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The Lawyer's Intercultural Communication Problems with Clients from Diverse Cultures

Joan B. Kessler*

I. INTRODUCTION

The role of the lawyer is currently in a state of flux. Former Chief Justice Warren Burger has repeatedly called upon the legal community to increase the study of communication skills in law schools.¹ Other legal and communication scholars have recently discussed the importance of communication skills for the lawyer.² More and more lawyers are becoming aware of the importance of understanding the research tools and theories used in communication research.³

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¹ See Burger, *Future of Legal Education*, STUDENT L.J., Jan. 1970, at 18, 19; Burger, *The Special Skills of Advocacy*, 46 N.Y. ST. B.J. 89 (1974); Burger, *The Role of the Lawyer Today*, 59 NOTRE DAME L. REV. 1, 5 (1983). While former Chief Justice Burger does not suggest turning law schools into trade schools, he does stress the importance of communication skills training in areas such as advocacy skills.

² See, e.g., SPEECH COMMUNICATION, COMMUNICATION STRATEGIES IN THE PRACTICE OF LAWYERING: PROCEEDINGS OF THE 1983 SUMMER CONFERENCE ON COMMUNICATIONS AT THE UNIVERSITY OF ARIZONA, (R. Matlon & R. Crawford eds. 1983)(hereinafter PROCEEDINGS). One of the major goals of this conference was "[t]o heighten the awareness of the interrelationship between the behavioral sciences and the study and practice of law . . ."; another was "[t]o provide a better understanding of the role played by the communication strategies in all phases of the legal process." *Id.* at 2-3. As one of the members of the steering committee and as one of the chairpersons, the author of this Perspective helped gather legal educators, lawyers and communication researchers together to discuss topics such as interviewing, counseling, jury selection, and direct and cross-examination techniques.

³ One example of the use of communication research by the legal community occurred when The United States Supreme Court was deciding whether to allow panels of fewer than twelve jurors. The Court cited various studies including the author's communication study on jury size in support

Because of the large influx of immigrants into the United States from various parts of the world, many lawyers confront culturally dissimilar clients. Further, the growth of multinational corporations and international investors in this country has increased the possibility of intercultural mixes between lawyers and clients. In addition to these factors, United States industrial cities have historically attracted large minority populations, but there has not been a corresponding increase in minority members of the bar.

The goal of this Perspective is to unify some of the empirical studies in the social sciences and law and to develop a theoretical model of intercultural interviewing and counseling that can be applied in the legal setting. Intercultural communication problems have been widely studied in doctor-patient⁴ and psychologist-client⁵ settings. However, few articles have been written on the subject in the lawyer-client⁶ context. A second goal of this Perspective is to encourage further empirical research geared specifically toward intercultural communication in the legal setting.

This Perspective has specific application for lawyers with culturally diverse practices. Although the legal community generally has not eagerly embraced communication theories, there is some indication of growing interest in this area. One legal writer, the Honorable E.D. Re, suggests that there should be more time devoted to teaching counseling skills in law schools.⁷ Re states further that the burden of teaching these skills should be on the law schools.⁸ He feels that increased communication skills training would serve a preventive function. If the attorney could solve the client's problems in the office rather than the courtroom, many matters could be resolved without litigation.⁹ To solve a client's problem without litigation, the lawyer must be able to gather as much

of its decision. See, e.g., Note, *An Empirical Study of Six- and Twelve-Member Jury Decision-Making Processes*, 6 U. MICH. J.L. REFORM 712 (1973), cited in *Colgrove v. Battin*, 413 U.S. 149, 159-60 (1973); *Ballew v. Georgia*, 435 U.S. 223, 238, 242-43 (1978). Many follow-up articles have been written in reference to this law journal article by both legal scholars and social scientists alike, demonstrating the interest of legal scholars in communication studies, and the interest of social scientists in the legal area.

⁴ See, e.g., A. BROWNLEE, *COMMUNITY, CULTURE AND CARE: A CROSS-CULTURAL GUIDE FOR HEALTH WORKERS* (1978).

⁵ See, e.g., Sue & Sue, *Barriers to Effective Cross-Cultural Counseling*, 24 J. COUNSELING PSYCHOLOGY 420 (1977).

⁶ Note, *The Lawyer's Responsibility for Foreign Law and Foreign Lawyers*, 16 INT'L LAW. 693 (1982); Snowdon, *The Impact of Protocol on Business Negotiations*, N.Y.L.J., Aug. 26, 1985, at 5, col. 1; Comment, *Cross-Cultural Legal Counseling*, 18 CREIGHTON L. REV. 1475-1501 (1985).

⁷ Re, *The Lawyer as Counselor and the Prevention of Litigation*, 31 CATH. U.L. REV. 685, 696-97 (1982).

⁸ *Id.*

⁹ *Id.*

information as possible and clearly communicate the legal alternatives to the client. In order to accomplish this in the intercultural exchange, the lawyer must recognize and overcome barriers to effective intercultural communication. If it is important to teach counseling skills to lawyers, it is equally important to teach them intercultural communication skills to help increase their success in client counseling.

Several studies have assessed the communication courses being offered by some law schools.¹⁰ One study in 1977 surveyed American Bar Association (ABA) accredited schools and found that few schools offered one or more courses in the area of communication skills.¹¹ However, a 1982 article reported that a majority of ABA-approved law schools offered training in interviewing or counseling.¹² One writer suggests there is an increased interest in interviewing and counseling in legal education. This interest is evidenced by the Annual Client Counseling Competition, which celebrated its fifteenth anniversary in 1983.¹³ Articles discussing courses in interviewing and counseling were reviewed for this Perspective, although none of them mentioned any intercultural communication component. However, many articles¹⁴ and books¹⁵ have been published in related areas. Further, organizations have developed commissions on communication and the law,¹⁶ and associations specifically concerned with applying communication methodologies to legal areas have been formed.¹⁷ Although these associations have encouraged interest in the area, few law schools have adopted courses in interpersonal communica-

¹⁰ See J. Kessler & C. Cleeland, A National Survey of Legal Communication Courses at S.C.A. Affiliated Universities and at A.B.A. Accredited Law Schools (Nov. 1977)(paper presented to the Western States Communication Association Convention, Phoenix, Arizona).

¹¹ *Id.* at 2-3.

¹² Stillman, Silverman, Burpeau & Sabers, *Use of Client Instructors to Teach Interviewing Skills to Law Students*, 32 J. LEGAL EDUC. 395 (1982).

¹³ See, Barkai & Fine, *Empathy Training for Lawyers and Law Students*, 13 SW. U.L. REV. 505, 507-08 n.18 (1983).

¹⁴ See, e.g., Priest, *Social Science Theory and Legal Education: The Law School as University*, 33 J. LEGAL EDUC. 437 (1983); Gee & Jackson, *Current Studies of Legal Education: Findings and Recommendations*, 32 J. LEGAL EDUC. 471 (1982).

¹⁵ One of the most popular books on interviewing and counseling is D. BINDER & S. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977). See also A. WATSON, *THE LAWYER IN THE INTERVIEWING AND COUNSELING PROCESS* (1976); H. FREEMAN, *LEGAL INTERVIEWING AND COUNSELING: CASES WITH COMMENTS* (1964); R. REDMOUNT & T. SHAFER, *LEGAL INTERVIEWING AND COUNSELING* (1980).

¹⁶ For example, the Speech Communication Association has a commission on Communications and the Law. Its national office is located at 5105 Backlick Road, Suite E, Annandale, VA. 22003.

¹⁷ The Association of Trial Behavior Consultants is a group of consultants that joined together in 1981 to serve as a clearinghouse for those requesting consulting in trial behavior. Its Executive Secretary is Ronald Malton, Ph.D., Dept. of Speech Communication, University of Arizona, Tucson, AZ. 85721.

tion. More emphasis has been placed on continuing education programs than in formal legal education curricula.¹⁸

II. DEFINITION OF TERMS

In order to explore the theory of intercultural communication in the legal setting, certain terms must be operationally defined. In this Perspective, theory is defined as "a statement or a set of statements that relates functionally [to] at least two sets of laws[I]t must generate predictions testable by observation."¹⁹ Samovar and Porter state that intercultural communication occurs "[w]henver the parties to a communication act bring with them different experiential backgrounds that reflect a long-standing deposit of group experience, knowledge, and values."²⁰ Human communication generally may be defined as "the process of creating meaning between two or more people,"²¹ while theorizing in intercultural communication may be valuable to "explain . . . predict . . . or control" ²² Pedersen defines culture as "special populations that share the same world view or tend to make the same assumptions about their environment."²³ In the present study, diverse cultures will be evaluated in legal settings and, specifically, attorney-client interview and counseling sessions.

The distinctions between interviewing as a means of information gathering and interviewing as a means of counseling to help the client understand a legal issue are somewhat blurred.²⁴ Interviewing may be thought of as a broader communication category of purposeful conversation, while counseling may involve a type of interview geared toward helping someone.²⁵ Freeman suggests the following as comparisons: (1) interviewing as information-getting, counseling as advice-giving; (2) interviewing as procedure, counseling as substance; (3) interviewing as a tool, counseling as a process; (4) interviewing as the preliminary step, counseling as the final stage; (5) both as an interpersonal relationship with activity flowing in two directions; (6) both as methods for the

¹⁸ The Continuing Education of the Bar (CEB) and various private groups run communication skills seminars.

¹⁹ J. BOWERS, *DESIGNING THE COMMUNICATION EXPERIMENT* 14 (1970).

²⁰ *INTERCULTURAL COMMUNICATION: A READER* 1 (L. Samovar & R. Porter eds. 1972).

²¹ S. TUBBS & S. MOSS, *HUMAN COMMUNICATION* 4 (1983).

²² *INTERCULTURAL COMMUNICATION THEORY: CURRENT PERSPECTIVES* 14 (W. Gudykunst ed. 1983).

²³ P. PEDERSEN, W. LONNER, & J. DRAGUNS, *COUNSELING ACROSS CULTURES* (1976) 17.

²⁴ H. FREEMAN, *supra* note 15, at 2, *cited in* Weaver, *Review of Research on Legal Interviewing and Counseling*, in *PROCEEDINGS*, *supra* note 2, at 14-15.

²⁵ S. TUBBS & S. MOSS, *supra* note 21, at 8-9.

solution of problems revealed.²⁶ In this Perspective, the "laws" of human communication, intercultural communication, and legal interviewing and counseling are integrated into one theory. This human interaction and analysis of the attorney-client intercultural interaction may be observed and facilitated by using this theory. It is hoped that more attention will be placed on researching and teaching intercultural communication skills for lawyers.

Problems may occur when either the lawyer, client, or both, become ethnocentric. Ethnocentrism is defined as viewing the whole world only through one's own eyes with one's beliefs, values, and attitudes and not acknowledging that others may not see the world in the same way.²⁷ The meaning intended by one person may not be correctly received by the other person. Developing an awareness of the possible impact ethnocentrism has on effective intercultural communication will be valuable to the lawyer who deals with clients from backgrounds diverse from his or her own. Lawyers should be able to identify their prejudices and learn to control them.²⁸ These insights may help the lawyer to examine, analyze, predict and regulate his or her conduct. This will help the lawyer gain the best result by obtaining the most information from the client while avoiding any possible intercultural conflict.²⁹

III. COMPARISON OF CODES OF PROFESSIONAL RESPONSIBILITY AMONG VARIOUS PROFESSIONS

Many professional groups are specifically interested in intercultural variables and their effect on the client-professional counseling setting, although some professional groups appear to be more sensitive to these human variances than others. Some authors theorize that medical doctors,³⁰ nurses,³¹ and psychologists³² may be far more sophisticated in

²⁶ H. FREEMAN, *supra* note 15.

²⁷ L. SAMOVAR, R. PORTER, & N. JAIN, UNDERSTANDING INTERCULTURAL COMMUNICATION 194-95 (1981).

²⁸ H. FREEMAN, *supra* note 15, at 17.

²⁹ *Id.*

³⁰ Berry, Kessler, Fodor & Wato, *Intercultural Communication for Health Personnel*, 7 INT'L J. INTERCULTURAL REL. 377 (1983).

³¹ Redmount, *The Nature of Client Counseling and the Code of Professional Conduct*, 47 SASKATCHEWAN L. REV. 186, 200 (1982-83).

³² Atkinson, Matsui & Maruyama, *Effects of Counselor Race and Counseling Approach on Asian Americans' Perceptions of Counselor Credibility and Utility*, 25 J. COUNSELING PSYCHOLOGY 76 (1978); Berman, *Counseling Skills Used by Black and White Male and Female Counselors*, 26 J. COUNSELING PSYCHOLOGY 81 (1979); Fry, Kropf & Coe, *Effects of Counselor and Client Racial Similarity on the Counselor's Response Patterns and Skills*, 27 J. COUNSELING PSYCHOLOGY 130 (1980); LaFromboise & Rose, *Skills Training for Bicultural Competence: Rationale and Application*, 30 J. COUNSELING PSYCHOLOGY 589 (1983); Neimeyer & Gonzales, *Duration, Satisfaction and Per-*

their understanding of intercultural communication theories and the application of these theories to improving intercultural counseling. This is partly due to their fundamental humanistic orientation. In designing the model (see App.), various professional codes were examined to evaluate how diverse professions view communication problems.

One study compared the Canadian Bar Association's Code of Professional Conduct, adopted in 1974,³³ with the American Nurses Association (ANA) Code for Nurses with Interpretive Statements, adopted in 1976.³⁴ Redmount quotes the nursing code as instructing the nurse to provide "services with respect for human dignity and the uniqueness of the client."³⁵ Redmount notes that the ANA Code specifically asks the nurse to consider some of the variables of intercultural communication, such as "background, customs, attitudes and beliefs"³⁶ in order to give personalized attention to patients of different "age, sex, and race."³⁷ The recognition of individual patient differences is emphasized in the ANA code, and the American Psychology Association's (APA) Code.³⁸ The APA Code reflects the importance of research on human understanding and treatment of the client while respecting "the dignity and worth of the individual."³⁹ This emphasis on human understanding is relevant to the solutions section of the model of this Perspective. (See App.)

Redmount stresses that codes of professional responsibility reflect each profession's perception of "its principal social function."⁴⁰ He states that lawyers deal with clients, but in terms of the law, not in individual human terms.⁴¹ Redmount cautions lawyers not to exploit their "client's needs or weaknesses."⁴² He says that a professional code should "reflect a social as well as a professional conscience."⁴³ Redmount does not specifically discuss the importance of intercultural sensitivity on the part of the lawyer, but this is a logical extension of his argument empha-

ceived Effectiveness of Cross-Cultural Counseling, 30 J. COUNSELING PSYCHOLOGY 91 (1983); Proctor & Rosen, *Expectations and Preferences for Counseling Race and Their Relation to Intermediate Treatment Outcomes*, 28 J. COUNSELING PSYCHOLOGY 40 (1981);

³³ Redmount, *supra* note 31, at 194 n.10.

³⁴ *Id.* at 200 n.28 (citing AMERICAN NURSES ASSOCIATION, CODE FOR NURSES WITH INTERPRETIVE STATEMENTS (1976)).

³⁵ *Id.* at 201.

³⁶ *Id.*

³⁷ *Id.*

³⁸ American Psychological Association, *Ethical Standards of Psychologists* (rev. ed. 1977), cited in Redmount, *supra* note 31, at 199 n.27.

³⁹ *Id.*

⁴⁰ Redmount, *supra* note 31, at 200.

⁴¹ *Id.*

⁴² Redmount, *supra* note 31, at 201.

⁴³ *Id.*

sizing "values and skills" in client counseling.⁴⁴ While Redmount refers only to the Canadian Code for lawyers, the ABA Code is similarly lacking in attention to the human aspect of the ethical responsibility in dealing with clients from diverse backgrounds.⁴⁵

Barkai compares the legal profession with the "helping professions."⁴⁶ He suggests that in teaching, social work and psychiatry, verbal communication is a central component. He emphasizes the importance of achieving "rapport, or a mutual trust."⁴⁷ The Barkai and Redmount articles might be extended. If the Model Rules of Professional Conduct for lawyers more vigorously stressed the importance of intercultural awareness, lawyers might be more sensitive to their clients' individual needs, and, therefore, more successful in eliciting information vital to a client's case.⁴⁸ The solution section of the model emphasizes the need for increased sensitivity to individual client needs. (See App.)

One example of this need is an anecdote about a German client whose unfamiliarity with American legal procedures left him unable to anticipate the expense of discovery and the financial costs of proceeding with litigation. Sensitivity to cultural differences may have helped his lawyer explain the costs of discovery in the United States more thoroughly to the client.⁴⁹ A Mexican who is used to going to a *cuarandero* or healer rather than a doctor may be compared to a Mexican who is used to going to a Mexican "legal healer."⁵⁰ An Anglo-trained lawyer must be aware of this possible Mexican cultural uniqueness to obtain that client's trust just as an Anglo doctor must obtain the trust of a Mexican patient.

IV. DEVELOPING SENSITIVITY TO THE UNIQUENESS OF CULTURALLY DIVERSE CLIENTS

The potential for misunderstandings, confusion, and hostility increases in the intercultural exchange. One way to improve the quality of

⁴⁴ *Id.* at 201-02.

⁴⁵ See, e.g., American Bar Association MODEL RULES OF PROFESSIONAL CONDUCT (1983)[hereinafter MODEL RULES] Rules 1.3, 1.4. This code gives the lawyer more personal autonomy than the older MODEL CODE OF PROFESSIONAL RESPONSIBILITY (1981). Note the lack of emphasis on intercultural communication in MODEL RULES PREAMBLE.

⁴⁶ Barkai & Fine, *supra* note 13, at 510-11. See also Berry, Kessler, Fodor & Wato, *supra* note 30 (discussing the problems that doctors face in providing health care to Latinos).

⁴⁷ Barkai & Fine, *supra* note 13, at 511 (citing D. BINDER & S. PRICE, *supra* note 15, at 25).

⁴⁸ Re, *supra* note 7, at 694. Re discusses a 1980 Model Code section to make the point that lawyers must explain the law to the client and any moral, economic, social and political factors that are relevant. *Id.* at 694. See also MODEL RULES 2.2 (Discussion Draft 1980).

⁴⁹ This anecdote was reported to the author by a lawyer who deals with many foreign clients.

⁵⁰ R. MARTINEZ, HISPANIC CULTURE AND HEALTH CARE: FACT, FICTION, FOLKLORE (1978).

the information exchange between lawyer and client is to improve their communication effectiveness. As more shared meanings and mutual understanding occur, the client will be more likely to share honest and complete information with the lawyer.⁵¹

Writers in both communication and legal disciplines have explored various methods of improving the communication environment during interviewing and counseling sessions. For instance, the authors of one communication textbook suggest the use of open-ended questions, which place no limits on the length of the respondent's answer and allow the respondent a chance to interpret the subject matter.⁵² These open-ended questions early in the interview may help to put the respondent at ease and encourage the respondent to reveal personal information.⁵³ For example, a lawyer might ask an accident victim to describe how the accident happened by using the open-ended question structure. As described in the model, lawyers need to be aware of their clients' feelings and not just respond to the substantive aspect of their clients' words.⁵⁴ All of the communication techniques needed for a successful lawyer-client interview become more important in the intercultural exchange.

Few studies have dealt with the factors affecting the intercultural exchange. However, in one seminal study researchers identified factors leading to increased satisfaction in an intercultural exchange.⁵⁵ The researchers had Chicano and black subjects interact with Anglo subjects and then report on their level of satisfaction with the exchange.⁵⁶ The Chicano subjects in the study felt that "sharing of common experiences" led to a more satisfying exchange. In fact, one Chicano subject became dissatisfied in an interaction when she felt that the value system between herself and her Anglo interactant "was different."⁵⁷ The black subjects felt that being "genuine" and having "open disclosure" made them feel more satisfied in the experimental situation interacting with Anglo subjects.⁵⁸ "Understanding . . . that their meaning had been successfully conveyed," was also of importance to them.⁵⁹

⁵¹ See, e.g., Weaver, *supra* note 24 (discussion of establishing rapport).

⁵² S. TUBBS & S. MOSS, *supra* note 21, at 233-34.

⁵³ *Id.* at 234.

⁵⁴ Smith & Nester, *Lawyers, Clients and Communication Skill*, 1977 B.Y.U.L. REV. 275, 281-82, cited in Barkai & Fine, *supra* note 13, at 507.

⁵⁵ M. Hecht & S. Ribeau, *Communication Between Domestic Cultural Groups* (1980) (unpublished paper presented at the Speech Communication Association, New York, N.Y., analyzing intercultural exchanges).

⁵⁶ *Id.* at 7.

⁵⁷ *Id.*

⁵⁸ *Id.* at 8.

⁵⁹ *Id.* See also Hecht & Ribeau, *Ethnic Communication: A Comparative Analysis of Satisfying*

Although this study dealt with social exchanges rather than lawyer-client interactions, these findings can be applied by the lawyer. A lawyer who interacts with clients from different countries, and more specifically from different cultures, should consider establishing common ground and emphasizing similarities to help the client feel more comfortable in the exchange. Conveying to the client that the message was understood may be even more important in an intercultural exchange than in an interview with a client from the same cultural background. The lawyer may actually be able to improve client satisfaction if his level of communication improves.⁶⁰

Increasing empathy may be one way to help solve the potential communication problems in an intercultural exchange.⁶¹ Empathy is the ability to have insight into and share the inner feelings of others.⁶² Training in empathy is particularly important in intercultural exchanges where there are increased chances of miscommunication.⁶³ Barkai explains the two steps to empathy: 1) respond to what the client says explicitly and 2) respond to what is implied or hinted.⁶⁴ Barkai discusses empathy and especially empathy training for lawyers.⁶⁵ If lawyers responded to culturally diverse clients with heightened sensitivity, the interaction might be more productive.

Barkai suggests that clients may be embarrassed and fearful about a case outcome,⁶⁶ which may heighten communication problems. The lawyer's objective is to convey to the client in the intercultural environment that speaking honestly is acceptable. The fact that much of the population distrusts lawyers makes this goal even harder to attain.⁶⁷

In an intercultural exchange it may be difficult for a lawyer to experience the feelings of a client whose cultural orientation has been different from his or her own. One major factor that may block one's ability to understand the orientation of another is stereotyping.⁶⁸ If, for in-

Communication, 8 INT'L J. INTERCULTURAL REL. 135 (1984) (discussing the unique communication characteristics of Chicanos and blacks).

⁶⁰ See generally Barkai & Fine, *supra* note 13 (personal empathetic relation with client necessary for effective lawyering).

⁶¹ See, e.g., Bennett, *Overcoming the Golden Rule: Sympathy and Empathy*, 3 ICA COMM. Y.B. 407 (1979) (Author suggests using empathy to try to experience what the person from the other culture is experiencing.)

⁶² L. SAMOVAR, R. PORTER & N. JAIN, *supra* note 27, at 197.

⁶³ See generally Barkai & Fine, *supra* note 13.

⁶⁴ *Id.* at 508 n.20.

⁶⁵ *Id.* at 523.

⁶⁶ *Id.* at 510.

⁶⁷ *Id.* at 509-10.

⁶⁸ *Id.* at 198. See also Barna, *Stumbling Blocks in Intercultural Communication*, in INTERCULTURAL COMMUNICATION: A READER 334 (L. Samovar & R. Porter 4th ed. 1985)[hereinafter

stance, an Anglo lawyer decides that all Iranian clients are the same, he may not effectively empathize with the unique characteristics and feelings of a certain client. The key to empathy for a lawyer in an intercultural interaction is to prevent prejudices and stereotypes from clouding the lawyer's perceptions of the culturally diverse client.⁶⁹ This is true when a lawyer who is a member of a minority group interacts with a client from a different cultural background or when an Anglo lawyer interacts with a client who is a member of a minority group.

Binder and Price feel that different clients vary in their expectations of how a lawyer should behave.⁷⁰ Some forms of communication may be acceptable between members of one ethnic group, but the same words or comments may not be acceptable to nonmembers of another group.⁷¹ The magnitude of the problem of counseling clients from different cultures is increased because lawyers may spend thirty to eighty percent of their time in counseling.⁷² Particularly in large cities, where multi-ethnic communities have burgeoned in the last twenty years, the lawyer may have many intercultural counseling situations.⁷³

Bennett suggests that in intercultural exchanges one person must *not* use the Golden Rule and "[d]o unto others as you would have them do unto you," but rather think of how the person from the other culture is feeling and consider how his cultural background affects his perceptions and influences his reactions.⁷⁴ As emphasized by the solution section of the model, empathetic listening is a critical tool for the lawyer⁷⁵ (see App.).

In intercultural exchanges the lawyer must go beyond what the client says to discover what is actually meant. A Japanese client interacting with a United States lawyer may send a message consistent with Japanese cultural norms but that will be misunderstood by the lawyer.⁷⁶ One researcher cites differences between Japanese and United States thought

READER, 4TH ED.]; Atkinson, Morten & Sue, *Minority Group Counseling: An Overview* in READER, 4TH ED. *supra* at 172-73.

⁶⁹ For a related discussion of stereotyping and empathy, see L. SAMOVAR, R. PORTER & N. JAIN, *supra* note 27, at 198.

⁷⁰ D. BINDER & S. PRICE, *supra* note 15, at 12.

⁷¹ *Id.*

⁷² See, e.g., T. SHAFFER, *LEGAL INTERVIEWING AND COUNSELING* (1981) cited in *Re, supra* note 7, at 691 n.23. See also Redmount, *An Inquiry into Legal Counseling*, 4 J. LEGAL PROF. 181 (1982).

⁷³ Hecht & Ribeau, *supra* note 59.

⁷⁴ See generally Bennett, *supra* note 61.

⁷⁵ Barkai & Fine, *supra* note 13, at 506-07 (citing D. BINDER & S. PRICE, *supra* note 15, at 20-21).

⁷⁶ Ishii, *Thought Patterns as Modes of Rhetoric: The United States and Japan*, in READER, 4TH ED., *supra* note 68, at 97-102.

patterns as a factor in intercultural communication problems.⁷⁷ For instance, Ishii explains that “[t]o the Western mind, human activity is paramount and ultimately will lead to the discovery of truth.”⁷⁸ The Taoist tradition, however, holds truth as an “active agent, and if it is to be known it will be through the activity of truth making itself apparent.”⁷⁹ Ishii states that while a United States author may use a “linear pattern” of writing with topic sentences and then subdivisions and examples, a Japanese writer may use an indirect approach.⁸⁰ These differences may lead a United States lawyer to perceive the Japanese client as ambiguous, while the United States lawyer may be perceived as loud and aggressive.⁸¹

A United States lawyer may arrive at inaccurate assumptions about the meaning of a Japanese client’s responses. For example, there is a Japanese custom of speaking and acting “only after due consideration has been given to the other person’s feelings and points of view” and “a habit of not giving a clear-cut yes or no answer, a habit on a long tradition of avoiding unnecessary friction.”⁸² The Japanese may hold silence in higher esteem than their United States counterparts; Ishii states that the Japanese would be less likely to exaggerate and more likely to understate a point.⁸³ Further, the Japanese would be more likely to value “mutual dependence to keep interpersonal harmony,”⁸⁴ while United States citizens might be more likely to have “mutual confrontation to keep things moving.”⁸⁵

In a legal setting when counseling a Japanese client, or a client who has been strongly influenced in his communication style by Japanese traditions, a “yes” may be given by the client although there is really disagreement with the United States lawyer’s suggestions, or the client may keep silent or understate the point. The lawyer must be aware of the possibility of misinterpretation, and pursue the issues for clarification. Empathy may also be a key to effective intercultural communication.

⁷⁷ *Id.* at 98.

⁷⁸ *Id.* (citing Samovar & Porter, *Approaching Intercultural Communication* in INTERCULTURAL COMMUNICATION: A READER 40 (L. Samovar & R. Porter 3d ed. 1982))[hereinafter READER, 3RD ED.].

⁷⁹ Ishii, *supra* note 76, at 98.

⁸⁰ *Id.* at 99.

⁸¹ *Id.* This conclusion is an application to the legal setting derived from Ishii’s general discussion.

⁸² *Id.* at 100 (citing NIPPON STEEL CORPORATION, PERSONNEL DEVELOPMENT OFFICE, NIPPON: THE LAND AND ITS PEOPLE, 297 (1982)).

⁸³ Ishii, *supra* note 76, at 101.

⁸⁴ *Id.*

⁸⁵ *Id.*

Another source⁸⁶ discusses intercultural communication problems between the psychologist and client in intercultural counseling. The problems of the psychologist in this setting relate to the lawyer's problems when counseling abroad. Not only are there differences in laws, but also in perceptions of the law, the role of the lawyer, and attitudes about what lawyers do, just as the psychologist encounters differences in attitudes toward counseling. Foreign lawyers in the United States may also have intercultural problems.

V. APPLICATION

There are many communication variables, and specifically intercultural communication variables, that may affect the lawyer-client intercultural exchange. These variables make up the model. In order to analyze the relevant intercultural variables, basic communication variables must be discussed. Communication may be defined as "a dynamic transactional behavior-affecting process in which sources and receivers intentionally code their behavior to produce messages that they transmit through a channel in order to induce or elicit particular attitudes or behaviors."⁸⁷

The major elements of this process, according to Samovar and Porter, are:⁸⁸ 1) the source—the one who needs to communicate, 2) the encoding—the internal selecting and arranging of behaviors using long-range rules, 3) the message—the set of symbols resulting from encoding, 4) channel—means of transmitting a message from source to receiver, 5) receiver—one who "intercept(s) messages," 6) decoding—"converting external messages into a meaningful experience," 7) receiver response—"what a receiver decides to do about the message," and 8) feedback or information about communication effectiveness. Accordingly, when a lawyer and client discuss a matter, they both send and receive messages through verbal and nonverbal cues. This communication process is ongoing and irreversible.⁸⁹ We are always communicating, intentionally or not. When a lawyer shuffles papers and looks at the clock, the client may get the message that it is time to go, whether or not the lawyer intended such a message.

In an intercultural exchange, several variables may cause breakdowns in the communication process. Perception is the "internal process

⁸⁶ P. PEDERSEN, W. LONNER & J. DRAGUNS, *supra* note 23.

⁸⁷ Porter & Samovar, *Approaching Intercultural Communication*, in READER, 3RD ED., *supra* note 78, at 17.

⁸⁸ *Id.* at 17-18.

⁸⁹ *Id.* at 18.

by which we select, evaluate, and organize stimuli from the external environment."⁹⁰ It is a key component to any communication, and especially to the intercultural exchange. In addition to perceptual problems, language may pose a problem in the intercultural exchange.⁹¹ Even if both lawyer and client speak the same language, thought patterns may be different in the creation of the message.⁹² Differences in slang and vernacular may also cause problems in the intercultural exchange.⁹³ For instance, a criminal lawyer communicating with a prison inmate may encounter a whole new usage of the English language within the prison system.⁹⁴ Here, even though both source and receiver may speak English, communication may break down. The inmate's use of the cultural language of the jail may be foreign to the lawyer.

Many other variables may also cause problems in the intercultural exchange between lawyer and client. Nonverbal communication aspects such as differences in use of personal space, and differences in the use and the value of time, are examples.⁹⁵ Beliefs, attitudes, and values,⁹⁶ roles (especially the role of the lawyer and the ability to elicit self-disclosure),⁹⁷ the environment or setting in which the interaction takes place, and the world view of those involved⁹⁸ are all other intercultural variables that might produce barriers affecting the intercultural exchange.

Lack of accurate analysis of feedback may cause problems in communication. This may be especially true when the interactants are from different cultural orientations. When one person sends a message to another through verbal and/or nonverbal channels, the reaction of the receiver is feedback. The subsequent messages sent by the sender may be influenced by the receiver's feedback,⁹⁹ or the sender's perception of the receiver's feedback. For instance, in an intercultural exchange between a lawyer and client, the lawyer must carefully assess the client's reactions to what is said in order to decide how and what to say to the culturally diverse client. Failure to understand how this client is reacting may cause the client to feel hostile or uncomfortable with the interaction.

⁹⁰ *Id.* at 24.

⁹¹ *See, e.g.,* Atkinson, Morten & Sue, *supra* note 68, at 170; Barna, *supra* note 68, at 333.

⁹² *See generally* Ishii, *supra* note 76 (discussion of United States versus Japanese thought patterns).

⁹³ Atkinson, Morten & Sue, *supra* note 68, at 170.

⁹⁴ *Id.*

⁹⁵ Barna, *supra* note 68, at 330-34.

⁹⁶ L. SAMOVAR, R. PORTER & N. JAIN, *supra* note 27, at 25-27.

⁹⁷ Atkinson, Morten & Sue, *supra* note 68, at 171 (citing Sue & Sue, *Counseling Chinese-Americans*, 50 PERSONNEL & GUIDANCE J. 637 (1972)).

⁹⁸ L. SAMOVAR, R. PORTER & N. JAIN, *supra* note 27, at 46-47.

⁹⁹ S. TUBBS & S. MOSS, *supra* note 21, at 7-8.

Further, the client may not be totally candid with a lawyer that is not understanding of the client.

Other factors may cause problems in intercultural interaction. Lack of empathy,¹⁰⁰ lack of trust,¹⁰¹ stereotyping,¹⁰² and especially ethnocentrism, or judging another culture according to one's own cultural values,¹⁰³ may lead to communication problems. For example, a lawyer would be ethnocentric in thinking that all people would perceive the United States legal system in the same manner, or even that all people would perceive the running of a negotiating session, as a lawyer would. This ethnocentric attitude might lead to a culturally diverse client's negative reaction to the lawyer.

Various solutions have been suggested to break down these barriers in an intercultural exchange. One source suggests the use of self-knowledge, empathy, good communication skills, and "shared codes" commonalities.¹⁰⁴ Another source suggests communicating respect, being nonjudgmental, listening attentively, avoiding ethnocentrism, being empathetic, being flexible and generally having tolerance for ambiguity.¹⁰⁵

Specific hypothetical examples of intercultural exchanges in legal interviewing and counseling may show how these problems and solutions may be applied to the legal context. For instance, some Latino clients may have cultural predispositions against going to a lawyer,¹⁰⁶ and this may be compared with the predisposition that some Latinos have against going to a medical doctor.¹⁰⁷ Various articles provide other examples of intercultural exchanges, and these interactions may relate to the legal setting.¹⁰⁸

A model is an excellent way to visually demonstrate the interaction

¹⁰⁰ L. SAMOVAR, R. PORTER & N. JAIN, *supra* note 27, at 197.

¹⁰¹ *Id.* at 196.

¹⁰² *Id.* at 199; Barna, *supra* note 68, at 334.

¹⁰³ L. SAMOVAR, R. PORTER & N. JAIN, *supra* note 27, at 194-95.

¹⁰⁴ *Id.* at 202-10.

¹⁰⁵ Ruben, *Human Communication and Cross-Cultural Effectiveness* in READER, 4TH ED., *supra* note 68, at 338-46.

¹⁰⁶ Berry, Kessler, Fodor & Wato, *supra* note 30. This article discusses the problems of Latino health care. The hesitation of Latinos to see Anglo doctors may relate to encouraging effective communication between Latino clients and non-Latino lawyers because of possible Latino hesitation about seeing Anglo lawyers.

¹⁰⁷ *Id.*

¹⁰⁸ Jereb, *Assessing the Adequacy of Counseling Theories for Use with Black Clients*, 27 COUNSELING & VALUES 17 (1982); Sue & Sue, *Barriers to Effective Cross-Cultural Counseling*, 24 J. COUNSELING PSYCHOLOGY 420 (1977). These articles present cultural profiles on Asians, blacks, Latinos, etc.; Hecht & Ribeau, *Communication Between Domestic Cultural Groups* (unpublished paper presented at the Speech Communication Association Annual Convention, New York (1980)). See also Bennett, *supra* note 61.

of the variables, and the possible solutions to resultant communication problems.¹⁰⁹ A lawyer might use the model below to evaluate intercultural client exchanges and become aware of possible communication problems.¹¹⁰

VI. CONCLUSION

A lawyer is first and foremost an advocate.¹¹¹ However, the role as interpersonal communicator and counselor is also critical.¹¹² Former Chief Justice Burger has called upon lawyers to work to reduce "friction in our complex society."¹¹³ By developing an awareness of the importance of intercultural communication to lawyers, lawyers may be able to reduce friction between themselves and clients of diverse cultural backgrounds and improve the lawyering process.

¹⁰⁹ C.D. MORTENSEN, *COMMUNICATION: THE STUDY OF HUMAN INTERACTION* (1972). "[A] model is a systematic representation of an object or event in idealized and abstract form." *Id.* at 29. A model helps to "clarify the structure of complex events" by giving "order and coherence." *Id.* at 31.

¹¹⁰ See App. Many sources were combined to develop this model. See generally Atkinson, Morten & Sue, *supra* note 68, at 176, Porter & Samovar, *Approaching Intercultural Communication*, in READER, 4TH ED., *supra* note 68, at 25-27. See generally S. TUBBS AND S. MOSS, *supra* note 21; READER, 4TH ED., *supra* note 68 and accompanying text.

¹¹¹ MODEL RULES, *supra* note 45.

¹¹² Re, *supra* note 7, at 689.

¹¹³ Burger, *supra* note 1, at 19, cited in Re, *supra* note 7, at 691.

APPENDIX
Model of Intercultural Communication in Legal Interviewing and Counseling*

FEEDBACK
(two-way process)

Lawyer Motivators	Lawyer Goals	Variables Causing Barriers to Intercultural Communication Effectiveness	Client Goals	Client Motivators	Solutions
<ol style="list-style-type: none"> 1. Increased client referrals and client cooperation (money/reputation) 2. Winning results 3. Code of Prof. Responsibility 4. Increased interest of legal community in communication 5. Personal needs 6. Cultural factors 7. Environment in which interaction takes place 8. Perception of other ethnic groups 9. Rules of culture's legal system 	<ol style="list-style-type: none"> 1. Work effectively with clients 2. Get accurate information 3. Give accurate information 	<ol style="list-style-type: none"> 1. Language (Verbal processes) 2. Meanings 3. Beliefs, attitudes, values (world view, thought patterns, value conflicts) 4. Nonverbal cues (time, space) 5. Other problems 	<ol style="list-style-type: none"> 1. Win case 2. Solve problems 	<ol style="list-style-type: none"> 1. Money or not going to jail 2. Cultural factors 3. Personal needs 4. Environment in which interaction takes place 5. Perception of other ethnic groups 6. Rules of culture's legal system 	<ol style="list-style-type: none"> 1. Avoid ethnocentric behavior 2. Develop self-awareness and intercultural awareness (identify uniqueness) 3. Develop empathetic listening skills 4. Identify commonalities