Taite & Nicola “Nicky” Boothe, *Teaching Cultural Competence in Law School Curricula: An Essential Step to Facilitate Diversity, Equity, & Inclusion in the Legal Profession*, 2022 UTAH L. REV. 813, 820 (2022).

⁸⁴ Carolyn Copps Hartley & Carrie J. Petrucci, *Practicing Culturally Competent Therapeutic Jurisprudence: A Collaboration Between Social Work and Law*, 14 WASH. U. J.L.P. 133, 151–52 (2004).

⁸⁵ Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability into Law School Teaching*, 32 WILLAMETTE L. REV. 541, 542 (1996).

gender, and other biases.⁸⁶ Hence, lawyers should learn to analyze how legal rules and decisions impact marginalized communities differently. Moreover, understanding the intersectionality of culture, race, gender, and other identities is essential for effective legal advocacy.⁸⁷ Scholars emphasize that cultural proficiency in legal education should be linked to the broader goals of promoting social justice and addressing systemic inequalities.⁸⁸ These experiences can help students understand the legal needs and challenges faced by marginalized communities.⁸⁹

There is a growing body of literature underscoring the significance of teaching students to be sensitive to cultural differences in communication styles, body language, and nonverbal cues to enhance their ability to build rapport and trust with clients with whom they do not share the same cultural background.⁹⁰ Furthermore, the literature highlights that cultural proficiency extends beyond effective cross-cultural communication skills.⁹¹ It emphasizes the importance of teaching students

⁸⁶ Frank, *supra* note 47, at 1–2; Elaine M. Chiu, *Culture in Our Midst*, 17 U. FLA. J.L. & PUB. POL'Y 231, 231 (2006).

⁸⁷ George, *supra* note 83. CRT helps lawyers recognize and amplify counter-narratives and alternative perspectives that challenge prevailing legal norms. *Id.* This includes acknowledging the experiences and voices of people of color who have historically been marginalized within the legal system. *Id.*

⁸⁸ Tiffany D. Atkins, *#ForTheCulture: Generation Z and the Future of Legal Education*, 26 MICH. J. RACE & L. 115, 161–62 (2020); see Claire P. Donohue, *Client, Self, Systems: A Framework for Integrated Skills-Justice Education*, 29 GEO. J. LEGAL ETHICS 439, 454–55 (2016).

⁸⁹ See, e.g., Pay, *supra* note 42, at 191.

[C]ultural competence means that a service provider is able to clearly communicate with her client and understand her client's needs and goals, to establish trust and a good rapport with the client, and, because she is aware of issues facing a diverse range of clients such as discrimination, to identify important issues that may not be initially apparent or explicitly raised by the client.

Id.

⁹⁰ Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 33 U. MICH. J.L. REFORM 263, 304, 327 (2000); Leslie G. Espinoza, *Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender*, 95 MICH. L. REV. 901, 926–27 (1997); Lynn Mather & Barbara Yngvesson, *Language, Audience, and the Transformation of Disputes*, 15 L. & SOC'Y REV. 755, 820 (1980).

⁹¹ Ingrid Loreen, *Therapeutic Jurisprudence and the Law School Asylum Clinic*, 17 ST. THOMAS L. REV. 835, 840–41 (2005); Antoinette Sedillo Lopez, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic*, 28 WASH. U. J.L. & POL'Y 37, 38–39 (2008); Nelson P. Miller, *Beyond Bias—Cultural Competence as a Lawyer Skill*, 87 MICH. BAR J. 38, 39 (2008).

to recognize and leverage differences in problem-solving approaches and analytical perspectives shaped by different cultural contexts.⁹² Encouraging students to appreciate how varying cultural norms and values can influence legal reasoning and decision-making enhances their ability to navigate complex legal issues while promoting equitable outcomes.⁹³ This comprehensive approach to cultural competence in legal education equips students with the skills needed to foster trust, empathy, and collaboration in legal practice.⁹⁴

Cultural competence pedagogy requires faculty members to model cultural competence and incorporate diverse perspectives into their teaching in culturally relevant and responsible ways.⁹⁵ Using case studies that involve clients that do not share the same cultural background helps students understand the intersection of law

⁹² See, e.g., Kimberly E. O’Leary, *Using “Difference Analysis” to Teach Problem-Solving*, 4 CLINICAL L. REV. 65, 74 (1997) (“[A] lawyer who engages in “difference analysis” early in the process may discover a broader array of options for the client to consider.”).

⁹³ See Lopez, *supra* note 91, at 39–40.

⁹⁴ Atkins, *supra* note 88, at 160–61.

⁹⁵ See Anastasia M. Boles, *Seeking Inclusion from the Inside Out: Towards a Paradigm of Culturally Proficient Legal Education*, 11 CHARLESTON L. REV. 209, 217–18 (2017) [hereinafter Boles, *Seeking Inclusion from the Inside Out*].

[A]lmost every study of law student and faculty experience analyzing race has recommended some type of culturally proficient policy for legal education. . . . And much of the legal scholarship analyzing diversity in legal education has called for some sort of diversity training to be offered to legal educators.

Id. See also Anastasia M. Boles, *The Culturally Proficient Law Professor: Beginning the Journey*, 48 N.M.L. REV. 145, 154 (2018) [hereinafter Boles, *The Culturally Proficient Law Professor*]. Boles provides multiple resources on becoming a culturally proficient educator, noting:

[L]aw teachers interested in the journey of cultural proficiency have a variety of resources. An easy step toward learning how to be a culturally proficient educator is to first engage in the literature on cultural proficiency. Dr. Nuri-Robins has resource material available on her website. Corwin Publishing, a frequent publisher of books related to cultural proficiency, also hosts conferences and online courses. Other resources for culturally proficient instruction may include the law school or university diversity office, faculty development workshops, speaker series, or outside consultants. Notably, there is an increasing amount of scholarship on the intersection of cultural proficiency and legal education.

Id.

and culture.⁹⁶ Presenting varied perspectives in legal education materials can also enhance students' appreciation of cultural diversity and underscore the value of lived experience.⁹⁷

Faculty development on cultural competence enhances the effectiveness of this pedagogy.⁹⁸ By adopting effective teaching strategies and creating culturally responsive learning environments, legal educators can better prepare law students to be competent, ethical, and culturally sensitive professionals in a diverse and globalized world.⁹⁹ Law professors prioritizing cultural proficiency in courses should also look to understand cultural proficiency barriers and inhibitors.¹⁰⁰

A review of existing literature also explores the challenges and complexities of integrating cultural proficiency into legal education. It recognizes that achieving cultural proficiency is an ongoing and evolving process, requiring a commitment to self-reflection and continuous learning.¹⁰¹ Additionally, the literature discusses the need for faculty from a wide array of cultural backgrounds and the importance of fostering an inclusive and equitable learning environment.¹⁰²

⁹⁶ Dark, *supra* note 85, at 574; *see* Espinoza, *supra* note 90, at 909 (“Clients and lawyers do not exist in a vacuum that separates us from social patterns. A less detached, less categorical, and less judgmental form of client interaction will open doors to deeper understanding both for the client and the lawyer.”).

⁹⁷ Calleros, *supra* note 50, at 152.

⁹⁸ Boles, *The Culturally Proficient Law Professor*, *supra* note 95, at 148.

⁹⁹ *Id.* at 149 (“[T]he internal lens of cultural proficiency redirects attention from outward displays of bias and prejudice and can guide a willing law professor toward internal transformation.”).

¹⁰⁰ Doron Samuel-Siegel, *Reckoning with Structural Racism in Legal Education: Methods Toward a Pedagogy of Antiracism*, 29 CARDOZO J. EQUAL RTS. & SOC. JUST. 1, 11 (2022) (“Only once we understand how unearned privilege operates; assess our biases and, for some, fragility; and reckon with our imperfect pursuit of equity—only then can we do the external work of teaching all students equitably and antiracistly.”); Boles, *The Culturally Proficient Law Professor*, *supra* note 95, at 153 (“The four barriers to culturally proficient instruction are: (1) resistance to change, (2) unawareness of the need to adapt, (3) the presumption of entitlement, and (4) systems of oppression and privilege.”) (citation omitted).

¹⁰¹ Samuel-Siegel, *supra* note 100, at 36.

¹⁰² Anne D. Gordon, *Cleaning Up Our Own Houses: Creating Anti-Racist Clinical Programs*, 29 CLINICAL L. REV. 49, 50–51, 68–69 (2022); Anna P. Hemingway, *Intentionally and Systematically Integrating Diversity Discussions and Lessons in the Law School Classroom During a Race-Conscious Era*, 73 RUTGERS U.L. REV. 33, 53, 58 (2020).

II. SETTING CULTURAL PROFICIENCY LEARNING OUTCOMES AND OBJECTIVES¹⁰³

Cultural proficiency, institutional outcomes, and course-level CPL objectives are necessary to impact cross-cultural proficiency in the legal profession more broadly. Although the ABA's adoption of Standard 303(c) stopped short of requiring that law schools establish cultural proficiency outcomes (as would be required if adopted under Standard 302),¹⁰⁴ law schools and law professors should, nonetheless, adopt 303(c)-related learning outcomes and course-level learning objectives. Setting institutional cultural proficiency learning outcomes is not only beneficial for law students, it also better equips faculty to develop courses that include course objectives responsive to the call of 303(c).¹⁰⁵ Additionally, setting institutional learning outcomes and promoting curricular learning objectives ensures that the school, and not solely individual faculty members, engages in cultural proficiency curriculum mapping and assessment.¹⁰⁶

By setting explicit CPL outcomes and objectives, law schools can demonstrate commitment to preparing culturally proficient legal professionals and reinforce the significance of cultural proficiency within the legal discipline. Setting cultural proficiency-related learning outcomes and objectives will demonstrate that law schools and law professors acknowledge the importance of cultural proficiency in legal education. It signifies a commitment to inclusivity, diversity, and equitable representation within the legal profession. By prioritizing cultural proficiency, law schools will send a clear message to students, faculty, and the legal community that this aspect of education is integral to the development of well-rounded and effective legal professionals.

¹⁰³ While the terms "outcomes" and "objectives" are used somewhat interchangeably in higher education, we refer to "outcomes" in this Article as the broad skills that students will acquire over the course of a law program. In contrast, by "objectives" we mean the smaller incremental learning goals of a course, as determined by professors teaching a course, that contribute to a particular programmatic outcome. Within the context of the CPL Framework, for example, a curricular "outcome" for a law program might be "cultural proficiency awareness," while a course-level objective might be "describe cultural proficiency inhibitors, including implicit bias associations, and practice strategies to overcome them." See *infra* Section IV.A.3.

¹⁰⁴ 2023–2024 ABA STANDARDS AND RULES, *supra* note 1, at 17–18.

¹⁰⁵ *Id.* at 18; see TERI MCMURTY-CHUBB, STRATEGIES AND TECHNIQUES FOR INTEGRATING DIVERSITY, EQUITY, AND INCLUSION INTO THE CORE LAW CURRICULUM: A COMPREHENSIVE GUIDE TO DEI PEDAGOGY, COURSE PLANNING, AND CLASSROOM PRACTICE 65 (Howard Katz ed., 2022).

¹⁰⁶ MCMURTY-CHUBB, *supra* note 105, at 30.

Including cultural proficiency in learning outcomes also enhances the professional legitimacy of legal education, starting in the classroom. If law schools and law professors do not prioritize cultural proficiency in the curriculum and in course work, the legal profession risks being perceived as outdated and disconnected from the realities of a diverse and globalized society.¹⁰⁷ By explicitly incorporating cultural proficiency as an educational goal, law schools and professors signal that this aspect of legal education is essential for preparing competent and responsive lawyers, thereby reinforcing the credibility of the discipline. Additionally, establishing clear learning outcomes related to cultural proficiency helps prevent a mere “check-the-box” approach, ensuring cultural proficiency is not treated as a superficial add-on, but rather, as an important part of legal education.

The development of cultural proficiency learning outcomes must be intentional. Cultural proficiency is not a skillset that is organically gained, nor is it natural to the law school learning environment.¹⁰⁸ Law school culture generally fails to promote skills not directly related to academic performance, affirming a competitive and conforming culture.¹⁰⁹ Additionally, law school culture has been described as “remarkably static, non-adaptive, and resistant to change, even in the face of strong pressure from significant constituents of legal education and evidence that law schools are not fulfilling core aspects of their mission.”¹¹⁰ For these reasons, law school culture generally subverts cultural proficiency objectives. Because student success in law school is primarily measured through a “highly public set of common

¹⁰⁷ Rosa Kim, *Globalizing the Law Curriculum for Twenty-First-Century Lawyering*, 67 J. LEGAL EDUC. 905, 910 (2018).

An overarching theme of increased globalization is that as legal services cross borders, there needs to be an awareness of differences not only in the legal cultures, but also in professional and ethical standards and practices; appreciating these differences could be critical to effective lawyering in cross-border or cross-jurisdiction contexts. This significant globalization trend in legal practice should be reflected in U.S. legal education if the academy is truly committed to preparing its students to practice competently in the current market. Yet skepticism and a reluctance to come to terms with the importance of global learning and its place in the law curriculum continue to pervade most U.S. law schools.

Id.

¹⁰⁸ Sturm & Guinier, *supra* note 64, at 519.

¹⁰⁹ *Id.* at 520.

¹¹⁰ *Id.*

rituals,”¹¹¹ it is challenging to demonstrate the value of CPL in the traditional legal educational environment.¹¹²

Law schools and the legal profession have historically excluded racialized minorities and women.¹¹³ Consequently, long-standing law school culture naturally favors white, cis-gender males.¹¹⁴ As a result, students of color, LGBTQ+, and first-generation students often express a feeling of “not belonging” in predominantly white, cis-gender legal environments.¹¹⁵ In such an environment, it is likely difficult for some students, faculty, and other stakeholders to appreciate the relevance of

¹¹¹ *Id.* at 523.

¹¹² *Id.*

Students collectively take exams, receive grades, go through the job search process, and compete for law reviews and clerkships. The law school environment encourages students to form their sense of selves and their success in terms of how well they do in all of these rituals of performance and competition. The pressure to keep up and to do well, as measured by these common metrics of success, comes to define the law school atmosphere. Students come to measure their worth by comparing their performance to that of their classmates.

Id.

¹¹³ MCMURTY-CHUBB, *supra* note 105, at 4–5.

¹¹⁴ Law school academic culture is at least in part also driven by its faculty, which is traditionally and predominantly white and male on both accounts. Carmen G. Gonzalez, *Women of Color in Legal Education: Challenging the Presumption of Incompetence*, FED. LAW., July 2014, at 48, 50. In discussing diversity on law school faculties, Professor Gonzalez notes, “[T]he culture of academia remains distinctly white, male, heterosexual, and upper and middle class. Those who differ from this unspoken and often unconscious norm are, to a greater or lesser extent, presumed incompetent” *Id.*; see also Sturm & Guinier, *supra* note 64, at 517 (“Law schools, whose culture has been passed down through generations of lawyers, generally do not ask fundamental questions about long-established practices and their relationship to institutional mission.”).

¹¹⁵ DARRELL D. JACKSON, *BLACK MEN IN LAW SCHOOL: UNMATCHED OR MISMATCHED?* (2018); Gonzalez, *supra* note 114, at 50.

Studies show that students from underrepresented groups often feel like outsiders in predominantly white law schools and regard the law school culture as inhospitable to their experiences and perspectives. These students report isolation, discomfort expressing their views, and daily ‘microaggressions’ in the form of subtle and not-so-subtle sexist and racist affronts. Students of color often have higher attrition rates and lower academic outcomes than white students.

Id. Professor Gonzalez indicates that the same studies suggest that “students of color derive tangible benefits from the support and mentorship they receive from diverse professors.” *Id.*

cross-cultural education, especially when most students' past learning has occurred from a white ethnocentric standpoint.¹¹⁶

By delineating specific cultural proficiency outcomes and course-level objectives, law schools and law professors can design robust curricula, instructional methods, and assessment mechanisms that promote meaningful development in students.¹¹⁷ This will foster the genuine acquisition of cultural proficiency skills and knowledge, and incidentally, create a natural tool for facilitating students' feelings of belonging in the law school setting.¹¹⁸ Moreover, the entirety of relevant perspectives cannot come solely from the insights of students of color.¹¹⁹ Given the insurmountable mental energy required to function as a person of color in the law school learning environment, historically underrepresented students should not additionally be expected to carry the burden of providing relevant cultural perspectives in the classroom.¹²⁰ When law professors adequately include cultural proficiency objectives in coursework, this relieves some of the burden carried by students by shifting the onus of meeting those objectives to the instructor.¹²¹

A. *Difficulties in Assessing Cultural Proficiency*

Assessing course-level CPL learning objectives is important in legal education for both students and instructors. As legal professionals, assessing our level of cultural proficiency can aid in our ability to effectively communicate with clients, understand their perspectives, and provide effective legal representation.¹²² By utilizing appropriate assessment methods and continuously reflecting on our

¹¹⁶ See Taite & Boothe, *supra* note 83, at 823 (discussing the difficulties of teaching cross-cultural competency in an environment that assumes neutrality).

¹¹⁷ Julie Ross & Diana Donahoe, *Lighting the Fires of Learning in Law School: Implementing ABA Standard 314 by Incorporating Effective Formative Assessment Techniques Across the Curriculum*, 81 U. PITT. L. REV. 657, 684, 690 (2020).

¹¹⁸ Jeffrey K. Coleman, Darryl B. Holloman, Melanie D. Turner-Harper & Christina M. Wan, *Cultural Competency Activities: Impact on Student Success*, 32 METRO. U. 27, 37–38 (2021) (discussing the acquisition of skills and fostering a feeling of belonging created by engaging in cultural competence activities).

¹¹⁹ In the classroom, students of color are more likely to experience their intelligence, experiences, and validity as a human being challenged, rather than their individual classroom contribution or idea. See JACKSON, *supra* note 115.

¹²⁰ Boles, *The Culturally Proficient Law Professor*, *supra* note 95, at 150.

¹²¹ See *id.* at 149–50.

¹²² Patel, *supra* note 29, at 142.

practice, we can enhance our cultural proficiency and ultimately improve our clients' experiences and outcomes.¹²³ Additionally, feedback from clients and peers in clinical or practical settings offers a valuable real-world assessment, ensuring a holistic and comprehensive evaluation of students' progress and areas for growth.¹²⁴ Nevertheless, assessing cultural proficiency in individuals can be a challenging task. Several factors contribute to the complexity of evaluating an individual's cross-cultural competence.

First, the skill of cultural proficiency is sometimes subjective. Cross-cultural competence encompasses a broad range of knowledge, skills, attitudes, and behaviors and involves understanding different cultures, being respectful, effectively communicating across cultural boundaries, and adapting to diverse situations.¹²⁵ Evaluating the subjective aspects of cultural competence can be inherently challenging, as they are not easily quantifiable or objectively measurable.¹²⁶ Additionally, because cross-cultural competence involves multiple dimensions—including knowledge, skills, attitudes, and awareness—assessing all these dimensions comprehensively requires a multifaceted approach that goes beyond traditional law school assessment methods.¹²⁷ It necessitates incorporating diverse assessment strategies, such as observation, interviews, case studies, and real-life simulations.¹²⁸

The field of cross-cultural competence assessment is still developing, and there is a lack of widely accepted, standardized assessment tools.¹²⁹ Existing instruments often have limitations in terms of cultural sensitivity, reliability, and validity, making it difficult to obtain accurate and meaningful results.¹³⁰ Moreover, the contextual nature of cultural proficiency also makes assessment difficult. The skill of cultural

¹²³ *Id.* at 143, 149.

¹²⁴ *Id.* at 155.

¹²⁵ Adams, *supra* note 40, at 4.

¹²⁶ *See id.* at 5.

¹²⁷ *Id.* at 5.

¹²⁸ *What is Cultural Competence & How is it Measured?*, DIVERSITY OFFICER MAG., <https://diversityofficermagazine.com/cultural-competence/what-is-cultural-competence-how-is-it-measured-2/> [<https://perma.cc/D6J8-ESVA>] (last visited Mar. 27, 2024).

¹²⁹ Jayshree Jani, Philip J. Osteen & Stacey L. Shipe, *Cultural "Competence" and Social Work Education: Moving Towards Assessment of Practice Behaviors*, 52 J. SOC. WORK EDUC. 311, 312 (2015).

¹³⁰ *Id.*

proficiency is context-dependent—meaning its effectiveness can vary depending on the specific cultural context and individuals involved.¹³¹ Cultural proficiency in one cultural setting does not necessarily translate to proficiency in another.¹³² Hence, assessments must consider the cultural nuances, dynamics, and complexities of specific situations or communities, which adds to the difficulty of developing standardized assessment tools.¹³³ Additionally, many existing methods for assessing cultural proficiency rely on self-report measures, such as surveys or questionnaires.¹³⁴ These tools ask individuals to reflect on their own cross-cultural competence and provide responses based on their self-perception.¹³⁵ As a result, individuals may provide socially desirable responses or overestimate their cross-cultural competence due to a lack of self-awareness or a desire to present themselves in a favorable light.¹³⁶ While self-report measures can provide insight, they are not without limitation, including self-report bias,¹³⁷ which can hinder the accuracy of assessments.

Despite these challenges, researchers and practitioners are developing more comprehensive and contextually appropriate assessment approaches, including

¹³¹ Adams, *supra* note 40, at 5.

¹³² Travis Jones, *A Point of View: Passports to Cultural Competence*, THE INCLUSION SOL. (June 26, 2014), <https://theinclusionsolution.me/a-point-of-view-passports-to-cultural-competence/> [<https://perma.cc/CPE7-78ZB>].

¹³³ Guri A. Nortvedt et al., *Aiding Culturally Responsive Assessment in Schools in a Globalizing World*, 32 EDUC. ASSESSMENT, EVALUATION & ACCOUNTABILITY 5, 9 (2020) (discussing the ways in which assessments should be mindful of students from different backgrounds).

¹³⁴ Andrea A. Curcio, Teresa M. Ward & Nisha Dogra, *Educating Culturally Sensible Lawyers: A Study of Student Attitudes About the Role Culture Plays in the Lawyering Process*, 16 U.W. SYDNEY L. REV. 98, 119–21 (2012).

The journey of self-assessment and how one's own cultural background, attitudes and beliefs have been formed and how it can taint one's effective lawyering of a client from a diverse background is an on-going life-long journey for the future lawyer in which the professional must seek out relevant educational and training opportunities. Only by taking this first step of becoming aware of one's own cultural background, can the law student or lawyer begin to effectively represent clients from all kinds of backgrounds.

Falati, *supra* note 77, at 644.

¹³⁵ Curcio et al., *supra* note 134, at 107.

¹³⁶ *Id.* at 119–20.

¹³⁷ *Id.* at 120; Falati, *supra* note 77, at 645.

performance-based assessments,¹³⁸ cultural immersion experiences,¹³⁹ and structured observations.¹⁴⁰ Various methods for assessing student proficiency such as rubrics,¹⁴¹ survey tools,¹⁴² and feedback from clients and peers¹⁴³ help measure students' progress and identify areas for improvement.¹⁴⁴ By continually refining assessment methods and considering the complexities of cross-cultural competence education, it becomes possible to better evaluate an individual's proficiency in navigating cultural diversity and promoting inclusive practices.¹⁴⁵ While assessing cultural proficiency presents challenges, law schools can develop innovative assessment tools and strategies tailored to legal education that can be utilized at the curricular and institutional levels.¹⁴⁶ These may include traditional and other performance-based assessments, simulations, reflective writing assignments, cultural immersion experiences, and structured interviews.¹⁴⁷

Additionally, various frameworks and theories are necessary as we fully appreciate the complexities and responsibilities of delivering culturally proficient law school graduates. Taken as a whole, the literature on the pedagogy of cultural proficiency in legal education emphasizes the need for legal educators to take a comprehensive and integrated approach to teaching cultural proficiency that fosters a deep understanding of the cultural dimensions of legal practice by emphasizing student awareness, knowledge, and skill development.

In most areas of law teaching there are numerous pedagogical options from which to choose assignments, assessments, rubrics, and frameworks.¹⁴⁸ This Article and subsequent work are intended to enhance the above-mentioned groundwork in

¹³⁸ See Falati, *supra* note 77, at 663–64.

¹³⁹ *Id.* at 672–74.

¹⁴⁰ See *id.* at 662–63.

¹⁴¹ *Id.* at 653.

¹⁴² Curcio et al., *supra* note 134, at 121.

¹⁴³ Falati, *supra* note 77, at 663–64.

¹⁴⁴ See *id.*

¹⁴⁵ *Id.* at 632, 650, 651, 653 (discussing new assessment methods and iterations of old ones).

¹⁴⁶ *Id.* at 663–64.

¹⁴⁷ See *supra* notes 140–44.

¹⁴⁸ Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 3 (1996).

cultural competence pedagogy. To be clear, it is exceedingly difficult for a law professor interested in teaching cultural proficiency concepts to pick up an article about cross-cultural competence in clinical teaching and understand how that pedagogy would apply in their own, non-clinical classroom. It would be similarly difficult to look at an article from a different topic area and attempt to replicate that pedagogy without a more holistic understanding of cultural context. Even if a law professor found literature about cultural humility, for example, there may be a lack of understanding regarding how to effectively meet cultural humility outcomes without doing harm in the classroom.¹⁴⁹ This could leave law professors in a position where they find information useful for their own understanding, but that information does not correlate to effective use in the classroom.¹⁵⁰

A cultural proficiency *teaching* framework is needed because cultural proficiency is not solely about lawyer-client relationships and experiences.¹⁵¹ Law professors should also know how to set course objectives that track curricular outcomes that appropriately explore the historic and systemic factors at play, and have the skill to manage information relating to how other actors beyond the attorney and client within that system make decisions that create life-shaping legal consequences.¹⁵²

¹⁴⁹ See Debra L. Clark & Rekha Sharma, *Fostering Cultural Humility in the Classroom*, KENT STATE UNIV. CTR. FOR TEACHING & LEARNING (May 24, 2021), <https://www.kent.edu/ctl/fostering-cultural-humility-classroom> [<https://perma.cc/NTW2-KVNV>] (discussing the difficulties of integrating and teaching cultural humility in the classroom). Additionally, although the cultural humility framework, discussed above accounts for intersectionality, individual experiences, and challenging assumptions, it does not emphasize the historical context of racism or sexism that is systemic in nature and intrinsic to many areas of American legal representation. *Id.* The cultural humility framework offers a way of describing and understanding a broadly useful cross-cultural skillset, but it does not go very far in helping us understand how to teach it. *Id.*

¹⁵⁰ *See id.*

¹⁵¹ Wendy Muchman, *The Effective Lawyer: Communication, Cultural Competence, and Civility*, AM. BAR ASS'N (Jan. 20, 2023), https://www.americanbar.org/groups/government_public/publications/public-lawyer/2023-winter/effective-lawyer-communication-cultural-competence-civility/ [<https://perma.cc/VF4E-PU79>] (“Communication between professionals and clients across cultural differences has been the focus of studies for years in virtually all professions.”).

¹⁵² *See* Taite & Boothe, *supra* note 83, at 815 (discussing the cultural context that led jurors to disregard a key witnesses’ testimony).

B. Frameworks Support Curricular Outcomes and Course Objective Development

Frameworks are valuable tools in the process of developing learning outcomes, objectives, and assessments for educational programs and courses; they provide a structured and organized approach to curriculum design and assessment.¹⁵³ Employing frameworks provides the user with a clear and structured foundation for designing learning outcomes and course-level objectives, and helps ensure that learning outcomes and objectives are aligned with the overarching educational goals of a program or institution.¹⁵⁴ Moreover, frameworks serve as a communication tool between educators, students, and administrators, and can convey the educational priorities and expectations clearly to all parties involved, fostering a shared understanding.¹⁵⁵

Frameworks assist educators in ensuring that learning outcomes and objectives are consistent in terminology and format.¹⁵⁶ A framework can be shared, acting as a bridge to increase communication and collaboration.¹⁵⁷ Scholars have not uniformly defined the term “framework.”¹⁵⁸ As such, there can be no universal utility to frameworks. Rather, a framework’s utility exists only in its value as a tool for the specific community that it serves.¹⁵⁹ As such, ideally, each specific framework will provide commonality, increase uniformity, and improve learning outcomes in the context in which it is being used.¹⁶⁰

¹⁵³ NAT’L RSCH. COUNCIL, HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL 17 (M. Suzanne Donovan et al. eds., Expanded ed. 2000) (“The enterprise of education can be viewed as moving students in the direction of more formal understanding This will require both a deepening of the information base and the development of a conceptual framework for that subject matter.”).

¹⁵⁴ *Id.* at 16–17.

¹⁵⁵ *Id.* at 160–61.

¹⁵⁶ *Id.* at 17.

¹⁵⁷ Stefan Partelow, *What is a Framework? Understanding Their Purpose, Value, Development and Use*, 13 J. ENV’T STUD. & SCIS. 510, 510–12, 517 (2023).

¹⁵⁸ *Id.*

¹⁵⁹ *See id.* at 510 (applying social science frameworks to social science research programs).

¹⁶⁰ Claudia R. Binder, Jochen Hinkel, Pieter W. G. Bots & Claudia Pahl-Wostl, *Comparison of Frameworks for Analyzing Social-Ecological Systems*, 18 ECOLOGY & SOC’Y 26, 29 (2013).

Additionally, frameworks help align assessment methods with learning outcomes and objectives.¹⁶¹ Educators can select or design assessments that directly measure the desired knowledge, skills, and abilities outlined in the framework.¹⁶² Frameworks enable educators to collect and analyze data systematically.¹⁶³ By using rubrics aligned with the framework, instructors can provide targeted feedback to students, identify areas for improvement, and make informed curriculum adjustments.¹⁶⁴ Once results are analyzed over time, frameworks should provide greater consistency and coherence.¹⁶⁵

Frameworks are also conceptually helpful to student learning. When information is organized within a conceptual framework, it becomes more than just isolated knowledge; it forms a structured foundation that can be flexibly adapted to various scenarios.¹⁶⁶ According to the National Research Council, “[t]o develop competence in an area of inquiry, students must: (a) have a deep foundation of factual knowledge, (b) understand facts and ideas in the context of a conceptual framework, and (c) organize knowledge in ways that facilitate retrieval and application.”¹⁶⁷ Organizing information conceptually empowers learners to connect the dots, see relationships, and transfer their knowledge to diverse contexts, ultimately fostering deeper understanding and proficiency.

A significant discovery in the field of learning and knowledge transfer emphasizes the importance of structuring information within a conceptual framework.¹⁶⁸ This approach enhances the capacity for “transfer,” enabling students not only to apply what they have learned in novel contexts but also to acquire related information with greater efficiency.¹⁶⁹ Think of it as building a mental scaffold upon

¹⁶¹ NAT’L RSCH. COUNCIL, *supra* note 153, at 16–17.

¹⁶² *Rubrics for Assessment*, N. ILL. UNIV., <https://www.niu.edu/citl/resources/guides/instructional-guide/rubrics-for-assessment.shtml> [<https://perma.cc/2HUK-Y2LY>] (last visited Mar. 10, 2024).

¹⁶³ *See, e.g.*, Tasha Almond-Dannenbring et al., *A Framework for Student Success Analytics*, EDUCAUSE (May 25, 2022), <https://library.educause.edu/resources/2022/5/a-framework-for-student-success-analytics> [<https://perma.cc/47MD-YMTR>].

¹⁶⁴ N. ILL. UNIV., *supra* note 162.

¹⁶⁵ NAT’L RSCH. COUNCIL, *supra* note 153, at 16–17.

¹⁶⁶ *Id.* at 16 (“[K]nowledge of a large set of disconnected facts is not sufficient.”).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

which new information and skills can be seamlessly integrated. This structured approach not only facilitates the application of learned concepts in different situations but also accelerates the acquisition of related knowledge.¹⁷⁰

Keep in mind that for all their positives, over-reliance on frameworks can stifle creativity, as well as the flexibility that is so important to any excellent educational environment.¹⁷¹ Frameworks must be critiqued, since the framework is only as “good” as those that created it.¹⁷² Consider the creators’ processes and experiences. Educational frameworks, whether they pertain to learning outcomes, objectives, or rubrics, are developed by individuals or groups with their own perspectives, experiences, and biases.¹⁷³ The quality and effectiveness of a framework can be greatly influenced by the expertise, insights, and diversity of perspectives of those involved in its creation.¹⁷⁴

Frameworks can also support a culture of continuous improvement in education. They allow for ongoing assessment and refinement of learning outcomes, objectives, and rubrics to better meet the evolving needs of students and the educational landscape.¹⁷⁵ Frameworks should be flexible enough to adapt to changes in education, technology, and societal norms.¹⁷⁶ A static framework may become outdated or less relevant over time.¹⁷⁷ Critiquing and revising frameworks allows them to remain adaptable and responsive to evolving educational needs.¹⁷⁸

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 45.

¹⁷² David J. Herring, *Teaching Legal Frameworks*, in SUPPLEMENTING SOCRATES 1, 1 (2015) (emphasizing students’ need to learn to create their own accurate frameworks).

¹⁷³ See Kimberle Williams Crenshaw, *Foreword: Toward a Race Conscious Pedagogy in Legal Education*, 4 CAL. REV. L. & WOMEN’S STUD. 33, 41–43 (1994).

¹⁷⁴ *Id.* at 43–44.

¹⁷⁵ UNIV. OF CAL. SANTA CRUZ, GUIDELINES FOR THE DEVELOPMENT AND ASSESSMENT OF PROGRAM LEARNING OUTCOMES 2–3 (2013), <https://mediafiles.ucsc.edu/iraps/assessment/plo-guidelines.pdf> [<https://perma.cc/Y39P-NR99>].

¹⁷⁶ See NAT’L RSCH. COUNCIL, *supra* note 153, at 17 (explaining how experts can adapt their frameworks to deal with changing situations).

¹⁷⁷ *Id.*

¹⁷⁸ N. ILL. UNIV., *supra* note 162.

C. *Rubrics Support Outcomes and Course Objective Development*

Rubrics can serve as valuable tools in the development of curricular outcomes and course objectives for cultural proficiency education by providing clear criteria for evaluating performance.¹⁷⁹ Survey tools and self-assessments complement rubrics by offering insights into students' perspectives and self-awareness.¹⁸⁰ They ensure alignment between objectives and assessment criteria, provide clarity and transparency, and enable objective assessment.¹⁸¹ Rubrics also support progress tracking, tailored feedback, customization for specific objectives, and the incorporation of multidimensional criteria related to cultural proficiency.¹⁸² They offer data for curriculum improvement, promote accountability, and ensure consistency in assessment.¹⁸³ Overall, rubrics enhance the quality of education, helping students achieve desired learning outcomes effectively and transparently.

Rubrics have no set form and law professors use the term “rubric” to describe various types of assessment tools.¹⁸⁴ For the purposes of this Article, “rubrics” are assessment tools that provide a structured approach for evaluating and grading student work based on specific criteria or objectives that provide descriptions of varying levels of student work quality.¹⁸⁵ Using rubrics in assessment, especially in a law school course setting, brings numerous advantages and can serve as a valuable teaching tool.¹⁸⁶ For instance, rubrics can be used to evaluate a course in its entirety and/or to assess the various parts of an exam or other assignments.¹⁸⁷ Moreover,

¹⁷⁹ Sandra L. Simpson, *Riding the Carousel: Making Assessment a Learning Loop Through the Continuous Use of Grading Rubrics*, 6 CANADIAN LEGAL EDUC. ANN. REV. 35, 38 (2011).

¹⁸⁰ *Id.*

¹⁸¹ Curcio et al., *supra* note 134, at 106, 121.

¹⁸² *See* Simpson, *supra* note 179, at 41, 42, 50.

¹⁸³ *See id.* at 41, 42, 50.

¹⁸⁴ N. ILL. UNIV., *supra* note 162 (outlining various types of rubrics).

¹⁸⁵ Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, MICH. STATE L. REV. 1, 4 (2004); Simpson, *supra* note 179, at 43 (“Rubrics ‘identify the knowledge and skills a teacher assesses and provide[s] criteria for how a student demonstrates success in these skills.’”).

¹⁸⁶ Sparrow, *supra* note 185, at 9 (“In addition to being a tool to evaluate and provide specific feedback, when provided in advance, a rubric tells the student how she will be graded, and is a teaching tool.”).

¹⁸⁷ *Id.* at 8 (giving examples of rubrics used for a course versus for a specific exam).

rubrics allow educators to consistently evaluate and provide student feedback, and additionally, when given to students *before* the assessment, allow students to focus their work on the skills that will be assessed.¹⁸⁸

A well-constructed rubric allows for meaningful, formative feedback for students and promotes growth in student learning.¹⁸⁹ Instead of just receiving a grade, students can identify specific areas in which they excelled as well as those in which they need improvement.¹⁹⁰ This is especially crucial in law school where the development of nuanced skills—from legal writing to crafting arguments and cultural proficiency—is vital.¹⁹¹ Moreover, by setting clear standards, rubrics ensure that each student is judged by the same criteria, making the grading process more equitable.¹⁹²

Constructing an effective rubric to support student learning outcomes in any law course involves several steps. First, an effective rubric determines student learning outcomes, making assessment criteria transparent to students.¹⁹³ These outcomes should align with the goals of the course and reflect what the professor wants students to achieve.¹⁹⁴ Any learning outcome that might be assessed starts with the stated objectives in the course syllabus and should be supported by the material covered in the course.¹⁹⁵ Each learning outcome should be broken down into specific assessment criteria that are clear, measurable, and relevant to the learning objectives.¹⁹⁶

¹⁸⁸ *Id.* at 9.

¹⁸⁹ Simpson, *supra* note 179, at 39 (“[B]ecause learning to read and write about the law is like learning a foreign language to most students, use of formative assessments is necessary to assist students in identifying their weaknesses and improving in those areas.”).

¹⁹⁰ Sparrow, *supra* note 185, at 9.

¹⁹¹ *Id.*

¹⁹² Veronica Boix Mansilla, Elizabeth Dawes Duraisingh, Christopher R. Wolfe & Carolyn Haynes, *Targeted Assessment Rubric: An Empirically Grounded Rubric for Interdisciplinary Writing*, 80 J. HIGHER EDUC. 334, 336 (2009).

¹⁹³ Simpson, *supra* note 179, at 42–43, 47.

¹⁹⁴ *Id.* at 47.

¹⁹⁵ *Id.* at 47–48.

¹⁹⁶ *Id.* at 50; MCMURTY-CHUBB, *supra* note 105, at 81–82 (listing sample “DEI” course outcomes).

A rubric should also identify different levels of proficiency or achievement for each assessment criterion.¹⁹⁷ Typically, rubrics use a scale, such as “Underdeveloped,” “Basic,” “Developing,” and “Advanced,” or numerical values (e.g., 1, 2, 3, 4) within a constructed table that includes rows for each assessment criterion and columns for each level of proficiency.¹⁹⁸ A rubric should clearly describe what each level means in terms of performance, providing clear and concise descriptions of what constitutes performance at each level for each criterion.¹⁹⁹ The best rubrics are specific, avoid vague language, and use action verbs to describe observable behaviors or qualities.²⁰⁰ A rubric should also be tested to ensure that it effectively distinguishes between different levels of performance and aligns with intended learning outcomes. Based on testing and feedback, a rubric should be revised and refined, with input from colleagues where possible.

Finally, a rubric can be used to provide constructive feedback to students, referencing specific criteria and levels of proficiency in instructor feedback to help students understand their strengths and areas for improvement.²⁰¹ Instructors should share rubrics with students when the assessment task is assigned.²⁰² Because law students are seldom given rubrics, instructors should explain to students how the rubric will be used to evaluate their work and clarify any questions they may have.²⁰³

¹⁹⁷ Simpson, *supra* note 179, at 48.

¹⁹⁸ See *infra* Appendix A. The CPL Rubric uses the designations “Underdeveloped,” “Basic,” “Developing,” and “Advanced.” *Id.*

¹⁹⁹ *Id.* Generally in the CPL rubric, the “Underdeveloped” designation indicates that the student has not recognized or identified the objective assessed at all. *Id.* The “Basic” designation indicates that the student broadly identifies the objective assessed (e.g., cultural humility). *Id.* The “Developing” designation indicates student understanding of the objective assessed in the specific context of the assignment. *Id.* The “Advanced” designation indicates that the student understands the objective assessed in the specific context of the assignment and provides examples of how to meet the objective assessed in the specific context of the assignment and lawyering. *Id.*

²⁰⁰ Simpson, *supra* note 179, at 48–49.

²⁰¹ MCMURTY-CHUBB, *supra* note 105, at 95–96; see also Robert C. Downs & Nancy Levit, *If It Can't Be Lake Wobegone . . . a Nationwide Survey of Law School Grading and Grade Normalization Practices*, 65 UMKC L. REV. 819, 823 (1997) (suggesting that traditional law school exams are not an ideal way to help students improve).

²⁰² Simpson, *supra* note 179, at 51.

²⁰³ *Id.*

For maximum effectiveness, debriefing students on the rubric use, and the meaning of their results, can be an extremely helpful learning exercise.²⁰⁴

III. THE CULTURALLY PROFICIENT LAWYERING FRAMEWORK

The Culturally Proficient Lawyering framework (“CPL Framework” or “the Framework”) enables lawyers and law students to work effectively in cross-cultural situations within legal environments, systems, and diverse organizations.²⁰⁵ The CPL Framework has three components: (1) “Awareness,” (2) “Knowledge,” and (3) “Skills.” Students develop culturally proficient lawyering skills as they work through fourteen learning objectives within this three-part framework.

During the “Awareness” module—Objectives 1 through 5—students learn to recognize their own cultural identities and biases, and the importance of cultural factors in legal contexts and professional identity formation. The “Knowledge” module—Objectives 6 through 10—entails a deep understanding of social norms, expectations, and historical contexts relevant to legal practice. Finally, the “Skills” module—Objectives 11 through 15—encourages students to demonstrate the practical ability to apply their newly-gained awareness and knowledge to navigate cross-cultural interactions, communicate effectively, and provide culturally sensitive legal representation. In combination, the three-part CPL Framework empowers legal practitioners by allowing them to develop personal and professional skills and policies that promote fairness in the legal system and contribute to a more inclusive and equitable society.

The CPL Framework encourages law students to be curious, self-directed learners who understand cultural proficiency as a continuum of development that requires continuous learning, practice, and adjustment.²⁰⁶ The cultural proficiency

²⁰⁴ *Id.* at 52 (“Respecting students enough to show them where they are in the process of mastering skills will encourage them to be more reflective of their own skills, improving self-reflection skills or metacognition.”).

²⁰⁵ The CPL Framework is adapted from medical education literature. *See, e.g.*, TERRY L. CROSS, BARBARA J. BAZRON, KARL W. DENNIS & MAREASA R. ISAACS, TOWARDS A CULTURALLY COMPETENT SYSTEM OF CARE, at iv (1989).

²⁰⁶ Jack Frawley, Gabrielle Russell & Juanita Sherwood, *Cultural Competence and the Higher Education Sector: A Journey in the Academy*, in CULTURAL COMPETENCE AND THE HIGHER EDUCATION SECTOR: AUSTRALIAN PERSPECTIVES, POLICIES AND PRACTICE 3, 9 (Jack Frawley et al. eds., 2020); Gabrielle Russell, *Reflecting on a Way of Being: Anchor Principles of Cultural Competence*, in CULTURAL COMPETENCE AND THE HIGHER EDUCATION SECTOR: AUSTRALIAN PERSPECTIVES, POLICIES AND PRACTICE 31, 31 (Jack Frawley et al. eds., 2020). Students should explore each stage of the continuum, including cultural incapacity, blindness, pre-competence, competence, and proficiency, gaining insights

learning process is non-linear.²⁰⁷ Students, therefore, might develop in any of the three areas in any order. Nevertheless, in terms of curricular mapping and planning, it is natural to proceed in the order of first developing student awareness, then knowledge, and finally skill, using each area to establish foundational concepts for the next. CPL involves self-reflection, humility, and a willingness to adapt one's behavior and attitudes when encountering new cultural perspectives and challenges.²⁰⁸ The developmental continuum is particularly relevant in legal education because exposure to topics such as implicit bias or microaggressions is only a beginning toward cultural proficiency for future lawyers who will represent clients on a variety of legal matters. Thus, the skills and personal policies that enable lawyers to work seamlessly and effectively in cross-cultural situations require an ongoing and long-term commitment and openness to development.²⁰⁹

The CPL Framework embraces a dynamic, non-static, and ever-changing definition of culture.²¹⁰ This modern theory does not view culture as fixed in time and place, but instead as evolving and subject to continual transformation.²¹¹ Understanding culture can be complex because assumptions are often made based on what can be seen from the outside of the culture itself.²¹² Because there are so many natural influences that reinforce individual biases and cultural assumptions,

into the characteristics and attitudes associated with each stage. *See* Boles, *Seeking Inclusion from the Inside Out*, *supra* note 95, at 248, for a description of these points on the continuum.

²⁰⁷ Russell, *supra* note 206.

²⁰⁸ Bryant, *supra* note 29, at 55–56; Christina A. Zawisza, *Teaching Cross-Cultural Competence to Law Students: Understanding the “Self” as “Other,”* 17 FLA. COASTAL L. REV. 185, 200 (2016).

²⁰⁹ Taite & Boothe, *supra* note 83, at 821.

²¹⁰ Bryant, *supra* note 29, at 67; Zawisza, *supra* note 208, at 194; Michael Davis, *The “Culture” in Cultural Competence*, in CULTURAL COMPETENCE AND THE HIGHER EDUCATION SECTOR: AUSTRALIAN PERSPECTIVES, POLICIES AND PRACTICE 15, 15 (Jack Frawley et al. eds., 2020).

²¹¹ Davis, *supra* note 210.

²¹² LARRY D. PURNELL & BETTY J. PAULANKA, *TRANSCULTURAL HEALTH CARE: A CULTURALLY COMPETENT APPROACH* 5 (3d ed. 2008).

Culture, a combined anthropological and social construct, can be seen as having three levels: (1) a tertiary level that is visible to outsiders, such as things that can be seen, worn, or otherwise observed; (2) a secondary level, in which only members know the rules of behavior and can articulate them; and (3) a primary level that represents the deepest level in which rules are known by all, observed by all, implicit, and taken for granted

Id.

and because culture is ever changing and dynamic, CPL development requires continuous intentional commitment and effort by the learner. This commitment extends beyond professional settings and encompasses personal attitudes and behaviors as well.²¹³

CPL also recognizes that historical, cultural context matters in cross-cultural interactions and legal environments.²¹⁴ This is crucial because it acknowledges that cultural beliefs, norms, and biases have deep historical roots that continue to influence contemporary attitudes and behaviors. By delving into the historical underpinnings of cultural dynamics, legal professionals can better comprehend the complex issues that arise in diverse legal settings.²¹⁵ Moreover, understanding historical context helps lawyers navigate cases involving historical injustices, discrimination, or systemic biases.²¹⁶ This enables them to provide more competent legal representation and advocacy for clients. Ultimately, cultural proficiency goes beyond surface-level understanding and embraces a holistic comprehension of culture's evolution and its impact on the practice of law.

The CPL Framework offers teaching and curriculum guidance providing structured approaches to help lawyers develop essential skills and the mindset needed for cultural proficiency. Students should understand cultural proficiency as an evolving skill set that will make them better practicing lawyers upon graduation. Individual CPL requires building meaningful relationships, engaging in open dialogue, and actively seeking out opportunities to expand understanding of diverse cultures. In an increasingly interconnected world, individuals who prioritize this ongoing commitment to cultural proficiency are better equipped to foster inclusivity, resolve conflicts, and promote mutual respect across cultural boundaries, both in their personal lives and in their professional endeavors.²¹⁷

²¹³ *Id.*

²¹⁴ Iris I. Varner & Katrin Varner, *The Relationship Between Culture and Legal Systems and the Impact on Intercultural Business Communication*, 3 GLOB. ADVANCES BUS. & COMM'N CONF. & J. 2014, at 1, 3 (“[L]egal systems come out of a people’s history and culture, and in return, they also shape culture.”).

²¹⁵ *See id.*

²¹⁶ Ellen Mbuqe, *How Does Learning About Past Racial Injustice Inform Understanding Current Racial Discrimination?*, SYRACUSE UNIV.: MEDIA TIP SHEETS (Oct. 20, 2022), <https://news.syr.edu/blog/2022/10/20/how-does-learning-about-past-racial-injustice-inform-understanding-current-racial-discrimination/> [https://perma.cc/JPA2-QUBY].

²¹⁷ Taite & Boothe, *supra* note 83, at 821.

A. Awareness

In the CPL Framework, Awareness serves as the foundational cornerstone upon which all other dimensions of proficiency are built. The Awareness dimension, reflected in Objectives 1 through 5, is designed to equip law students with the essential insights and introspection needed to embark upon their journey toward cultural proficiency.

1. Professional Obligations: Evaluate Professional Obligations in Cultural Proficiency and Within the Context of Professional Identity Formation (Objective 1)

From the outset of their legal education, students learn the acceptable norms and practices within the legal profession, laying the foundation for their professional identity.²¹⁸ This professional identity formation encompasses the way lawyers understand their roles in the legal system, including their relationships with clients, courts, opposing parties, firms, and the broader legal system and society.²¹⁹ Professional identity goes beyond the rules of professional ethics to encompass “the ideals each of us holds regarding our professional roles, and how we apply those ideals to the complex situations we encounter in our professional lives.”²²⁰

Because some of the most complex and sensitive situations lawyers will regularly encounter involve cross-cultural interactions, lawyers should aim to develop a professional identity that centers around cultural proficiency as a skill.²²¹ Law school programs should emphasize and encourage ongoing professional identity development, fostering a lifelong commitment to cultural competence skill development.²²² Recognizing that cross-cultural interactions are among the most complex and sensitive situations lawyers encounter, this objective underscores the continuous evolution of lawyers as culturally proficient advocates. Through

²¹⁸ “Professional identity is the way a lawyer understands his or her role relative to all of the stakeholders in the legal system, including clients, courts, opposing parties and counsel, the firm, and even the legal system itself (or society as a whole).” Martin J. Katz, *Teaching Professional Identity in Law School*, 42 *COLO. LAW.* 45, 45 (2013).

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ See Tully, *supra* note 75, at 245.

²²² See *id.*

Objective 1, students should also explore how the development of cultural competence can profoundly impact their effectiveness as legal practitioners.

Law students should also evaluate professional obligations in exercising cultural competence through examining lawyer ethical and professional standards. Specifically considering the duty of zealous advocacy,²²³ competent representation,²²⁴ and the promotion of equal access to justice,²²⁵ students should reflect upon how cultural competence intersects with professional identity formation. They should explore these ethical and professional obligations through case studies and exercises that encourage learners to analyze how these standards influence legal practice.

2. Cultural Self-Awareness: Understand Culture, Identity & Demonstrate Cultural Self-Awareness (Objective 2)

In the journey toward becoming culturally proficient lawyers, the first step is embracing cultural self-awareness.²²⁶ Objective 2 of the CPL Framework lays the foundation for understanding the significance of introspection and reflection in cultural proficiency, with the ideal of reflexive lawyering practice. This objective is not merely a preliminary step but an essential prerequisite to meaningful cross-cultural engagement and the foundation upon which culturally proficient legal practice is built. As students embrace cultural self-awareness, they begin a transformative journey toward becoming lawyers who understand the profound

²²³ MODEL RULES OF PRO. CONDUCT r. 1.3 (AM. BAR ASS'N 1983) (“A lawyer shall act with reasonable diligence and promptness in representing a client.”).

²²⁴ *Id.* at r. 1.1 (“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”).

²²⁵ MODEL RULES OF PRO. CONDUCT: PREAMBLE & SCOPE cmt. 6 (AM. BAR. ASS'N 1983).

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and quality of service rendered by the legal profession. . . . [A]ll lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice

Id.

²²⁶ Bryant, *supra* note 29, at 40 (“To become good cross-cultural lawyers, students must first become aware of the significance of culture on themselves.”).

impact of their own “cultural lenses” and who are better prepared to navigate the rich tapestry of diversity they will encounter in their legal careers.²²⁷

By understanding their own cultural identity and perspectives, learners can recognize how cultural values and beliefs may influence interactions with people from dissimilar backgrounds.²²⁸ Cultural self-awareness is a dynamic process that involves exploring one’s own cultural identity, biases, assumptions, and attitudes.²²⁹ It entails the introspection and reflection necessary to comprehend how our cultural backgrounds and personal lenses influence our perceptions, worldviews, and decision-making. This objective is about recognizing that each of us is a “cultural being” whose experiences and perspectives are shaped by our unique cultural contexts.²³⁰

Self-awareness is the key that unlocks the door to cross-cultural competence.²³¹ By engaging in introspection and self-reflection, learners gain profound insights into the multifaceted aspects of their cultural identities.²³² Self-awareness empowers students to explore their beliefs, values, and biases and understand how these elements impact their interactions with individuals who do not share the same cultural background.²³³ It is through this process of self-discovery that learners can begin to recognize the potential biases and assumptions they bring to the table.²³⁴ When students gain a deep understanding of their own cultural identity and

²²⁷ PURNELL & PAULANKA, *supra* note 212 (“The ability to understand oneself sets the stage for integrating new knowledge related to cultural differences into the professional’s knowledge base and perceptions. . .”).

²²⁸ Russell, *supra* note 206, at 36.

²²⁹ There are three key components that students must grasp in meeting this learning objective. First, students must understand themselves as cultural beings and be encouraged to consider their own cultural identity and background. Second, informed by this understanding, law students should develop heightened understanding about how that culture impacts cross cultural engagement and the perceptions others have about us when we engage cross culturally. Third, students should consider how cultural lenses might impact lawyering practice and professional identity formation, and provide the tools and resources to identify how their cultural identity shapes their perspective and influences interactions with others.

²³⁰ Russell, *supra* note 206, at 36.

²³¹ Taite & Boothe, *supra* note 83, at 822.

²³² See John Hamilton, *Intercultural Competence in Medical Education—Essential to Acquire, Difficult to Assess*, 31 MED. TCHR., 862–63 (2009) (emphasizing the importance of experience and reflection in the assessment of cultural competence).

²³³ Taite & Boothe, *supra* note 83, at 820–21.

²³⁴ Patel, *supra* note 29, at 149.

perspectives, they are also better equipped to navigate the complex terrain of multi-cultural legal environments.²³⁵

In legal practice, self-awareness is invaluable because it allows lawyers to empathize with others, avoid stereotypes, and approach interactions with the humility and respect necessary for effective legal practice.²³⁶ Lawyers who embark upon the journey of self-awareness are better positioned to build trust with clients that do not share the same cultural background.²³⁷ Moreover, they can offer more effective representation by recognizing the cultural nuances that may affect their clients' legal needs and expectations.²³⁸ Additionally, self-aware lawyers are less likely to perpetuate stereotypes or engage in actions that may unintentionally harm their clients.²³⁹

3. The Cultural Proficiency Toolbox: Understand Cultural Competence as a Skill, the Cultural Competence Continuum, and the Five Essential Elements of Cultural Proficiency (Objective 3)

Objective 3 introduces the cultural proficiency toolbox that equips learners with the fundamental tools necessary for navigating the complexities of cultural diversity in the realm of legal practice. In line with this objective, students begin to grasp cultural proficiency as a multifaceted skill on a continuum, and delve into the essential components that define it. Students will not only enhance their legal acumen, but also cultivate the mindset and capabilities necessary to become culturally proficient legal professionals who can serve *everyone* with respect, empathy, and skill.

Objective 3 teaches students to use the “cultural proficiency continuum,” an analytical tool that can be used to explore, evaluate, and guide cultural interactions.²⁴⁰ Developed and refined by a team of educational experts, the cultural

²³⁵ *Id.* at 143.

²³⁶ Boles, *Seeking Inclusion from the Inside Out*, *supra* note 95, at 215 (“[C]ultural proficiency starts at the root of the problem by seeking to dismantle the biased beliefs and hegemonic values of the individual or organization.”).

²³⁷ Patel, *supra* note 29, at 145.

²³⁸ *Id.* at 154 (recommending that students learn and better understand cultural nuance and avoid stereotypes by being given hypothetical situations to recognize alternative reasons for client behavior).

²³⁹ *Id.* at 149.

²⁴⁰ See LINDSEY ET AL., *supra* note 65, at 129–30 for a description of the cultural proficiency continuum.

proficiency continuum encapsulates various stages of cultural awareness and proficiency, ranging from cultural incapacity (lack of awareness) to cultural proficiency (the highest level of competence).²⁴¹ By adopting the continuum, students learn that cultural proficiency is not a fixed attribute.²⁴² Rather, cultural proficiency is a dynamic skill that can be developed and honed over time.²⁴³ This proficiency involves the ability to effectively interact with individuals from diverse cultural backgrounds while demonstrating respect, empathy, and an understanding of their unique perspectives. Progression along the continuum is not linear and cultural competence is not a one-size-fits-all concept; rather, it is a skill that requires continuous cultivation.²⁴⁴

Central to Objective 3 are the Five Essential Elements of cultural proficiency.²⁴⁵ These elements serve as pillars upon which culturally proficient legal practice is built:

- (1) *Assessing Culture*: This element involves the ability to assess and understand the cultural backgrounds, beliefs, and values of clients and communities.²⁴⁶ It requires active engagement in learning about different cultures to inform legal strategies and interactions.
- (2) *Valuing Diversity*: Valuing diversity goes beyond recognizing differences; it involves appreciating and respecting the richness that a variety of perspectives bring to the legal profession.²⁴⁷ Students will learn to embrace diversity as a source of strength.

²⁴¹ Boles, *Seeking Inclusion from the Inside Out*, *supra* note 95, at 248. The continuum has six developmental points: “(1) cultural destructiveness, (2) cultural incapacity or cultural intolerance, (3) cultural blindness or cultural reductionism, (4) cultural pre-competence, (5) cultural competence, and (6) cultural proficiency.” *Id.*

²⁴² *Id.* at 249.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 246.

²⁴⁶ *Id.* (“[T]o *assess culture*, means to learn to identify the cultural groups present in the system, including your own.”).

²⁴⁷ *Id.* at 247 (“In valuing diversity, an individual or organization ‘demonstrate[s] an appreciation for the differences among and between groups.’”) (quoting KIKANZA J. NURI-ROBINS ET AL., *CULTURALLY PROFICIENT INSTRUCTION: A GUIDE FOR PEOPLE WHO TEACH* xxiv (3d ed. 2012)).

- (3) *Managing Cultural Conflict*: Conflict may arise when differing cultural perspectives intersect. Cultural proficiency equips individuals with the skills to manage and resolve these conflicts respectfully and effectively, fostering productive dialogues and relationships.²⁴⁸
- (4) *Adapting to Diversity*: As culturally proficient lawyers, students will discover the importance of adapting their communication, strategies, and approaches to better suit the diverse needs and expectations of their clients. This element emphasizes flexibility and responsiveness.²⁴⁹
- (5) *Institutionalizing Cultural Knowledge*: This final element focuses on embedding cultural knowledge and competence within the fabric of legal institutions and the personal policies of lawyers.²⁵⁰ It calls for a commitment to creating inclusive, culturally proficient learning and legal environments.

4. Proficiency Inhibitors: Describe Cultural Proficiency Inhibitors, Including Implicit Associations, and Practice Strategies to Overcome Them (Objective 4)

Objective 4 explores the critical understanding needed about the barriers that can impede the path to cultural proficiency. This Objective equips students with the awareness and initial tools to identify, confront, and overcome cultural proficiency inhibitors, ensuring that they develop the awareness and skills necessary to navigate cultural diversity effectively. Recognizing and addressing cultural proficiency inhibitors is paramount for lawyers working in a culturally diverse society. Proficiency in this objective enables students to provide more equitable and effective legal representation, as they can navigate potential biases and shed ethnocentric ways of thinking, thereby allowing them to engage in more inclusive communication and better advocate for the culturally relevant needs of their clients.²⁵¹

²⁴⁸ *Id.* (“The goal of the third element is to learn to respond appropriately and effectively to the issues that arise in a diverse environment.”).

²⁴⁹ *Id.* at 248 (“Here, an organization or individual must engage in adopting or changing practices to support diversity and inclusion.”).

²⁵⁰ *Id.* (“The goal of the fifth element is to drive the changes into the systems of the organization so that culturally proficient practices are not dependent on the leadership of a particular person or group.”).

²⁵¹ Taite & Boothe, *supra* note 83, at 818.

Implicit bias, with its profound impact on perceptions and decision-making, takes center stage within this objective.²⁵² Students will explore the science behind implicit bias, uncover how biases develop, and gain insights into the far-reaching effects biases have on interactions between individuals from divergent backgrounds. To be successful in gaining proficiency in this objective, students should be afforded opportunities to reflect on their own assumptions, biases, and preconceived notions that may impact their interactions with individuals from different cultural backgrounds and communities that are different from the ones with which they are familiar.²⁵³ This introspection is pivotal in dismantling barriers to cultural competence.

While implicit bias associations are a critical focus, students are also encouraged to explore other proficiency inhibitors that may manifest in legal practice. These inhibitors can manifest in various forms, including implicit associations,²⁵⁴ ethnocentrism,²⁵⁵ racial anxiety,²⁵⁶ and cultural

²⁵² See Frank, *supra* note 47, at 20 (“[S]ocial scientists and legal scholars strongly suspect that individuals’ subconscious beliefs, automatic associations and stereotypes have a variety of implications for those entering the justice system.”).

²⁵³ Case studies and interactive exercises can help students develop skills in recognizing and acknowledging their own biases while exploring ways to create inclusive legal environments that actively address and mitigate biases. For example, students should be introduced to the OSEE (Observe, State, Explore, Evaluate) tool as a bias intervention strategy. Ultimately, this learning objective encourages law students to consider the factors that put decision makers at high-risk of bias and promote strategies to overcome them.

²⁵⁴ See Frank, *supra* note 47, for a description of implicit associations.

²⁵⁵ “Ethnocentrism” is a concept that refers to the tendency of individuals or groups to view their own culture, beliefs, and values as superior to those of other cultures. It involves the belief that one’s own cultural norms and practices are the “right” or “normal” way of doing things, and it often leads to judgments and biases against cultures that are perceived as different or unfamiliar. See WILLIAM A. HAVILAND, HARALD E.L. PRINS, BUNNY MCBRIDE & DANA WALRATH, CULTURAL ANTHROPOLOGY: THE HUMAN CHALLENGE 401 (Aileen Berg et al. eds., 14th ed., 2014); Neyooxet Greymorning, *The Anglocentric Supremacy of the Marshall Court*, 10 ALB. GOV’T L. REV. 191, 203 (2017).

Ample evidence exists to support claims of ethnocentrism on the part of federal jurists who sat in judgment on rights of Indigenous people. For this reason there should be little doubt that judges, even when believing they have the best of intentions, are not immune to the influences and biases of the culture that governs them.

Id.

²⁵⁶ Racial anxiety specifically refers to the unease or anxiety that individuals, particularly those from racial majority groups, may experience in interactions with people of a different racial or ethnic background. Rachel D. Godsil & L. Song Richardson, *Racial Anxiety*, 102 IOWA L. REV. 2235, 2243 (2017) (“[P]eople

insecurity.²⁵⁷ These inhibitors can drive a wide range of negative outcomes, such as stereotypes,²⁵⁸ cultural misconceptions, or a lack of relevant cultural knowledge.²⁵⁹ Equally important to identifying inhibitors is the development of strategies to overcome them. Optimal law school curricula exploring this objective should work to equip students with tools and techniques to challenge and mitigate the impact of cultural proficiency barriers, fostering an environment in which cultural proficiency can thrive.

In addition to understanding implicit bias and other cultural proficiency inhibitors, it is essential for students to recognize the potential biases present in generative artificial intelligence (“AI”) systems.²⁶⁰ As AI becomes increasingly

report feeling anxious and uncomfortable during cross-racial interactions and often exhibit behaviors associated with anxiety, such as sweating, increased heart rate, facial twitches, fidgeting and avoiding eye contact.”). It often centers around concerns related to race, racial stereotypes, bias, or the fear of saying or doing something perceived as racially insensitive or offensive. *Id.* at 2239.

²⁵⁷ Cultural insecurity is an emerging concept that refers to a sense of social unease or discomfort experienced by individuals when they encounter cultures, values, or norms that differ from their own, especially as it relates to immigration and politicized terroristic acts. It often arises from a lack of familiarity or understanding of other cultures, leading to feelings of uncertainty, anxiety, or even fear when interacting with individuals from foreign backgrounds. Although the concepts of “cultural insecurity” and “racial anxiety” are related, “cultural insecurity” is a broader concept and is not limited to racial or ethnic factors and can include anxiety related to differences in language, customs, values, and social norms. See Michel Wieviorka, *Cultural Insecurity in a World of Violence, Fear and Risk*, in HANDBOOK OF CULTURAL SECURITY (Yasushi Watanabe ed., 2018).

[T]hroughout the world, the cultural insecurity of the citizens in a country, combined with various other fears and anxieties, in particular economic, is an encouragement for policies for the closure of countries. As a consequence, walls are built along the borders, detention camps are opened, barriers of all sorts attempt to close the country, and those who wish to cross these barriers illegally often pay with their lives for doing so.

Id. at 22–23.

²⁵⁸ John A. Powell, *Structural Racism: Building Upon the Insights of John Calmore*, 86 N.C. L. REV. 791, 799–800 (2008) (“Research in cognitive psychology demonstrates that subconscious stereotyping is a normal byproduct of ordinary cognitive functioning and a necessary part of human survival.”).

²⁵⁹ Chopp, *supra* note 49, at 368–69.

²⁶⁰ Justice Brooks, *Understanding Generative AI: A Primer for the Next Step in AI and Its Legal Applications*, OR. ST. BAR BULL., Apr. 2024, at 22, 25, <https://www.osbar.org/bulletin/issues/2024/2024April/offline/download.pdf> [<https://perma.cc/R3F6-B4HR>].

Generative AI algorithms are susceptible to biases present in the training data, which can perpetuate and exacerbate existing disparities in the legal system. It is essential for attorneys to be mindful of these biases and take steps to mitigate them when utilizing generative AI tools. susceptible to biases present in the

integrated into legal research, case analysis, and client interactions, understanding how biases can be embedded within these technologies is critical.²⁶¹ Generative AI models are trained on vast datasets that may reflect existing societal prejudices, resulting in outputs that can unintentionally perpetuate stereotypes or reinforce inequities.²⁶² Students need to be aware of these limitations and develop the skills to critically evaluate AI-generated content, ensuring that their reliance on such tools does not undermine culturally proficient legal practice.²⁶³

5. Humility and Sensitivity: Demonstrate Cultural Sensitivity and Humility, Understand How Various “isms” Perpetuate Privilege, Inequity, and Exclusion (Objective 5)

Cultural humility and sensitivity are critical components of the CPL Framework. Objective 5 not only encourages students to develop cultural sensitivity and humility, but also explores the profound impact of privilege, inequity, and exclusion on the legal profession. The CPL Framework urges students to approach cultural interactions with curiosity and empathy, rather than judgment or defensiveness.²⁶⁴ The CPL Framework recognizes and affirms the intricate tapestry of cultures within society and the inevitable engagement of diverse cultures with the

training data, which can perpetuate and exacerbate existing disparities in the legal system. It is essential for attorneys to be mind of these biases and take steps to mitigate them when utilizing generative AI tools.

Id.

²⁶¹ See generally CATHY O’NEIL, WEAPONS OF MATH DESTRUCTION: HOW BIG DATA INCREASES INEQUALITY AND THREATENS DEMOCRACY (2017).

²⁶² Ra’na Heidari, *AI’s Transformative Impact on Ethical Legal Practices*, S.C. LAW., Nov. 2023, at 32, 35, <https://cdn.coverstand.com/18928/807143/566627f315d343d32aa40eba5b9f27b3e0e300c5.pdf> [<https://perma.cc/DG7R-9B3N>].

One of the major concerns about AI, especially machine learning models, is the potential perpetuation of existing biases. AI systems perform only as well on the data which they are trained. If the data used to train these models comes from biased sources or reflects discriminatory practices, the AI tools may unintentionally reinforce these biases.

Id.

²⁶³ Although the transformative power of AI is expected to revolutionize public access to legal assistance “[b]y reducing costs and automating basic services,” there is also risk that “low-income AI services may amplify the current power imbalances in court for impoverished Americans.” *Id.* at 36.

²⁶⁴ See Falati, *supra* note 77, at 647–48.

legal profession. Law students must therefore cultivate an awareness of cultural diversity, both within society and the legal profession itself, in validating ways.

Students should be encouraged to develop a profound sense of cultural sensitivity and humility by learning to approach diverse cultures and communities with respect, openness, and a genuine willingness to learn. Within Objective 5, students should delve into the concept of privilege and its intersections with power dynamics, gaining a deeper understanding of the experiences of historically excluded and marginalized groups and critically evaluating their own privileges. This continued self-reflection emphasizes the importance of cultural humility when engaging in cross-cultural interactions.²⁶⁵

Under Objective 5, students should also be introduced to the concept of allyship and its role in promoting equity within legal systems. As such, legal advocacy as allyship becomes a powerful tool for fostering inclusivity and equity within the legal profession. Students should learn how to amplify marginalized voices, recognize microaggressive behaviors, and embrace diversity as an asset in lawyer-client relationships.²⁶⁶ Furthermore, this objective extends into legal advocacy as a form of allyship. Students will practice creating a sense of belonging for clients by making decisions that prioritize diversity, implementing best practices to reduce implicit biases, and leveraging their privileges to enhance client outcomes.

B. Knowledge

The Knowledge portion of the CPL Framework requires that lawyers understand the foundations of cultural dynamics in the relevant practice environment. In American law schools, this requires foundational knowledge of the history of systemic injustice, racism, and sexism, among other “-isms” and “-phobias.”²⁶⁷ In addition, lawyers should also possess knowledge of socioeconomic disparities and their impact on marginalized communities.²⁶⁸ This knowledge should encompass an awareness of economic inequalities, access to resources, and the

²⁶⁵ The concept of “privilege” is closely related to the concept of ethnocentrism, as it often reinforces ethnocentric attitudes and behaviors. See Kecia M. Thomas, *Psychological Privilege and Ethnocentrism as Barriers to Cross-Cultural Adjustment and Effective Intercultural Interactions*, 7 LEADERSHIP Q. 215 (1996).

²⁶⁶ Adams, *supra* note 40, at 13; Tully, *supra* note 75, at 214; Donohue, *supra* note 88, at 449, 456–57.

²⁶⁷ See Deborah N. Archer, *Political Lawyering for the 21st Century*, 96 DENV. L. REV. 399, 399 (2019); Spencer Rand, *Social Justice as a Professional Duty: Effectively Meeting Law Student Demand for Social Justice by Teaching Social Justice as a Professional Competency*, 87 U. CIN. L. REV. 77, 119 (2018).

²⁶⁸ Curcio et al., *supra* note 134, at 102.

influence of social class on individuals' and communities' experiences within the legal system.

Law students must also possess knowledge about the legal implications of cultural context and the significance of intersectionality in the human and legal experience.²⁶⁹ The knowledge needed for CPL is not composed of discrete bits of knowledge that overgeneralize the experiences of demographic or cultural groups.²⁷⁰ Rather, knowledge requires exposure to a broad range of cultural backgrounds, norms, values, and traditions. Moreover, it includes developing curiosity and understanding the histories, languages, customs, and beliefs of the various communities lawyers may encounter during their legal careers.²⁷¹

1. Historical Context: Evaluate How the Legacy of Slavery, Segregation, and the Imposition of Second-Class Citizenship on People of Color Through the Use of Law and Policy Continues to Permeate Society Today (Objective 6)

Objective 6 stands as a critical pillar within the CPL Framework. It challenges students to confront the profound and persistent impact of historical racial injustices on contemporary society, including the legal landscape. By confronting these legacies head-on, students are better prepared to advocate for justice, equality, and equity. This objective underscores the necessity of recognizing and dismantling systemic racism while fostering an empathetic and inclusive legal practice.

At the core of Objective 6 is the examination of how the legacy of slavery, segregation, and the imposition of second-class citizenship on African Americans

²⁶⁹ See Chopp, *supra* note 49, at 390–91.

²⁷⁰ See *id.* at 374.

Because people are simultaneously embedded within multiple cultures, however, it is extremely difficult to become 'culturally competent,' particularly if 'competence' denotes mastery of 'facts' about a particular culture. The cultural competence model carries the risk that professionals will feel overly confident in their understanding of clients from other cultures. It also carries the risk that people will rely on stereotypes when engaging with people from different cultures because they have studied the culture and maintain the belief that they are competent.

Id. (footnote omitted).

²⁷¹ PURNELL & PAULANKA, *supra* note 212; Curcio et al., *supra* note 134, at 101–02.

and other people of color continue to reverberate through society.²⁷² Students should explore how racism remains pervasive and normalized in various aspects of contemporary life, including law and policy.²⁷³ Objective 6 encourages students to broaden their perspectives beyond the Black/African American experience and to engage with the experiences of other marginalized communities, including Indigenous peoples, Latine Americans, Asian Americans (including South, East, and Southeast Asians), and MENA Americans (Middle Eastern and North African Americans). By examining the unique historical contexts and legal struggles of these communities, students gain a more comprehensive understanding of the intersectionality of racial injustice.

Objective 6 requires exploring the contemporary consequences of the racial caste system on communities of color.²⁷⁴ Moreover, this objective prompts students to critically assess disparities within the legal system, including disparities in arrest rates, sentencing outcomes, and the overrepresentation of people of color in the criminal justice system.²⁷⁵ This exploration includes an examination of the psychological and emotional impacts experienced by various communities as a result of historical and ongoing injustices.²⁷⁶ Students should be encouraged to examine instances of implicit bias, racial profiling, and disparate treatment in various legal contexts. Additionally, students should reevaluate the role of privilege in the context of systemic oppression and disparities, identifying which privileges have contributed to their own escape from or their being subject to these disparities.²⁷⁷

²⁷² See Samuel-Siegel, *supra* note 100, at 48–49 (footnote omitted) (“No law school course can be described fairly as lacking implications related to race. Teaching a subject ‘race neutrally’ means teaching it incompletely.”).

²⁷³ Building on their examination of internal biases set forth in prior objectives, students should research accounts of similar biases manifesting institutionally or systemically. The goal is to identify instances where race continues to play a role within current institutions or systems, with the pedagogical purpose of highlighting that race should not have any role in these systems. See Samuel-Siegel, *supra* note 100, at 6.

²⁷⁴ See Michele Goodwin, *Law and Anti-Blackness*, 26 MICH. J. RACE & L. 261, 282 (2021); see also Thomas E. Baines, *White Terror, Black Threat*, 84 ALB. L. REV. 131, 132–34 (2020).

²⁷⁵ See Jalila Jefferson-Bullock & Jelani Jefferson-Exum, *That Is Enough Punishment: Situating Defunding the Police Within Antiracist Sentencing Reform*, 48 FORDHAM URB. L.J. 625 (2021).

²⁷⁶ See Jamila Jefferson-Jones, “Community Dignity Takings”: *Dehumanization and Infantilization of Communities Resulting from the War on Drugs*, 66 KAN. L. REV. 993, 995 (2018).

²⁷⁷ See Samuel-Siegel, *supra* note 100, at 11. To gain a deeper appreciation of privilege, for example, students should create both individual and community privilege checklists. This involves a process of self-

2. Structural Racism: Understand the Social Construct of Race and How Institutionalized Racism Perpetuates a Racial Caste System that Relegates People of Color to the Bottom Tiers (Objective 7)

Objective 7 relates to structural racism, which plays an important role within the CPL Framework. It explores the systemic underpinnings of racial inequity, enabling students to comprehend the historical and contemporary dynamics of structural racism. In legal practice, it is necessary to understand the history of the dispossession of Native Americans, slavery and Jim Crow segregation, exclusionary immigration policies, and other ways in which the American legal system has been used to maintain a racialized social caste system.²⁷⁸ Objective 7 invites students to explore the enduring impact of these historical legacies and their connections to contemporary issues of institutionalized racism.²⁷⁹

To achieve cultural proficiency, students must engage with the development of race as a social construct.²⁸⁰ This includes tracing its origins in colonialism, the legacy of slavery, and the pernicious influence of scientific racism.²⁸¹ Students will gain insight into how race has been socially constructed and learn to articulate why racial classifications persist in American society.²⁸² Also central to Objective 7 is the recognition of institutionalized racism as a powerful force perpetuating a racial caste system.²⁸³ Students will grapple with the mechanisms through which racism is woven into the fabric of institutions, maintaining a hierarchy that relegates people of color to the lower rungs of society.²⁸⁴

reflection, conducting research, identifying privileges, reflecting on the impact of those privileges, and discussing those consequences in meaningful dialogue. *Id.*

²⁷⁸ See Goodwin, *supra* note 274, at 269–70, 283, 309.

²⁷⁹ See *id.* at 283, 297–98.

²⁸⁰ See Samuel-Siegel, *supra* note 100, at 31–32.

²⁸¹ See *id.* at 47–48; Goodwin, *supra* note 274, at 266–67.

²⁸² See Kimberle Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253, 1262 (2011).

²⁸³ See Powell, *supra* note 258, at 796 (“Structural racism shifts our attention from the single, intra-institutional setting to inter-institutional arrangements and interactions. Efforts to identify causation at a particular moment of decision within a specific domain understate the cumulative impact of discrimination.”).

²⁸⁴ See *id.* at 793.

Practicing lawyers must develop the ability to evaluate policies that reinforce systems of oppression, connecting these policies to their historical underpinnings.²⁸⁵ Objective 7 underscores the importance of understanding the historical context of such policies and their enduring impact on marginalized communities.²⁸⁶ Recognizing the systemic nature of racism,²⁸⁷ this objective emphasizes the importance of advocating for inclusive policies that transcend historical inequities. These inclusive policies reset the “rules of the game” and play a pivotal role in dismantling structural racism.

3. Systemic Oppression: Understand Social Constructs Beyond Race and How They Are Used to Maintain Hierarchies and Privileges Within Society (Objective 8)

Objective 8 guides students in exploring social constructs that extend beyond race and their role in perpetuating hierarchies and privileges within society. At the core of this objective is the introduction of the concept of “social dominance.”²⁸⁸ Students will appreciate how social hierarchies are constructed and maintained. This exploration encompasses various dimensions of identity, such as socioeconomic status, class, gender, sexuality, and ability, and their correlation with different forms of oppression, often denoted by “-isms” and phobias.²⁸⁹ This knowledge empowers future legal professionals to advocate for justice, equity, and inclusion across diverse dimensions of identity, ultimately fostering a more culturally proficient legal practice.²⁹⁰

Under this objective, students should be encouraged to critically evaluate policies and systems that reinforce non-racialized systems of oppression and draw connections to racialized systems of oppression. This comparative analysis enables students to grasp the complex web of intersecting oppressions that operate within society. To facilitate this exploration, students should be tasked with defining various “-isms” (e.g., sexism, ableism, heterosexism) and phobias (e.g., homophobia, transphobia). This objective promotes providing working definitions to lay the groundwork for deeper exploration.

²⁸⁵ See Goodwin, *supra* note 274, at 266–67.

²⁸⁶ See *id.*

²⁸⁷ See *id.* at 308.

²⁸⁸ Darren Lenard Hutchinson, “Continually Reminded of Their Inferior Position”: Social Dominance, Implicit Bias, Criminality, and Race, 46 WASH. U. J.L. & POL’Y 23, 32 (2014).

²⁸⁹ See Curcio et al., *supra* note 134, at 102.

²⁹⁰ See *id.* at 104.

Students should engage in comparative studies of the modes of discrimination and marginalization perpetuated by the various “-isms” and phobias. This comparative analysis allows students to recognize the diverse ways in which systemic oppression manifests and affects individuals and communities. As students progress through this objective, they should have opportunities to reexamine their position on the cultural competence continuum. Reflecting on what they have learned about systemic injustice and social hierarchies, students should have heightened awareness and valuable insights into their evolving cultural proficiency.

4. Intersectionality: Understand the Ways in Which Class, Race, Gender, Sexuality, Ability, and Other Identities May Intersect with One Another to Impact Individuals’ Perspectives and the Challenges Faced by the Communities to Which Those Individuals Belong (Objective 9)

Objective 9 guides students in exploring the intricate ways in which various aspects of identity intersect and overlap, impacting individuals’ lived experiences and the challenges faced by their respective communities. At the heart of this objective lies the concept of “intersectionality.”²⁹¹ Students will delve into the understanding that individuals may identify and be identified by others in ways that intersect and overlap, including dimensions such as class, race, gender, sexuality, ability, and more. Intersectionality recognizes that these identities are not isolated, but instead, they interact and influence one another, creating unique experiences and challenges.²⁹²

This objective emphasizes the practical utility of recognizing intersectional identities when providing legal services. By understanding the layers of an individual’s identity, lawyers can offer more culturally competent and tailored support to clients.²⁹³ Recognizing the unique challenges faced by those with various intersectional identities informs legal strategies and advocacy efforts. Objective 9 centers on the identification of intersectional identities and an understanding of the challenges encountered by individuals with these identities. Students should be

²⁹¹ See Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1 U. CHI. LEGAL F. 139, 140 (1989) (coining the term “intersectionality” to describe the unique overlapping identities of Black women).

²⁹² See *id.*

²⁹³ See Bryant, *supra* note 29, at 41, 45–46.

evaluated on their ability to recognize how various dimensions of identity intersect and influence one another, leading to a nuanced comprehension of systemic oppression.

5. Lived Experience: Understand the Importance of Lived Experience and the Interplay Between Those Experiences, Social Status, Decision Making, and Legal Consequences (Objective 10)

Within the CPL Framework, Objective 10 underscores the profound impact of lived experiences within the context of a race- and class-stratified society.²⁹⁴ This objective fosters a heightened awareness of the integral role that lived experiences play in shaping social status, decision-making dynamics, and legal outcomes. The concept of “lived experience” is deeply rooted in critical theories that challenge traditional legal frameworks.²⁹⁵ As such, Objective 10 encourages students to critically examine the role of lived experiences in the context of social justice and legal practice. As students engage with Objective 10, they develop the capacity to approach their future legal practice with sensitivity, empathy, and a deep appreciation for the diverse lived experiences of their clients and communities.

The concepts of empathy and active listening are fundamental to Objective 10. Students learn to actively engage with the narratives of others, honing their empathetic skills to better understand and appreciate the lived experiences of unique individuals. Therefore, students undertaking Objective 10 embark on a journey of exploration and introspection, delving into the significance of lived experiences in understanding the intricacies of cultural and social groups different from their own. Under this objective, students might engage in research and analysis, seeking to unveil the intrinsic value of lived experiences in a world shaped by racialized perspectives.

C. Skills

The Skills component of the framework bridges the gap between Awareness and Knowledge by focusing on practical skill development. It emphasizes the importance of applying one’s cultural awareness and knowledge to real-world

²⁹⁴ See Angela Olivia Burton, *Cultivating Ethical, Socially Responsible Lawyer Judgment: Introducing the Multiple Lawyering Intelligences Paradigm into the Clinical Setting*, 11 CLINICAL L. REV. 15, 35–36 (2004).

²⁹⁵ See *id.* at 37. Objective 10 and “lived experience” aligns with the principles of Critical Legal Studies, Critical Race Theory, Legal Realism, and Narrative Jurisprudence and underscores the value of intersectionality (Objective 9). *Id.*

scenarios. Acquiring concrete skills, techniques, and resources for navigating cross-cultural interactions is essential for effectively understanding and adapting to diverse cultural norms, values, and communication styles.²⁹⁶ The objective is to empower students with the ability to advocate for clients from diverse backgrounds in a manner that promotes well-being and minimizes anxieties in cross-cultural situations. This entails recognizing how cultural factors can impact legal cases and employing culturally competent strategies when providing legal representation.²⁹⁷

1. Integrate Cultural Proficiency Principals into Legal Practice: Practice Engaging the Cultural Proficiency Toolbox Within the Context of Lawyering (Objective 11)

In Objective 11, students begin learning to bridge the theory and practice of cultural proficiency. Drawing from the foundational principles established in previous objectives, students are tasked with translating their theoretical awareness and knowledge into tangible, practical skills that can be applied effectively in the legal profession. Specifically, students should continuously engage the cultural proficiency toolbox introduced in Objective 3. Doing so will enable students to understand how cultural proficiency theories can be translated into concrete skills that can be applied in real-world legal scenarios.

To bridge the gap between theory and practice, students should explore the wealth of scholarship in clinical and lawyering skills. First, law students will compare the culturally proficient lawyering skills they have acquired with best practices from other professional disciplines, such as education, medicine, and social work. This comparative analysis should help students gain a broader perspective on the importance of cultural proficiency across various fields and encourage them to adapt and incorporate successful strategies from other disciplines into their legal practice. Culturally proficient lawyering skills are important in every aspect of law practice, and Objective 11 guides students toward skill development in a variety of legal contexts, from cross-cultural interactions with court staff to serving clients in a global environment. Students should practice translating the principles of prior objectives, including self-reflection and reflexivity, and learn to recognize and address common barriers to culturally proficient legal representation.

The culmination of Objective 11 should result in the creation of individualized “best practices” tailored to each student’s unique professional identity and cultural proficiency journey. These personalized best practices will guide students as they

²⁹⁶ See Bryant, *supra* note 29, at 40–42.

²⁹⁷ See Taite & Boothe, *supra* note 83, at 819.

continue to develop culturally proficient lawyering that promotes inclusivity, empathy, and effective advocacy.

2. Inclusive Communication and Interaction: Demonstrate Communication Skills that Manage Cultural Conflict and Adapt to Diversity in Lawyering Situations (Objective 12)

Objective 12 represents a pivotal phase in legal education, emphasizing the paramount importance of cross-cultural communication skills for aspiring lawyers.²⁹⁸ This objective builds upon earlier foundations by placing a significant focus on the ability to communicate effectively in diverse lawyering situations.²⁹⁹ To achieve this, students draw insights from the third and fourth essential elements of cultural proficiency—managing cultural conflict and adapting to diversity. Objective 12 revolves around the notion that conflicts arising from cultural disparities are natural and can be effectively managed, leading to productive resolutions. Students learn that cultural differences are intrinsic to cross-cultural interactions and should not be avoided or minimized. Instead, they are encouraged to embrace these differences as opportunities for enriching their legal practice.

This objective also employs the cultural proficiency continuum introduced in Objective 3 to craft a comprehensive set of communication skills. These skills are vital for resolving conflicts and, more importantly, for fostering inclusivity and empathy in legal practice.³⁰⁰ Law students are taught to adapt their communication styles to engage respectfully and empathetically with clients from diverse cultural backgrounds, ensuring that their legal advice and representation align with clients' cultural values and expectations.³⁰¹ This involves recognizing cultural nuances and employing culturally sensitive approaches to achieve equitable outcomes, especially during negotiations and conflict resolution processes.³⁰²

By mastering the skills embodied in Objective 12, students can engage in meaningful cross-cultural dialogues, build trust, and promote equitable, culturally responsive solutions to meet their clients' needs.

²⁹⁸ See Montoya, *supra* note 90, at 290, 301; Loreen, *supra* note 91, at 835, 840–41.

²⁹⁹ See Montoya, *supra* note 90, at 302; Loreen, *supra* note 91, at 842.

³⁰⁰ See Taite & Boothe, *supra* note 83, at 820.

³⁰¹ Falati, *supra* note 77, at 663.

³⁰² See Taite & Boothe, *supra* note 83, at 819; Curcio et al., *supra* note 134, at 102.

3. Build an Inclusive Lawyering Skills Paradigm: Create a Lawyering Skills Model that Integrates Culturally Proficient Lawyering (Objective 13)

During prior objectives, students learned that culturally proficient lawyering is an integral and essential component of practicing law in an increasing cross-cultural world. Culturally proficient lawyering is not a separate lawyering skill that can be uncoupled from competent legal representation, cross-cultural interactions with legal actors, and the ethical practice of law. In Objective 11, students practiced applying the cultural proficiency toolbox to various legal settings, and began development of an individualized set of “best practices” to aid each student’s cultural proficiency journey. Objective 12 focused on the skill of inclusive communication and interaction, recognizing that poor cross-cultural communication is a serious barrier to culturally proficient lawyering.

In Objective 13, students will create a culturally proficient skills model that strengthens the broader set of lawyering competencies, including issue spotting, legal analysis, writing, research, advocacy, and negotiation. For example, students will practice cross-cultural negotiation skills and learn how clients from different cultures may approach negotiation in distinct ways. Culturally proficient research and writing skills help lawyers anticipate cultural conflict and address a client’s unique point of view; students will practice researching and writing strategies that can mitigate, for example, a judge’s bias. The NextGen bar exam is expected to test cultural competency in at least three areas: client counseling and advising, investigation and analysis, and client relationship and management.³⁰³ In this Objective, students will practice broadening their understanding of fact investigation, challenging their assumptions about credibility, and gaining the client’s (or witness’s) trust. Finally, Objective 13 will require students to apply the culturally proficient lawyering skills model to digital competencies such as social media and e-discovery.

4. Wellness and Culturally Proficient Lawyering: Develop a Plan for Incorporating Self-care and Mental Wellness into Legal Practice (Objective 14)

Objective 14 in the CPL Framework examines common wellness challenges, such as mental illness, substance abuse, burnout, trauma, and secondary trauma, in the context of culturally proficient lawyering. Students are educated on the additional

³⁰³ *NextGen (July 2026)*, NAT’L CONF. OF BAR EXAM’RS, <https://www.ncbex.org/exams/nextgen> [<https://perma.cc/XB6K-BK6C>] (last visited Mar. 10, 2024).

cognitive load, cultural anxiety, and emotional labor associated with navigating cultural conflicts.³⁰⁴ Furthermore, this objective highlights the broader importance of mental health within the legal profession and how mental health challenges can impact client representation.³⁰⁵ To this end, students are introduced to accessible self-care strategies, including mindfulness, journaling, and breathwork, that can help mitigate wellness challenges and enhance lawyering skills generally.³⁰⁶

In light of the sensitivity surrounding the topics associated with cultural proficiency, legal educators preparing to teach this objective must approach it thoughtfully.³⁰⁷ They should be well-equipped to address self-care and trauma, acknowledging that this may be uncharted territory for many law students. Additionally, educators should recognize that discussions around self-care and trauma are culturally contingent because students from vulnerable communities experience mental health and trauma challenges in different ways. For this reason,

³⁰⁴ Anastasia M. Boles, *Pivoting Under Pressure: Cultural Proficiency, Race, and Reforms*, 2022 UTAH L. REV. 871, 880 (2022) (discussing need for law schools to prepare students for the emotional work of cultural conflict).

³⁰⁵ Jerome M. Organ, David B. Jaffe & Katherine M. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116, 117–22 (2016) (surveying literature on mental health and substance abuse of law students); see generally Patrick R. Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, J. ADDICTION MED., Jan.–Feb. 2016, at 46, 46–52.

³⁰⁶ Peter H. Huang, *Can Practicing Mindfulness Improve Lawyer Decision-Making, Ethics, and Leadership?*, 55 HOUS. L. REV. 63, 79–80 (2017).

[P]racticing mindfulness can improve people's decision-making processes through a number of routes, including: (1) reducing anxiety, negative affect, stress, and threat perception, (2) increasing positive affect, (3) improving cognitive functioning, (4) reducing fatigue, (5) improving self-knowledge, (6) improving decision framing, (7) improving information gathering, (8) improving information processing, (9) improving the drawing of conclusions, (10) improving learning from feedback, (11) improving decision readiness, (12) increasing single-tasking, (13) decreasing attempted multi-tasking, (14) reducing substance abuse, (15) improving sleep quality, (16) improving discernment about what choices are most important, (17) reducing the influence of cognitive biases, (18) reducing the influence of affective biases, and (19) reducing burnout.

Id.

³⁰⁷ Erin C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL EDUC. 780, 784–86 (2018) (discussing the range of deleterious effects of poorly handled discussions about race in the classroom, including defensiveness, lowered productivity, degraded academic performance, withdrawal, and increased anxiety).

instructors should extend their support resources to all students, ensuring inclusivity within the learning environment. By imparting these essential skills and fostering a culture of well-being and mindfulness, Objective 13 equips law students with the skills to manage the unique challenges associated with cultural proficiency, ultimately enhancing their effectiveness as future lawyers.

5. Culturally Proficient Leadership: Develop a Sustainable Plan for Culturally Proficient Lawyering (Objective 15)

Culturally proficient lawyering does not stop at the attorney-client relationship.³⁰⁸ New lawyers today must be equipped with inclusive leadership, business, and law practice management skills.³⁰⁹ Many new lawyers are immediately placed in supervisory and leadership roles, often requiring management of support staff or other junior lawyers.³¹⁰ All lawyers must form productive relationships with every actor in the legal ecosystem, including court staff, judges, opposing counsel, in-house counsel, and regulatory lawyers.³¹¹ Lawyers must be empowered with culturally proficient lawyering skills to do so.

Objective 15 represents the culmination of the CPL Framework's core concepts. At this stage, students are tasked with synthesizing and applying the wealth of knowledge they have acquired throughout their CPL journey. One key focus of this objective is the utilization of the cultural proficiency continuum. Students will employ this tool to explore the importance of ongoing skill development, with the goal of moving every interaction along the continuum towards cultural proficiency. By recognizing the need for continuous growth and learning throughout their legal careers, students develop a deeper understanding of the cultural proficiency journey's ever-evolving nature.

Connecting CPL concepts to broader aspects of professional identity, leadership within legal environments, and lateral relationships, underscores the practical relevance of cultural proficiency in the legal profession. As students synthesize and apply their knowledge, they will gain not only a comprehensive understanding of cultural proficiency, but also the capacity to lead and excel in diverse legal settings. Objective 15 encapsulates the essence of the cultural

³⁰⁸ See, e.g., Taite & Boothe, *supra* note 83, at 820.

³⁰⁹ TONI JAEGER-FINE, BECOMING A LAWYER: DISCOVERING AND DEFINING YOUR PROFESSIONAL PERSONA 66–68 (2d ed. 2023).

³¹⁰ *Id.* at 66.

³¹¹ See generally *id.* at 64–65.

proficiency framework, empowering law students to continually develop their skills and knowledge, foster inclusive legal environments, and uphold the principles of cultural proficiency throughout their legal careers.

IV. THE CULTURAL PROFICIENCY LAWYERING RUBRIC

In support of institutional CPL outcomes and the course-level objectives described in Part III of this Article, the authors propose the use of the Cultural Proficiency Lawyering Rubric (“CPL Rubric”),³¹² created by the authors of this Article and encompassing the vast CPL-supporting resources developed by legal scholars, sociologists, psychologists, and critical race theorists over the past twenty-five-plus years. Driven by the CPL Framework, the CPL Rubric provides a clear description of what is expected of students in terms of cultural proficiency development. The CPL Rubric assesses the level of cultural proficiency demonstrated by individuals in various dimensions that track the fourteen learning objectives of the CPL Framework. It is designed to evaluate the depth of understanding and application of cultural proficiency awareness, knowledge, and skills, ranging from “Underdeveloped,” “Basic,” “Developing,” to “Advanced” proficiency levels. Each objective criterion assesses different aspects of cultural proficiency and its application in legal education and practice.

Generally, the “Underdeveloped” proficiency level indicates a student that does not demonstrate any recognition of the learning objective assessed, while the “Basic” proficiency level student broadly identifies the objective assessed (e.g., “cultural self awareness” or “inclusive communication”). A student demonstrating “Developing” proficiency would not only recognize the objective being assessed, but would also understand the objective assessed in the specific context of the assignment, assessment, or real-world application. A student demonstrating “Advanced” proficiency would recognize the objective assessed within the specific context of the assignment, as well as be able to provide examples of how to meet the objective assessed in the specific context of the assignment and lawyering practice.

The CPL Rubric also offers example descriptions for each of the CPL Framework objectives for each level of proficiency. These descriptions offer law professors guidance while also being highly malleable to the specific learning objectives the instructor is assessing. By understanding the specific criteria and standards by which cultural proficiency will be evaluated, students in law school

³¹² *Infra* Appendix A.

have a clearer sense of how to direct their CPL developmental efforts.³¹³ Students can refer to these descriptions to understand what is expected of them in terms of CPL awareness, knowledge, and skill. The CPL Rubric also provides an objective basis for discussing student performance.³¹⁴

Using the CPL Rubric tool, students should be encouraged to move from lower proficiency levels to higher ones within each criterion, using it as a roadmap for achieving their CPL goals. Thus, the CPL Rubric allows students to approach their cultural proficiency development as a goal-oriented process.³¹⁵ Students can note growth areas and, with the help of their professor's assessment, can create customized development plans tailored to their unique strengths and weaknesses in cultural proficiency. The CPL Rubric also covers various aspects of cultural proficiency that allow students to engage in holistic skill development by progressively addressing all objectives outlined in the CPL Rubric, even beyond the law school curriculum.

A. *Using the CPL Framework and Rubric*

To demonstrate how the CPL Rubric might be used, the authors provide a sample assignment assessing cultural proficiency (the "Client Interview Vignette" or "Vignette").³¹⁶ The Vignette provides several examples where students might demonstrate lawyering cultural proficiency related to the CPL Framework learning objectives presented in this Article. The Vignette highlights various cultural nuances related to mental health, replete with normalized stigmas and stereotypes.³¹⁷ The assignment requests that students reflect on how the lawyer in the interaction might show better cultural proficiency. The Vignette also highlights potential areas of misunderstanding or conflict between the attorney and the client. After reviewing the

³¹³ Sparrow, *supra* note 185, at 18; see Simpson, *supra* note 179, at 47–48.

³¹⁴ See Sparrow, *supra* note 185, at 36; Simpson, *supra* note 179, at 50.

³¹⁵ MICHAEL HUNTER SCHWARTZ & PAULA J. MANNING, EXPERT LEARNING FOR LAW STUDENTS 4, 8–10 (3d ed. 2018).

³¹⁶ This assignment was initially used in an Evidence course and contained learning objectives related to several evidentiary principles that have mostly been removed for brevity. Similar assignments can be created for almost any course that can integrate and assess CPL objectives. See *infra* Appendix B for the sample Vignette.

³¹⁷ Mental illnesses and substance use disorders are among the most stigmatized of health conditions. Nora D. Volkow, Joshua A. Gordon & George F. Koob, *Choosing Appropriate Language to Reduce the Stigma Around Mental Illness and Substance Use Disorders*, NEUROPSYCHOPHARMACOLOGY, July 19, 2021, at 2230, 2230.

Vignette, students might be asked to write a response to the prompt, or the professor might facilitate a discussion on how the lawyer might demonstrate better cultural proficiency.

The sample Vignette, which involves an interaction between a lawyer and prospective client—a middle-aged woman who has been diagnosed with bipolar II disorder—highlights normalized missteps a lawyer might make when interacting with people living with mental illness. The prospective client has been fired from her teaching position with a school district, allegedly due to this diagnosis. She is therefore in need of a lawyer who is able to provide effective representation without further stigmatizing or triggering negative feelings related to her diagnosis.³¹⁸

The interaction between the lawyer and prospective client underscores several issues related to lawyering cultural proficiency. For purposes of this example, let us suppose the professor awards a set value of points for each level of demonstrable proficiency where a student exhibiting “Underdeveloped” proficiency receives 1–2 points, “Basic” proficiency is awarded 3–4 points, “Developed” proficiency is awarded 5–6 points, and “Advanced” proficiency is awarded 7–8 points. Note that the potential discussions and assessment points go well beyond the below-noted examples, and that learning objectives often overlap.³¹⁹

B. Example Framework and Rubric Use: Self Awareness (Cultural Self-Awareness and “Self” As a “Cultural Being”—CPL Framework Objective 2)

The CPL Framework endorses cultural self-awareness so that lawyers recognize their own limitations as well as the impact on and perceptions of other actors that may result from not recognizing those limitations.³²⁰ The Framework supports culturally self-aware legal professionals that engage in introspective practices to better serve clients from diverse backgrounds, including those living with mental health conditions.³²¹ In the Vignette, the attorney’s lack of introspection and reflection on her own culture, personal biases, assumptions, and attitudes contributes to a lack of empathy and understanding in the interaction, potentially

³¹⁸ See Curcio et al., *supra* note 134, at 117.

³¹⁹ It is up to the instructor to limit the scope of objectives assessed and to make decisions on where and how to distribute points.

³²⁰ See Curcio et al., *supra* note 134, at 116–17; Sparrow, *supra* note 185, at 19.

³²¹ See Falati, *supra* note 77, at 644.

exacerbating the stigma associated with mental health conditions.³²² Additionally, the attorney's questioning lacks empathy and understanding of the emotional and psychological impact of living with a mental health condition.

Cultural self-awareness would require recognizing the potential emotional distress experienced by individuals living with mental illness and providing support and empathy when possible.³²³ For example, the attorney asks the prospective client, "[w]hy do you think they fired you for this illness?" As a follow-up question, the attorney again asks, "[w]hat makes you believe they fired you for your illness?" While potentially evaluated as an innocent request for more knowledge, a culturally competent lawyer would have already considered the heightened concerns and anxieties of their middle-aged prospective client with a diagnosed mental health condition.

"Underdeveloped" cultural self-awareness, as defined by CPL Framework Objective 2, is indicated by limited or no awareness of the personal cultural identities of the attorney and prospective client—including the above-described power dynamic, biases, and assumptions. An "Underdeveloped" proficiency regarding Objective 1 reflects minimal or no reflection on how personal cultural lenses shape perceptions and decisions. The student possessing "Underdeveloped" cultural awareness shows little recognition of how personal cultural values may influence interactions with individuals from diverse backgrounds and fails to connect cultural self-awareness within the context of the Vignette.

"Basic" cultural self-awareness proficiency is indicated if the student provides a limited connection between cultural self-awareness within the context of the Vignette. A student exhibiting "Basic" proficiency demonstrates some level of awareness of the lawyer's personal cultural identity, but lacks deep or meaningful analysis in the assessment response. A "Basic" proficiency on this learning objective recognizes that the attorney in the Vignette exhibits personal biases and assumptions, but fails to explore them thoroughly as referenced in the Vignette (i.e., displays some recognition of how personal cultural values may influence interactions, but lacks specificity).

"Developing" cultural self-awareness, is indicated by a student who demonstrates a clear understanding of personal cultural identity, biases, and

³²² *Stigma, Prejudice and Discrimination Against People with Mental Illness*, AM. PSYCHIATRIC ASS'N, <https://www.psychiatry.org/patients-families/stigma-and-discrimination> [https://perma.cc/B8P3-6REF] (last visited Sept. 20, 2024) ("A review of studies on stigma shows that while the public may accept the medical or genetic nature of a mental health disorder and the need for treatment, many people still have a negative view of those with mental illness.").

³²³ *Id.*

assumptions. “Developing” proficiency on this learning objective identifies the importance of personal cultural lenses and their impact on perceptions, worldviews, and decisions and explores them thoroughly. Students at this proficiency level recognize how personal cultural values may influence interactions with individuals from diverse backgrounds and establish a reasonable connection between cultural self-awareness and the context of the Vignette.

“Advanced” cultural self-awareness is indicated by a student who displays a profound and insightful understanding of personal cultural identity, biases, and assumptions. “Advanced” proficiency on this learning objective engages in deep introspection and reflection on personal cultural lenses. A student at this proficiency level articulates a nuanced understanding of how personal cultural values may influence interactions with individuals from diverse backgrounds. Students at this proficiency level are able to demonstrate a strong and insightful connection between cultural self-awareness and the context of the Vignette by offering meaningful insights and potential actions to address the situation effectively.

C. Example Learning Framework and Rubric Use: Systemic Oppression (Understand Social Constructs Beyond Race and How They Are Used to Maintain Hierarchies and Privileges Within Society—CPL Framework Objective 8)

CPL Framework Objective 8 emphasizes the importance of understanding systemic oppression and the resulting social constructs of hierarchy and privilege. As the objective suggests, various forms of “othering” can lead to interactions that leave one party to the interaction feeling less empowered than the other.³²⁴ Throughout the interaction in the Vignette, the attorney’s questions and concerns center on the individual attributes and behaviors of the prospective client, particularly her bipolar disorder and medication use. The attorney’s inquiries about her “manic episodes,”³²⁵ medications, and “emotional stability” demonstrate a

³²⁴ See Goodwin, *supra* note 274, at 268 (discussing the concept of “otherness”). While this may seem to be a fact of life, it can also lead to less-than-optimal attorney-client relationships, at best, or attorney malpractice, at worst. It is hard to argue against the attorney being in the position of power as they engage a client about a legal issue. Even if the attorney is financially dependent on the client, within the confines of the legal analysis, the attorney leads. *Id.*

³²⁵ This interaction also demonstrates the attorney’s lack of knowledge on the appropriate language and knowledge of mental illness. Additionally, the attorney does not acknowledge or explore the concept of intersectionality, which refers to the interconnectedness of various social identities and the unique forms of discrimination that can result from their intersections. The prospective client’s experience as a person with bipolar disorder intersects with other aspects of her identity, such as her gender and employment

narrow focus on her as an individual and overlook systemic factors. As the interaction unfolds, the attorney does not inquire about or address the broader structural context of the prospective client's situation.

Systemic oppression often operates within larger societal structures, such as workplace policies, institutional biases, and cultural norms.³²⁶ Although systemic oppression often thrives within organizational structures that perpetuate discrimination,³²⁷ the attorney in the Vignette does not inquire about company policies, procedures, or any potential biases within the workplace.³²⁸ Moreover, the attorney fails to consider how these systemic elements might influence the prospective client's experience and her employer's actions.

"Underdeveloped" knowledge of systemic oppression is indicated by a lack of understanding of social constructs beyond race that are potentially contributing to the prospective client's employment claim. An "Underdeveloped" proficiency regarding this learning objective reflects vague or incomplete explanations of how social constructs are used to maintain hierarchies and privileges. The student may also fail to provide concrete examples or connect the concept of systemic oppression to real-world scenarios as explored in the Vignette and may display minimal or no awareness of the intersectionality of systemic oppression with other forms of discrimination.

"Basic" knowledge of systemic oppression is indicated by a student that demonstrates emerging understanding of the systemic factors contributing to the prospective client's potential employment claim and/or broad understanding of systemic oppression and social constructs. A student demonstrates a "Basic" proficiency regarding this learning objective by providing some specific examples of how social constructs contribute to maintaining hierarchies and privileges, but failing to explore those social constructs thoroughly. The student may provide broad examples or partial context by offering limited connections to the Vignette or real-world situations or demonstrate partial awareness of how systemic oppression may intersect with other forms of discrimination.

status, which can compound the impact of systemic oppression. The attorney's failure to recognize these intersections limits their understanding of the complexity of her situation.

³²⁶ See Powell, *supra* note 258, at 793.

³²⁷ See Samuel-Siegel, *supra* note 100, at 35.

³²⁸ Understanding systemic oppression also involves recognizing and challenging power dynamics that perpetuate privilege and inequity. See Rand, *supra* note 267, at 81–82. The attorney does not address power imbalances within the employer-employee relationship or explore how these dynamics might have influenced the prospective client's termination. *Id.*

“Developing” knowledge of systemic oppression proficiency is indicated by a student that demonstrates a clear understanding of the systemic factors potentially contributing to the prospective client’s potential employment claim and/or broad understanding of systemic oppression and social constructs. A student at this “proficiency level on this learning objective will provide specific and illustrative examples of how social constructs are used to maintain hierarchies and privileges (e.g., how a person with more social workplace privilege/power seeks information about a person with less privilege/power). A student at the “Developing” proficiency-level may offer a well-contextualized discussion, connecting the concept of systemic oppression to real-world scenarios and show awareness of how systemic oppression intersects with and influences other forms of discrimination and privilege.

“Advanced” knowledge of systemic oppression is indicated by a student who displays a profound and insightful understanding of the systemic factors that may be contributing to the prospective client’s potential employment claim and/or broad understanding of systemic oppression and social constructs. “Advanced” proficiency on this learning objective presents the use of nuanced and comprehensive examples that clearly illustrate the mechanisms by which social constructs perpetuate hierarchies and privileges. A student at this proficiency level will offer a sophisticated and insightful discussion that places systemic oppression within a broader societal context using examples from the Vignette and demonstrating a deep understanding of the complexities involved. Students at this proficiency level exhibit mastery in recognizing and analyzing the intricate intersections of systemic oppression with various forms of discrimination and privilege.

D. Example Framework and Rubric Use: Inclusive Communication and Interactions (Demonstrate Communication and Inclusive Interaction Skills that Manage Cultural Conflict and Adapt to Diversity in Lawyering Situations—CPL Framework Objective 12)

Perhaps the most problematic aspect of the Vignette is the lawyer’s lack of inclusive communication. The interaction is riddled with insensitivity, which underscores the critical need for cultural proficiency and inclusive communication skills among legal practitioners. The attorney’s almost immediate inquiry about whether the prospective client has experienced “manic episodes” immediately sets a tone of insensitivity.³²⁹ This question fails to recognize the diverse experiences of individuals with mental health conditions and assumes that such persons all must have the same or similar symptoms and experiences. As the conversation unfolds,

³²⁹ Cultural sensitivity and humility are also addressed in CPL Objective 5.

the attorney's invasive line of questioning continues, delving into the prospective client's medications and emotional stability while failing to create a safe space for open and honest dialogue—an essential element of inclusive communication.

The attorney's repeated skepticism about both the prospective client's account of the events that transpired and her emotional stability contributes to an atmosphere of judgment rather than understanding. Such skepticism disregards the significance of empathy and validation in effective communication, particularly when discussing topics as personal and potentially stigmatizing as mental health. The attorney's questions and responses minimize the cultural conflicts between Varney and the school district, likely making the prospective client feel judged, unsupported, misunderstood, and disempowered. The glaring lack of inclusivity in this interaction underscores the vital role of cultural proficiency and inclusive communication skills in the legal profession.

Also concerning is the attorney's failure to address the stigmatization that the prospective client faced due to her mental health condition and the attorney's adoption of the stigmatizing language used by the prospective client's former colleagues.³³⁰ The phrase “emotional stability issues” is stigmatizing and judgmental since it implies that having a mental health condition, such as bipolar disorder, equates to having “issues” with emotional stability.³³¹ This language not only lacks sensitivity but also perpetuates stereotypes and misunderstandings about mental health.³³² Further, the attorney does not express empathy or concern for the prospective client's experiences with coworkers and the Vice Principal who engaged in stigmatizing behavior and the use of this insensitive language. The attorney's

³³⁰ Moreover, the Vignette allows instructors to facilitate discussions about how the lawyer could improve communication through self-awareness by admitting to the potential client that their experience representing people living with mental illness is limited. Further, the attorney could seek guidance about the proper terminology or ask the client how she would like the mental health issue to be addressed. Demonstrating vulnerability in the lack of experience or knowledge in this area would go a long way.

³³¹ Volkow et al., *supra* note 317, at 2330–31.

³³² *Id.* at 2330. While potentially interpreted as an innocent request for more information about his client relevant to representation, the culturally competent lawyer would recognize that a term like “emotional stability” is largely subjective and potentially undefinable. Moreover, given the context of the engagement, the accusation is likely to put the client on the defensive and lead to less information being shared. The goal must be to gradually build trust so that the client not only feels comfortable in the moment to share the most intimate details, but also feels confident enough in the relationship to continue sharing even after the initial client interview. *Id.*

silence, therefore, highlights the importance of recognizing and combating stigma through empathetic and inclusive communication.³³³

The attorney's focus on the prospective client's medication use in the context of potential legal proceedings highlights another aspect of the attorney's lack of inclusive communication. While there may be legitimate legal considerations regarding the use of medication, they must be approached with sensitivity and an awareness of the stigma that often surrounds mental health and medication.³³⁴ Failing to acknowledge this stigma can perpetuate discrimination, exclusion, and miscommunication.³³⁵

"Underdeveloped" proficiency in the skill of inclusive communication, as endorsed by CPL Framework Objective 12, is indicated by limited or no identification of the inclusive communication issues in the Vignette. An "Underdeveloped" proficiency on this learning objective is reflected in a student's failure to provide context or examples of how inclusive communication could improve the attorney-client interaction. The student may demonstrate little recognition of the importance of adapting communication in cross-cultural situations and may fail to identify how inclusive interaction facilitates positive attorney-client relationships in the real world and/or in the context of the Vignette.

"Basic" proficiency in the skill of inclusive communication is indicated by a student that demonstrates emerging or broad understanding of the inclusive communication issues presented in the Vignette. A "Basic" proficiency on this learning objective offers some specific examples of how communication and cultural sensitivity may be improved within the Vignette. The student may offer some context or basic examples of how inclusive communication might have positively impacted the attorney-client interaction. The student may also provide broad examples or partial context by offering limited connections to the Vignette or real-world situations. The student may also demonstrate a basic awareness of the significance of adapting communication in diverse lawyering situations.

"Developing" proficiency in the skill of inclusive communication is indicated by a student who demonstrates a clear understanding of the inclusive communication issues presented in the Vignette. Such a student consistently identifies examples of

³³³ *Id.* at 2330–31. This interaction also presents a missed opportunity. Inclusive communication involves building a connection with individuals and acknowledging their experiences. The attorney's question misses an opportunity to establish a connection with the prospective client, understand her perspective, and provide emotional support, if needed. *Id.*

³³⁴ *Id.*

³³⁵ AM. PSYCHIATRIC ASS'N, *supra* note 322.

inclusive communication and cultural sensitivity. A student at the “Developing” proficiency level on this learning objective provides well-contextualized explanations and examples of how inclusive communication could have improved the attorney-client interaction. A student at the “Developing” proficiency-level may also demonstrate a strong awareness of the importance of adapting communication effectively in cross-cultural lawyering situations and connect the important concept of inclusive communication to real-world scenarios and/or as explored in the Vignette.

“Advanced” proficiency in the skill of inclusive communication is indicated by a student who displays a profound ability to recognize specific instances of the lack of inclusive communication and cultural sensitivity within the Vignette and insightful understanding of the importance of inclusive communication. A student at this proficiency level will offer nuanced examples of inclusive communication. Such a student will showcase a deep understanding of how inclusive communication would significantly benefit the attorney-client interaction. Students at this proficiency level exhibit a heightened awareness of the importance of inclusive communication and demonstrate the ability to apply the awareness, knowledge, and skills of inclusive communication effectively in cross-cultural lawyering situations.

CONCLUSION

As the legal profession continues to evolve and adapt to an increasingly diverse and interconnected world, cultural proficiency has become an ethical imperative. This Article has proposed a comprehensive Framework designed to address the ABA’s mandate for law schools to educate students about “bias, cross-cultural competency, and racism” under its newly-adopted accreditation Standard 303(c). This Article not only outlines the key course and curricular objectives necessary for successfully imparting cultural proficiency, but also introduces a practical rubric tool to evaluate students’ awareness, knowledge, and skills in culturally proficient lawyering. These tools offer a structured approach that enables legal educators to guide students in recognizing the importance of, and ultimately developing cultural proficiency awareness, knowledge, and skills.

The CPL Framework and Rubric proposed in this Article stand as essential instructional and assessment tools for fostering cultural proficiency among future legal professionals. By embracing the Framework and Rubric outlined herein, educators can foster a new generation of culturally proficient lawyers who will not only meet but also exceed the standards set by the ABA, thereby contributing to a more just and inclusive legal system.

APPENDIX A
Culturally Proficient Lawyering Rubric

Sample Rubric for Assessing Cultural Proficiency

	Learning Objectives	Underdeveloped (0-1 pts)	Basic (2 pts)	Developing (3 pts)	Advanced (4 pts)
	General Guidance	Minimal or no recognition of the objective assessed with little or no connection to the specific context of the assessment and/or real-world application.	Emerging recognition of the objective assessed but may lack depth and/or not fully connect the objective assessed to the specific context of the assessment and/or real-world application.	Clear recognition of the objective assessed in the specific context of the assessment and/or real-world application, but the depth and insight provided may be moderate.	Clear recognition of the objective assessed in the specific context of the assessment and/or real-world application providing strong or reasonable insights and/or high-level actionable suggestions or recommendations.
	AWARENESS: Appropriate social and cultural awareness in the context of lawyering professional identity.				

	Learning Objectives	Underdeveloped (0–1 pts)	Basic (2 pts)	Developing (3 pts)	Advanced (4 pts)
A1	Self-Awareness: Demonstrate cultural self-awareness and “self” as a “cultural being.”	Minimal or no recognition of the importance of cultural self-awareness and its implications with little or no connection to the context of the assessment and/or real-world application.	Emerging recognition of the importance of cultural self-awareness and its implications, but may lack depth and/or not fully connect the objective assessed to the specific context of the assessment and/or real-world application.	Clear recognition of the importance of cultural self-awareness and its implications in the specific context of the assessment and/or real-world application, but the depth and insight provided may be moderate.	Clear recognition of the importance of cultural self-awareness and its implications in the specific context of the assessment and/or real-world application providing strong or reasonable insights and/or high-level actionable suggestions or recommendations.
A2	Cultural Proficiency Toolbox: Understand cultural proficiency as a skill, the cultural competence continuum, and the Five Essential Elements of cultural proficiency.*	Minimal or no recognition of cultural proficiency as a skill, the cultural competence continuum, and the Five Essential Elements of cultural proficiency with little or	Emerging recognition of cultural proficiency as a skill, the cultural competence continuum, and the Five Essential Elements of cultural proficiency, but may lack	Clear recognition of cultural proficiency as a skill, the cultural competence continuum, and the Five Essential Elements of cultural proficiency in the	Clear recognition of cultural proficiency as a skill, the cultural competence continuum, and the Five Essential Elements of cultural proficiency in the

* The Five Essential Elements of cultural proficiency are (1) assessing culture, (2) valuing diversity, (3) managing cultural conflict, (4) adapting to diversity, and (5) institutionalizing cultural knowledge.

	Learning Objectives	Underdeveloped (0–1 pts)	Basic (2 pts)	Developing (3 pts)	Advanced (4 pts)
		no connection to the context of the assessment and/or real-world application.	depth and/or not fully connect the objective assessed to the specific context of the assessment and/or real-world application.	specific context of the assessment and/or real-world application, but the depth and insight provided may be moderate.	specific context of the assessment and/or real-world application providing strong or reasonable insights and/or high-level actionable suggestions or recommendations.
A3	Proficiency Inhibitors: Describe cultural proficiency inhibitors, including implicit bias associations, and practice strategies to overcome them.	Minimal or no recognition of cultural proficiency inhibitors, including implicit bias associations, and the strategies to overcome them, with little or no connection to the context of the assessment and/or real-world application.	Emerging recognition of cultural proficiency inhibitors, including implicit bias associations, and the strategies to overcome them, but may lack depth and/or not fully connect the objective assessed to the specific context of the assessment and/or real-world application.	Clear recognition of cultural proficiency inhibitors, including implicit bias associations, and the strategies to overcome them in the specific context of the assessment and/or real-world application, but the depth and insight provided may be moderate.	Clear recognition of cultural proficiency inhibitors, including implicit bias associations, and the strategies to overcome them in the specific context of the assessment and/or real-world application providing strong or reasonable insights and/or high-level actionable suggestions or recommendations.

	Learning Objectives	Underdeveloped (0–1 pts)	Basic (2 pts)	Developing (3 pts)	Advanced (4 pts)
A4	Humility and Sensitivity: Demonstrate cultural sensitivity and humility, understanding how various “isms” perpetuate privilege, inequity, and exclusion.	Minimal or no recognition of the importance of cultural sensitivity and humility, with little or no connection to the context of the assessment and/or real-world application.	Emerging recognition of the importance of cultural sensitivity and humility, but may lack depth and/or not fully connect the objective assessed to the specific context of the assessment and/or real-world application.	Clear recognition of the importance of cultural sensitivity and humility in the specific context of the assessment and/or real-world application, but the depth and insight provided may be moderate.	Clear recognition of the importance of cultural sensitivity and humility in the specific context of the assessment and/or real-world application providing strong or reasonable insights and/or high-level actionable suggestions or recommendations.
A5	Professional Obligations: Evaluate professional obligations in cultural proficiency and within the context of professional identity formation.	Minimal or no recognition of the professional obligations in cultural proficiency, with little or no connection to the context of the assessment and/or real-world application.	Emerging recognition of professional obligations in cultural proficiency, but may lack depth and/or not fully connect the objective assessed to the specific context of the assessment and/or real-world application.	Clear recognition of professional obligations in the specific context of the assessment and/or real-world application, but the depth and insight provided may be moderate.	Clear recognition of professional obligations in cultural proficiency in the specific context of the assessment and/or real-world application providing strong or reasonable insights and/or high-level actionable

	Learning Objectives	Underdeveloped (0–1 pts)	Basic (2 pts)	Developing (3 pts)	Advanced (4 pts)
					suggestions or recommendations.
	KNOWLEDGE: Relevant cultural knowledge and capacity to challenge cultural norms and assumptions.				
K6	Structural Racism: Understand the social construct of race and how institutionalized racism perpetuates a racial caste system that relegates people of color to the bottom tiers.	Minimal or no recognition of how institutionalized racism perpetuates a racial caste system that relegates people of color to the bottom tiers, with little or no connection to the context of the assessment and/or real-world application.	Emerging recognition of how institutionalized racism perpetuates a racial caste system that relegates people of color to the bottom tiers, but may lack depth and/or not fully connect the objective assessed to the specific context of the assessment and/or real-world application.	Clear recognition of how institutionalized racism perpetuates a racial caste system that relegates people of color to the bottom tiers in the specific context of the assessment and/or real-world application, but the depth and insight provided may be moderate.	Clear recognition of how institutionalized racism perpetuates a racial caste system that relegates people of color to the bottom tiers in the specific context of the assessment and/or real-world application providing strong or reasonable insights and/or high-level actionable suggestions or recommendations.

	Learning Objectives	Underdeveloped (0–1 pts)	Basic (2 pts)	Developing (3 pts)	Advanced (4 pts)
K7	<p>Historical Context: Evaluate how the legacy of slavery, segregation, and the imposition of second-class citizenship on people of color continue to permeate society, including law and policy.</p>	<p>Minimal or no recognition of how the legacy of slavery, segregation, and the imposition of second-class citizenship on people of color continue to permeate society, with little or no connection to the context of the assessment and/or real-world application.</p>	<p>Emerging recognition of how the legacy of slavery, segregation, and the imposition of second-class citizenship on people of color continue to permeate society, but may lack depth and/or not fully connect the objective assessed to the specific context of the assessment and/or real-world application.</p>	<p>Clear recognition of how the legacy of slavery, segregation, and the imposition of second-class citizenship on people of color continues to permeate society in the specific context of the assessment and/or real-world application, but the depth and insight provided may be moderate.</p>	<p>Clear recognition of how the legacy of slavery, segregation, and the imposition of second-class citizenship on people of color continues to permeate society in the specific context of the assessment and/or real-world application providing strong or reasonable insights and/or high-level actionable suggestions or recommendations.</p>
K8	<p>Systemic Oppression: Understand social constructs beyond race and how they are used to maintain hierarchies and privileges within society.</p>	<p>Minimal or no recognition of systemic oppression and social constructs, with little or no connection to the context of the assessment and/or real-world application.</p>	<p>Emerging recognition of systemic oppression and social constructs but may lack depth and/or not fully connect the objective assessed to the specific context of the assessment</p>	<p>Clear recognition of systemic oppression and social constructs in the specific context of the assessment and/or real-world application, but the depth and insight</p>	<p>Clear recognition of systemic oppression and social constructs in the specific context of the assessment and/or real-world application providing strong or reasonable insights</p>

	Learning Objectives	Underdeveloped (0–1 pts)	Basic (2 pts)	Developing (3 pts)	Advanced (4 pts)
K9	Intersectionality: Understand the ways in which class, race, gender, sexuality, disability, and other identities may intersect with one other to impact individuals' perspectives and the challenges faced by the communities to which those individuals belong.	Minimal or no recognition of the importance of intersectionality and the challenges faced by the communities to which those individuals belong, with little or no connection to the context of the assessment and/or real-world application.	Emerging recognition of the importance of intersectionality and the challenges faced by the communities to which those individuals belong, but may lack depth and/or not fully connect the objective assessed to the specific context of the assessment and/or real-world application.	Clear recognition of the importance of intersectionality and the challenges faced by the communities to which those individuals belong in the specific context of the assessment and/or real-world application, but the depth and insight provided may be moderate.	Clear recognition of the importance of intersectionality and the challenges faced by the communities to which those individuals belong in the specific context of the assessment and/or real-world application providing strong or reasonable insights and/or high-level actionable suggestions or recommendations.
K10	Lived Experience: Understand the importance of lived experience and the interplay between those experiences, social status, and decision making.	Minimal or no recognition of the importance of lived experience and the interplay between those experiences, social status, and decision making.	Emerging recognition of the importance of lived experience and the interplay between those experiences, social status, and decision making.	Clear recognition of the importance of lived experience and the interplay between those experiences, social status, and decision making.	Clear recognition of the importance of lived experience and the interplay between those experiences, social status, and decision making.

	Learning Objectives	Underdeveloped (0–1 pts)	Basic (2 pts)	Developing (3 pts)	Advanced (4 pts)
	decision making, and legal consequences.	legal consequences, with little or no connection to the context of the assessment and/or real-world application.	legal consequences, but may lack depth and/or not fully connect the objective assessed to the specific context of the assessment and/or real-world application.	and legal consequences, in the specific context of the assessment and/or real-world application, but the depth and insight provided may be moderate.	and legal consequences in the specific context of the assessment and/or real-world application providing strong or reasonable insights and/or high-level actionable suggestions or recommendations.
	SKILLS: Cultural proficiency skills in cross cultural interactions.				
S11	Cultural Proficiency Toolbox Practice: Practice using the cultural proficiency toolbox within the context of lawyering.	Minimal or no demonstration of the use of the cultural proficiency toolbox within the context of lawyering with little or no connection to the context of the assessment and/or real-world application.	Emerging demonstration of the use of the cultural proficiency toolbox within the context of lawyering but may lack depth and/or not fully connect the objective assessed to the specific context of the assessment	Clear demonstration of the use of the cultural proficiency toolbox within the context of lawyering in the specific context of the assessment and/or real-world application, but the depth and insight	Clear demonstration of the use of the cultural proficiency toolbox within the context of lawyering in the specific context of the assessment and/or real-world application providing strong or reasonable insights

	Learning Objectives	Underdeveloped (0–1 pts)	Basic (2 pts)	Developing (3 pts)	Advanced (4 pts)
S12	Inclusive Communication and Interactions: Demonstrate communication skills that manage cultural conflict and adapt to diversity in lawyering situations.	Minimal or no demonstration of inclusive communication and interaction skills, with little or no connection to the context of the assessment and/or real-world application.	Emerging demonstration of inclusive communication and interaction skills, but demonstration may lack depth and/or not fully connect the objective assessed to the specific context of the assessment and/or real-world application.	Clear demonstration of inclusive communication and interaction skills, in the specific context of the assessment and/or real-world application, but the depth and insight provided may be moderate.	Clear demonstration of inclusive communication and interaction skills, in the specific context of the assessment and/or real-world application providing strong or reasonable insights and/or high-level actionable suggestions or recommendations.
S13	Build an Inclusive Lawyering Skills Paradigm: Create a lawyering skills model that integrates culturally proficient lawyering.	Minimal or no demonstration of the integration of culturally proficient lawyering into the traditional lawyering skills framework, with little or no connection to the context of the	Emerging demonstration of the integration of culturally proficient lawyering into the traditional lawyering skills framework, but may lack depth and/or not fully connect the objective assessed to the specific	Clear demonstration of the integration of culturally proficient lawyering into the traditional lawyering skills framework, in the specific context of the assessment and/or real-world application, but	Clear demonstration of the integration of culturally proficient lawyering into the traditional lawyering skills framework, in the specific context of the assessment and/or real-world application,

	Learning Objectives	Underdeveloped (0–1 pts)	Basic (2 pts)	Developing (3 pts)	Advanced (4 pts)
S14	Wellness and Culturally Proficient Lawyering: Develop a plan for incorporating self-care and mental wellness into legal practice.	Minimal or no demonstration of a plan to incorporate culturally proficient legal practice, with little or no connection to the context of the assessment and/or real-world application.	Emerging demonstration of a plan to incorporate culturally proficient wellness into legal practice, but the plan may lack depth and/or not fully connect the objective assessed to the specific context of the assessment and/or real-world application.	Clear demonstration of a plan to incorporate culturally proficient wellness into legal practice in the specific context of the assessment and/or real-world application, but the depth and insight provided may be moderate.	Clear demonstration of a plan to incorporate culturally proficient wellness into legal practice in the specific context of the assessment and/or real-world application providing strong or reasonable insights and/or high-level actionable suggestions or recommendations.
S15	Culturally Proficient Leadership: Develop a sustainable plan for culturally proficient lawyering.	Minimal or no demonstration of a sustainable plan for culturally proficient lawyering with little or no	Emerging demonstration of a sustainable plan for culturally proficient lawyering, but the plan may lack depth and/or not	Clear demonstration of a sustainable plan for culturally proficient lawyering in the specific context of the	Clear demonstration of a sustainable plan for culturally proficient lawyering in the specific context of the

	Learning Objectives	Underdeveloped (0–1 pts)	Basic (2 pts)	Developing (3 pts)	Advanced (4 pts)
		connection to the context of the assessment and/or real-world application.	fully connect the objective assessed to the specific context of the assessment and/or real-world application.	assessment and/or real-world application, but the depth and insight provided may be moderate.	assessment and/or real-world application providing strong or reasonable insights and/or high-level actionable suggestions or recommendations.

APPENDIX B

Client Interview Vignette

Ella Varney is a 56-year-old woman with a mental health condition that she manages by medication under a doctor's care. She believes her employer unlawfully fired her after finding out about her mental health condition. The below is an excerpt from her initial client interview with an attorney. Attorney is a lawyer who has sued the school district several times for unlawful hiring and termination practices.

Atty: Good afternoon Ms. Varney? How can I help you today?

MV: Well, I don't know yet, but I think my employer Valley County Schools fired me because I am diagnosed with bipolar II disorder. I know some of the administrators found out and at the end of the school year they decided to let me go although there was no other reason to fire me.

Atty: Why do you think they fired you for this illness?

MV: There is no other reason. I teach sixth grade and have taught with Valley County Schools for eighteen years. I love my job and love kids. On every evaluation I've had in the last ten years, I have scored above other teachers in the district and most at my school.

Atty: Have you ever had one of those manic episodes?

MV: No, I was diagnosed in my early twenties and have always managed it with medication, therapy, and other coping skills. My condition is pretty mild, and I have never had an incident at work. Not every person with bipolar has manic episodes, and many people with bipolar live normal lives.

Atty: Are you sure there was no other reason?

MV: Like I said, there was no other reason to let me go. Nothing else changed. I've been a star employee and have never had complaints from parents or anyone and my students perform well.

Atty: At what school do you teach?

MV: Olive Middle.

Atty: What was the stated reason for your fire? What makes you believe they fired you for your illness?

MV: Well, they told me that I wasn't teaching using the methods endorsed by the District and needed for my students to do well on the state test . . . but my students have always performed above the district average, including this year.

The students don't get the math the District wants us to teach. So, I admit, I use my own methods so that the students understand and do well. I've done this the past several years after they switched to the new math.

However, it wasn't until they found out about my medical condition that they fired me.

Atty: How did they find out?

MV: I was leaving my doctor's office one day and ran into the Vice Principal, who asked me, "What are YOU doing here?" I responded, "I'm seeing my doctor." The clinic where I ran into the VP is obviously for mental health treatment and she responded, "My sister works here. That's the ONLY reason I'm here," and gave me a weird look.

About a week later, a good friend on our staff told me that the VP had been asking around about whether I had "emotional stability" issues. I didn't appreciate this, of course, so I went to ask the VP why she was asking around about me. When I confronted her on the issue, she stated she had never asked anyone about that. But coworkers confirmed to me that she did.

Atty: Do you have emotional stability issues?

MV: Of course not! I manage my condition very well and always have. I learned early in life that my life is better when I take my medication. And as long as I am doing so, I am just fine.

Atty: Okay. So, who were the people the Vice Principal asked about you?

MV: She asked one of our school counselors, who has been with me at Olive Middle for at least twelve years. She also asked another teacher, Mr. Haas, who also teaches sixth grade. I've been colleagues with him for a long time.

Atty: Do you know what she was asking them?

MV: I know that the VP asked if there had ever been "incidents" in my past, and whether they knew if I had "mental health issues."

Atty: Do you know how they answered? I mean . . . you can see how the school might be concerned about your job performance if you are bipolar and unstable.

MV: They both stated that they didn't know anything about that, and that the VP should talk to me directly. But they are my friends, and I assume she was asking others as well.

Atty: Is anyone at the school aware you are bipolar?

Atty: What are your medications?

MV: Is that important? I've never had a problem with my illness at work.

Atty: I need as full a picture as possible to help me decide if you have a claim or not. Plus, you know that the fact that you are using medications will come into court, right?

How might we improve this interaction, demonstrating better cultural proficiency?