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Just What the Doctor Ordered: The Need for Cross-Cultural Education in Law Schools

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ESSAY

JUST WHAT THE DOCTOR ORDERED: THE NEED FOR CROSS-CULTURAL EDUCATION IN LAW SCHOOLS

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I. Introduction

In 2003, the United States Supreme Court affirmed the importance of diversity in legal education when it decided *Grutter v. Bollinger*.[1] Underlying the Court's decision was the recognition that a diverse student body benefits the education of all law students, which in turn, impacts society in important ways.[2] While recognition of educational diversity as a compelling state interest allows law schools to consider race in admissions, race-based admissions policies alone cannot address the truly compelling state interest underlying educational diversity: training lawyers to practice in a multicultural society, including effectively representing clients from different racial, ethnic, and socioeconomic backgrounds. Law schools must do more than simply attempt to create diverse classrooms. Law schools must implement cross-cultural education to teach law students the skills necessary to understand cultural differences and to effectively

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[1] 539 U.S. 306, 343 (2003).

[2] *See id.* at 330.

communicate with clients and colleagues whose cultural backgrounds differ from their own.

Several years ago, the medical profession recognized that its professionals, while not overtly racist, reflect the prejudicial attitudes and perceptions prevalent in American society.[3] As a result of doctors' and nurses' prejudices, stereotypes, and biases, American racial and ethnic minorities receive lower quality healthcare than white Americans, independent of insurance status, income, education, or other factors that influence access to healthcare.[4] In response to that disturbing finding, the medical profession called for the inclusion of cross-cultural education into medical school curricula.[5] The American Medical Association (AMA) subsequently adopted[6] cross-cultural education standards for all medical schools seeking accreditation.[7] The same societal biases influencing medical professionals influence lawyers, perhaps to an even greater degree given the legal system's central place of power in American society. Yet, the legal profession has not undertaken a similar self-assessment.

Given the changing demographics in the United States and law schools, the time is ripe to reassess what law students need to know to be effective advocates in our multicultural society. In *Grutter*, the Supreme Court focused on the importance of the diversity of the next

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[3] INST. of MED., UNEQUAL TREATMENT: CONFRONTING RACIAL AND ETHNIC DISPARITIES IN HEALTHCARE 76–77, 79 (Brian D. Smedley et al. eds., 2003) ("*Unequal Treatment*").

[4] *Id.*

[5] *See* Patricia A. Thomas, *Leading through Diversity—My Version of the Dream: Comfortable Shoes*, SELAM INT'L NEWS, July 2002, at 12, 13.

[6] *Id.*

[7] LIAISON COMM. ON MED. EDUC., FUNCTIONS AND STRUCTURE OF A MEDICAL SCHOOL: STANDARDS FOR ACCREDITATION OF MEDICAL EDUCATION PROGRAMS LEADING TO THE M.D. DEGREE 15 (June 2007) (standards ED-20 and ED-21) ("*LCME Cultural Competency Standards*").

generation of law students.[8] The United States Census Bureau predicts that the demographics of the United States will undergo a massive transformation in the next forty years.[9] By 2050, the United States will be a "minority-majority" country in which non-Hispanic white Americans will become a plurality rather than the majority population.[10] Future generations of law students will represent an increasingly diverse population of clients. Without cross-cultural education, lawyers will lack the basic skills needed to fulfill their ethical obligation of competent representation, and the legal profession will continue to reflect societal prejudice toward minorities, rather than fulfill the American Bar Association's command to rid the profession of discrimination based on race and ethnicity. [11]

Currently, momentum is building toward retooling legal education in the United States. In the past year alone, two major assessments of legal education were released: *Best Practices for Legal Education*[12] by the Clinical Legal Education Association (CLEA) and *Educating Lawyers*[13] by the Carnegie Foundation for the Advancement of Teaching. Both of these reports advocate the need to

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[8] *See Grutter*, 539 U.S. at 343 ("The Court expects that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.").

[9] U.S. Census Bureau, *The Face of Our Population* (Oct. 13, 2004), http://factfinder.census.gov/jsp/saff/SAFFInfo.jsp?-pageID=tp9_race-ethnicity (" *Face of Our Population*").

[10] *Id.*

[11] *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* 1992, A.B.A. SECT. L. EDUC. & ADMISSIONS BAR, 141, 216-17, *available at* http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html (" *MacCrate Report*").

[12] ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007) ("*CLEA's Best Practices*").

[13] WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) ("*Carnegie Report*").

improve legal education to ensure the health, morality, and competence of lawyers and the legal profession. In addition, CLEA's *Best Practices* recognizes the importance of cross-cultural skills for lawyers.

This article urges law schools to follow their medical counterparts by incorporating cross-cultural education into their curricula. Part II discusses the *Grutter* decision and the Supreme Court's recognition of the benefits of diversity to legal education. Part III highlights the changing demographics of the United States and how those demographics require immediate response from the legal academy. Part IV considers the experience of medical education. This section begins by exploring a study of the medical profession conducted by the Institute of Medicine. The section then addresses medical schools' response to the Institute of Medicine report and the subsequent incorporation of cross-cultural education into medical school curricula. Part V addresses the recent assessments by CLEA and the Carnegie Foundation regarding cross-cultural competency of lawyers. Part VI argues that the American Bar Association must take the lead and require law schools to incorporate cross-cultural competency into the education of America's next generation of lawyers.

II. *Grutter* and Educational Diversity

In 2003, the Supreme Court of the United States issued its opinion in *Grutter v. Bollinger*,[14] addressing whether educational diversity in law schools constitutes a compelling state interest.[15] The Court affirmed the constitutionality of Michigan Law School's admissions policy allowing consideration of race as a factor in order to

[14] *Grutter*, 539 U.S. at 310.

[15] *Id.* at 322. The Court issued a separate opinion dealing with the use of race in undergraduate admissions. *See* Gratz v. Bollinger, 539 U.S. 244 (2003).

further the school's goal of creating a diverse law student body.[16]

Justice O'Connor, in drafting the opinion of the Court, began by reviewing Justice Powell's opinion in *Regents of the University of California v. Bakke*[17] that educational diversity could constitute a compelling state interest.[18] According to Justice Powell, the "'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples."[19] Before *Grutter*, many lower courts had interpreted Justice Powell's opinion as the holding of the Court.[20] However, in *Grutter*, a majority of the Court held for the first time that educational diversity constitutes a compelling state interest.[21]

In holding that the state has a compelling interest in achieving diversity in its educational institutions, the Court highlighted several "substantial" benefits of ethnic and racial diversity.[22] First, the Court agreed with the district court's finding that diversity in educational programs "promotes 'cross-cultural understanding'" and helps decrease racial stereotypes.[23] The Court found that educational diversity "enables [students] to better understand persons of different races."[24]

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[16] *Grutter,* 539 U.S. at 343.
[17] 438 U.S. 265 (1978).
[18] *Grutter*, 539 U.S. at 322–23.
[19] *Id.* at 324 (quoting *Bakke*, 438 U.S. at 313).
[20] *Id.* at 321; *see, e.g.*, Smith v. Univ. of Wash. Law Sch., 233 F.3d 1188, 1199 (9th Cir. 2000) (quoting Marks v. United States, 430 U.S. 188, 193 (1977) ("When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.") (internal citations omitted)).
[21] *Grutter*, 539 U.S. at 325.
[22] *Id.* at 330.
[23] *Id.*
[24] *Id.*

In addition, the Court found that educational diversity produces professionals better trained to deal with America's diverse population.[25] The Court, quoting from the amicus brief of the American Educational Research Association, noted that "student body diversity promotes learning outcomes, and 'better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.'"[26]

Third, the Court identified the significant role that diversity plays in the legitimacy of American leaders.[27] Harkening back to Justice Powell's connection of effective leadership with cross-cultural understanding, the Court stated that "universities, and in particular, law schools, represent the training ground for a large number of our Nation's leaders . . . . Individuals with law degrees occupy roughly half the state governorships, more than half the seats in the United States Senate, and more than a third of the seats in the United States House of Representatives."[28] The Court continued in this vein, stating:

> In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training.[29]

Finally, the Court noted that educational diversity—namely, law schools' ability to train students to understand

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[25] *Id.* (quoting Brief for the Am. Educ. Research Ass'n as Amici Curiae, *Grutter* 539 U.S. (No. 02-241)).
[26] *Grutter*, 539 U.S. at 330.
[27] *Id.* at 332.
[28] *Id.*
[29] *Id.*

different cultures and effectively work with those differences—played an important role in the future health of American society and America's ability to realize its democratic values:

> We have repeatedly acknowledged the overriding importance of preparing students for work and citizenship, describing education as pivotal to "sustaining our political and cultural heritage" with a fundamental role in maintaining the fabric of society . . . . Effective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized . . . . As we have recognized, law schools "cannot be effective in isolation from the individuals and institutions with which the law interacts."[30]

The Court's finding that educational diversity is a compelling state interest, therefore, was premised on the central place of law schools in educating lawyers, the critical leadership role lawyers play in American society, and the importance of American lawyer-leaders being able to work effectively with a diverse population.

III. The Changing Demographics of the United States and Law Schools

Due to dramatic changes in the racial and ethnic makeup of the United States population, tomorrow's

[30] *Id.* at 331–32 (quoting Sweatt v. Painter, 339 U.S. 629, 634 (1949)). Interestingly, the *Grutter* Court left out the sentence immediately preceding the language it quoted from Sweatt v. Painter: "Moreover, although the law is a highly learned profession, we are well aware that it is an intensely practical one." *Sweatt*, 339 U.S. at 634.

lawyers will practice law in a truly multicultural society.[31] In one generation, America will be a "minority-majority" country for the first time.[32] Four states—Texas, California, Hawaii, and New Mexico—are currently "minority-majority" states.[33] Even in the legal profession, where minorities are underrepresented,[34] minority participation has followed larger demographic trends.[35] As a result, the next generation of American lawyers will be required to maneuver cultural differences and intricacies, with regard to both colleagues and clients, to a far greater degree than any previous generation of legal professionals.

The face of lawyers' future clients is changing dramatically. The current United States population is roughly 300 million people.[36] Non-Hispanic white

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[31] While race and ethnicity are just some of the many important aspects of culture, the projected changes in this area merit examination. Similar, but more difficult to quantify, changes are also taking place in other aspects of culture: sexual orientation, family structure, and gender, for example. Although this section focuses on race and ethnicity, it should not be taken to mean that these are the only important aspects of culture about which law schools needs to educate future lawyers.

[32] *Face of Our Population*, *supra* note 9.

[33] U.S. Census Bureau, Texas Becomes Nation's Newest "Majority-Minority" State, Census Bureau Announces (Aug. 11, 2005), *available at* http://www.census.gov/PressRelease/www/releases/archives/population/005514.html. Both terms—"minority-majority" and "majority-minority"—are used to describe the phenomenon of minority populations exceeding majority populations. For purposes of this paper, I prefer the term, "minority-majority" because it places the emphasis on the minority populations rather than white population.

[34] A.B.A. Commission on Racial & Ethnic Diversity in the Profession, *Statistics about Minorities in the Profession from the Census*, Sept. 28, 2008, http://www.abanet.org/minorities/links/2000census.html ("*ABA Statistics about Minorities*").

[35] U.S. Equal Employment Opportunity Commission, *Diversity in Law Firms* (2003), *available at* http://www.eeoc.gov/stats/reports/diversitylaw/index.html.

[36] U.S. Census Bureau, *2006 American Community Survey Data Profile Highlights* (2006), *available at* http://factfinder.census.gov/

Americans constitute nearly three-fourths of that population.[37] Minorities make up the remaining one-fourth, or slightly less than 100 million people.[38] According to the United States Census Bureau, by the year 2050, the United States will experience a 188% increase in the Hispanic population, a 71% increase in the Black population, and a 213% increase in the Asian population.[39] As a result, by 2050, minorities and whites will make up equal portions of the American population.[40]

Immigration also contributes to increasing diversity in American society. The United States draws two-thirds of the world's immigrants.[41] In 1940, 70% of immigrants to the United States came from Europe.[42] Today, 85% of immigrants to the United States come from Central and South America,[43] further adding to this country's diversity.

In addition to racial and ethnic differences, future lawyers will face increasing language challenges in their practices. According to the Census Bureau, nearly 20% of the United States' population speaks a language other than English at home.[44] With continued immigration and

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servlet/ACSSAFFFacts?_submenuID=factsheetI&sse=on ("*American Community Survey Highlights*").

[37] *Id.*

[38] Press Release ,U.S. Census Bureau, *Minority Population Tops 100 Million* (May 17, 2007), http://www.census.gov/Press-Release/www/releases/archives/population/010048.html. This figure probably underestimates illegal immigrants, who may avoid participating in census surveys.

[39] *Face of Our Population*, *supra* note 9.

[40] U.S. Census Bureau, *Projected Population of the United States, by Race and Hispanic Origin: 2000 to 2050* (Mar. 18, 2004), *available at* http://www.census.gov/ipc/www/usinterimproj/natprojtab01a.pdf).

[41] American Medical Student Association, *Cultural Competency in Medicine*, http://www.amsa.org/programs/gpit/cultural.cfm (accessed Jan. 31, 2008) (citing RACHEL E. SPECTOR, CULTURAL DIVERSITY IN HEALTH AND ILLNESS 169 (5th ed., Prentice-Hall 2000)).

[42] *Id.*

[43] *Id.*

[44] *American Community Survey Highlights*, *supra* note 36.

globalization, knowledge of languages other than English will increase in importance.

The face of the legal profession is changing as well. In the past twenty years, minority participation in law schools more than doubled. In the 1984–1985 academic year, minorities received 8.6% of all Juris Doctor degrees awarded;[45] two decades later, in the 2004–2005 academic year, 22.4% of juris doctors were awarded to minorities.[46] While this trend has slowed—in the past eight years, minority enrollment in law schools has consistently hovered around 20% of total law school enrollment [47]—minority enrollment rates have not decreased, and continue to show small increases each year. Despite these increases, minorities remain underrepresented in the legal profession as they currently represent one-fourth of the total United States population.[48]

In August 2006, an understanding of the importance of educational diversity and a concern about underrepresentation of minorities prompted the American Bar Association to adopt an accreditation standard requiring law schools show a "commitment to diversity":

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[45] American Bar Association, *Total Minority J.D. Degrees Awarded 1983–2004* (2006), *available at* http://www.abanet.org/legaled/statistics/charts/stats%20-%209.pdf.

[46] *Id.*

[47] LAW SCHOOL ADMISSION COUNCIL & AMERICAN BAR ASSOCIATION, ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 852, 856 (2008 ed.).

[48] *ABA Statistics about Minorities*, *supra* note 34; A.B.A. COMMISSION ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION, MILES TO GO 2000: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION v (2000); *see also American Community Survey Highlights*, *supra* note 36.

Standard 212. EQUAL OPPORTUNITY AND DIVERSITY.

(a) Consistent with sound legal education policy and the Standards, a law school shall demonstrate by concrete action a commitment to providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.

(b) Consistent with sound educational policy and the Standards, a law school shall demonstrate by concrete action a commitment to having a faculty and staff that are diverse with respect to gender, race, and ethnicity.[49]

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[49] American Bar Association Section of Legal Education and Admissions to the Bar, *2007–2008 Standards for Approval of Law Schools* 16 (2007), *available at* http://www.abanet.org/legaled/standards/20072008StandardsWebContent/Chapter%202.pdf ("*ABA Accreditation Standards*"). In September 2007, this standard came under attack from an unlikely source: the United States Commission on Civil Rights. U.S. Commission on Civil Rights, *Affirmative Action in American Law Schools: Briefing Report* 141–45 (2007); U.S. Commission on Civil Rights, *U.S. Civil Rights Commission Warns that Affirmative Action Might Harm Minority Law Students* (Aug. 28, 2007) press release, *available at* http://www.usccr.gov/index.html. In 2004, the Commission, which is supposed to be a bipartisan panel, underwent a makeover—after two of the Commission's four Republican members switched their voter registration to Independent, President Bush appointed two more Republicans, creating a Commission of six Republicans and two Democrats. Charlie Savage, *Maneuver Gave Bush a Conservative Rights Panel*, THE BOSTON GLOBE (Nov. 6, 2007), *available at* http://www.boston.com/news/nation/washington/articles/2007/11/06/maneuver_gave_bush_a_conservative_rights_panel/; *see* Daniel Levin, Office of Legal Counsel, *Memorandum Opinion for the Deputy Counsel to the President: Political Balance Requirement for the Civil Rights Commission* 1–2 (Dec. 6, 2004). Shortly thereafter, the

At the same time, the American Bar Association amended and adopted the following interpretations of Standard 212:

> ***Interpretation 212-1***
> The requirement of a constitutional provision or statute that purports to prohibit consideration of gender, race, ethnicity, or national origin in admissions or employment decisions is not a justification for a school's non-compliance with Standard 212. A law school that is subject to such constitutional or statutory provisions would have to demonstrate the commitment required by Standard 212 by means other than those prohibited by the applicable constitutional or statutory provisions.
>
> ***Interpretation 212-2***
> Consistent with the U.S. Supreme Court's decision in *Grutter v. Bollinger*, 539 U.S. 306 (2003), a law school may use race and ethnicity in its admissions process to promote equal opportunity and diversity. Through its admissions policies and practices, a law school shall take concrete actions to enroll a diverse student body that promotes cross-cultural understanding, helps break down racial and ethnic stereotypes, and enables students to better understand persons of different races, ethnic groups, and backgrounds.

Commission began to question the ABA's diversity standards and law schools' affirmative action efforts, sparking harsh criticism from civil rights and affirmative action advocates. Peter Schmidt, *Civil-Rights Commission Pressures Law Schools on Affirmative Action*, THE CHRON. OF HIGHER ED. (Sept. 7, 2007), available at http://chronicle.com/weekly/v54/i02/02a03601.htm; Martha Neil, *Government Report Pans Law School Affirmative Action*, A.B.A. J. (Aug. 30, 2007), *available at* http://abajournal.com/news/govt_report_pans_law_school_affirmative_action/.

> ***Interpretation 212-3***
> This Standard does not specify the forms of concrete actions a law school must take to satisfy its equal opportunity and diversity obligations. The determination of a law school's satisfaction of such obligations is based on the totality of the law school's actions and the results achieved. The commitment to providing full educational opportunities for members of underrepresented groups typically includes a special concern for determining the potential of these applicants through the admission process, special recruitment efforts, programs that assist in meeting the academic and financial needs of many of these students and that create a more favorable environment for students from underrepresented groups.[50]

Given the recent adoption of Standard 212 and the accompanying interpretations, minority enrollments in law schools will likely continue to increase—albeit at less than representative rates—creating greater diversity in future law school classes.

IV. The Medical Profession

A. The Institute of Medicine Report

In 1999, Congress commissioned the Institute of Medicine to assess disparities in healthcare received by minorities in the United States.[51] Prompted by multiple medical studies indicating that the health of American

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[50] *American Bar Association Accreditation Standards*, *supra* note 49, at 17 (emphasis removed).
[51] *Unequal Treatment*, *supra* note 3, at 30.

minorities contrasts negatively with that of white Americans,[52] Congress charged the Institute to "assess the extent of racial and ethnic differences in healthcare", identify potential sources for any disparity found—including discrimination and bias in the healthcare industry—and make recommendations to alleviate the issues.[53] In 2003, after an eighteen-month study, the Institute of Medicine issued its report, *Unequal Treatment: Confronting Racial and Ethnic Disparities in Healthcare*.[54]

The Institute's report confirmed that racial minorities receive lower-quality healthcare than whites.[55] This disparity results in higher morbidity and mortality rates among minority patients.[56] The Institute conducted an extensive literature review and documented negative disparities in care provided for cardiovascular disease, cancer, HIV/AIDS, diabetes, and mental illness.[57] The Institute concluded that the disparities in health care are "consistent and extensive across a range of medical conditions and healthcare services [and] are associated with worse health outcomes."[58]

Significantly, the fact that minorities receive worse healthcare is independent of insurance status, income, education, and other access issues.[59] The Institute found that healthcare provider bias, stereotyping, prejudice, and clinical uncertainty significantly contributed to the healthcare disparities.[60] While the Institute of Medicine did not find evidence of overt racism on the part of doctors and nurses, the report documented that medical professionals'

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[52] *See id.* at 29–30.
[53] *Id.* at 30.
[54] *See generally id.*
[55] *Id.* at 29.
[56] *Id.*
[57] *Id.* at 38, 39, 52, 57, 58, 61, 62, 64, 66, 68, 69.
[58] *Id.* at 79.
[59] *Id.*
[60] *Id.*

unconscious attitudes, stemming from America's history of racial discrimination and socialization in a racist society, impacted the quality of care:

> Racial and ethnic disparities in healthcare emerge from [a] historic context in which healthcare has been differentially allocated on the basis of social class, race, and ethnicity. Unfortunately, despite public laws and sentiment to the contrary, vestiges of this history remain and negatively affect the current context of healthcare delivery. And despite the considerable economic, social, and political progress of racial and ethnic minorities, evidence of racism and discrimination remains in many sectors of American life.[61]

In reaching this conclusion, the Institute of Medicine recognized that discrimination in the healthcare profession could not be separated from the larger social, political, and economic context of American society.[62] The Institute of Medicine examined American racial attitudes, drawing heavily from the work of social scientists such as Lawrence Bobo.[63] In his work, Bobo documented that white Americans tend to hold racist attitudes even though they would not self-identify as racist or bigoted.[64] According to Bobo, white Americans "continue to express support for negative stereotypes of minority groups in surprisingly large numbers."[65] Bobo's findings are supported by the results of the 1990 General Social Survey, which found that whites held negative views towards blacks, Hispanics, and Asian Americans.[66] Specifically, a

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[61] *Id.* at 123.
[62] *Id.* at 91.
[63] *Id.* at 92.
[64] *Id.*
[65] *Id.*
[66] *Id.* at 93.

majority of whites viewed blacks as being less intelligent and more prone to violence. Nearly two-thirds of whites believed that blacks are lazier than whites, and over three-quarters of whites rated blacks as preferring to live off of welfare as compared to whites.[67] White Americans exhibited similar trends in their attitudes toward Hispanics and Asian Americans.[68] These findings have also been confirmed by Project Implicit's on-going study of attitudes, biases, and stereotypes. A joint project between Harvard University, the University of Washington, and the University of Virginia, Project Implicit documents that "75–80 percent of self-identified whites and Asians show an implicit preference" for whites as opposed to blacks.[69]

Not surprisingly, while white Americans did not self-identify as racist, even when holding negative attitudes toward other Americans based on race, white Americans held profoundly different views as to the prevalence and source of racial discrimination in America.[70] Compared to minorities, whites tend to see America as more egalitarian and view racism as isolated incidents rather than part of the fabric of American society.[71] Moreover, "[minorities] not only perceive more discrimination, they also see it as more 'institutional' in character . . . [whereas] many whites tend

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[67] *Id.*

[68] *Id.*

[69] Project Implicit, *General Information*, *available at* http://www.projectimplicit.net/generalinfo.php (last visited Mar. 14, 2008); *see also* MALCOLM GLADWELL, BLINK: THE POWER OF THINKING WITHOUT THINKING 84 (2005) ("[M]ore than 80 percent of all those who have ever taken the [Implicit Association Test] end up having pro-white associations, meaning that it takes them measurably longer to complete answers when they are required to put good words into the "Black" category than when they are required to link bad things with black people.").

[70] Project Implicit, *supra* note 69 (finding that people who harbor negative associations towards various social groups also self-perceive as being without bias).

[71] *Id.*

to think of discrimination as either mainly a historical legacy of the past or as the idiosyncratic behavior of the isolated bigot."[72]

In 2001, the Washington Post, the Henry J. Kaiser Family Foundation, and Harvard University released results of a study on racial attitudes in America.[73] The study found that "whether out of hostility, indifference, or simple lack of knowledge, large numbers of white Americans incorrectly believe that blacks are as well off as whites in terms of their jobs, incomes, schooling, and healthcare."[74]

These findings parallel those from a study conducted in the late 1990s examining the perceptions of a class of medical students regarding diversity and its effects in their school.[75] Students overwhelmingly reported that diversity of gender, race, sexual orientation, culture, and class were simply not an issue in medical school.[76] One class concluded that racism and sexism were not problems because their class was "racially diverse and gender-balanced."[77] Most students reported that lesbians and gays could comfortably be open about their sexual orientation, but did not think there were any lesbian or gay students in their class.[78] Most students reported that none of their classmates came from poverty or a working class background, while in reality 15% of the class reported

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[72] *Unequal Treatment*, *supra* note 3, at 94, (quoting Lawrence D. Bobo, *Racial Attitudes and Relations at the Close of the Twentieth Century*, *in* AMERICA BECOMING: RACIAL TRENDS AND THEIR CONSEQUENCES 281 (N.J. Smelser et al., eds, National Academy Press 2001)).

[73] *Unequal Treatment*, *supra* note 3, at 94.

[74] *Id.* (quoting Richard Morin, *Misperceptions Cloud Whites' View of Blacks*, WASH. POST (July 11, 2001, at A01)).

[75] Brenda L. Beagan, *Teaching Social and Cultural Awareness to Medical Students: "It's All Very Nice to Talk About it in Theory, But Ultimately it Makes no Difference,"* 78 ACAD. MED. 605, 605 (2003).

[76] *Id.* at 609.

[77] *Id.* at 610.

[78] *Id.*

coming from those backgrounds.[79] Finally, although students denied the existence of prejudice or stereotypes based on class, one finding was particularly telling: students "suggested these are generational issues or problems restricted to 'redneck' places and/or the uneducated."[80]

The Institute of Medicine drew several major conclusions from the work of the sociologists who have studied discrimination in America. First, American society experiences a "lasting residue" of racism from its history of legally sanctioned racism.[81] This institutional racism exists even though America is a society that "overtly abhors discrimination."[82] Second, dominant white culture generally espouses adherence to the values of equality at the same time that it is blind to the inequality existing in America. This split between reality and rhetoric poses significant problems for American society because "[t]he discrepancy between Americans' widely held values and beliefs regarding the importance of equality and the reality of persistent racial inequalities tears at the social fabric of the nation and contributes to the gulf of understanding between racial, ethnic, and socioeconomic groups."[83]

In keeping with its congressional charge, the Institute of Medicine did not merely document the disparities in quality of healthcare based on race and ethnicity.[84] The Institute also sought ways to overcome those disparities and to address the gap between equality rhetoric and reality.[85] Interestingly, one of the Institute of Medicine's primary recommendations was not directed at healthcare providers, but rather at educators of healthcare

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[79] *Id.*
[80] *Id.* at 609–10.
[81] *Unequal Treatment*, *supra* note 3, at 95.
[82] *Id.*
[83] *Id.* at 37.
[84] *See generally id.*
[85] *See generally id.*

providers.[86] The Institute of Medicine found that cross-cultural education can improve the ability of doctors and nurses to meet the medical needs of diverse patient populations.[87] Based on this finding, the Institute of Medicine made the following recommendation to medical schools:

> Integrate cross-cultural education into the training of current and future health professionals. Strategies should be developed to fully integrate cross-cultural curricula into undergraduate, graduate, and continuing education of health professionals. These curricula should be expanded to include modules documenting the existence of racial and ethnic disparities in healthcare, and the impact of social cognitive factors and stereotyping on clinical decision-making. Required, practical, case-based curricula based on a set of core competencies, amenable to evaluation, should be the desired standard of training.[88]

B. The Response of Medical Schools

In response to the congressional charge to the Institute of Medicine and the Institute's report documenting provider bias, medical education has embraced the need for cross-cultural education for doctors. While acceptance has not always been smooth, it has largely progressed in three stages. First, the accrediting agency for medical schools adopted cultural competence standards.[89] Second, medical schools responded to the new accreditation standards with a

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[86] *Id.* at 214.
[87] *Id.*
[88] *Id.*
[89] Selam Newsletter *supra* note 5, at 13.

variety of piecemeal approaches.[90] Third, several of the primary governing bodies for medical education recognized the need to move beyond piecemeal approaches and now advocate for institutionally integrated approaches to cross-cultural education.[91] Medical education is currently in the third stage, which has seen the development of more sophisticated model curricula and assessment tools.[92]

In 1999, before release of the Institute of Medicine's report, the Liaison Committee on Medical Education (LCME) proposed cross-cultural competency standards for medical schools.[93] The LCME is the national accrediting authority for medical education programs in the United States and Canada, and is sponsored by both the Association of American Medical Colleges (AAMC) and the American Medical Association (AMA).[94] The LCME proposed two amendments to the standards for the educational program for the M.D. degree.

The first cultural competence standard stated:

> The faculty and students must demonstrate an understanding of the manner in which people of diverse cultures and belief systems perceive health and illness and respond to various symptoms, diseases, and treatments.[95]

The following commentary accompanied the proposed standard:

> All instruction should stress the need for students to be concerned with the total medical needs of their patients and the effects that social and

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[90] *Cultural Competence Education, infra* note 100.
[91] *Cultural Competency in Medical Education, infra* note 101.
[92] *See generally id.*
[93] *See generally LCME* Cultural Competency Standards, *supra* note 7.
[94] *See generally id.*
[95] *Id.* at 15.

> cultural circumstances have on their health. To demonstrate compliance with this standard, schools should be able to document objectives relating to the development of skills in cultural competence, indicate where in the curriculum students are exposed to such material, and demonstrate the extent to which the objectives are being achieved.[96]

The second cultural competence standard LCME proposed was:

> Medical students must learn to recognize and appropriately address gender and cultural biases in themselves and others, and in the process of health care delivery.[97]

The commentary accompanying the standard stated:

> The objectives for clinical instruction should include student understanding of demographic influences on health care quality and effectiveness, such as racial and ethnic disparities in the diagnosis and treatment of diseases. The objectives should also address the need for self-awareness among students regarding any personal biases in their approach to health care delivery.[98]

These standards were adopted by the AMA and the AAMC in 1999 and finally adopted by the LCME in 2000.[99] In response, medical schools introduced a variety

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[96] *Id.* at 16.
[97] *Id.*
[98] *Id.*
[99] Selam Newsletter *supra* note 5, at 13.

of cultural competence education.[100] Much of this education has been piecemeal and has taken the form of lectures, interactive sessions, workshops, student clerkships, elective courses, immersion programs, specific clinical rotations, and language training.[101]

More recently, the AAMC and the Health Resources and Services Administration of the Department of Health and Human Services have criticized the piecemeal approach, calling instead for a more fully integrated model.[102] According to a recent report from the Department of Health and Human Services, teaching cultural competence in isolated contexts did not fully address the goal of producing culturally competent doctors:

> [T]his shortsighted view might yield students a glimpse of cultural competency in the form of an elective whose lessons are quickly forgotten in the stresses of clinical training, but it will not do much to create what is really required to forge change: culturally competent medical education. It is only with the whole picture that one can be effective. When cultural competency isn't a thread that runs seamlessly through all levels of a medical school philosophy and curriculum, its importance is underestimated and underexposed—those who need training the most remain the farthest from the experience.[103]

In light of this assessment, these reports have called for a more systematic, institutional incorporation of cultural

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[100] *See* Ass'n of Am. Med. Colls., *Cultural Competence Education* 1 (2005) ("Cultural Competence Education").

[101] U.S. Department of Health and Human Services, Division of Medicine and Dentistry, *Cultural Competency in Medical Education: A Guidebook for Schools* 2 (Sept. 2004).

[102] *See id.*

[103] *Id.*

competency throughout medical school curricula and administrations.[104]

The AAMC now asserts that an effective cultural competence curriculum mandates five institutional requirements.[105] First, the curriculum must have the support of the administration, faculty, and students.[106] As one professor of medicine noted, "[s]tudent resistance to studying these issues in medical school finds quick and comfortable companionship in institutions that marginalize or undermine efforts to construct these educational venues."[107] Second, institutional and community resources must be committed to the curriculum.[108] Third, the curriculum must be designed in collaboration with community leaders.[109] Fourth, administration and faculty must commit to provide "integrated educational interventions appropriate to the level of the learner."[110] Fifth, the cultural competence curriculum must have a clearly defined assessment and evaluation process.[111]

Medical educators have recognized that cultural competency efforts must address three components: attitudes, knowledge, and skills.[112] All are essential to providing competent care to patients from diverse backgrounds; none alone are sufficient.[113] Medical educators have also recognized that cultural competence

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[104] *See Cultural Competence Education*, *supra* note 100, at 1.
[105] *Id.*
[106] *Id.* at 2.
[107] Melanie Tervalon, *Components of Culture in Health for Medical Students' Education*, 78 ACAD. MED. 570, 575 (June 2003).
[108] *Cultural Competence Education*, *supra* note 100, at 2; Tervalon, *supra* note 107, at 575.
[109] *Cultural Competence Education*, *supra* note 100, at 2.
[110] *Id.*
[111] *Id.*
[112] Joseph R. Betancourt, *Cross-Cultural Medical Education: Conceptual Approaches and Frameworks for Evaluation*, 78 ACAD. MED. 560, 561 (June 2003).
[113] *Id.*

requires more than memorization of facts and characteristics about various cultures.[114] Rather,

> preparing students to become competent practitioners requires that students learn to care for those perceived as different from self; that they learn to care as connected members of a community and the larger society; and that students learn to care with a commitment towards changing existing social, health, and economic structures that are exclusionary.[115]

In addition to calling for greater integration of cultural competency into curricula, medical educators have identified certain shortcomings of cultural studies models.[116] One example of such a model is the "cultural sensitivity/awareness" approach, which focuses on individual attitudes and attempts to transform them through discussion of and exposure to different cultures.[117] Another example is the "cultural competency" approach, such as that adopted by the Institute of Medicine, which seeks to decrease bias and improve services by teaching students the characteristics of various racial and ethnic minorities.[118]

Critics find both approaches naïve in their assumption that the problem lies solely in, and is solvable through, individual attitudes.[119] The approaches are also

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[114] *See generally* Taylor, *infra* note 115.
[115] Janelle S. Taylor, *Confronting "Culture" in Medicine's "Culture of No Culture"*, 78 ACAD. MED. 555, 558 (June 2003), (quoting M.K. Canales & B.J. Bowers, *Expanding Conceptualizations of Culturally Competent Care*, 36 J. OF ADVANCED NURSING 102–111 (2001)).
[116] *See generally* Wear, *infra* note 117.
[117] Delese Wear, *Insurgent Multiculturalism: Rethinking How and Why We Teach Culture in Medical Education*, 78:6 ACAD. MED. 549, 550 (June 2003).
[118] *Id.*
[119] *Id.*

criticized for their ethnocentric definition of "difference" as "nonwhite, non-Western, non-heterosexual, [and] non-English-speaking."[120] The cultural competency approach in particular raises a real risk of further perpetuating stereotypes.[121] Lumping any group of people together under common beliefs, values, and characteristics ignores the reality that each individual is unique, and may or may not share those traits with the group.[122]

Another criticism, stemming from both approaches' focus on individual attitudes, calls into question their resulting lack of inquiry into larger, institutional sources of inequality.[123] One author, expounding on Henry Giroux's concept of "insurgent multiculturalism,"[124] explained:

> [M]ost multicultural studies have kept the focus off structures, institutions, and governmental policies by limiting discussion to individual attitudes. A more insurgent multiculturalism . . . does not limit itself to "communicative competence" or the "celebration of tolerance" but shifts the discussion to power and the foundations of inequalities.[125]

The author proposes that, in addition to learning about specific racial, ethnic, and other groups, "students would also learn to identify and analyze unequal distributions of power that allow some groups, but not others, to acquire and keep resources, which would also include the rituals,

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[120] *Id.*

[121] Taylor, *supra* note 115, at 555.

[122] *Id.* at 555; Wear, *supra* note 117, at 551.

[123] *Id.*

[124] Henry Giroux, *Insurgent Multiculturalism and the Promise of Pedagogy*, *in* FOUNDATIONAL PERSPECTIVES IN MULTICULTURAL EDUCATION, 195–212 (Eduardo Manuel Duarte & Stacy Smith eds., Allyn & Bacon 1999).

[125] Wear, *supra* note 117, at 551, (quoting Giroux, *supra* note 124).

policies, attitudes, and protocols of the very institution educating them."[126] By placing both care provider and patient within a larger sphere of social and institutional oppression, this approach addresses the tendency of cultural competency studies to view non-dominant groups as the "other."[127] Members of dominant society tend to see "culture" as something "others" have, "in which . . . 'we' must become competent,"[128] forgetting that culture is something that belongs to and shapes everyone. Some medical educators have suggested replacing the term "cultural competence" with "cultural humility,"[129] to reflect that cultural learning is an ongoing process in which everyone is both teacher and learner. Bringing systemic and institutional factors into the picture provides students with a better understanding of their patients' cultures as well as their own.

V. Lessons for Law Schools

In response to overwhelming evidence that societal biases negatively impact the healthcare racial and ethnic minorities receive, medical schools dramatically altered their curricula. Medical schools now require cross-cultural education for all future doctors. While there has not been a corresponding finding of provider bias in the legal profession, the legal system is not immune to similar societal attitudes toward racial and ethnic minorities.[130] The legal academy should learn from its medical counterpart and incorporate cross-cultural education in a similarly positive and institutional manner.

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[126] *Id.*
[127] *Id.* at 553.
[128] *Id.*
[129] Taylor, *supra* note 115, at 556.
[130] *See generally* Jon Hanson & Kathleen Hanson, *The Blame Frame: Justifying (Racial) Injustice in America*, 41 HARV. C.R.-C.L. L. REV. 413 (2006).

Many commentators contend that legal education has not changed significantly in the last hundred years. The majority of law students are still taught to "think like lawyers" using the Socratic and case study methods. These methods were created long before legal practice was open to minorities or women, when the make-up of the profession closely resembled the power structure in society. Momentum, however, appears to be building to re-examine law school curricula. In 1992, the American Bar Association (ABA) released its landmark study of legal education, commonly known as the "MacCrate Report."[131] More recently, two major collaborative reports on legal education were released: CLEA's *Best Practices for Legal Education*[132] and the Carnegie Foundation for the Advancement of Teaching's *Educating Lawyers*.[133] These studies stress that the health, morality, and competence of lawyers and the legal profession compel legal education to wean itself from its total reliance on the casebook method of instruction. Considering the changing demographics in the United States and law schools, legal education must reassess what law students need to know to be effective advocates in our increasingly multicultural society.

A. The MacCrate Report

The release of the ABA's MacCrate Report in 1992 advanced calls for reform of legal education. The MacCrate Report identified essential skills and values needed for competent representation. The report viewed the development of these skills and values as an educational "continuum" starting with law school and continuing throughout a person's legal career.[134]

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[131] *MacCrate Report*, *supra* note 11.
[132] *CLEA's Best Practices*, *supra* note 12, at 5.
[133] *Carnegie Report*, *supra* note 13, at 83–84.
[134] *MacCrate Report*, *supra* note 11, at 8.

Specifically, the report recognized that skills training for law students and lawyers was lacking and called for greater emphasis on skills training both in law schools and in continuing legal education.[135]

The Task Force that drafted the MacCrate Report skills and values recommendations recognized the changing face of the legal profession. The report identified that minority participation in the legal profession was a relatively recent phenomenon after years of exclusionary policies and practices.[136] Largely, the MacCrate Report was responding to these discriminatory practices when it called on bar associations and law schools to strive for greater minority participation in the profession.[137] As a result, the primary value expressed in the report relating to diversity is found in Value 3 relating to improving the profession.[138] Specifically, Value 3.3 stated a lawyer should be committed to the value of "Striving to Rid the Profession of Bias Based on Race, Religion, Ethnic Origin, Gender, Sexual Orientation, Age, or Disability, and to Rectify the Effects of These Biases."[139] In its commentary, the report stated:

> Despite the substantial efforts of the organized bar to eliminate bias within the profession, its effects continue to be felt in numerous ways . . . . Elimination of bias within the profession is essential in order to preserve "public . . . confidence in the integrity and impartiality" of the profession and "the system for establishing and dispensing [j]ustice" which it administers.[140]

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[135] *Id.* at 123–25.
[136] *Id.* at 23–26.
[137] *Id.* at 27.
[138] *Id.* at 216.
[139] *Id.*
[140] MacCrate Report, *supra* note 11, at 217 (quoting A.B.A., CANONS OF PROFESSIONAL ETHICS, Preamble (1908)).

While the MacCrate Report's focus on diversity primarily focused on increasing minority participation in the legal profession, it did make passing reference to a "cultural skill" needed for effective communication. The report identified that lawyers must have the essential communication skill of being able to "effectively assess the perspective of the recipient of the communication (the client, decision maker(s), opposing counsel, witnesses, and so forth)."[141] The report noted that the lawyer must be aware that "insufficient understanding of the other person's culture, personal values, or attitudes" may hinder communication.[142] The report recognized that cross-cultural communication could be an essential skill for lawyers. However, it primarily dealt with diversity as an issue of equal opportunity as opposed to an issue of quality representation.

B. The Carnegie Foundation's *Educating Lawyers*

In 2007, the Carnegie Foundation for the Advancement of Teaching released a study, *Educating Lawyers: Preparation for the Profession of Law.*[143] The report determined that current law school pedagogy emphasizes legal analysis over both practical skills and professional development. This "triumph of formal knowledge" over "practical knowledge" is largely a by-product of the historical development of the American university system and the law school quest for legitimacy within the academy.[144] Currently, law schools excel at developing students' analytical expertise. According to the authors of the report, this success of law schools comes at

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[141] *Id.* at 173.
[142] *Id.*
[143] *Carnegie Report*, *supra* note 13.
[144] *Id.* at 7.

the expense of greater development of other aspects of legal practice and of full professional and human development.[145]

The Carnegie Report made two essential recommendations to law schools. First, legal education needs to reunite practice and theory:

> Students cannot proceed very far in even their technical mastery of the law without encountering issues concerning matters of policy or the equities implied in particular rulings or general rules. Legal thinking naturally opens out onto the concerns of political philosophy, ethics, and religion, though . . . the case dialogue's emphasis on formal and procedural issues tends to convey the view that a lawyer need not take matters of policy or "the equities" very seriously. Yet, law regulates the world of human activity. In this way, it is quite unlike the physical or biological systems underlying engineering or medicine, which can be adequately described in abstraction from intention and purpose. As we have seen, this cultural and ethical aspect of the law receives far less attention in the critical first year than its formal, analytical features. From the point of view of professional identity, the missing complements to legal analysis imply the need for a serious effort to re-integrate the severed components of the educational experience.[146]

Second, law schools must fully embrace their ability and responsibility to form the professional characters of future lawyers. According to the report:

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[145] *Id.* at 50-55, 78-79.
[146] *Id.* at 83–84.

> The challenge is to align the practices of teaching and learning within the professional school so that they introduce students to the full range of the domain of professional practice while also forming habits of mind and character that support the students' lifelong growth into mature knowledge and skill.[147]

Interestingly, the drafters of the Carnegie Report recognized that an overemphasis on analytical skills tends to remove the discussion to a level of abstraction that overshadows essential cultural components of the issue or dispute.[148] As many commentators have noted, this has the particular effect of removing issues of race, ethnicity, or class from "legal" discussions.[149] The result is discussion of legal doctrine as if it exists in a color-blind, classless society. As the American Bar Association's Commission on Racial and Ethnic Diversity in the Profession found in its report, *Miles to Go 2000: Progress of Minorities in the Legal Profession*:

> Most law school curricula also ignore the history of racial exclusion in the profession, and the role of race, gender, and class stratification in the development of all professions. Thus, most law students graduate without any sense of how seemingly neutral practices (and the rhetoric of "merit" generally) can be used—in some cases

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[147] *Id.* at 45.
[148] *Id.* at 84.
[149] *See, e.g.*, Elizabeth Mensch, *The History of Mainstream Legal Thought*, in David Kairys, ed., The Politics of Law: A Progressive Critique 48 (3d ed. 1998); Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 Stan. L. Rev. 1547, 1554-61 (1993).

> cynically—to protect professional and economic turf.[150]

The Carnegie authors, however, asserted that a "good counselor . . . is one who can enter the world of the client with a legal eye and join the client there in order to translate the client's problems into legal concepts, all the while anticipating opposing counsel's likely arguments."[151] While the Carnegie Report did not elaborate on what it means to "enter the world of the client" or how to teach law students this skill, the report's authors clearly contemplated the skill as being critical to competent lawyering.

In its recommendations regarding the future of legal education, the Carnegie Foundation compared law school practice to medical school practice and asserted that law schools could learn from medical education. According to the Carnegie Report, medical schools use more of clinical educational methods and less traditional classroom instruction.[152] Medical schools have found that while students still learn the substantive material, providing context actually enhances their learning.[153] In addition, medical schools have found that the clinical setting allows a greater emphasis on professionalism and for personal development to occur naturally:

> This intensification of the practical apprenticeship in medical education has also opened the way to more authentic and powerful means of fostering professionalism. Students grapple with real issues of patient autonomy, inter-cultural communication, responsibility for public health, and the challenge of maintaining compassion in

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[150] Miles, *supra* note 48, at 29–30.
[151] *Carnegie Report*, *supra* note 13, at 13.
[152] *Id.* at 192.
[153] *Id.*

> the press of a fast-paced medical environment. When they confront these and related issues, professionalism becomes tangible and visible to them. Their teachers are models, for better or worse, and opportunities to reflect on what they are experiencing take on a new urgency. Although medical educators believe their field still faces serious unresolved problems . . . medical education has been receptive to pedagogical and curricular change to advance the goals of a more seamless integration of theory, practice, and professional responsibility.[154]

C. CLEA's *Best Practices*

2007 also saw the release of the much-anticipated Clinical Legal Education Association's *Best Practices for Legal Education: A Vision and A Road Map*.[155] Although complementary to much of the Carnegie Foundation's report, *Best Practices* starts from the premise that legal education does not adequately prepare law students for the actual practice of law. From this starting point, the report identifies "best practices" that would allow a law school to better fulfill this commitment to preparation for practice. The report sets out best practices for setting curriculum goals, organizing the curriculum, delivering instruction, assessing student learning, and evaluating institutional effectiveness. *Best Practices* also includes a "model" curriculum for a three-year legal education. The authors of the report hope to bring about fundamental changes in current law school curricula and provoke further engaged discussion about reform of legal education.[156]

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[154] *Id.* at 192–93.
[155] *CLEA's Best Practices*, *supra* note 12, at 5.
[156] *Id.*

The CLEA report establishes that the first principle for a law school's program of instruction should be a "commit[ment] to preparing students for practice."[157] The authors recognize that law schools are not fully committed to this idea and that law schools do not adequately prepare students to enter the profession. According to the report,

> Most law school graduates are not sufficiently competent to provide legal services to clients or even to perform the work expected of them in large firms. The needs and expectations of the workplaces awaiting law school graduates have changed since the traditional law school curriculum was developed, even in the large law firms that serve the legal needs of corporate America. Research conducted by the American Bar Foundation in the early 1990's reached the following conclusion:
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> > The [hiring] partners today, in contrast to the mid-1970s, expect relatively less knowledge about the content of law and much better developed personal skills. It appears that the law firms in the 1970s could afford to hire smart, knowledgeable law graduates with as yet immature communication and client skills, place them in the library, and allow them to develop. Today there is much less tolerance for a lack of client and communication skills; there is perhaps more patience with the development of substantive and procedural expertise in a world of increasing specialization.

[157] *Id.* at 39.

> Potential clients should be able to hire any licensed lawyer with confidence that the attorney has demonstrated at least minimal competence to practice law. Doctors' patients reasonably expect that their doctors have performed medical procedures multiple times under supervision of fully qualified mentors before performing them without supervision. Clients of attorneys should have similar expectations, but today they cannot.[158]

Best Practices asserts that a critical component of being prepared for practice is a greater commitment to professionalism.[159] Therefore, law schools should teach students "the values, behaviors, attitudes, and ethical requirements of a lawyer and . . . infuse a commitment to them."[160] The report extensively discusses professionalism and attempts to define it with concepts like commitment to justice, respect for the rule of law, honor, integrity, fair play, truthfulness, candor, and sensitivity and effectiveness with diverse clients and colleagues. In turn, the report explores each of these aspects of professionalism.

While all of these are important ideas, this article is primarily concerned with the idea that professionalism includes cross-cultural communication skills. According to *Best Practices*, law graduates must have the skills to "deal sensitively and effectively with diverse clients and colleagues."[161] The comments to this principle explain:

> It is important for law schools to help students develop their capacity to deal sensitively and

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[158] *Id.* at 26 (quoting Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence* 27 (Am. B. Found., Working Paper No. 9212, 1992)).
[159] *Id.* at 18.
[160] *Id.* at 79.
[161] *CLEA's Best Practices*, *supra* note 12, at 88.

> effectively with clients and colleagues from a range of social, economic, and ethnic backgrounds. Students should learn to identify and respond positively and appropriately to issues of culture and disability that might affect communication techniques and influence a client's objectives.[162]

The authors of the report identify two ways law schools can develop students' cross-cultural skills. First, law schools can "promote diversity" by having a "critical mass" of minority faculty, students, and staff. In language reflecting the *Grutter* decision and the Supreme Court's discussion of the benefits of educational diversity, the authors assert the educational benefits of greater minority representation in all facets of the law school community:

> As students progress through law school, they identify and analyze their conscious and subconscious biases regarding race, culture, social status, wealth, and poverty through discourse with their teachers and fellow students. They test their own perceptions against those of their peers and teachers. If the law school community is racially, culturally, and socio-economically diverse, students develop better understandings of the ways in which race and culture can affect clients' and lawyers' world views and influence their objectives and decisions.[163]

Second, the report asserts that "cross-cultural competence" is a skill that can be taught and learned.[164] The report suggests that students must be able to effectively

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[162] *Id.*
[163] *Id.* at 89.
[164] *Id.* at 88.

communicate with people of diverse racial, ethnic, and socioeconomic backgrounds to be competent professionals. As to how students should obtain these skills, the report states that "[s]tudents can improve their cross-cultural skills by practicing and honing throughout their professional careers the five habits of cross-cultural lawyering developed by Susan Bryant and Jean Koh Peters."[165] It is interesting that the report seems to shift focus at this point from the responsibilities of law schools to those of the students. The report seems to suggest that the onus is on students to develop these skills "throughout their professional careers" as opposed to something that law schools should be providing students. This is particularly interesting given that Susan Bryant and Jean Koh Peters clearly contemplate clinical professors incorporating these "Five Habits" into clinical teaching.[166]

VI. The Need for a Cultural Competence Accreditation Standard for Law Schools

The recent experience of medical educators with cultural competence is instructive for law schools and the American Bar Association. Medical educators adopted cross-cultural education to address deficiencies in delivery of medical care and to develop fully competent professionals for the future.[167] In addition, medical educators learned that cultural competence must be integrated throughout the curriculum to avoid marginalization.[168] As a result, the accrediting body for medical schools adopted cultural competency standards for medical school graduates.[169]

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[165] *Id.* at 88–89, citing Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001).
[166] Bryant, *supra* note 158, at 35.
[167] *See Cultural Competence Education*, *supra* note 100, at 1-2.
[168] *Id.* at 2.
[169] *Id.* at 1-2.

These lessons should compel legal educators to the same conclusions.[170] To successfully develop competent, professional lawyers, the ABA should adopt cultural competence standards for law school graduates. An accreditation standard will highlight the importance of cross-cultural education, fully integrate it into the academic program, and connect cross-cultural education to skills development for competent attorneys.[171] When viewed as a necessary skill for practice, students, faculty, and administrations will see and accept the relevance and importance of cultural competency, and law schools will graduate lawyers ready to practice in a multicultural society.

The ABA should adopt a cross-cultural education standard akin to that currently required for medical schools. The medical school accreditation standards require:

> The faculty and students must demonstrate an understanding of the manner in which people of diverse cultures and belief systems perceive health and illness and respond to various symptoms, diseases, and treatments.[172]
>
> Medical students must learn to recognize and appropriately address gender and cultural biases in themselves and others, and in the process of health care delivery.[173]

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[170] *See Carnegie Report*, *supra* note 13, at 84.

[171] *See generally* BRIAN D. SMEDLEY, ADRIENNE Y. SMITH, ALAN RAY NELSON, UNEQUAL TREATMENT: CONFRONTING RACIAL & ETHNIC DISPARITIES IN HEALTHCARE 203. (Inst. of Med. ed. 2003)(explaining why cross-culutral education became an accreditation standard for medical education).

[172] *LCME Cultural Competency Standards*, *supra* note 7, at 15 (commentary omitted).

[173] *Id.* at 16.

Combining the ideas incorporated in the medical school standards and those advanced by CLEA's *Best Practices*, law schools should be required to meet the following standard:

> Faculty and students must demonstrate an understanding of the manner in which people of diverse cultures perceive and respond to legal issues and the historical role the legal system has played in disparate treatment of racial, ethnic, and gender minorities. Students and faculty must demonstrate the capacity to deal sensitively and effectively with clients and colleagues from a range of social, economic, racial, and ethnic backgrounds, including the ability to identify issues of culture and difference and the skills to effectively communicate with and advocate for people from diverse backgrounds.[174]

There are three reasons supporting adoption of a cultural competence accreditation standard. First and foremost, an accreditation standard will emphasize the importance of cultural competence for lawyers.[175] The Institute of Medicine study established that highly educated professionals are not immune to societal bias and prejudice.[176] This applies equally to doctors and lawyers. In addition, the history of legal discrimination against

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[174] An alternative to a separate cultural competence accreditation standard could be to add cultural competence to current Standard 302 (a)(4). Standard 302(a)(4) requires law schools to provide professional skills programs. *See ABA Accreditation Standards*, *supra* n. 45, at 21. As I have argued, cultural competence is a skill that can be taught and that is essential for competent representation. In this way, cultural competence could be integrated effectively into professional skills courses such as trial advocacy, client counseling, and negotiation.

[175] *See Unequal Treatment*, *supra* note 3, at 203.

[176] *Id.* at 9-12.

women and racial and ethnic minorities in the United States further compels the legal system to address these issues. As recently as fifty years ago, laws barred blacks, women, Native Americans and others from equal participation in society.[177] Many laws continue to provide for different treatment of homosexuals. Finally, the face of society will continue to change dramatically in the next half century. By the year 2050, the United States will be a "minority-majority" country.[178] Since the rule of law will continue to be a foundation of our economic, social, and legal systems, lawyers must be skilled in dealing effectively with difference—differences of culture, race, gender, and ethnicity.

Second, an accreditation standard will assist in the effort to integrate cross-cultural education throughout the academic program.[179] As medical schools experienced, without integration throughout the curriculum and administration, issues of culture are marginalized,[180] which perpetuates societal bias and is counter-productive. Students who have already developed an interest in cultural differences from travel, family background, or language instruction tend to enroll in multicultural classes. Thus, those who would benefit the most from exposure to cross-cultural education would not be required to receive the training. In addition, without full integration into the curriculum, faculty and administration are much less likely to buy into the process.

Third, an accreditation standard can make explicit that cultural competence is a skill that future lawyers—like future doctors—need in order to be effective

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[177] *See e.g.,* GERALD DAVID JAYNES & ROBIN M. WILLIAMS JR., A COMMON DESTINY: BLACKS & AMERICAN SOCIETY (Comm. on the Status of Black Ams., Nat'l Research Council ed., 1989).

[178] *Minorities Set to be U.S. Minority,* BBC News, Aug. 14, 2008, http://news.bbc.ea.uk/2/hi/amencas/7559996.stm.

[179] *Cultural Competence Education, supra* note 100, at 1.

[180] *Id.* at 2.

professionals.[181] Certainly, CLEA's *Best Practices* identified the importance of cross-cultural communication skills to professionalism. In addition, *Best Practices* noted that cultural competency is a skill that is teachable and learnable.[182] The author, along with Amie Thurber of the Missoula Chapter of the National Coalition Building Institute and Jonathan Dunbar, a local attorney and NCBI trainer, recently developed and presented workshops to public defenders on cross-cultural communication and advocacy skills.[183] The trainers developed a full-day workshop that combined education about systemic oppression with development of concrete trial advocacy skills in the context of cultural difference.[184] Over three days, the trainers presented the workshop to nearly 100 criminal defense attorneys, ranging in experience from one to thirty years.[185] After each workshop, the participants completed evaluation and the response to the workshops was overwhelmingly positive.[186] Many participants expressed that this was the most practical continuing legal education seminar they had ever attended.[187] One person expressed, "The content opened my eyes to many things I had never thought of before."[188] Another stated that the workshop was "an aspect of lawyer education that is usually overlooked."[189] Ninety-seven percent of the participants stated that the workshop would enhance their ability to work with, and advocate for, diverse client

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[181] *See Cultural Competence Education, supra* note 100, at 1-2.
[182] *CLEA's Best Practices, supra* note 12, at 66.
[183] Andrew King-Ries, *Montana Public Defenders Advocate for Justice*, NAT'L COALITION BUILDING INST. MISSOULA NEWSL. (Nat'l. Coal. Bldg. Inst. Missoula, Mont.) Winter 2008, at 1.
[184] *Id.*
[185] *Id.*
[186] *Id.*
[187] *See id.*
[188] Workshop evaluation (on file with author).
[189] *Id.*

populations. It is the author's opinion that because the issues of cultural difference and systemic oppression were placed within the context of advancing advocacy skills, there was much greater acceptance of cultural difference and recognition of its relevance to the practice of law.

In meeting a cultural-competency accreditation standard, law schools should consider several lessons from the more fully developed experience of the medical profession. For instance, cultural competency should not just be a week of cultural studies inserted into an existing course, or even a stand-alone course. That makes it too easy to compartmentalize cultural competency instead of showing how it is an integral part of legal education and lawyering skills. In addition to integrating cultural competency throughout the legal curriculum, values and skills courses like professional responsibility, client counseling, and pretrial and trial practice provide logical venues for students to increase their cultural knowledge, learn and practice relevant skills, and gain a greater awareness of how culture affects them and their clients.

VII. Conclusion

To date, legal educators have largely left cross-cultural skills development to chance. Schools have assumed that greater minority representation in classrooms will translate into greater cultural competence for all students. Unfortunately, law, like medicine, "with its authority to define what is normal . . . tends to strengthen patterns of stereotyping and reinforce existing power inequalities."[190] Greater minority participation alone will not provide sufficient skill development to adequately prepare law students for practice in our increasingly multicultural society. Law schools must stop leaving cross-cultural communication—a fundamental skill for all

[190] Wear, *supra* note 117, at 552.

lawyers—to chance. It is only through the adoption of a cultural competence accreditation standard that law schools can effectively learn from the experience of medical education and prepare competent professionals.