

REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS:

Ethical and Practical Dimensions

Third, International Edition

Jean Koh Peters

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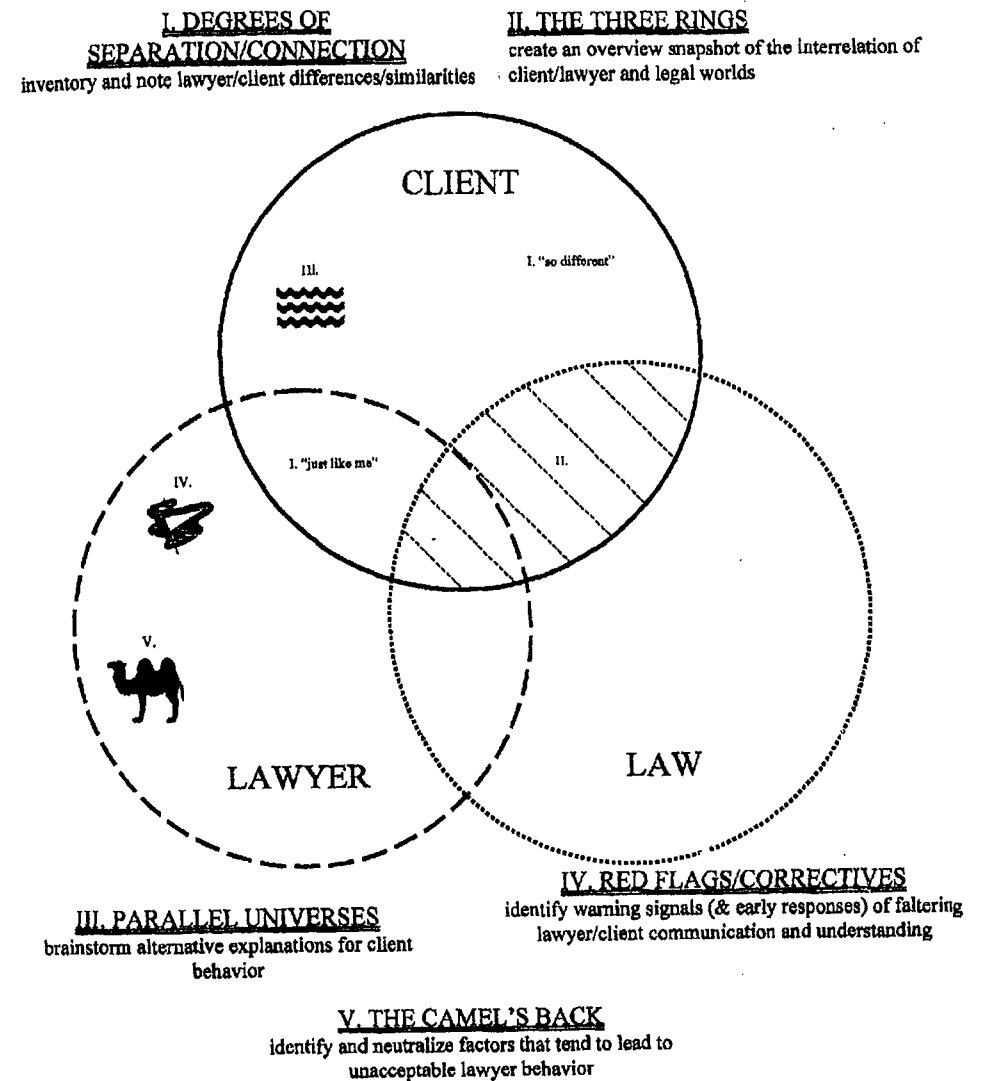
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FIVE HABITS OF CROSS-CULTURAL LAWYERING



§ 6-1 Introduction

This book seeks to help the lawyer for children represent each individual child in his or her unique context. The lawyer has been cautioned against the dangers of accidentally representing his or her own values, experiences, and wishes, in the

name of representing the child. Chapters Two and Nine identify obstacles that prevent the lawyer from focusing wholeheartedly on the child in the representation, obstacles such as counter-transference, burnout, and vicarious traumatization. Another constant obstacle for the lawyer for children is the absence of proper cross-cultural understanding, and communication between the adult lawyer and child client. Cross-cultural lawyering, unlike other obstacles described in the earlier chapters, responds to the law's systemic problems and the lawyer's internal processes that plague our child clients. This chapter begins to address the pervasive question of cross-cultural lawyering for children.

Lawyering for children in the twenty-first century is plainly a cross-cultural endeavor at almost every moment. In the United States today, many lawyers for children represent clients of vastly different cultural, socio-economic, ethnic, and racial backgrounds from themselves. Lawyers regularly deal with not only their clients, but also their clients' families and community supports as well as caseworkers from local agencies. (These day-to-day, minute-to-minute contacts are riddled with communication across class, gender, race, and religion.) Excellent lawyering for children must continually guard against the hazards of miscommunication in these daily encounters.

In addition to their unique class, ethnic, and immigrant backgrounds, many of our clients are growing up in particular cultures of childhood and adolescence that are foreign to the adult lawyer. Being a kid or a teenager today is simply not the same as childhood or adolescence in the decades of the fifties, sixties, or seventies. This is especially true when the adult lawyer does not share class, race or other kinds of background. Thus, the chasm of understanding that many lawyers feel in approaching their clients at the beginning of a representation truly exists. Lawyers for children are called upon daily to lawyer cross-culturally, to enter lives that are framed by cultural understandings far different from their own, and to represent those understandings faithfully and effectively in administrative and judicial forums.

Excellent lawyering requires a daily practice that understands culture as a distinct, pervasive, and a critical element to the work of a lawyer. As William Gudykunst defines it, "Culture is a person's theory of what his or her fellows know, believe, and mean, his or her theory of the code being followed, the game being played in the society into which he or she was born. . . . It is this theory to which a native actor or actress refers in interpreting the unfamiliar or the ambiguous, in interacting with others. . . . Culture provides guidelines for how individuals should interact with others and how they should interpret others' behavior. Culture, therefore, provides one-step. . . a system of knowledge for

dealing with the world."¹ Culture includes ethnicity, race, gender, nationality, age, economic status, social status, language, sexual orientation, levels of sexual activity, physical characteristics, marital status, role in family, birth order, immigration status, religion, accent, skin color, education level, and values as well as other characteristics.

This extremely broad understanding of culture is critical to our analysis for a number of reasons. First, since the first two of the five habits in particular will focus a lawyer on creating an inventory of characteristics of the client, this inventory may include items that at first blush do not appear cultural in themselves, but when combined with other factors become very culturally significant. Therefore, for instance, birth order, which may not appear to denote in itself any cultural content, can vary widely in importance depending on the cultural context in which the client was born. We know, for example, that oldest sons in many cultures have a great deal of responsibility, and knowledge of the client's ethnicity alone would not convey the full cultural responsibility that an oldest son client is bearing. Therefore, broadly understanding culture to include many demographic features of a client that may not have been formally considered culture is *critical* to our analysis. Put a slightly different way, our cultural analysis in these habits emphasizes over and over again that no *single* cultural characteristic is definitive. Observing all the characteristics, whether they appear at first blush cultural or not, is critical for getting to know the clients and all of their idiosyncrasies and in all of their individuality. Understanding any particular aspect of the client's behavior or a demographic makeup as potentially cultural is a critical first step in undertaking a consciously competent approach to culture.

Second, understanding the many possible components of culture in itself encourages the lawyer to see each client as multifaceted with several unique individual characteristics that must be learned as *facts*. Thus, a broad definition of culture, and a broad expectation of cross-cultural lawyering, leads the lawyer to learn and observe many different parts of the client's life, as they come up in the legal case, as potentially indicative of cultural background that the lawyer should take into account. The first and second habits, which encourage the lawyer to amass as many special observations about the client as possible in assessing the cultural issues that may arise, also encourage the lawyer to get to know the many individual facets of the client that the lack of such detailed analysis would miss. Thus, casting the net of culture broadly brings the lawyer back to understanding the client in all of his or her individuality, a central goal of these habits.

Cross-cultural lawyering is a daily practice that can be used to break free of the

¹ Gudykunst, William. *Bridging Japanese and North American Differences* 18.

lawyer's assumptions and biases, and to remain focused on the individual goals of the particular client at the time. The five habits outlined in this chapter and the overall approach to cross-cultural lawyering outlined in the next section represent the beginning of a methodology to integrate cross-cultural lawyering habits into the workable daily life of the lawyer. They were the product of two years of collaboration between the author and Susan J. Bryant, Associate Professor and Director of Clinical Programs at City University of New York Law School at Queens College. These habits are designed, first and foremost, for practitioners seeking to develop a daily practice of cross-cultural competence in representing clients. They are of special use to lawyers for children, who face issues of culture in their work on a minute-by-minute basis. Once mastered, the habits themselves can be implemented on a minute-to-minute basis in daily work in lawyering for children; the habits aid the lawyer who seeks to be true to the client's understandings, even when placed in a culture that is foreign to the lawyer, rather than transform the client's views into perspectives that are more palatable to the lawyer. The five habits are designed to hone and supplement other excellent lawyering skills, while heightening the lawyer's awareness of the ways in which cultural understanding can augment excellent lawyering.

The five habits can be briefly described as follows. Habit One, Degrees of Separation and Connection, is an inventory of similarities and differences between the lawyer and an individual client. This is the habit of taking stock, the habit that turns the lawyer's gaze, in depth, to this client. It is the essential tool for the careful cross-cultural lawyer.

Habit Two, the Three Rings, the Worlds of Client, Law, and Lawyer, creates an overview of the case, charting the cultural understandings brought to the case by client, lawyer and law. Habit Two is designed to help the lawyer see the forest and the trees, either through reflection or by providing a big picture graphic, in the form of a Venn diagram, that helps the lawyer sort through the many dynamics pulling on the representation. It is the habit of right relationship, because it identifies the core areas of concern for the lawyer: the client's world and the ways in which that world overlaps with the world of the law. While the most complex to explain and learn, Habit Two also offers the biggest payoff—a clear way to sort through the many cultural dynamics in a case while keeping one's eyes centrally on the client's legal claim.

Habit Three, Parallel Universes, is the habit of understanding behavior. It asks the lawyer to brainstorm alternative explanations for client behavior that initially puzzles or annoys the lawyer. It is the simplest to learn and implement. It embodies the nonjudgmentalism that is key to all the habits. It is the habit of not being sure about realities we do not yet fully apprehend. In some ways, it is the habit of constructive ignorance: of reminding ourselves about how much we do not know about the client, before rushing to judgment. It also reminds the lawyer

of isomorphic attribution, the goal of cross-cultural lawyering: to understand the client's world and behavior as *the client* understands it.

Habit Four, Red Flags and Correctives, is the habit of communication. It identifies signs of faltering communications, and fashions correctives for restoring communication that allow the lawyer to understand *this* client's story, in his or her own voice. It is a habit that requires mindfulness in all interactions with clients. It can also be called the habit of not having habits when it comes to communication, especially no habits of rote description, standard introductory rituals, and scripts delivered on automatic pilot. It is also the habit of isomorphic attribution: that is, of learning to understand client's words and actions as the client intended them, rather than as the lawyer's cultural background would interpret them.

Finally, Habit Five, the Camel's Back, is the habit of steady improvement. It asks the lawyer to look, clear-eyed, at failed encounters with clients in the past, to prevent repeat performances in the future. It is the sadder, but wiser, habit of turning today's debacle into tomorrow's success. It is the habit of proactivity. It tries to turn despair into hope, to suggest that even a small change that the lawyer can control, like an apple in the briefcase, a well-timed five minute break, or a frank acknowledgment of certain long-held biases, can make all the difference in excellent cross-cultural lawyering.

Taken together, or separately, the habits attempt to put into words the practices that fine cross-cultural lawyers have been using for years. The habits need not be used or learned in any given order. The habits, separately, offer discrete improvements to practice immediately. Used together, they can ensure a steady increase in cross-cultural competence over time in any lawyer's practice.

The sections are organized as follows: Section 6-2 introduces the approach to cross-cultural studies that has informed the development of the habits and introduces key concepts that pervade the habits. Sections 6-3 through 6-7 introduce the five habits. Section 6-8 concludes the chapter.

§ 6-2 The Animating Methodology of the Habits: The Four Threes

The habits can be fully understood by just reading the five separate sections that describe them below. For students who wish a broader understanding of the methodology and research that spawn the habits and for teachers wishing to build on this methodology, the origins and methodology of the habits is contained in this section.

[a] The Three Steps

In our approach to the Habits, Sue Bryant and I began with a single question. What is good cross-cultural lawyering? Early in our discussions, a three-step

process emerged for good cross-cultural lawyering:

1. Identify assumptions in our daily practice.
2. Challenge assumptions with fact.
3. Lawyer based on fact.

It appeared to us that all the central problems with lawyering that fails to be properly cross-cultural lies in one of these three steps. The first step, identifying assumptions, acknowledges that lawyers, in the course of their daily work, employ assumptions about their client's world and their client's behavior in order to fill in gaps of information that they may not yet have or may never have. For instance, a lawyer representing a child attending a public school in a large inner city environment may jump to many conclusions about the quality of that education, the environment of the classroom, the services available to the child, the size of the classroom, and the educational options the child faces. This may be true even when the lawyer has no information about any of these aspects of *this specific child's education*.

These kinds of information voids are especially dangerous breeding grounds for assumption. Into these voids of information, lawyers can easily be tempted to fill in a vision of education based on their own educational background, images from popular culture, the experiences of past clients, or other data available to them. These assumptions may have nothing to do at all with the actual environment in which the child lives.

Second, after identifying assumptions, the lawyer must challenge his or her assumptions with fact. This is critically important for lawyers who specialize, and therefore represent many clients with similar problems in comparable forums. It would be especially easy for specializing lawyers to meet a new client and imagine the context and environments the client is living in by relying on other clients' information rather than taking time to understand this client, this client's environment, and this client's desires and needs. After identifying his or her assumptions, the lawyer must challenge the assumptions with the facts of this client's case. Taking the time and effort to sort out the details of *this child's life*, and to replace the lawyer's assumptions regarding his or her life, is the second step in cross-culturally competent lawyering.

Third, the lawyer must take care to lawyer in the case based on the facts of *this case* and not on assumptions that underlie his or her practice in general. This step can be seen as the starting place for traditional lawyering, with an extra awareness that alerts the lawyer to require fact, and not presumption, to each step of his or her lawyering. Once a lawyer can undertake these three steps and make them a regular part of lawyering, the lawyer can be said to achieve cross-cultural competence.

The five habits described in this chapter focus exclusively on Step One, Identifying Assumptions. The habits offer concrete methods for orienting a lawyer to the specific cultural surroundings of an individual case and for identifying the assumptions that the lawyer might inadvertently import into that case.

[b] The Three Ghosts of Diversity Training Past

Previous attempts to integrate so-called "diversity training" into lawyering in the past decade have met with mixed results. The habits were specifically designed in the hopes of avoiding three "ghosts" which, in our experience, have hampered prior diversity training. First, many students and trainees experienced diversity training with a fear of being labeled as racists or culturally insensitive, and also feared the shame of discovering abhorrent attitudes or conditioning in themselves. This fear of judgment, either from the outside or from within, closed off the student to any benefits of cross-cultural training. This fear of judgment and branding in turn creates a tremendous resistance to learning. Understandably, students felt very negatively about any attempts to "change" them into politically correct figures.

Second, early diversity training often erroneously focused on teaching about non-white culture to white students, without identifying white students as people with diverse and varying cultures among themselves. In these contexts, with many white students and only a few people of color, the education too narrowly focused on how to make cultural training relevant to white students.

Third, such diversity training thus created unfair burdens for people of color. People of color, in the name of inviting their voices into the room, often felt the responsibility of educating their white colleagues in experiences of other races and other cultures. Little focus was given at that time on needs of students of color to broaden their own cross-cultural awareness and to be relieved of the burden of educating others.

[c] The Three Dynamics

To banish these ghosts, the habits of cross-cultural lawyering that are described in this chapter share three critical dynamics that pervade our understanding of cross-cultural competence. These are the dynamic of nonjudgmentalism; the dynamic of isomorphic attribution; and the dynamic of daily practice and learnable skill.

[1] The Dynamic of Nonjudgmentalism

This dynamic responds to the first ghost of diversity training past, in trying to rid the process of the branding and labeling that has so haunted us in past learning experiences. Guilt and shame have paralyzed many who sought in the past to address the shortcomings of their practice in cross-cultural work. It stands to

reason that fear of being unsuccessful and negatively labeled as racist, insensitive, or politically incorrect, as a result of openness to cross-cultural training would be a major obstacle as improvement in the general cross-cultural competence of our profession.

But is it possible to address these highly charged difficult issues of difference in our society without such branding and labeling? The dynamic of nonjudgmentalism suggests that it is not only possible, but necessary. Nonjudgmentalism focuses first on accepting as “fact” the existence of assumptions, even stereotypes, in our current ways of thinking. Acknowledging, without condemnation, the existence of these assumptions is the critical first step that can pave the way to examining them and eventually to replacing them. Nonjudgmentalism also requires us to observe the assumptions and stereotypes of others in an equally accepting way.

To regard stereotypes, either our own or those of others, with acceptance does not mean a resignation or a surrender on the question of cross-cultural competence. The paradox of acceptance is that only acknowledgment gives us the clear-eyed understanding of our own behavior that is the first requirement for changing it. Regarding ourselves and others from the start in a judgmental way may prevent us from identifying our assumptions in the first place. Therefore, a lawyer who fears that he will learn that his background taught him anti-Semitic views will be blinded by that fear in identifying those stereotypes in the first place. Only a lawyer who accepts that those anti-Semitic views are a part of his upbringing and appear in his daily thinking can expect to marshal the resources to combat those stereotypes when they interfere with his proper lawyering.

It is ironic, but true, that our corrective impulses, those parts of ourselves that seek to rid us of prejudice and bias, can hamper our identification skills. Expecting harsh judgment, we simply do not see what we are hoping that we will not find. Therefore, when people enter a judgmental system of diversity training, the most natural reaction would be to deny the existence of prejudice, in order to avoid the feared labeling and branding.

Thus, a critical step in cross-cultural lawyering is to observe both oneself and others without judgment. Richard Brislin and Tomoko Yoshida explore the skill of non-judgment in their study of “culture shock.” In order to learn the skill of non-judgment, according to Brislin and Yoshida, there are four stages to becoming aware of the skills that need to be acquired:

- (A) Self-Awareness. The first competency requires the trainees to move from being culturally unaware to becoming aware of the way their own lives have been shaped by the culture into which they were born.
- (B) Consciousness of One’s Values and Biases and Their Effects. The second competency requires conscious awareness of one’s own values

and biases and how they affect the way one interacts with culturally different people.

- (C) Necessity of Becoming Comfortable with Differences. People should not be afraid to recognize and admit that there are differences.
- (D) Sensitivity to Circumstances. Being sensitive to circumstances implies that human beings are not infallible and that there may be certain culture groups in which some people have a hard time interacting.¹

Another way of thinking about the dynamic of nonjudgment is to think about observing oneself in a “fact-finding spirit.” In this way, even the most dreaded biases that have cropped up in our behavior can be seen as facts that we learn about our behavior, but facts which need not brand us through and through as somehow racist or biased. Our childhood conditioning and existence of this stereotype in our thinking are facts to be observed, not a condemnation to be made about ourselves or others.

Finally nonjudgmentalism is critical to beginning to overcome the natural resistance that many learners have to approaching cross-cultural issues. Because risk resistance thrives in an atmosphere of fear, relieving the fear can reduce the resistance as well. While cross-cultural analysis will almost never be an easy thing to undertake, nonjudgmentalism is a critical, and potentially giant step forward toward creating a safe environment in which these issues can be addressed.

[2] The Dynamic of Isomorphic Attribution

The cross-cultural writer Harry C. Triandis² identifies isomorphic attribution as the goal of cross-cultural studies. In isomorphic attribution, one attributes to a behavior the meaning that *the person doing the behavior* attributes to it. So, for example, if a client does not look you squarely in the eye, the lawyer’s cultural training might identify that behavior as evasive or indicative of dishonesty. Nevertheless, the client may identify that behavior as cultural training showing respect and a modest demure posture toward authority. The isomorphic attribution of the behavior is the one that *the client*, the person who is not making eye contact, *rather than the lawyer*, attributes to the behavior.

Therefore, the trained cross-cultural lawyer understands the client’s words and behavior in a way that, as close as possible, matches the meaning that the client gives that behavior. Isomorphic attribution squares with the general goal of this

¹ Richard Brislin and Tomoko Yoshida, *Intercultural Communication Training: An Introduction* 31 (1994). For a popular culture resource on nonjudgmental learning skills, see W. Timothy Gallwey, *The Inner Game of Tennis*, 19–27 (1997).

² Harry C. Triandis, “The Role of Culture Theory in the Study of Culture and Intercultural Training,” *The Handbook of Intercultural Training* 17 (1996).

book to ground the lawyer's representation in a deep understanding of the child-in-context, the child understood on his or her own terms in ways that the child would be able to understand and endorse. So much of cross-cultural work involves the meanings that we give to events, words, and behaviors in the world. Cross-cultural lawyering seeks to root those meanings in the *client's* understanding. Cross-cultural lawyering also seeks to rid the lawyer-client relationship of misunderstandings based on assumptions made by the lawyer that arise from his or her cultural training rather than from an engagement of the client in his or her own understanding.

Needless to say, the lawyer not only engages in cross-cultural work when meeting with the client, but also by advocating the client's experience before the law and interpreting the law to the client. In legal work, isomorphic attribution grows in importance. Seeking to help the client understand the law and understand its concepts properly in terms that are meaningful to the client in making legal decisions, and helping the law understand the client on his or her own terms, is integral to work that has been described in the rest of this book. The cross-cultural training below will hopefully help lawyers attribute meaning isomorphically when lawyers and clients seek to work together and communicate across cultural barriers.

[3] The Dynamic of Daily Practice and Learnable Skill

One of the many barriers to proper cross-cultural practice to date has been the perception that certain personalities are better adapted to cross-cultural work than others. Cross-cultural sensitivity in that light could be argued to be something that one either has or has not gotten from birth. By implication, lawyers could be discouraged easily from believing they can learn to do better cross-culturally. The good news is that cross-cultural scholars have begun to understand the ways in which these "successful" cross-cultural personalities can be seen to have particular traits that can be learned as behavior even if not possessed from birth. It is important to get out of the mind-set that this is work suited to particular personalities and to focus rather on the ways in which cross-cultural skills can be learned by each of us just as we have learned interviewing, counseling, and negotiation skills.

The key to such learning is to put these learnable skills into daily practice. Like the "pervasive method" of professional responsibility training used in many law schools, cross-cultural skills for many lawyers across the country, and particularly for lawyers for children, can be put into practice every day. In essence, cross-cultural literature breaks down what people with natural cross-cultural skills do, translates them into learnable behavior, and teaches people by reminding them to use the skills and practice them on a daily basis. The habits below are concrete ideas for learning skills to be put into daily practice.

As a result of his study in another context of the process of learning skills and

turning them into daily practice, W.S. Howell³ suggests that one must go through four stages of consciousness and competence. In the first stage, unconscious incompetence, the learner is unaware that there is any gap in their learning. The learner is, in fact, "perceiving failure as success."⁴ Certainly the lawyering profession has spent a good deal of time unconsciously incompetent at cross-cultural work. Cross-cultural issues are rarely taught in our law schools, where diversity of faculty and students has been a persistent problem, despite the fact that the legal world deals every day with people of myriad cultural backgrounds. Many individual lawyers, including this author, have spent years unknowingly incompetent at cross-cultural lawyering, not noting it as an area requiring study and not aware of its potential ability to sabotage our attempts to do excellent work with clients.

In the second stage, conscious incompetence, both the profession and lawyer can be said to begin to understand what they do not know. This extremely uncomfortable phase features a learner who is vividly aware of what he or she does not yet know, often confronted with failure or "negative results."⁵ A new lawyer trying to learn interviewing and counseling skills may experience the pain of not communicating as acute and the remedy as not clear. It appears that the legal profession as a whole has begun to understand that we have been incompetent in our cross-cultural lawyering. The habits are an attempt to move our profession a tiny step closer to a greater level of competence.

Note that in the stage of conscious incompetence, resistance to change and learning looms very large. Conscious incompetence is the most deeply uncomfortable stage of learning. Those who resist the learning may yearn to return to that level of unconscious incompetence that led them to see "no problem" in their daily practice. Lawyers who feel newly conscious of a level of confusion about cross-cultural issues should be gentle with themselves when resistance arises. Lawyers may find this work frustrating, tedious, maddening, or threaten to abandon the enterprise as useless. It is critical that every lawyer give himself or herself a number of occasions of resistance without judgment while being aware that this is a natural reaction to the work that is being proposed.

In the third stage, conscious competence, lawyers begin to be aware of what they need to know in order to achieve the kind of cross-cultural lawyering that they hope to practice, using analysis and a growing understanding.⁶ The habits are designed to help move directly from the level of conscious incompetence to the

³ W.S. Howell. *The Empathic Communicator* 30-35 (1982).

⁴ W.S. Howell. *The Empathic Communicator* 30 (1982).

⁵ W.S. Howell. *The Empathic Communicator* 30 (1982).

⁶ W.S. Howell. *The Empathic Communicator* 30 (1982).

level of conscious competence, by providing concrete, flexible but well-structured habits for moving out of situations ripe for cultural misunderstanding. This chapter is designed to move the lawyer from conscious incompetence to a clearer understanding of habits that can transition the lawyer to conscious competence.

It is further hoped that the habits can be so ingrained in one's working life that eventually the lawyer would move to the fourth stage, unconscious competence, an instinctive application of the habits throughout one's work. An attorney who is conscious of his or her incompetence in cross-cultural lawyering can ease this discomfort by beginning to learn these habits. While conscious competence is a critical step forward, the lawyer is still focusing attention on remaining competent, rather than on the client wholeheartedly. The "spontaneous"⁷ use of the habits will enable the lawyer to use competent culture procedures in everyday life.

The theory of conscious competence explicates the goal of the habits. By learning these skills and applying them in daily life, a lawyer can develop conscious competence at cross-cultural lawyering. If eventually, the habits became a reflex in our work, good cross-cultural lawyering will pervade our practice through unconscious competence.

[d] The Three Principles

In framing our initial approach to cross-cultural lawyering, Sue Bryant and I started with our own assumptions as three principles overarching our work. In review, a cross-culturally competent lawyer continually seeks to:

- 1) View all lawyering as cross-cultural;
- 2) Remain present with this client, ever respecting his or her dignity, voice, and story; and
- 3) Know himself or herself as a cultural being.

These principles are the umbrella framework for the five habits below.

[1] All Lawyering Is Cross Cultural

All lawyering is cross-cultural because the law and its practice are itself a culture with strong professional norms that give meaning to and reinforce behavior. The law has its own jargon, its own language, its own customs, and its own traditions. It has its own etiquette, and its own rules of behavior. To some lawyers and some clients, the culture of the law is different, while it reflects many values with which they have grown up. For others, the law is a completely foreign culture with values and assumptions that do not match lay life. Therefore, even

⁷ W.S. Howell. *The Empathic Communicator* 35 (1982). Put another way, consciousness of competence prevents the mindfulness needed for the habits. See Habit Four, § 6-6, below.

when a lawyer and client share common cultural attributes in other ways, lay clients and lawyers will experience the lawyer-client relationship as a cross-cultural experience.

For our child clients, the culture of the law is a deeply adult intellectual culture in which they have no footholds for understanding. In general, many similarities and differences deeply affect the lawyer-client relationship, arising from other, more traditionally understood components of culture: race, class, nationality, language, ethnicity, age, region, accent, gender, and sexual preference, to name only a few.

The key point of this principle is that cross-cultural lawyering is not relegated to a small subset of one's cases that happen to involve clients who look visibly different from us. Lawyers should assume from the start that culture is an important component of *every* case, and an essential component to the assumption that the lawyer brings to the situation. Thus, the habits of cross-cultural lawyering should pervade the lawyer's daily life and should instinctively become part of the arsenal of legal skills that the lawyer brings to every case. They are thus triply essential in representing children in child protective proceedings: first because the culture of the law will be utterly foreign to most children; second because empirically lawyers tend to be in a different socioeconomic class and race of child clients; and third because lawyers by definition are adults who are representing children and therefore by virtue of age alone must reach across a cultural divide in pursuing each lawyer-client relationship.

[2] Remain Present With This Client Ever Respecting Her Dignity, Voice, and Story

This principle, a goal of all lawyering, is especially critical and difficult in lawyering that must bridge large gaps in culture. Starting from scratch with each client, recognizing our ignorance about the life of any given person who sits in front of us, is a humbling and often frustrating necessity for authentic lawyering. Understanding how this client speaks, how this client sees the world, what this client values, and what shows this client respect is an individualized inquiry that the lawyer must undertake afresh for each person he or she represents. This goal can be especially challenging for lawyers in high-pressure high-volume practices, where the "efficiency" of characterizing and generalizing, and severe time and resource constraints, can lead the lawyer away from such an individualized understanding of each client. This goal can also be difficult for lawyers representing large groups of siblings in a single case, or lawyers who must process dozens of cases in the same day. Despite the massive resource constraints, abandoning this goal, however, would be deserting the centerpiece of client service: the commitment to represent every individualized client in his or her own context.

This principle, which cautions the lawyer to remain as close as possible to the

client and his or her unique life experience in all that we do with the client—interviewing, counseling, negotiating, appearing in court—can also provide a framework for moving toward genuine and authentic cross-cultural communication. We will see, for instance, in Habits Four and Five that the client's voice, dignity, and story will be the constant lighthouses on the rocky seas of cross-cultural lawyer-client communication. Even when we are floundering on the waves and acutely aware of the ways in which we are failing to understand this client, we know exactly where we are trying to go. This principle serves as a beacon reminding us of the goals of cross-cultural lawyering. The habits, we hope, will be the daily tools of navigation that will get us there.

[3] Know Oneself As a Cultural Being

This final principle recognizes that developing competence in cross-cultural lawyering is a continuous, ongoing lifelong process that never ends. To begin the process, a lawyer must understand and accept the role that the particular culture plays in shaping his or her world view, values, judgments, and interpretations. The lawyer must also accept that his or her culture may create roadblocks to understanding others. Our learned behavior may cause us to stereotype our clients and their families, and to view them with negative judgment. Only once we accept and understand the ways in which we give meaning to life events, can we begin to account for the role that stereotype might play in our lawyering, and begin to replace those stereotypes with facts from our client's individual cases. It is absolutely critical in this stage that we do so nonjudgmentally, and that we do not condemn ourselves with shame and guilt for the very human act of having prejudices and biases. Our commitment to grow and change through this learning process is all we need to assure that such judgments will be unfounded. But letting go of self-judgment is the first critical and the most potentially transformative phase of the process. Over time the lawyer may learn to befriend himself or herself as a cultural being through self-understanding and mindfulness. By beginning to understand his or her own cultural meanings and limitations, very similar to the way an understanding friend would gently confront him or her with his or her weaknesses while accepting him or her all the while, a lawyer can gently and firmly lead himself or herself away from biases over time and learn to compensate for those that persist.

[e] Conclusion

The four stages frame the methodology and assumptions that undergird the habits that follow. The next sections introduce the habits in turn in some depth.

§ 6-3 Habit One—Degrees of Separation and Connection

First example. *An African-American lawyer represents an African-*

American child who, like the lawyer, was raised in the inner city by his single mom. The lawyer believes that he deeply understands this child's life and situation. When the lawyer does Habit One however, the lawyer notices that in fact differences predominate between him and his client. While there are significant similarities between the child's current situation and the lawyer's background, there is very little that is similar about their current lives and situations.

Second example. *A lawyer has represented a client for about a week. Instinctively, the lawyer feels that the client is completely dissimilar from him. In fact, the lawyer feels somewhat estranged from his client. After inventorying the similarities and differences between himself and his client through Habit One, the lawyer finds that indeed there are many many differences between the client and lawyer, but that there are significant similarities in areas of common ground. In his next meeting, the lawyer learns that the child shares his religious faith and many of his religious practices. The lawyer notes with some amazement the ways in which this sense of estrangement completely dissolves from the relationship.*

Third example. *A lawyer, who is the oldest in a large immigrant family, represents a client who is also the oldest in a similarly configured immigrant family in the lawyer's town. The lawyer has a sense from the beginning that he has a unique perspective into this client's life. Unlike the lawyer, however, this child has no interest in attending school. The school issue is not currently a legal concern in the child protective case. The lawyer, however, finds himself constantly concerned about the child's school attendance and making frequent efforts to boost that attendance without success.*

Fourth example.

THE CASE OF RACHEL PARKINSON

You have been assigned to represent Rachel Parkinson, a 16-year-old girl who is the subject of a neglect proceeding. Although the Department of Children, Youth, and Families (DCYF)—the local child protective authority—has not asked to remove Rachel from her home, DCYF has filed a petition alleging that the child is being permitted to live under circumstances, conditions or associations injurious to her well being in that she has inconsistent living arrangements and her mother has a history of cocaine use. No educational neglect is alleged. In a separate affidavit, the DCYF worker states that Rachel, the youngest of Janet Anderson's five children, has missed forty days of school between September and April of the current school year, has had inconsistent living arrangements moving with her mother between a number of extended family homes and local homeless

shelters over the last two years, and may have been present during her mother's bouts of crack cocaine use. Her oldest brother is currently finishing a period of commitment to DCYF for delinquency charges involving shoplifting and drug sales. Her older sister, who is herself the mother of a young baby, is currently living with her boyfriend's family in a separate apartment. Her remaining two older brothers live with her maternal uncle in a neighboring town. One of them suffers from severe asthma. DCYF alleges that Janet Anderson has been evicted from a number of apartments and has refused social services offered by DCYF. Rachel currently lives in one of the poorest sections of town in a public housing project that you know has been the subject of recent scandals due to inappropriate conditions.

You meet with Rachel Parkinson after repeated attempts to have her visit you in your office. She reluctantly arrives at the third scheduled appointment but insists that she needs to go very soon. She slumps in her chair and is plainly uninterested in the conversation. Rachel freely shares that she greatly dislikes her current DCYF worker and all the previous workers that she has met. She tells you that she hates school, particularly her current teacher, and often leaves early for the day. She insists that she wants absolutely no court action in her life, and that she wants to stay with her mother. She wants DCYF to leave her alone. She notes that her mother lets her do whatever she wants. She states that she does not use crack but that using crack is no big deal in her neighborhood.

You are a 41-year-old female lawyer who works at the local legal aid association. You are second generation Asian-American immigrant who grew up with Korean-speaking parents. You lived with your parents and five siblings as a child. Your family had no history of DCYF involvement. You grew up in the same hometown as Rachel. Your family had no experience with crack cocaine use. You enjoyed going to school and excelled there. You are currently married with two children and living in an upper-middle class suburb of the city where Rachel lives.

You have represented children and parents over a period of fifteen years of practice and have had many experiences of close caring families with drug-using parents. Your personal philosophy is to limit state intrusion into families unless there is no other recourse. You have had some bad experiences with DCYF workers who do not offer families the kind of services you believe are necessary to bring families together. You perceive that the DCYF and the courts take a "zero tolerance" attitude toward drugs, believing that any level of drug use is absolutely inconsistent with family life. You also perceive that DCYF and the courts often fear media and public criticism and organize their approaches to the cases accordingly. You perceive also that DCYF and courts favor more intervention in the family than you would ideally, using the "Best interest" rather than "Imminent harm" approach to even pre-adjudication removal of children from their homes. You also perceive that DCYF and the courts operate with a constant concern

about conservation of state and court resources. However, despite your misgivings about the legal system, you believe in your experience that thoughtful professionals have been able to offer families meaningful services in the past and can continue to do so.

[a] Habit One: The Habit of the Lawyer-Client Relationship

In brief, Habit One asks the lawyer to inventory the differences and similarities that the lawyer perceives to exist between lawyer and client. These differences and similarities end up shaping critical aspects of the lawyer-client relationship from its first encounter. Thus, developing an awareness of exactly what those differences and similarities are can be the lawyer's most potent tool in identifying cultural assumptions that he or she brings to the representation.

Habit One has three steps. The first is a brainstorming phase, in which the lawyer seeks to identify as many differences and as many similarities as possible between himself or herself and the client. The goal is to seek both numerosity and specificity; the more differences and similarities are identified, the better; the more specifically those differences and similarities are outlined, the better. The habit will offer a number of different methods for this inventory, including a graphical depiction of similarities and differences. In the second phase, the lawyer analyzes the facts that have been identified. Specifically, the lawyer identifies, as an overview, whether similarities or differences prevail in a relationship. The lawyer also identifies those similarities and differences that may affect the lawyer the most. And third, the lawyer looks at the ways in which similarities may lead to assumptions about the lawyer-client relationship and about the client, and the ways in which differences may spur inquiries and specific questioning of the client. Habit One is a building block of Habit Two, which depicts the relationship between lawyer, client, and law.

This section will describe in some detail the "how to" of the habit given the example of the habit in action, offer larger thoughts of the habit and its purpose, and then offer specific advice about fitting habits into daily life with special thoughts about lawyers in high-volume practice and lawyers for children. The chapter will end with ten tips for personalizing Habit One to any individual lawyer.

[b] Learning Habit One

Habit One has two phases, the brainstorming phase and the analysis phase.

A lawyer trying to learn Habit One for the first time or to use it in daily practice can use the following worksheets.

Figure 1. *Habit One: Phase One—Degrees of Separation and Connection*

Lawyer Name: Client Name:

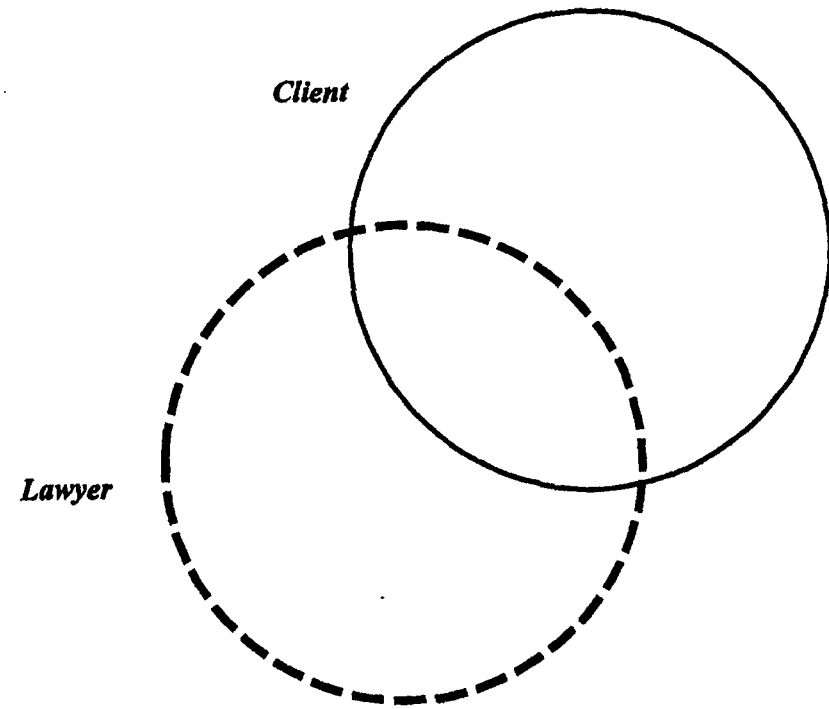
List items in each column: as many as you can, as fast as you can

Similarities

Differences

Me My Client

Figure 1(a). *Habit One: Phase Two—Analysis of the Degrees of Separation and Connection*



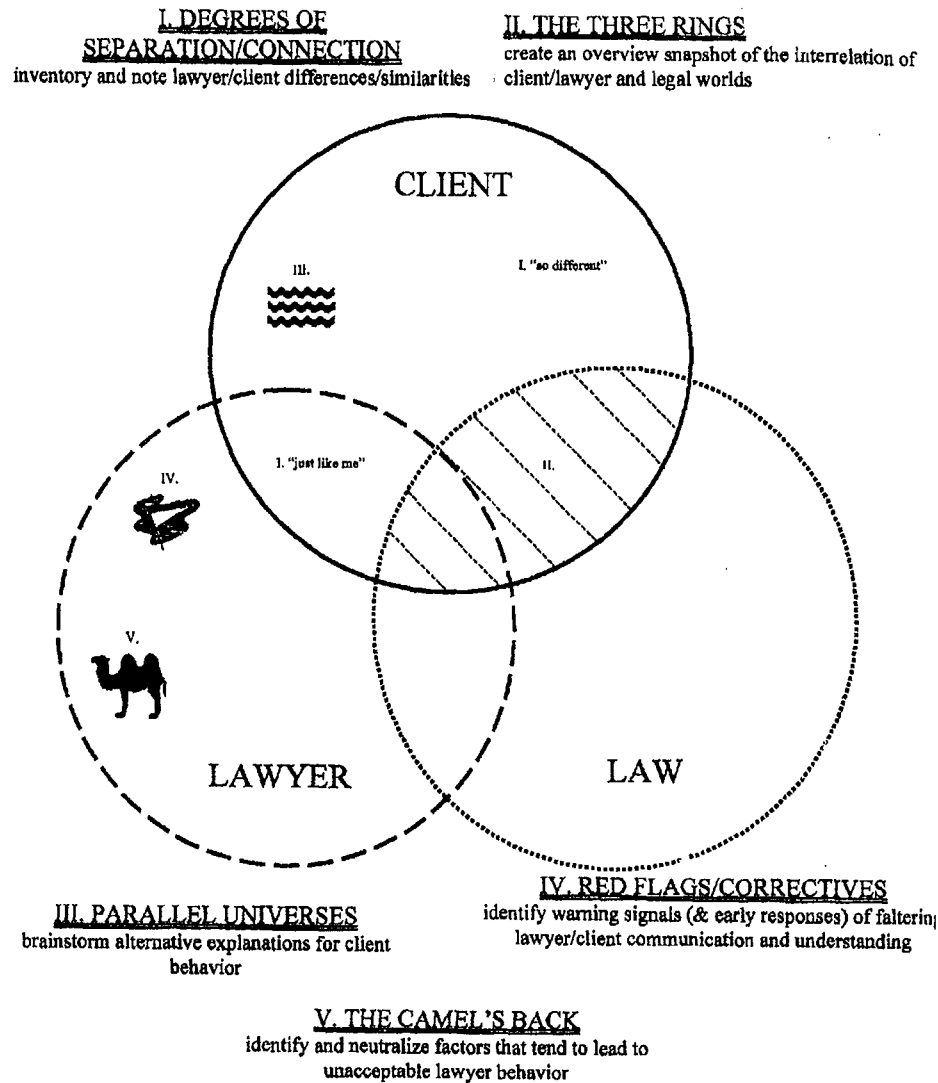


Figure 1(b). *Habit One: Phase Two Continued—Analysis of the Degrees of Separation and Connection.*

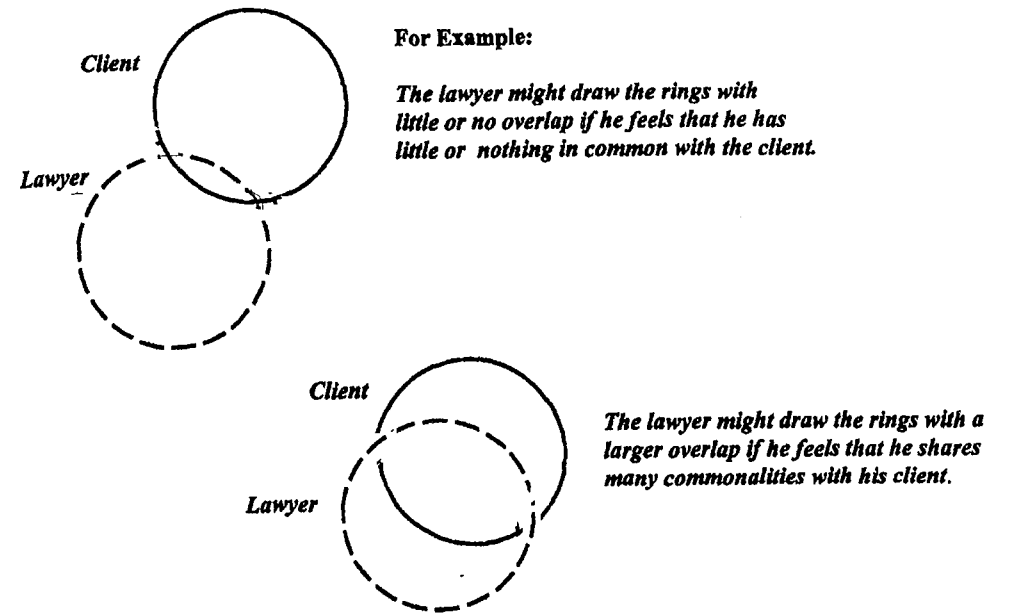


Figure 1(b). Habit One: Phase Two Continued—Analysis of the Degrees of Separation and Connection.

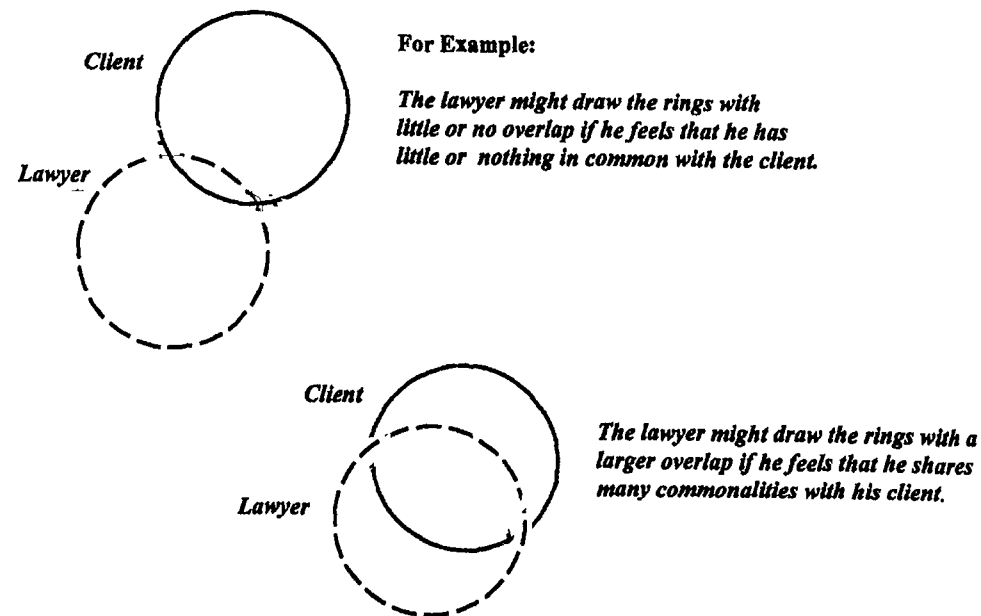


Figure 1(c). Habit One: Phase Three—Interpreting the Degrees of Separation and Connection

1. Degrees of Separation and Connection: How large is the area of overlap between the client and myself? What observations can I make about degrees of connection and separation, and how might those observations affect my communication with my client? What seems to be the greatest challenge to my relationship with my client?

2. Hot Button Issues: Of all the characteristics and perspectives listed on the rings, which loom largest for me? Are they the same ones that loom largest for the client?

3. Questions Based on Assumptions About Similarity and Difference: Am I likely to make assumptions about similarities that I share with the client (for example, assuming that the client acts out of the same motivations as the lawyer) and therefore disproportionately ask questions about the differences that divide me from the client?

[1] Habit One: Phase One—The Brainstorming Phase

In the brainstorming phase, the lawyer's simple goal is to inventory similarities and differences he or she perceives between himself or herself and the client, as 'completely as possible, at any given moment in the case. Please note that the inventory can be begun at any given moment, and continued throughout the case. Note also that any amount of time is sufficient; the lawyer can complete a meaningful dose of Habit One even in a short period of time. In fact, to get started, the lawyer is encouraged to set a small period of time, perhaps three minutes, for brainstorming this information as quickly as possible.

Some examples of characteristics among which you might identify differences and similarities are:

- 1) Ethnicity
- 2) Race
- 3) Gender
- 4) Nationality
- 5) Age
- 6) Economic Status
- 7) Social Status
- 8) Language
- 9) Sexual Orientation
- 10) Levels of Sexual Activeness
- 11) Physical Characteristics
- 12) Marital Status
- 13) Role in Family
- 14) Birth Order
- 15) Immigration Status
- 16) Religion
- 17) Education
- 18) Accent
- 19) Skin Color
- 20) Education Level

21) Values

This list is non-comprehensive and should only be a starting place. Any similarities or differences that you perceive between yourself and your client, whether you would ordinarily label them cultural or not, should be included in the listing. For lawyers who like using lists, the lawyer can simply create a column of similarities on the one hand and differences on the other hand. In the differences column it would be useful to create two sub-columns, one for the lawyer and one for the client. In the time allotted, write down in the proper columns as many similarities and differences as you perceive. In writing the similarities, be as specific as possible. For instance, rather than "religion," write "Christian" or "Presbyterian."

An example of the "list" version of Habit One, Phase One, is included below, using the Rachel Parkinson example.

Figure 2. Habit One: Phase One—The Brainstorming Phase—The Degrees of Separation and Connection

Lawyer Name: Jean Koh Peters *Client Name:* Rachel Parkinson

Similarities

- Both have older brothers
- History of asthma in family
- Lived with extended family as children
- Older sisters with children
- Both English speaking
- Love mothers very much

Differences

Lawyer	Client
Four other siblings	Five other siblings
Mother of two children	Not a parent
Loved school	Does not attend school daily
No history of crack cocaine in home	History of crack cocaine in home
Upper middle class	Poor right now
Married	Single
41 years old	15 years old
No DCYF involvement	History of DCYF involvement
One home as child	Multiple homes as child
Korean-American	White
Not hard to trust legal system	No trust in legal system
Detail oriented	Non-detail oriented

Lawyers who prefer to work with graphical representations may prefer to draw

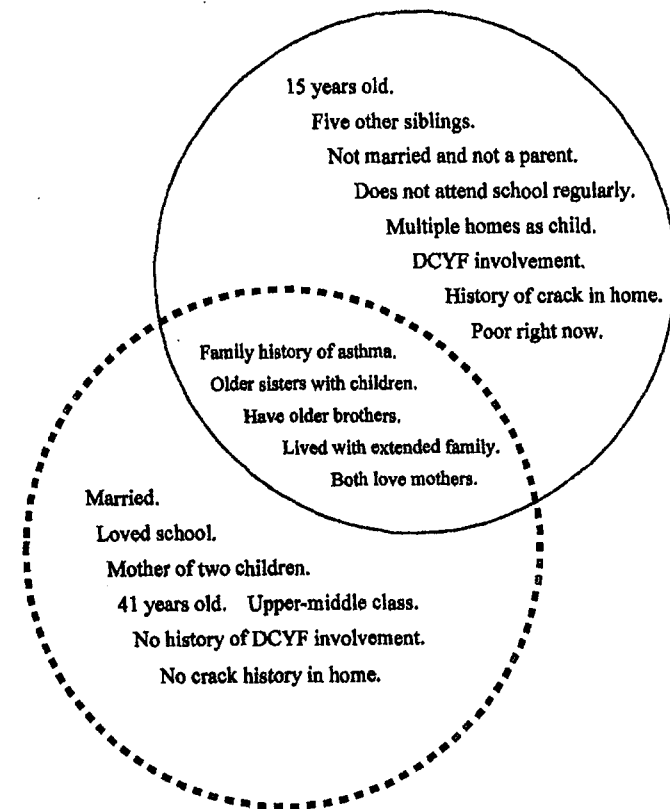
Habit One onto the blank Venn diagram provided in the worksheet. The Rachel Parkinson example gives an illustration of worksheet filled in that way. Rather than filling out a list, the lawyer draws two circles.

Figure 2(a). Habit 1: Phase 2—Drawing the Rings

Example:

Client Name: Rachel Parkinson

Lawyer Name: JKP



The first, a solid line in the figure above, represents the client's world. The second, to the lower left in a dash line, represents the lawyer's world. The lawyer fills in the overlap between the two circles with all similarities that he or she perceives between himself or herself and the client and fills in differences in the area of non-overlap. In the example, for instance, with the lawyer and client being of such different ages, the lawyer's age is placed in the non-overlapped area of the lawyer's circle, the client's in the non-overlapped area of the client's circle. Other differences are listed by placing the specific characteristics that are different in the respective circles. The similarities are listed only once in the overlap between the

circles.¹

Whether doing Habit One by list, circle, or non-visually, keep the following helpful hints in mind.² First, create your inventory under well-understood circumstances of confidentiality. For instance, the lawyer should be clear about whether he or she will show this material to someone else before writing it. In most circumstances, lawyers are encouraged to draw these circles strictly for their own use, to encourage the maximum possible honesty and disclosure in the circles or lists. Second, the element of non-judgment is critical here. Even if the list is private, the lawyer may find his or her internal self-judgment hampering the ability to make a comprehensive list. If, for instance, the lawyer representing an African-American client knows in his heart that he has demonstrated anti-African-American views from time to time, that fact is clearly relevant to the list and the diagram. Shame may prevent the lawyer from acknowledging or recording that fact. Habit One specifically asks the lawyer to put that shame aside and acknowledge the former views as a relevant fact in play in the representation, no more and no less. Non-judgment is also important when describing your client. If you find yourself using words that appear to be stereotypical in listing differences, ask yourself to become more accurate, more specific and more factual. Acknowledging specific differences between lawyer and client may be a way to lead to a more individualized understanding of the client.

[2] Habit One: Phase Two—Analysis of the Degrees of Separation and Connection

As a starting place in Phase Two the lawyer should ask himself or herself whether he or she, overall, feels that similarities or differences predominate in the relationship. The lawyer should do that not by simply consulting the list made, but by consulting gut instincts. For the graphically minded, literally drawing the circles again, but in motion—that is, showing a large overlap with a client with whom you feel a great deal of similarity, and very little overlap with a client from whom you feel relatively estranged, is useful.

¹ A computer website to aid the readers in doing the Venn diagrams and activities is in progress, and can be found at <http://pantheon.yale.edu/~njm6/>.

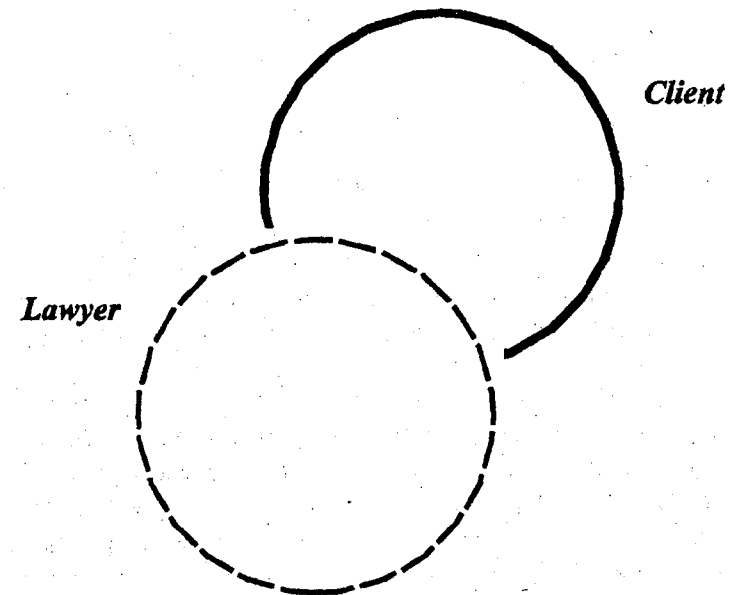
² One technical note for handwritten circles: the lawyer should write very small. Until computer technology has been perfected to make size of handwriting unimportant, it is important for the lawyer to leave plenty of room in whatever areas exist so that the lawyer is not discouraged from seeking numerosity because space has run out.

Figure 2(b). *Habit One: Phase Two Continued—Analysis of the Degrees of Separation and Connection*

Example:

Client Name: Rachel Parkinson

Lawyer Name: JKP



The circles are drawn with a small overlap to illustrate the small number of similarities that Rachel and JKP share.

[3] Habit One: Phase Three—Interpreting the Degrees of Separation and Connection

Figure 2(c). *Habit One: Phase Three—Interpreting the Degrees of Separation and Connection*

1. Degrees of separation and connection: How large is the area of overlap between the client and myself? What observations can I make about degrees of connection and separation, and how might those observations affect my communication with my client? What seems to be the greatest challenge to my relationship with my client?

A. *I feel very distant from her; we have very little in common. I don't know if she will ever trust me.*

2. Hot button issues: Of all the characteristics and perspectives listed on the rings, which loom largest for me? Are they the same ones that loom largest for the client? For the law?

A. *School is not necessarily my client's priority, but one that I tend to focus on.*

3. Questions based on assumptions about similarity and difference: How large is the area of overlap between all three circles? (Notice that the overlap is now divided into two parts: the characteristics relevant to the legal case that the lawyer shares with the client, and those relevant characteristics that the lawyer does not share with the client.) Does my client have a plausible claim that is difficult for me to see because of these differences or similarities? Am I likely to make assumptions about similarities that I share with the client (for example, assuming that the client acts out of the same motivations as the lawyer) and therefore disproportionately ask questions about the differences that divide me from the client?

A. *Most of our similarities do not relate to the case, or concern experiences we both do not have. The questions that I most long to ask concern the issues that trouble me.*

Drawing the circles instinctively allows the lawyer to get a sense of his or her gut impression of the degrees of separation and connection from the client. The next step compares that instinct with the actual data available regarding the separation or connection. For instance, it is not unusual for a lawyer to feel particularly connected to a client and find that there are only a few actual similarities between the lawyer and client. This could be because the similarities that do exist play an important role in the mind of the lawyer. The client may share the lawyer's religious faith, or the lawyer's love of a cherished sports team or in some other specific but deeply valued way share common ground with the lawyer.

This leads to the second point of analysis: "hot button" similarities and differences. Clearly all similarities and differences between lawyer and client are not created equal. A lawyer may identify that a particular similarity or difference makes the case stand out for reasons that are intrinsic to the lawyer's experience, but in no way particularly important to the client. For instance, the lawyer who cherishes his or her educational experience may feel affronted by Rachel's problems with regular school attendance. In this example, where educational neglect is not alleged and the child actively dislikes school, it is not necessarily appropriate for the lawyer to let those school issues dominate the representation. Identifying "hot button issues" for the lawyer is critical in order to avoid making the lawyer's preoccupation with the child's school issues overly important in the case.

As the lawyer continues to work with Habit One, the lawyer will find the same "hot button issues" resurfacing from case to case and will be able to use that awareness to prevent those issues from dominating his or her practice. As suggested in Habit Five below, understanding those issues which acutely trouble

a lawyer from case to case can be a key point in improving a lawyer's practice.

In the third point of analysis, the lawyer can observe the similarities and differences between himself or herself and the client in tracking assumptions that the lawyer may have made and in the probing that the lawyer might have done in the case so far. It is extremely common for a lawyer who shares similarities with the client to assume that these similar characteristics motivate the client in the same way that they inspire the lawyer. For instance, a lawyer tends to ask fewer questions about the actions of a client that seem reasonable to the lawyer, assuming that the client took those actions for the same reason that the lawyer would have taken those very actions. If similarities of attitude and characteristic leads a lawyer to assumptions instead of to questioning the client, these similarities may be the breeding ground for misunderstandings in the future simply because the lawyer did not clarify the reasons for the client's actions in initial interviews.

In the same way, lawyers tend to probe for clarification during client meetings based on differences that they perceive between themselves and their clients. Thus, lawyers tend to *ask questions* when clients make choices that the lawyers would not have made, when they perceive an inconsistency between what the clients say and the clients' actions. Conversely, lawyers tend *not to ask questions* about choices clients have made when the lawyers would have made the same choices themselves.

If similarities may lead to assumptions, and differences may lead to questions, analysis of the lawyer's Habit One inventory should lead the lawyer in at least two directions. First, it should help the lawyer determine if he or she is making assumptions about similarities shared with the client, and search for ways in which the lawyer may have filled in or made presumptions about the client's motives based on those assumptions. Therefore, the lawyer should broaden the questioning and inquiry to clarify even behaviors that make sense to him or her. As in all interviewing, the lawyer must find nonthreatening and comfortable ways of doing so, but the lawyer is able to do so in many situations and must apply those techniques in client interviews. The lawyer should also examine questions based on differences that may be coming up in the interviews. It is critical that the shape of the meetings the lawyer has with the clients is not molded simply by those areas of the client's life that the lawyer finds confusing. Habit Two will provide a rubric for refocusing that questioning to the proper area of inquiry, the client's legal issues. The lawyer should also examine the differences he or she perceives between himself or herself and the client for potential stereotype or bias that may predispose the lawyer negatively toward the client based on previous socialization or bad experiences.

These three areas of analysis are three starting points for deriving benefit from the Habit One inventory.

[c] Habit One for Lawyers for Children

Lawyers and their child clients will always stand apart from each other across the chasm of age and the cultural characteristics of that chasm. Unlike lawyers representing adults of similar backgrounds to themselves, lawyers will always have significant differences from their child clients. These differences may be masked, however, when the lawyer relates strongly to childhood experiences that he or she recalls upon watching child clients undergo them. If a lawyer perceives that as a child he was quite similar and shared many similar characteristics to the child currently, the lawyer may believe, like the lawyer in one of the stories that began this section, that he has a tremendous amount of insight into the child's life. Using Habit One is a critical way of assessing, factually, whether those similarities indeed predominate.

The lawyer should also clearly distinguish between the Habit One listing that focuses on comparing the lawyer's *childhood* to the client's current life, as opposed to a listing that compares the lawyer's *current* life to the child's current life. These will be extremely different listings. The most important one is the comparison of the lawyer's current life to the client's current life, especially because the client's perception of the lawyer will be based on this, not on the invisible features of the lawyer's own childhood experiences.

If the lawyer believes that there are uncanny similarities between his childhood and his client's life, or if the lawyer finds himself repeatedly thinking about himself as a child in relationship to his client, the lawyer by all means should do the Habit One listing to see what it reveals. However, in so doing, the lawyer should be very clear that he is comparing two childhoods, not two different person's characteristics in the current moment.

One final thought about special concerns for lawyers for children doing Habit One. The mandate of specificity is extremely important for the lawyer for children. In our field, many phrases appear at first glance to be facts, when they are in fact conclusions. Hearing that our client "acted out" actually conveys extremely little information; in fact, it conveys an interpretation of behavior that is yet to be enumerated. Many of the familiar terms from our jargon, such as "sexual abuse," "emotional neglect," "parentified," "bonded," and the like are conclusions based on facts that need to be explored. Therefore, the lawyer for children should be extremely careful in listing facts and strive for the greatest level of specificity at any given moment.

[d] Thoughts About the Relationships Between Similarities and Differences

In addition, as noted above, all similarities and differences are not created equal. Some will be highly relevant to the lawyer, and largely irrelevant to the

client. Others may be highly relevant to the client and barely noticed by the lawyer. Some shared characteristics in particular may serve primarily to facilitate trust in building a similarly configured family, for instance, a shared taste for a particular musical performer or television program, while others may relate more directly to the representation. The lawyer completing Habit One should keep in mind what "hot button" characteristics she has perceived as especially important, but then overtly think about what characteristics might be especially important to the client.

Note also, that all similarities need not be exact matches nor must all differences be diametrical opposites. As long as the similarities and differences noted refer to facts known about the lawyer and client, there need be no mathematical precision to their charting. Keep in mind also that similarities and differences may lead to further observations of other similarities and differences. Similarities may branch out into differences for instance. For example, a lawyer may note that both she and her client are the oldest of four children, an important similarity, but then note that the configuration of children is quite different because the lawyer's three siblings were all of a single gender and the client's were not. Differences also often converge into similarities. A lawyer might note, for instance, that she is from Chicago while the client is from New York City, and then realize that this difference highlights the similarity that they were both raised in large urban centers.

In general, the goal of Habit One is to make the lawyer aware of the client's uniqueness.³

[e] Conclusion

The Habit One inventory can be seen as a way of actualizing the concern that appears throughout the book about the lawyer's counter-transference dominating the lawyer-client relationship. Habit One asks the lawyer to lay out in black and white specific ways in which the client's case affects and draws upon the lawyer's life experience. It asks the lawyer to take the data of similarity and difference and use it to pinpoint potential areas of counter-transference that these similarities and differences may implicate.

The goals of numerosity and specificity help the lawyer identify specific characteristics of the client that make the client unique, while identifying areas of lack of knowledge about the client. On the one hand, the lawyer is confronted, detail-by-detail, with the individual characteristics that make up this unique human being. The more numerous the characteristics, whether they are similarities or differences, the more the unique profile of this client appears distinct from all

³ Ten Tips for Habit One and Two appear after Habit Two at § 6-4(e) below.

other clients. On the other hand, in doing this exercise, it is also very common for the lawyer to realize how little he or she knows about a client. It is very common for a lawyer to represent a client in a procedural posture that he or she knows well, and unconsciously attribute to the client exigencies and concerns that other clients in the same circumstances have had. Habit One confronts the lawyer with the limits of that knowledge, when the lawyer finds that he or she is actually unable to complete the Habit One inventory in any detail because he or she does not know the client well enough.

It is absolutely critical to note in analyzing the Habit One inventory that there is no magical distance. Unlike the European fairy tale character Goldilocks, we are not searching for the overlap with the client's experience that is "just right." However the similarities and differences fall, they are what they are. The lawyer is not searching for a magical amount of professional distance or for a magic amount of connection. The lawyer is searching for a *factual* statement about the ways in which characteristics and values naturally unite the lawyer and client or naturally stress their relationship. This awareness, which must be factual and non-judgmental, is a critical foundation for a clear-eyed representation that keeps counter-transference in check.

It is true that certain lawyers may find that they tend to perceive many similarities with their clients whereas other lawyers may find that differences tend to prevail across their caseload. For instance, a lawyer who lived in foster care as a child may tend to have many heavily overlapping circles, and a sense of deep identification with the client. Conversely, a lawyer who had no experience with the child welfare system may find the experiences of clients somewhat foreign. The critical question is, can a lawyer attain an individualized vision of each client that does not fall back on stereotypes or assumptions based on the vast majority of cases? For each lawyer the call to cross-cultural competence may mean something different. For lawyers of color, it may mean establishing proper professional distance and boundaries with clients. For lawyers with vastly different socioeconomic backgrounds than their clients, it may be an invitation to develop deeper understandings of their clients' contexts.

§ 6-4 Habit Two—The Three Rings

Tricia is a Legal Aid Lawyer who represents children in a high-volume practice in a large metropolitan area. Her family hails from England seven generations back. Her family has lived in the city for five of those generations. She is several years out of law school and came to Legal Aid straight from law school. She considers herself an agnostic. She is assigned to represent Manuel, a 14-year-old boy who was raised by his aunt in a three-person household, which included his cousin. For two years Manuel has lived in a number of state-run agencies moving back

and forth between those agencies and his aunt's home with great frequency. In two years he has been through eight placements. By the time Tricia is assigned to represent him, he has been in this eighth placement for four months, and is making a good adjustment, with the exception of an arrest for shoplifting a month ago. This is his second shoplifting arrest in two years.

Manuel has been placed in the eight placements on voluntary admissions, which have been assigned and revoked by his aunt. The Child Protective Agency has brought the neglect proceeding in order to commit Manuel involuntarily to the placement where he is currently making a good adjustment.

When Tricia meets Manuel, he expresses a desire to remain in placement and a strong connection to his aunt. He tells Tricia that his main battles with his aunt have to do with her very strict Christian religion, which requires them to attend church daily. While Manuel considers himself a believer, he finds the church environment too strict and believes that there are no kids his age there. He prefers hanging out with his friends outside of church. His aunt Dalia's son, with whom he has been raised, attends church regularly and the boys are close, but regularly in conflict, physically and verbally, about church. Manuel feels like his aunt puts him out of the house and he is frustrated with not being able to live at home. While he thinks he may want to go home eventually, he is content to stay in his current placement. Manuel tells Tricia it is important for him to have as many visitations as possible with his aunt. Manuel also tells Tricia that he has had several girlfriends, one of whom he "may have gotten pregnant."

In an early court appearance, Tricia meets Manuel's aunt, Dalia. Dalia, whose first language is Spanish, speaks in broken English, using almost exclusively Christian terminology. Dalia tells Tricia it is important for Manuel to be in placement sometimes, when "evil one" is in him. "If only he will repent and be saved, I will take him back into the home." Dalia is very uncomfortable with Manuel staying at his current group home, which is run by a Jewish philanthropist agency. She states that she will oppose his long-term placement there, but will not take him home until he accepts the daily church requirement the way her son does. Tricia finds herself uncomfortable talking to Dalia. Further conversations follow the same pattern, with Dalia speaking in strong jargoned terms about her faith.

Tricia finds herself preoccupied with Manuel and extremely bothered by his instructions to advocate for weekly visitations with his aunt. She

finds herself wondering whether Dalia is a member of a cultic group. She worries about Manuel's sexual activity and the potential that he will soon or already has become a father. Tricia finds herself thinking that Dalia is ridiculous to oppose a group home where Manuel has finally started to make a decent start. She finds herself extremely angry with Dalia, that Dalia would want to disrupt a stable place while not offering him one of her own.

Over the weeks, Tricia finds Manuel's case weighing heavily upon her. She finds her thoughts scattering whenever she thinks about the case and often finds herself angry with Dalia, or extremely anxious about Manuel's extracurricular activities. Using Habit Two, she makes a Venn diagram map of the case to try to organize her thoughts. Focusing her attention on Manuel's world, and the overlap between his world and the world of the law, she realizes that in many ways the legal case is fairly straightforward. Dalia is not offering an alternative placement for Manuel; Manuel's current placement appears to be the only option the child protection agency has available for him, and in the end Tricia is quite certain that Dalia will agree for Manuel to stay at the group home, despite her religious objections, rather than take him home. Tricia realizes also that the issue of weekly visitations with Manuel's aunt is quite straightforward as well. Previous attempts at regular visitations have been hamstrung by a failure of transportation by the child protection agency, and the aunt's unwillingness to step foot in the group home. Problem solving Manuel's transportation to his home for weekend visits will pose no real problem. From a legal standpoint, Manuel's wish to balance his stable living outside the home with regular visitations on weekends can readily be achieved and preserves the uneasy balance that has been Manuel's life for many years. Even looking to the future, Tricia realizes that the only real options that the system has for Manuel are continued residence at this current group home and reunification with his aunt, maximizing his long-term interest, and seeking right relationship with those important to the client. Pursuant to the principles of child representation, Tricia realizes maintaining excellent relationships with the current group home and Dalia is an excellent proactive strategy as Manuel's lawyer.

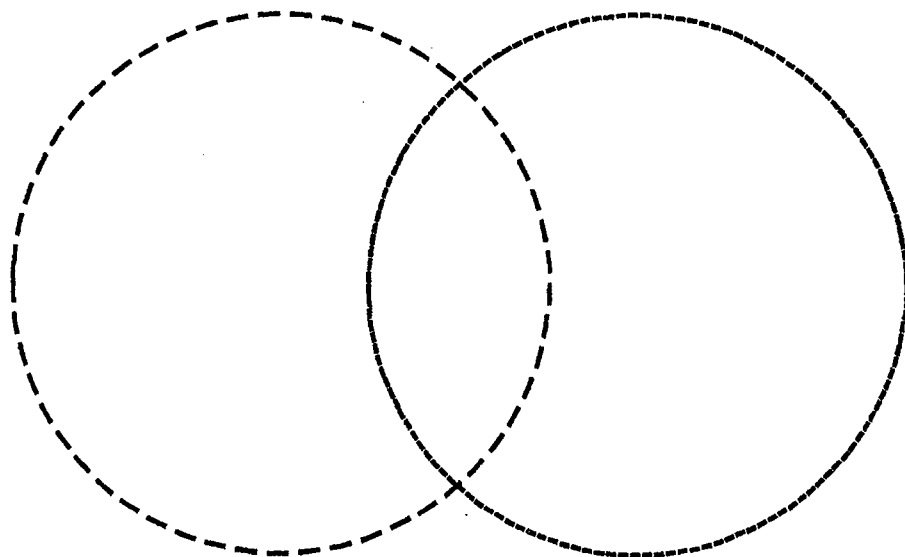
Seeing with surprise how straightforward the case seems, Tricia wonders where her anxiety and anger have been coming from. Tricia realizes from the start that she feels extremely uncomfortable arguing for visitations with Dalia and seeking a strong positive relationship with her. Tricia notices actually that she has been avoiding doing so because she is so uncomfortable with Dalia's expressions of her faith and, in Tricia's view, highly rigid life style. When Tricia asks herself if Manuel has those

feelings, she realizes that Manuel does not have these objections to his aunt's lifestyle so much as a desire not to be part of it. She realizes that Manuel understands his aunt's lifestyle and does not see it as odd or aberrant in the way that Tricia does. Tricia also notices that this is her third case in two weeks involving Spanish-speaking families with non-parents as heads of households. Tricia also realizes that Manuel's arrests and sexual activity are a very small part of this current legal context. Using the Habit Two analysis to clarify, she notes that Dalia's religion and Manuel's other activities are "hot button" issues for her, distracting her from the central issues of the case. She recommits herself to seeking ongoing placement for Manuel, seeking weekly visitations with his aunt, and maintaining good relationships with his placement and his aunt, and notes that the other issues appear to be issues that deeply affect her but not Manuel's legal case.

Figure 3. *Habit Two: Law/Lawyer Rings in Motion*

Lawyer

Law



Instructions: The lawyer draws the overlap between her and the law according to the values that the lawyer holds in common with the law relevant to an ethical and rewardable legal claim of the client.

Figure 3(a). *Habit Two: Client/Law Dyad—Brainstorming List*

Lawyer

Name: Client

Name:

List as many similarities and differences as quickly as you can

Law/Client Similarities

Client characteristics favorable to the outcome that the client wants

Law Differences

Characteristics the client does not have that the law favors

Client Differences

Client characteristics unfavorable to the outcome that the client wants

Figure 3(b). *Habit Two: Client Law Dyad—The Rings*

Client

Law

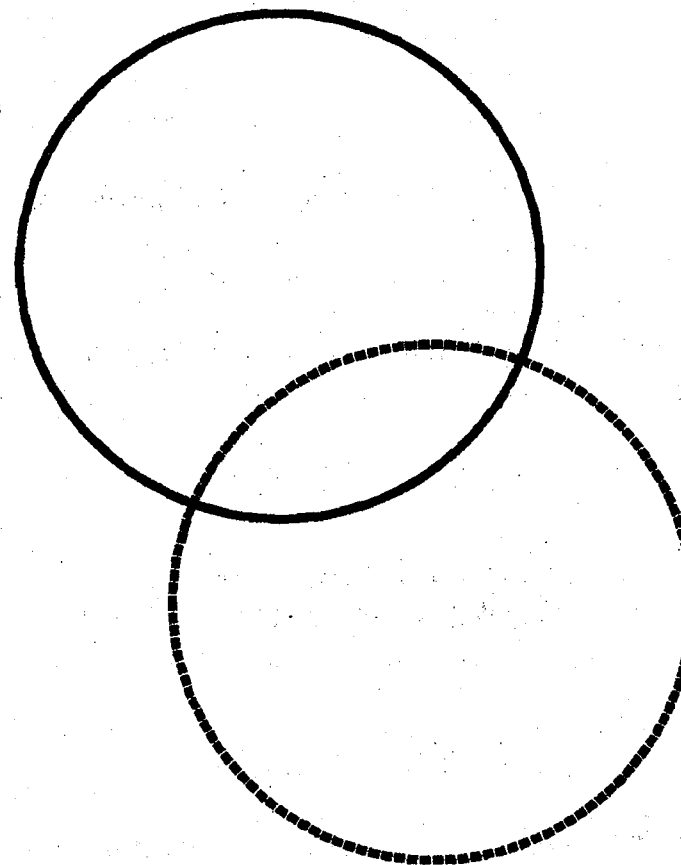
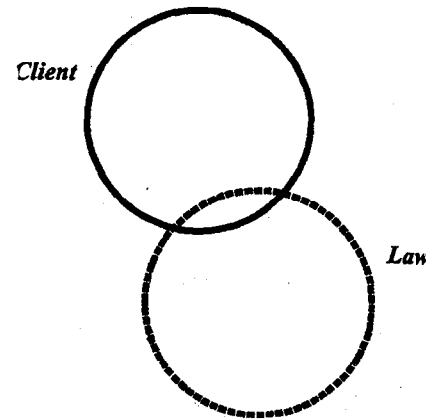
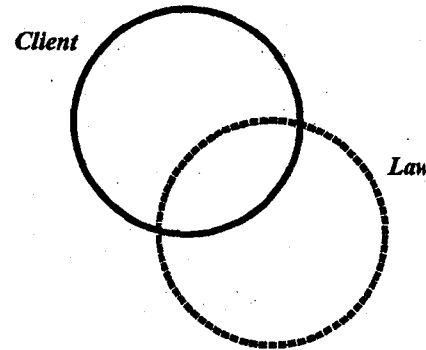


Figure 3(c). *Habit Two: Client/Law Dyad: Drawing the Overlap*

Example: *The lawyer might draw only a slight overlap if he feels that the law and client do not share that many similarities.*



The lawyer might draw a larger overlap if he feels that the law and client do share more than a few similarities.



***Example:** *The lawyer might draw only a slight overlap if he feels that the law and client do not share many similarities.*

The lawyer might draw a larger overlap if he feels that the law and client do share more than a few similarities.

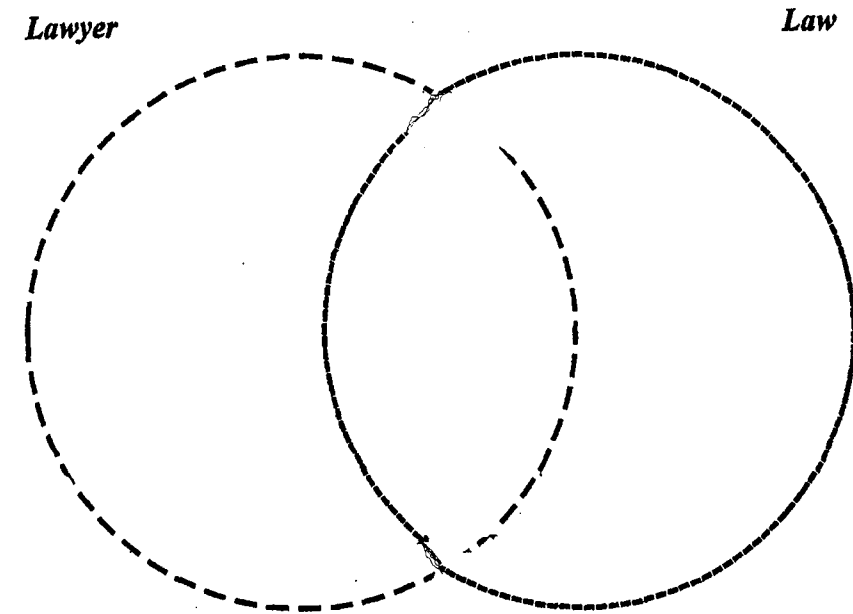
Figure 3(d). *Habit Two: The Lawyer/Law Dyad: Brainstorming List*

Similarities Law/Lawyer

Differences-Lawyer

Differences-Law

Figure 3(e). *Habit Two: Law/Lawyer Rings in Motion*

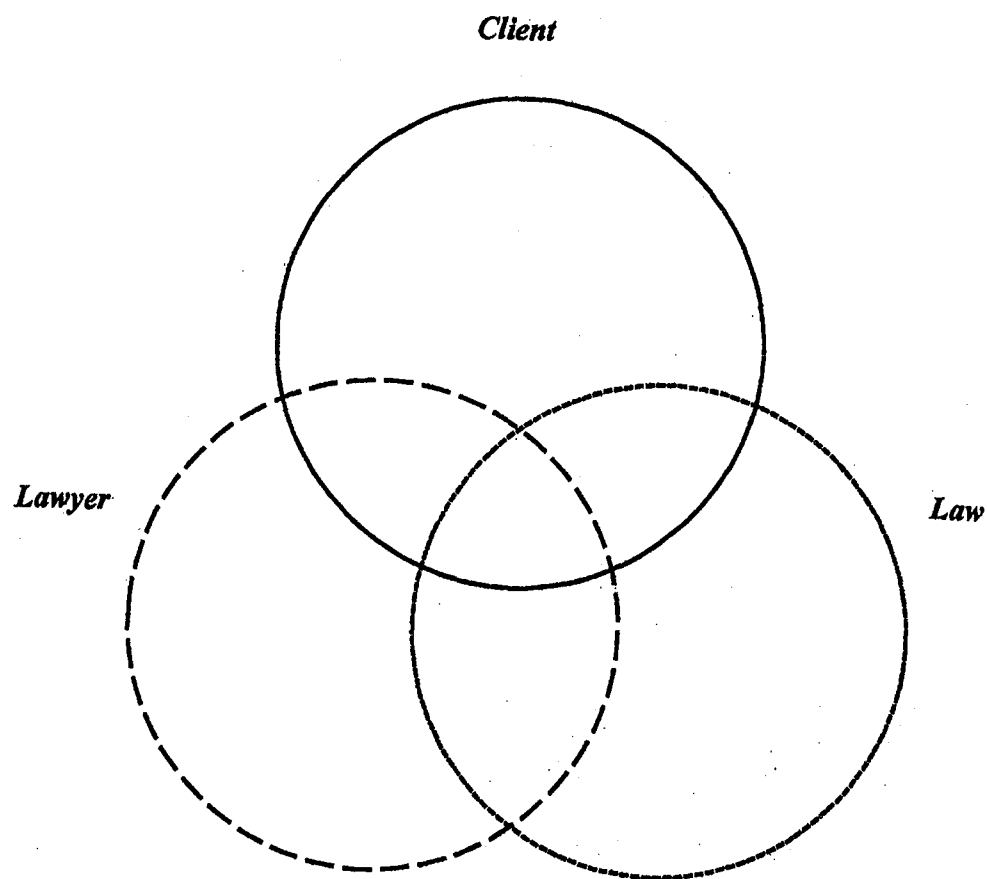


***Instructions:** The lawyer draws the overlap between her and the law according to the values that the lawyer holds in common with the law "in respect" to an ethical and rewardable legal position of the client.

Figure 3(f). *Habit Two—Law/Lawyer Dyad—Analyzing the Law/Lawyer Rings*

1. Bones to pick with the law: How large is the area of overlap between the law and myself? Are there points on which I strongly agree or disagree with the law in this area? Do I have an agenda that the client does not have?

2. Hot button issues: Of all the characteristics and perspectives listed on the rings, which loom largest for me? Are they the same ones that loom largest for the law?

Figure 4. *The Three Rings in Motion*

[a] Brief Overview of Habit Two: The Habit of the Forest and Trees

Habit Two ultimately seeks to provide the lawyer with a way to move from a simple look at the lawyer-client relationship to a more holistic and well-balanced view of the case. Bottom line, the lawyer does not want to spend his or her time for the client focusing unconsciously on similarities and differences of the client. The proper area of focus for the lawyer is the way that the client sees the law and defines his or her legal objectives, the merits and weaknesses of the client's case as seen by the law, and the way that the client's legal claim fits into the client's world more generally.

Any method that the lawyer devises to move from a scatter-shot, unconsciously prioritizing view of the client's case to a holistic view of the case that focuses on the client's legal claim and its place in the client's larger world, accomplishes the goals of Habit Two. The section below describes two methods of doing Habit Two, one a visual-based method.

If the brief description here of the visual method appeals to your learning style, by all means learn more about the graphical method of doing Habit Two below. On the other hand, if the graphical method for whatever reason does not attract you or appear useful to you for the client, abandon it immediately and stick with the non-visual approach!

Achieving the goals of Habit Two is critical. For the lawyer, it is important that this intricate method, which may benefit some lawyers greatly, not discourage others from pursuing methods that work better for them in achieving these critical goals of cross-cultural lawyering. The first section below gives some ideas for non-visual oriented lawyers about how to pursue Habit Two constructively. If this method is not helpful, the lawyer is urged to explore the goals of Habit Two in a way that best suits his manner of approach and daily life, and to incorporate those ideas into his or her daily practice.

[b] Learning Habit Two

Both non-visual and visual methods for performing Habit Two are described below.

[1] How to Do Habit Two Non-Visually

What in general is your sense of connection to your client? On the other hand what is your sense of disconnectedness from your client? In thinking about these holistic questions try to think about individual components of separation and connection. Beware of over-general views of the client that might risk lumping the client into large categories, analogizing the client to earlier clients with apparently similar needs, or failing to individualize this particular client and this particular representation. In your non-graphical approach to Habit Two, think about this client in as much three-dimensional detail as possible. What is your specific knowledge about this client's life? What do you know about this client's day? What is it like to speak with this client? What does this client's voice sound like both literally and figuratively? Most critically, *what makes this client different from all your other clients?*

Then look at the specifics of the separation and connection that you've identified that you feel with the client, by returning briefly to Habit One. Use this time of Habit One reflection to identify the ways in which this client's case particularly moves you, troubles you, interests you, annoys you, or otherwise affects your work. If you find yourself feeling less invested than average in the case, try to identify the things about the case that may lead to that sense of estrangement. In general you may find that those items are areas of difference between you and the client. Conversely, if you feel exceptionally invested in the case, try to identify the things about the case that draw you in. In general, those may well be issues of similarities between you and the client.

After engaging in this reflection on Habit One, move that reflection to other parts of Habit Two. Take a few minutes to focus on the client's relationship with the law. To what extent is this a strong claim in your view? Identify the component parts of the claim that are strong. List them for yourself and identify them with as much particularity as possible. Now identify, with as much specificity as possible, the weak points in the claim. What are the shortcomings in the case? Again, resist the urge to speak in too general terms in answering these questions. Thoughts like "Oh, this is the case where the mom needs to get into drug treatment," may be a clear indication that you are lumping this case together with other cases that appear to you to be similar to it. In your time of reflection force yourself to think as concretely as possible about the apparent strengths and weaknesses of the client's case.

The next part of the process is to ask yourself how the legal claim fits into your client's world generally. How important is the legal claim to this client right now? In child protective cases, we represent some child who has been recently taken out of her home and whose primary concern in life—the outcome of the case—is her return home to her biological parent. On the other hand, we represent some child for whom the legal proceedings in which we represent them are mere formalities. The legal proceeding will have no pitiable effect on the child's daily life because it ratifies a reality that has already taken place. For these two clients, the role of the legal case in their larger perception of their world is radically different. This part of Habit Two asks us to focus on the importance of the claim from the client's point of view in a way we may not have done before. It focuses on the way in which this case may implicate the lawyer's current view of the law. For instance, does this happen to be the lawyer's fourth consecutive case opposing a child protective agency's removal of a child? Has the lawyer recently made a decision to oppose all petitions of a certain sort, of which this petition is one? Or to support them all? This pre-existing context between the law and the lawyer is something that the lawyer must think through carefully when approaching an individual case. The lawyer in this way identifies the bones the lawyer already has to pick with the law and identifies the various cross fires in which the client's case may have unwittingly stepped.

Having done this four-part reflection, the lawyer is now in a position to identify holistic thoughts about the issues in the case most likely to divert him or her from the central concern: the client's legal claim, and its general place in the client's world. A lawyer who is thoughtfully engaged in this reflective process should jot notes warning himself or herself about identifying the obstacles that may focus him or her more on Habit One considerations or issues between the lawyer and the law, rather than on the client's legal claim and his or her world as it's affected by the claim.

Note again that this is only one way to accomplish Habit Two thinking. This

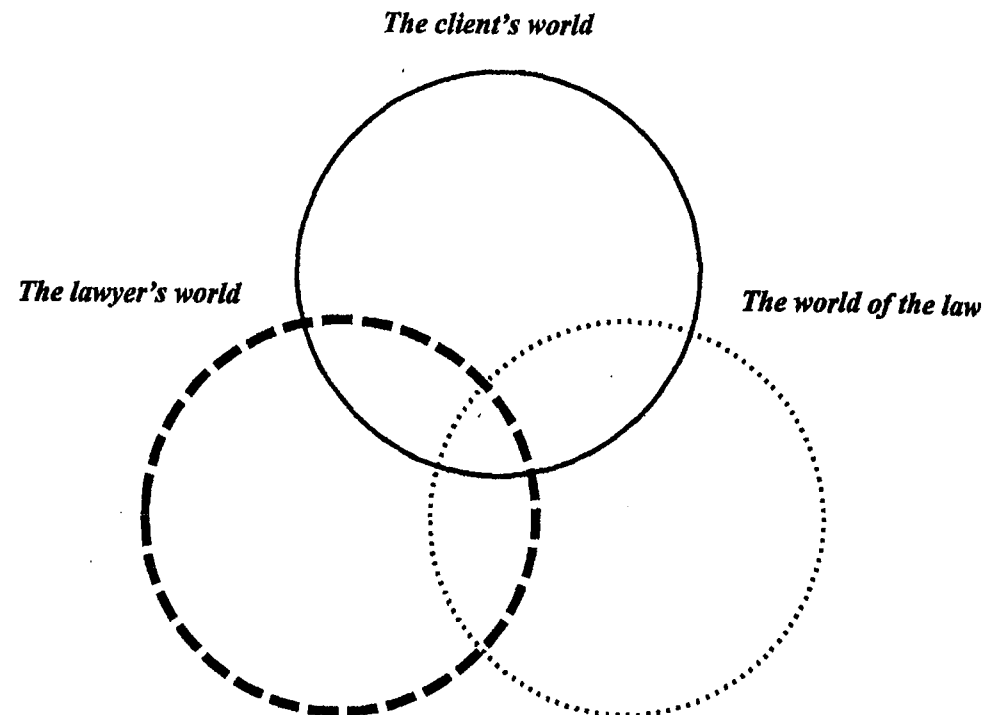
way focuses on a step-by-step look at the intersection of the client, the lawyer, and the legal world one by one. Experienced lawyers may find themselves more easily able to identify obstacles to focusing on the client's claim. For instance, a second non-graphical way of doing Habit Two would be to focus initially on the client's claim and the way the claim affects the client's world generally and to begin there even before doing Habit One. Once having identified those two factors, the lawyer can ask himself or herself how hard it will be to pursue that claim in the client's voice while not disturbing other parts of the client's world that the legal proceedings might affect. Some lawyers may find that they are able to identify obstacles this way without going through the step-by-step process. A lawyer who knows that the case will be "hard for him," and does not quite know why, who engages in this more general reflective process and is unable to identify specific obstacles, however, may find the step-by-step approach listed above useful.

As noted above these are but two ways to accomplish Habit Two non-graphically. Note that these questions have a lot of similarity with the seven questions to keep you honest in Chapter 3. These questions share with those questions a general desire to get the lawyer out of the automatic pilot that may lead him or her to lump cases together and to neglect the individuality of a particular client in a particular case context. However the goal of keeping the lawyer's focus productively on the client's legal claim and her larger world is accomplished, whether through these questions, the questions in Chapter 3, or some other rubric, *this is a critical step for cross-cultural lawyering*. Habit Two educates the lawyer in each case about where the proper focus of attention is, so that when his or her attention wanders, is distracted, or temporarily sidetracked, Habit Two reminds him how to return to the core of the case. It is no accident that the area of the client's legal claim and her world generally coincide with the place of her dignity, voice, and story, the focus of the second principle of these Habits. Habit Two aims above all to provide a lawyer with a way to identify the core importance of his or her work with the client, so that after times of wandering away he or she can return with renewed vigor to this central work.

[2] How to Do Habit Two Visually: Drawing the Three Rings

Habit Two is a visual representation of the client's world, the lawyer's world, and the world of the law. It provides a systematic and visually friendly message for organizing the lawyer's observations about the interaction between these three worlds. While Habit Two is the most complicated to learn and the longest to do for a case, taking about 10 minutes at the computer or 45 minutes by hand, this habit also offers the largest payoff. Habit Two allows the lawyer to keep constant track of the central focus of his or her work: the interaction between the client's world and the world of the law, and the priorities of the client's world.

Figure 4(a). *Habit Two—The Worlds of the Client, Law, and Lawyer*



The overarching goal of the rings is to focus the lawyer on the area of client-law overlap and to provide a visual reminder to focus the lawyer's legal energies primarily in that area. As demonstrated throughout the book, representing the child-in-context will also require learning as needed what must also be known about the larger world of the client. To the extent that the lawyer finds the representation driven by similarities and differences between himself or herself and the client as noted in Habit One, (or interactions between the lawyer and the world of the law exclusive of the client), the lawyer should strive in each representation to move back to a focus on the client's world and the area of lawyer-client overlap.

This section will teach the how-to of drawing the circles with reference to Rachel's example continued from Habit One. After offering ideas for fitting Habit Two into daily practice, and special considerations for lawyers for children and lawyers in high-volume practices, this section will end with thoughts about the role of Habit Two in cross-cultural lawyering and areas of further study.

Habit Two allows the lawyer to keep constant track of the central focus of his or her work: the interaction between the client's world and the world of the law, and the priorities of the client's world. Habit Two seeks in the end to provide the

lawyer with a way to move from a simple look at the lawyer-client relationship to a more holistic and well-balanced view of the case. As a bottom line, the lawyer does not want to spend time for the client focusing unconsciously on similarities and differences between the lawyer of the client. The proper area of focus for the lawyer is the way that the client sees the law and defines his or her legal objectives, the merits and weaknesses of the client's case as seen by the law, and the way that the client's legal claim fits into the client's world more generally. The visual representation also helps the lawyer keep his or her cultural perspective in its proper place.

The process of Habit Two can be described quickly in the following four steps building off of Habit One.

1. *Complete the client/law dyad, mapping the interaction between the client's world and the world of the law.*

As already discussed, the client circle represents the world of the client, and to the lower right of this circle is a dotted circle that represents the world of the law. For the sake of uniformity, the client and the law circle should always be drawn in this arrangement, replicating their place in the final three rings. The client's world is as described above, and represents the client's world as understood by the lawyer. This concept of the client's world has been used throughout the book to denote the world as the child's life and environment as he or she sees it.

The law circle represents the world of the law as it applies to the client in this case. Specifically, items within the law circle describe characteristics and values belonging to a "successful client"—one whose legal position will be recognized and rewarded. The world of the law includes the paradigmatic vision of a successful client as seen by the law.

In drawing the client/law dyad, use a process similar to Habit One. Brainstorm, seeking numerosity and specificity, for items in the overlap and items of difference between client and law. For the more list-minded, one might start with just a list of shared and divergent views of a successful claimant/defendant/subject of the law. In a graphical representation of the rings, the area of overlap represents those parts of the client's world that the law would view favorably and reward with the remedy that the client seeks.

Once the rings are drawn, the lawyer must read the law/client rings in a fashion similar to the reading of Habit One rings. In general, the graphical representation is intended to capture an overview of the legal strengths and weaknesses of the client's claim. This reading of the rings may also suggest legal strategies. For instance, a petition notable for its lack of factual allegations of harm or imminent danger is vulnerable to a motion to dismiss the petition altogether. Therefore, the reading of the rings may prompt additional items for either circle or the overlap in between.

The graphical representation also offers a visual sense of how the strength of the legal claim could be improved over time. In any case, the lawyer-client rings help the lawyer pinpoint similarities between the law and client and offer these and other strategies for bridging the gap between the law and the client. If neither is willing to change, the lawyer can also simply pursue the strategies that already appear in the overlap. In this case, a motion to dismiss the petition outright, before requiring the client to make any changes in his or her home circumstances, is certainly a viable strategy.

The above description gives a basic understanding of the client-law circles. As the lawyer becomes practiced at Habit Two and more used to understanding the ways in which Habit Two enriches his or her insight about the case, the lawyer may decide to define the law circle differently. For instance, in preparation for an interdisciplinary meeting in which the local child protective agency's perspectives are critical, the lawyer may decide to draw the law circles strictly from the point of view of that agency. Similarly, before a trial, prior to a fact finder who is well known, the lawyer may try to draw the law circle from the perspective of a particular judge. However, since in most circumstances neither the child protective agency nor the judge hold real exclusive power, in general it is most useful to draw the law circle as a grab bag of all the perspectives of powerful legal players in the case. This may lead to the law circle containing contradictory views at one time, especially when the physiological perspectives of judge and the childcare agency are different, but this is an accurate reflection of the confusion in the law that the client is trying to navigate through, with the lawyer's help.

Figure 4(b). Habit Two: Client/Law Dyad—Interpreting the Rings

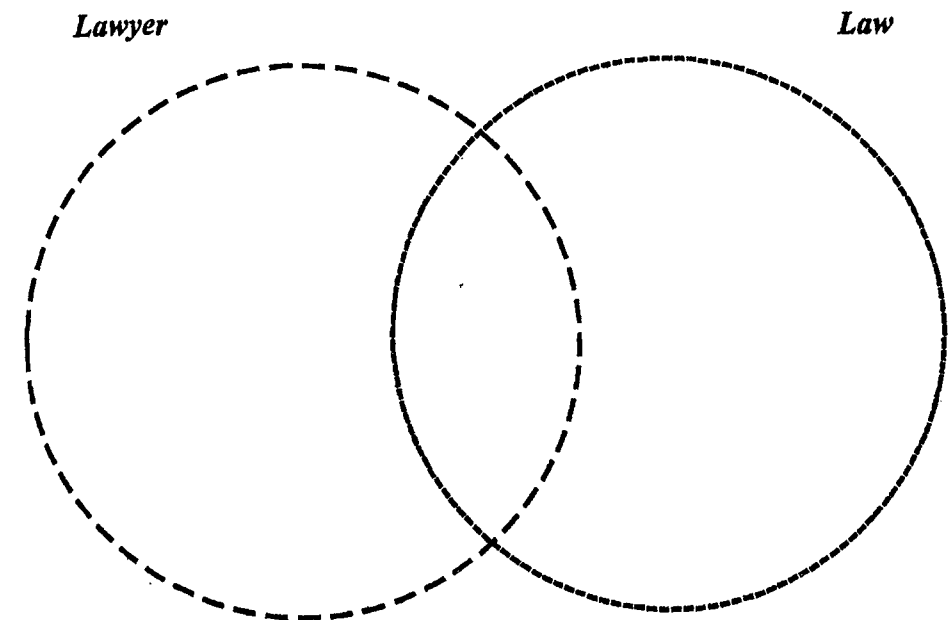
Assessing the Legal Claim: How large is the area of overlap between the client and the law? Do I feel that my client has a relatively weak or a relatively strong claim? What additional facts can I use to strengthen the case?

Legal Strategies: Can I shift the law's perspective to encompass more of the client's claim? Do my current strategies in the client's case require the law or the client to adjust perspectives? What additional facts or characteristics are needed to strengthen the case?

1. Complete the lawyer/law dyad, mapping the interaction between the lawyer's world and the world of the law.

After completing the client-lawyer and the client-law dyads, the lawyer's should focus on the law-lawyer dyad. It should be drawn as a dashed circle to the left intersecting with a dotted circle to the right.

Figure 4(c). Habit Two: Law/Lawyer Dyad: Drawing the Rings



The intersecting areas between the law circle and the lawyer circle represent the values that the lawyer holds in common with the law with respect to an ethical and rewardable legal position of the client. The non-overlapping region represents points of disagreement between the law and the lawyer about legal issues relevant to the client. Thus, in writing this dyad, the lawyer is asked to inventory his or her legal and other views of the client's circumstances and contrast those with the values held by the law.

In reading these circles, it is clear that the lawyer begins Rachel's case with some prior grudges and history with the system. Just as the lawyer can read outstanding agenda items with the law from the differences reflected in the circles, the lawyer can also see commonalities with legal values in the overlap area. The lawyer may share values with the law that will shape his or her approach to the case, even when the client's world and client's family do not share those values. As in Habit One and the client/law dyad, the law/lawyer rings can be drawn impressionistically, in motion. See Figure 4(d), below. For lawyers who understand Habit Two thoroughly, the impressionistic rings can be the starting point for the inquiry: "What agendas am I bringing to this case?"

Figure 4(d). *Habit Two: Law/Lawyer Rings in Motion*

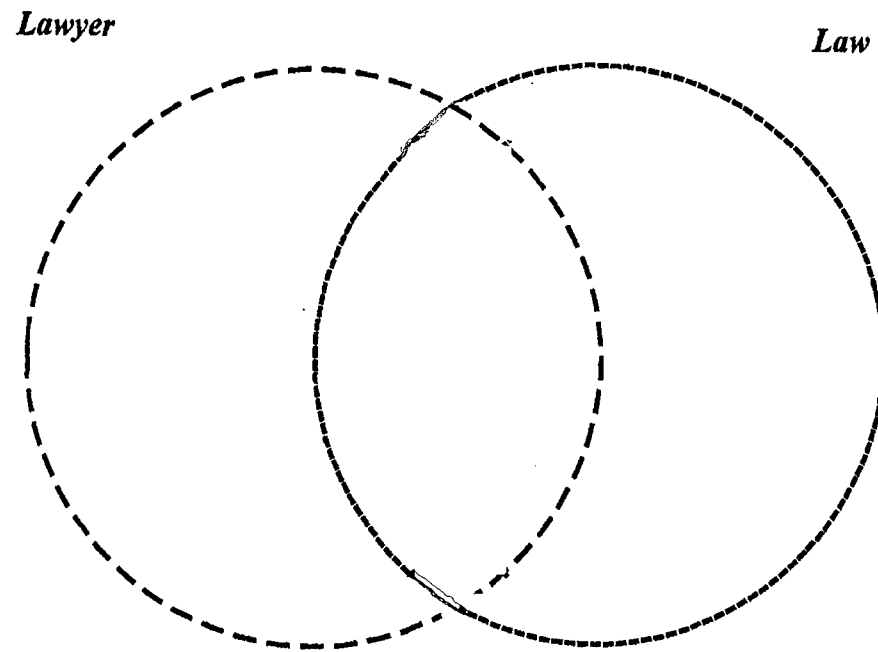
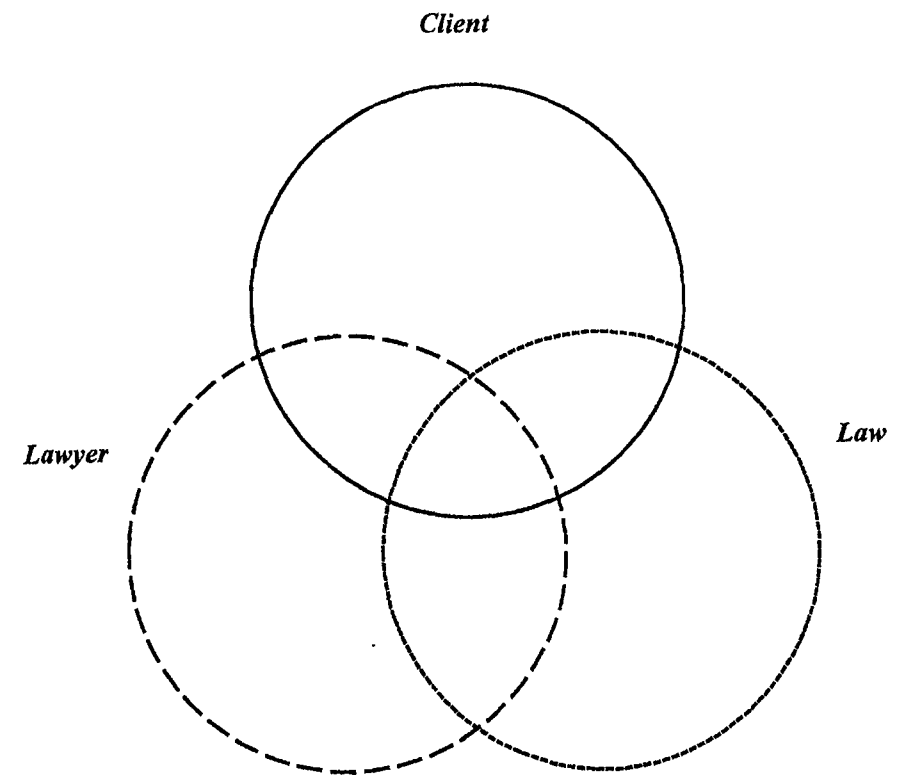


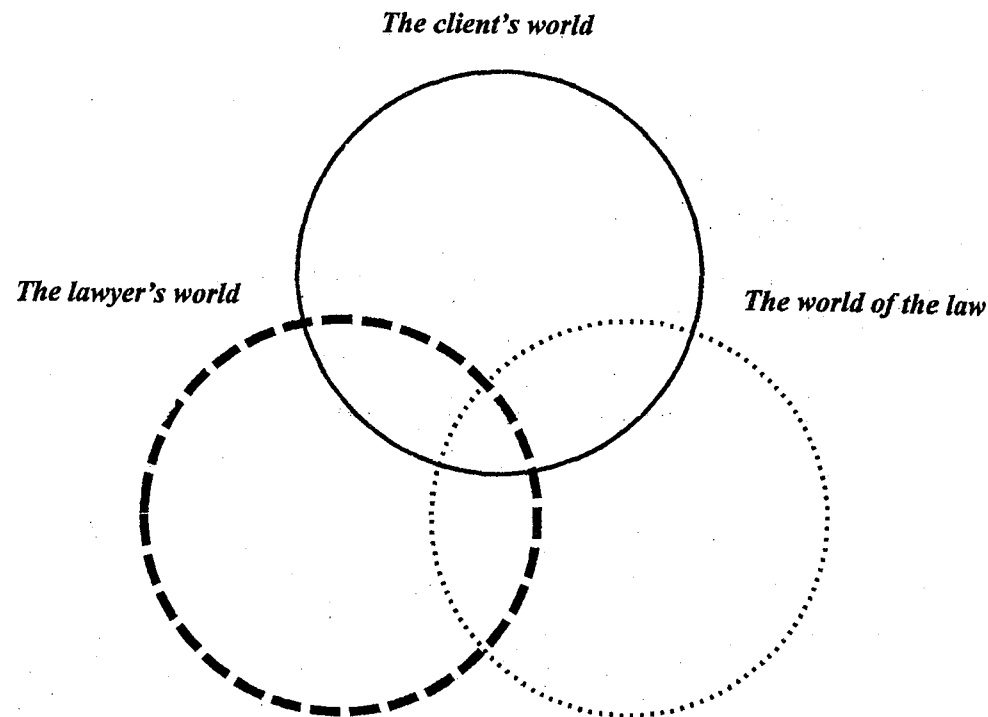
Figure 4(e). *The Three Rings in Motion*



And, as with Habit One and the client/law dyad, the law/lawyer rings, however created, can be usefully individually analyzed.

2. Convert the three dyads, the two you have just drawn along with the one from Habit One, and complete the three rings. Take care to map the area of triple overlap and the areas of singular overlap carefully.

Figure 4(e). *The Three Rings*



Having explored each of the dyads separately, the time has come to integrate these dyads together in one larger Venn diagram with three overlapping circles. This process takes a bit of time, because both the differences and the overlaps require some sorting. While the process of drawing the dyads should be a brainstorming process in which numerosity is sought, as in Habit One, integrating the three dyads into the three rings involves some discernment and sorting. For instance, it is useful to start by charting the area of triple overlap first. This process requires looking at all the items that occur in any of the three overlaps between the three dyads and figuring out which belong in the area where all three circles overlap. This is the area of items that the law sees as positive about the client's case in considering the client's legal position that also serves as similarities between the lawyer and the client.

Once the sorting of the triple overlap is done, the lawyer drawing circles should examine the remaining areas of overlap between the dyads. Putting the dyads together may add some interesting new items into the areas of overlap.

Drawing the three rings requires the lawyer to sort quickly, but carefully, each of the items that occur in the three dyads onto one graphical representation and sort each item into one of seven spaces: the area of triple overlap; the remaining area of overlaps between lawyer and client; the remaining area of overlap between client and law; the remaining area of overlap between lawyer and law; and the remaining parts of the lawyer, client, and legal worlds that are shared by none of the other two. The completed three rings in the Rachel Parkinson case are exhibited below. The resulting graphical representation allows the lawyer to take all the facts, values and characteristics that he has identified in the three dyads process and put them in one diagram. Once the diagram is finished, the lawyer focuses attention specifically on the area of law/client overlap which is the main substance of the lawyer's work. That area itself is divided into two sections: items that the lawyer shares in common with the client in these perpetual characteristics which the law would be inclined to reward, and those which the lawyer does not share. In short, the area of overlap between law and client is divided by Habit One standards between similarities and differences between the client and the lawyer. The critical fact is that *all* of these similarities and differences between lawyer and client are relevant to the client's legal case. The remaining areas of similarities and differences between the lawyer-client are not clearly relevant to the client's legal case.

This graphical representation of the relevant and irrelevant similarities and differences between the lawyer and client are critical to proper cross-cultural lawyering. Here, the lawyer is confronted with the ways in which the lawyer is *not* the context of the client's case. To the extent that we all have tendencies of seeing ourselves as context, the three rings offer a clear way to keep "lawyer-as-context" in check. The three rings do so by identifying a clear area of relevant similarities and differences between the lawyer and client and also identifying irrelevant similarities and differences between lawyer and client. The three rings also identify the ways in which differences between the lawyer and client may be shared by the law and may draw the lawyer away from a single-minded allegiance to the client's point of view. Throughout the case when the lawyer finds himself or herself estranged from the client, distant from the client, and unable to see the client's point of view clearly, the lawyer can reorient himself or herself by focusing on the areas of overlap between the client and law.

Therefore, this graphical representation is a concrete and useful symbol of the larger struggle of every lawyer to remain faithful to the client's point of view rather than his or her own point of view bounded by the lawyer's unique experience, values, and background. An overview of the three rings allows the lawyer to look at what he or she brings to the representation and put it in its proper perspective. To the extent that commonalities that the lawyer shares with the law or the client or both can help the lawyer be an effective instrument of the client's legal advocacy, they are to be celebrated here. If, to an extent, they detract or pull

the lawyer away from an empathic view of the client, they must be kept in check.

There is an additional observation to be made about similarities and differences now that the three rings have been drawn. As noted in Habit One above, lawyers tend to ask questions of their clients based on differences that they perceive between themselves and their clients and to make assumptions about similarities that they view between themselves and their clients.¹ Therefore, the lawyer's explicit questioning of the client may focus more than is necessary on differences between the lawyer and client. In looking at these three rings, the lawyer may be likely to ask many questions about drugs in the home, the multiple homes that Rachel has lived in, and her attitudes toward school particularly because they are different from his own background, and areas of uneasiness that he shares with the law. One can easily see how this focus would grate on a child client, and might lead to a sense of mistrust or even "ganging up" by the child. In addition, the lawyer may ask no questions about the absence of delinquent behavior, troubled behavior and allegations of harm in the home. These positive aspects may be assumed by the lawyer to be areas not worthy of inquiry, and in the process the lawyer may overlook the client's family strengths and good processes.

Using this observation about the differential use of similarities and differences, the lawyer can reorient questioning to make sure that critical areas of importance for the legal claim, and not differences between the lawyer and the client, shape the interview. This involves making sure that the lawyer questions the client about similarities about which he or she might have made assumptions without this awareness, and that the lawyer limit questioning about differences between the lawyer and the client that have no legal relevance. In general, all inquiries by the lawyer into the case of the client in the nature of discovery and otherwise should focus on the area overlap between the law and client. When the lawyer finds himself veering toward areas outside that critical overlap, the lawyer should understand that proper cross-cultural lawyering is not occurring and should take steps to bring himself back to that critical area of client-law overlap.

¹ Sue Bryant, Isabel Gunning, and Steve Hartwell presented this observation at the AALS Conference on Clinical Education in Albuquerque, New Mexico in 1992.

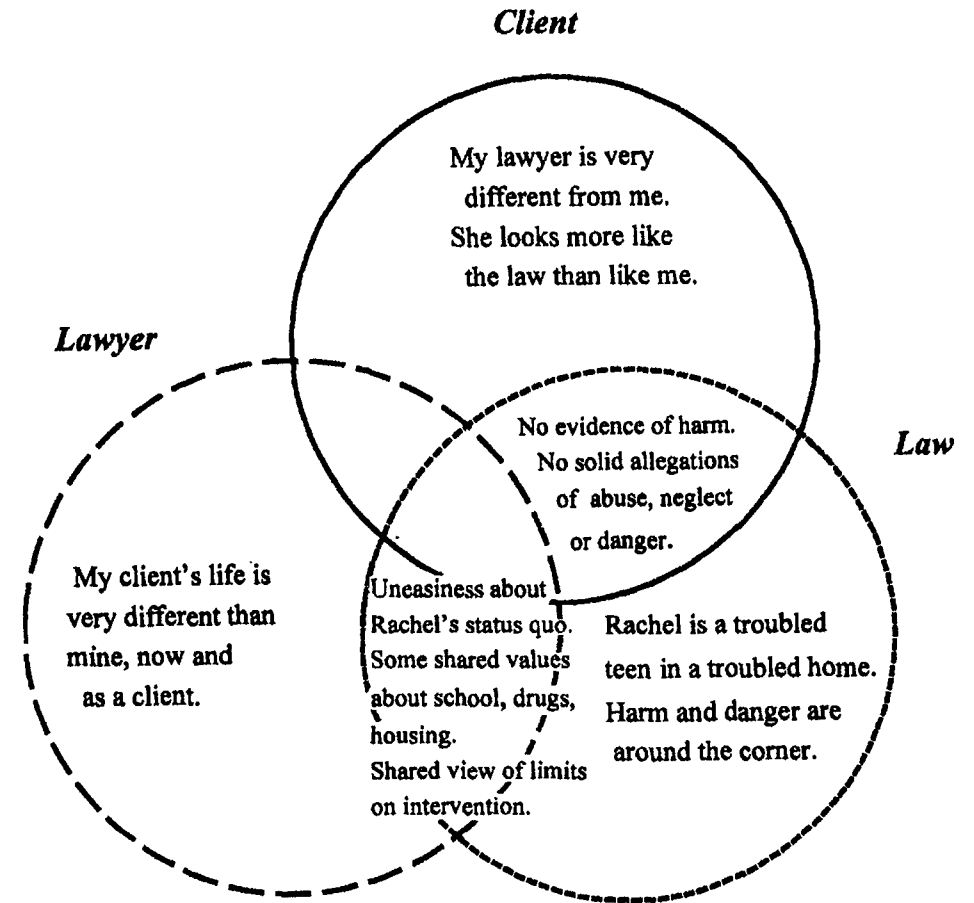
3. If helpful, draw the rings in motion.

Figure 4(f). Habit Two: The Completed Rings in Motion

Example:

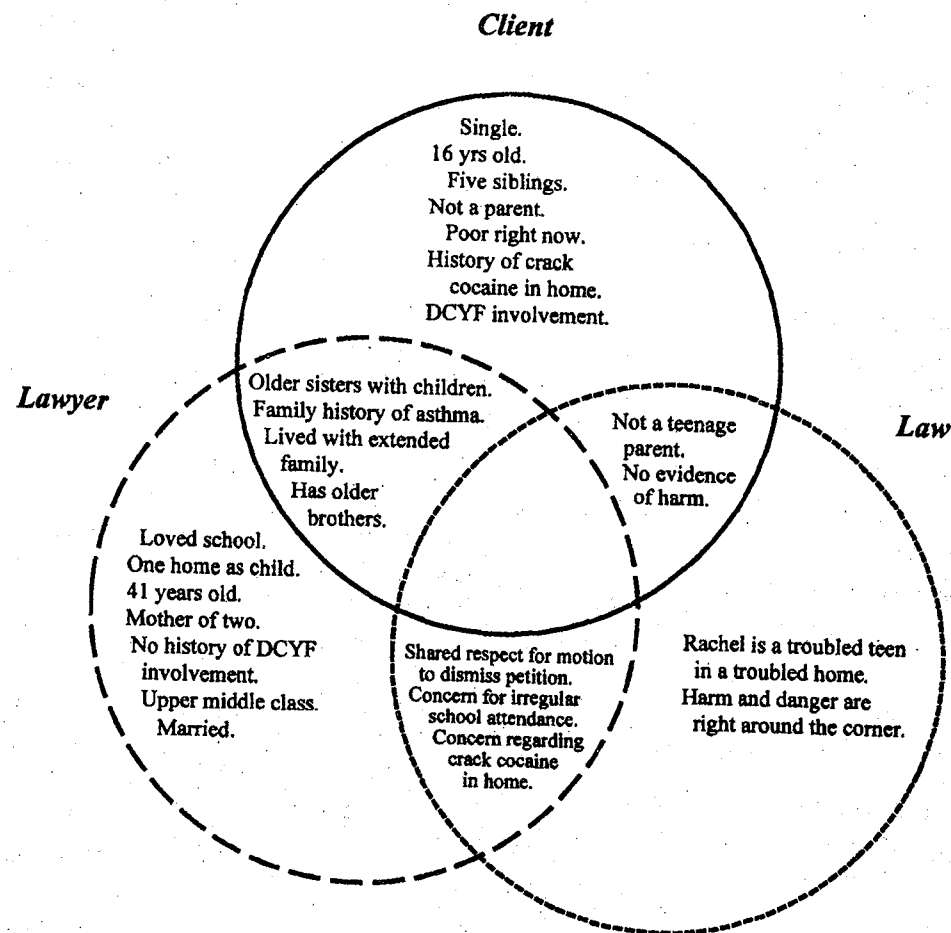
Client: Rachel Parkinson

Lawyer: JKP



In order to prevent the lawyer from losing the forest for the trees, the lawyer can complete one last step with the three rings called the Rings in Motion. Using a blank piece of paper, rather than using three drawn circles, the lawyer can draw the circles free hand, incorporating an impressionistic sense of the overlap between the circles.²

² Note that a lawyer who's familiar with Habit Two may end up using the rings in motion from the start.

Figure 4(g). *The Rings in Motion*

Above, in Figure 4(g), is an example of the Rachel example with the rings in motion rather than on a pre-drawn Venn diagram. The circles show impressionistically the way in which Rachel and her lawyer have relatively little in common in which their dyad is dominated by difference. The Rachel/law circle has a substantial area of overlap with substantial area of difference. And the lawyer/law circles show a large overlap. In this example the lawyer is encouraged not to fill in the circle with individual items but to summarize his or her findings from analysis of the rings.

4. *Read the rings, observing the critical areas that affect the success of the client's legal position, and moving oneself away from irrelevant matters that may be accidentally driving the representation.*

Crystallize the observations from reading the three dyads! Identify the key obstacles that may move the lawyer away from the central areas of concern: the

client's world and his or her overlap with the world of the law. And turn that into an action plan that focuses on the client's areas of concern as a final step.

[c] **Logistical Questions About Habit Two**

Making Habit Two truly a habit can be facilitated by several specific logistical measures. Having pre-made sets of the dyad and the grid and blank sheets for drawing the rings in motion in each case file will help the lawyer accomplish Habit Two over time. Habit Two, while useful to do at once, can also be done in stages. Habit One will take care of one dyad and others can be filled in during breaks in court, while waiting for the client to appear, or in the odd moment between phone calls. At other moments, looking at the rings and seeing what insights they offer can be done in more reflective or integrated moments. The computer program in progress aims to shorten the time to do Habit Two to 20 minutes for the computer friendly lawyers using the computer to convert the dyads to Habit Two rings with less rewriting than they require currently by hand.

As the lawyer gets used to Habit Two, using the rings in motion can give an instant impressionistic sense of the challenges that a lawyer faces in a case. A lawyer could simply ask first "How similar am I to the client in this case?" and draw the rings accordingly; second, ask how good the client's claim is and draw the rings accordingly; and third, ask what agendas the lawyer brings in with the law about issues relating to the case and draw those impressionistically, and then impressionistically build the three rings from there. This process, which would require less than a minute, would give the "forest" impression of the case. While not providing specific data, the lawyer could get a sense of whether his or her primary issues with the client are those of distance on the one hand, or over-identification on the other hand, whether the client's claim is solid or slim and in need of beefing up, or whether the lawyer enters the client's case with agendas left over from previous cases. Even such impressionistic diagrams can provide much information and guidance to a lawyer. Consider, for instance, the rings in motion for Rachel Parkinson shown in Figure 4(g) above. This suggests a lawyer whose central issue with his client is a sense of deep distance and estrangement from experience. This is a lawyer who perceives that he and the client have very little in common. Nevertheless, the client appears to have an extremely strong legal case. A lawyer who finds himself experiencing difficulty in working on this case may find himself preoccupied with his inability to relate to the client's experience rather than the very solid legal strengths of the client's position. The lawyer could use even that brief insight from this sketchy diagram to move himself to focus on the areas of law/client overlap.

In another example of similar overlap, the lawyer who quickly draws Figure 4(e) above may find that he closely identifies with the client in as much as he perceives the client and himself as having many similarities, while, on the other

hand the client's legal case appears to be extremely weak. This is the kind of client whose case torments a lawyer, because the lawyer feels so connected to the client and so helpless about his or her legal options. It is important for the lawyer to focus on the area of law/client overlap and figure out ways to increase that area of overlap in order to increase the possibility of a successful legal case for the client. Considering the two strategies above in the client-law dyad about moving the client toward the law or moving the law toward the client are two places to start.

[d] Special Considerations for Lawyers for Children Using Habit Two

Two special considerations arise for the lawyer for children using Habit Two. First, the lawyer for children is often hampered by not knowing the substance of the client's legal position until later in the case. This may be because the client is unclear about his or her position, or because the lawyer is required to make a best interest determination for the client, or for some other reason. The lawyer can still usefully practice Habit Two in those situations by writing the three rings for one or two of the most likely legal outcomes for the case. For instance, if the choice is between returning home or placement in a foster home or placement with a family relative, the lawyer can chart Habit Two using particularly the law/client dyad, to see what the legal chances of various alternatives are. The lawyer can even chart the law/client dyad for each available alternative to see how dramatically different the analysis of those claims would be. Conceivably, the lawyer could use the law/client dyad to inform his or her own views of the different alternatives, if the lawyer's discretion is to be exercised.

Using Habit Two in connection with the best interest analysis can be a very useful way of investigating possible options for the client and the strengths and weaknesses of different positions for the client. It may also help a child's lawyer investigate whether she is drawn to a particular alternative because of her own preferences based on her own life experience and values. Habit Two can be used as a way to keep the lawyer honest in assessing in moments of digression why a lawyer sees one particular option as more in the child's best interest than another.

Similarly, a number of characteristics about the lawyer's past, which are differences between the lawyer and the client, would have identified him or her as a successful client had the lawyer been in the client's place. For instance, the lawyer's stable home, lack of history of DCYF involvement, lack of crack in the home, success in school and then school attendance made her a child not subject to State intervention. This suggests that these factors—the lawyer's childhood experiences—might be grouped in one section of the lawyer/law overlap as an area of personal experience that the lawyer has that the law approves of in stark contrast to the client's situation. Moving these characteristics is a red flag to the lawyer in this particular case that there is a great deal of distance between the

lawyer's personal experience and the client's personal experience. The lawyer certainly does not have the perspective that the client has of experiencing state disapproval about the composition of her home. This suggests that the lawyer lacks a base of natural empathy on these issues and must be careful to cultivate a sense of understanding of the client's perspective.

[e] Suggestions for Making Habits One and Two a Daily Practice—Ten Tips

1. *Make Habits One and Two a part of the preparation for every interview.* Even jotting a list of similarities and differences on Post-Its© in the file that grow over time is a good start.
2. *Revisit Habits One and Two when a case becomes especially troubling or challenging.* Also, signs that the lawyer is experiencing resistance about a case may be a good indication that Habit One/Habit Two counter-transference exists. Habits One and Two may be the best way to figure it out.
3. *No time frame is too short.* As in stellar cartography, described in Chapter 8, Habits One and Two can be started even when they cannot be finished. Meanwhile, Habits One and Two can also grow over time as the lawyer's information about a client grows over time.
4. *Adapt Habits One and Two to your learning style.* If the list works for you, fine. If the circles work for you, fine. If none of them work for you, is there a way to examine questions of similarity and difference without using methods that are foreign to you? For instance, free writing in a journal, a conversation with a partner on the case, or any other method that confronts the lawyer in black and white with thoughts about similarity and difference would achieve most of the goals of Habits One and Two.
5. *Seek numerosity in all phases of Habits One and Two.* Approach Habits One and Two in a spirit of brainstorming, trying to get new ideas and trying to put everything on the table no matter how irrelevant it may seem. Habits One and Two are worth it even if just one or two insights come from the experience.
6. *Approach Habit One always in a spirit of fact finding not judgment.* Congratulate yourself if you identify the ways in which past training to discount people from a particular race or religion is relevant to a particular case. That awareness may be all you need to prevent those biases from infecting your representation this time.
7. *Your every thought can help the client.* Any similarities or differences that

come to mind may turn out to be ones that are critical later on. Even if you prevent these biases or assumptions from affecting your representation, it may be crucial for you to identify them so as to be on guard for others in the case from acting on those assumptions as well. Do not feel guilty or ashamed about having spontaneous negative thoughts about your client. Your awareness of them will prevent those negative thoughts from becoming too important and may protect the client from others who act on those thoughts in the case.

8. *Continue the Habits One and Two processes at any point in which you believe that you need extra insight into the case.* Habits One and Two started at the beginning of the case can be very useful, but it is never too late to engage in the analysis.
9. *If it helps, try Habits One and Two from the client's point of view.* While having no illusions that we understand exactly how the client sees things, it may be a very useful exercise to put ourselves in our client's shoes and see how we see things from that vantage point.
10. *If time is short, try just the circles in motion.* If you're trying to get a rough read on your sense of identification or estrangement from your client, even just doing the first step of Phase Two—drawing the circles from instinct with the overlap showing your sense of connection to your client—can literally take five seconds, but may yield very interesting insights.

[f] Special Considerations of Habit Two for High-Volume Practices.³

Many lawyers with an extremely high volume of client representations may find Habit Two daunting for a number of reasons. Taking thirty minutes on a case in a given day might seem impossible. The lawyer who does Habit Two might find herself tremendously troubled by how few facts the lawyer can place in the client circle because of inabilities to spend adequate time meeting with the client, or fact finding about them. Even these are extremely important observations. The lawyer who takes a minute to confront himself with absence of particularized knowledge about a particular client has at least reminded himself not to treat his clients in a categorized or generalized way. High-volume lawyers under stress are highly apt to use a stereotype in their representation in the name of efficiency and just getting the job done.

Even in high-volume practices, however, certain cases grab the attention of and trouble the lawyer tremendously. In our experience, charting Habit Two at times

³ Other timesaving ideas are mentioned in § 6-4(c) above.

of high concern, anxiety or stress about a case can be an extremely useful anxiety-reducing tool. In the hustle and bustle of an extremely hectic practice, the lawyer may have no useful instruments for sorting through the complex web of counter-transference, dread, fear, trauma, vicarious trauma, and other dynamics that cloud a fact-based individualized lawyering for each client. Habit Two, while time-consuming in some ways, can save the lawyer tremendous amounts of time in other ways. If a lawyer can sort through the counter-transference and emotion that is clouding his or her approach to a case and create a graphical representation that keeps him or her focused on the law/client overlap, he or she may have created the best time-saving device of all.

[g] Areas for Further Study

Habit Two offers a tremendously fertile field for further study. Predominately, the law circle's precise definition and its ability to be adapted to different circumstances are an extremely fertile area of inquiry. For instance, in child protective proceedings, would it be useful to have additional circles representing the system as distinct from the lawyer? Would a consulting social worker on a case draw a social work circle instead of or in addition to the lawyer circle?⁴

Useful rubrics for analyzing the three rings can be developed. The reading the ring questions that appear in the worksheets are just the beginning of questions that might be usefully investigated as the lawyer has enough time and energy to do so.

Adaptation of Habit Two to computer use could dramatically drop the time it takes to draw Habit Two, and perhaps create a literal ring in motion effect.

The law/client overlap can also be used as a basis for determining issues for client counseling. Drawing the client-law circles with the client and examining areas of overlap to show the good parts of the claim, and examining the areas of difference to show points of separation between the client and the law could help the lawyer begin to discuss legal strategies. The lawyer could discuss the strategies of client changes that could allow the overlap to grow and could also discuss the ways in which the lawyer can seek to expand or change the views of the law in order to make that overlap grow. As an ongoing graphic, if useful to the client, the lawyer can use the law/client Venn diagram to help the client see changes in the legal case over time.

[h] Conclusion

Habit Two attempts to unite the forest and the trees in one graphical

⁴ These were some very useful suggestions from a training done on materials preliminary to these at the Legal Aid Society Juvenile Rights Division in January 2000.

representation that can help the lawyer identify the major dynamics moving in a case and separate those that are legally relevant to the claim from other strongly emotional ones that may wrongly drive the dynamics of the case. As such, it is an extremely useful tool for giving the lawyer an overall orientation to the case and for problem solving in the middle of difficult moments of a client's case.

§ 6-5 Habit Three—Parallel Universes

Joe, a second generation German-American clinical professor at a city law school is assigned to represent Margarete, a 15-year-old girl from a Haitian immigrant family, who repeatedly runs away from home. The petition that describes Margarete notes that she has run away from home and is beyond her parent's control, and that she has been truant for over half the school year.

Joe sighs heavily. His practice is full of Haitian cases, and he knows what this means: clients who never appear on time, who constantly show up late, who don't come to court. He makes an appointment with Margarete to come to his office. Sure enough, she does not appear at the scheduled time. Angry and resigned, he calls her foster mother again and sets up a second appointment. She does not arrive again. The third time, he waits about 10 minutes for her to come and leaves the office to run an errand. When he returns, he learns to his surprise that Margarete has come and gone. He sends Margarete a reminder to meet him in court for the first court appearance in the case several days later. She arrives on time, and he asks her to explain why she didn't appear for the meetings as planned. She tells him she has been regularly spending time with her ailing grandmother whose illness has taken a turn for the worst lately. She explains that the way she was raised, the health of her elders was more important than anything, including school, including court, including anything. "Is there something wrong with that?" she asks Joe.

Figure 5. Habit Three: Parallel Universes

Brainstorm five different explanations for the client's behavior.

- 1.
- 2.
- 3.
- 4.
- 5.

[a] Habit Three: The Habit of Not Jumping to Conclusions About Behavior

Habit Three asks the lawyer to identify alternatives to assumptions he or she may make about the client's behavior. The Habit itself is simple. When faced with a client's behavior, a lawyer should force himself or herself to brainstorm multiple explanations for the client's behavior rather than settling on a specific interpretation. To use science fiction terminology, the lawyer should brainstorm the various parallel universes in which the lawyer and client may be interacting, not only to search for open mindedness about the meaning of the client's behavior, but also to avoid rushing to judgment or conclusion about a particular event. Parallel universes also confront a lawyer with the vastness of his or her ignorance about the client's life and circumstances.

Parallel-universe thinking can be done anywhere, anytime, in a matter of seconds. In a simple example, consider a client who does not show up for an appointment with the lawyer. The lawyer who immediately jumps to the conclusion that the client doesn't care about his or her case should stop and consider the parallel-universe explanation. "Maybe her worker forgot to pick her up, perhaps they got the time of the meeting wrong, perhaps they're delayed and still on their way." The no-show client is a classic example of a situation in which a lawyer has very little information—except for the client's actual absence. Here, Margarete's lawyer jumped to conclusions about his client's failure to come to meetings, assuming, even predicting, that she would be like "all his other Haitian clients." He proceeded with a false certainty about the meaning of her absence as a result. Assuming the client is indifferent to the case, when many other explanations could be equally true, pushes the lawyer forward on a false assumption about the client's view about his legal matters. It also prevents him from achieving a central goal of cross-cultural lawyering, "isomorphic attribution," understanding her behavior on her own terms.

Raymonde Carroll beautifully encapsulates the essential importance of parallel-universe thinking.

Very plainly, I see cultural analysis as a means of perceiving as "normal" things which initially seem "bizarre" or "strange" among people of a culture different from one's own. To manage this, I must imagine a universe in which the "shocking" act can take place and seem "normal," can take on meaning without even being noticed. In other words, I must try to enter, for an instant, the cultural imagination of the other.¹

As Carroll demonstrates, parallel-universe thinking connects directly to the critical dynamics of nonjudgmentalism, in its refusal to prejudice confusing

¹ Raymonde Carroll, *Cultural Misunderstandings: The French-American Experience* 2 (1987).

behavior, and isomorphic attribution, in its search for the client's understanding of her own behavior. The ease of a parallel universe provides the third dynamic, in that it is easy to learn and integrate into daily life, and thus makes it the ideal habit: essential in its lessons and simple to perform.

[b] Learning Habit Three

Parallel-universe thinking is a reactive habit triggered when the lawyer finds himself or herself beginning to make either a negative or positive judgment about the client's behavior. Habit Three asks the lawyer to describe the behavior, but hold back on interpretations based on an incomplete set of facts. Even a single parallel-universe explanation for behavior can jar a lawyer out of a mistaken certainty about the client's motive or intentions. Considering multiple parallel universes by brainstorming many alternatives should further the lawyer's open-mindedness while increasing the chances that the lawyer may stumble upon the proper parallel universe (isomorphic attribution) in the process.

As with Habits One and Two, numerosity and specificity help the lawyer understand how many possible options could explain behaviors that we initially feel certain we understand. Parallel-universe thinking is especially important when we are feeling judgmental about clients. When we are attributing negative meanings to a client's behavior, we should explore other reasons for the behavior. This reminds us that we must explore with the client the actual reason for the behavior rather than operating on our false assumptions.

Another important trigger for parallel-universe thinking is certainty. When a lawyer finds himself or herself thinking "I am sure that my client did that because. . .," the lawyer should challenge that assumption with a parallel universe. Note also that it is not necessary or even expected that the parallel universes generated include the *actual* explanation for the behavior. Sometimes, parallel universes are less important for finding the actual interpretation (the isomorphic attribution) of the client's behavior, which can best be resolved with the client face-to-face or in some kind of dialogue. Most important, parallel-universe thinking operationalizes the non-judgmentality that all the habits require. While it can be somewhat confusing in that it offers a multiplicity of explanations for a single event, it is also efficient; it prevents the lawyer from charging forward based on an assumption that is not necessarily true.

Parallel-universe thinking opens the lawyer back up to the client, to the vastness of the lack of knowledge about the client's world, and to a perspective of humility about the lawyer's relative importance in the client's life. Its critical quality of non-judgment is a welcome antidote to the default tendencies of our profession. Our clients may have experienced many events in which they felt wrongly and hastily judged; parallel-universe thinking can prevent us from joining the ranks of those who have betrayed them in this way. By preventing us from acting

mistakenly on false judgment, and from lawyering based on a misguided uncertainty about a reality which we do not yet apprehend, parallel-universe thinking is a tremendous ally in our ongoing struggle to understand the client on his or her own terms and not ours.

Habit Three is extremely easy to put into daily practice. When finding oneself making a judgment about a client's behavior, take a minute, and think "parallel universe" and most of the work is done. Even just the effort of starting to figure out what parallel universes exist will soften a lawyer's dedication to his or her baseless interpretation of a client's behavior.

It is often useful to think of the ways in which parallel-universe thinking could benefit you throughout your workday as well. Suppose you snapped at a worker or colleague in a way that is uncharacteristic. Imagine the kind of open-minded nonjudgmental sympathy that you would like to experience in that moment of embarrassment or loss of control. Thinking of the ways in which parallel-universe thinking could help you in that situation, as people strive to give you the benefit of the doubt in a moment of uncharacteristic behavior, can strengthen the lawyer's resolve to do the same for the client and other people in the client's case.

[1] Habit Three: Special Considerations for Lawyers for Children

Habit Three has many possible specialized applications when representing a child. Child behavior, for instance, should always be interpreted with an eye toward special issues of child development. An impulsive thoughtless act by a five-year-old must be given a different range of interpretations than a similar act by an adult. Lawyers should use their understanding of child development and child trauma as discussed in Chapter 9 to explain multiple parallel-universe explanations for child behavior that are not necessarily applicable to adult clients.

Habit Three should also be used to explore the various cultures in which the child lives. The teenager showing certain behaviors with his friends may literally be interacting in a different culture than the one that the adult lawyer is using to interpret his behavior. The child who has just moved to a new foster home is showing behavior that must be interpreted carefully and with reference to many contextual factors. The traumatized client, as explored in Chapter 9, is moving in a context that is only beginning to be understood. In short, Habit Three parallel-universe thinking should be especially available to the lawyer in child cases because of the wide range of potential explanations for child behavior.

[2] Habit Three: Special Considerations for Lawyers in High-Volume Practices

Because of its efficiency, lack of need for pencil and paper, and instantaneous application, Habit Three has a place in every law practice no matter how busy. One particular impediment likely to show its face more starkly in high-volume

practices is Habit Three's apparent lack of efficiency. A lawyer needing to "understand" the client's behavior immediately may resist Habit Three in favor of desirable certainty that provides a certain efficiency in the middle of a fast-moving practice life. Such efficiency, however, is too often ephemeral and misleading. If the lawyer indeed lacks the information to understand exactly what a client is doing, the false efficiency of a false certainty is of no use. Habit Three also appears to be counter to our views of proper moral reasoning.

High-volume lawyers, who resist Habit Three because of its potential to confuse and paralyze rather than motivate to singular action, rightly note that Habit Three is appropriate in some circumstances and not others. When the lawyer and client have agreed on a plan of action, Habit Three analysis should not be used as an excuse for inaction. However, a healthy incorporation of Habit Three into the life of even the busiest lawyer could itself be the singular act that, day to day, increases the cross-cultural awareness that enables the lawyer to practice based on fact and not on assumption.

[3] Areas of Further Study of Habit Three

When is it most useful to use Habit Three? Identifying particular triggers for each lawyer is an extremely useful way of figuring out how to work parallel-universe thinking into your daily life.

How should parallel-universe thinking be used with behaviors of all other people in one's cases? Keeping an open-minded perspective on even those people in one's cases who may be adverse to one's legal position leaves open lines of communication, possibilities of settlement, and the possibility of developing right relationships with people close to your clients in the way suggested in Chapter 3. While parallel-universe thinking should start with the client, it should not end there. Once mastered with the client, it should move throughout the case to all other behaviors of uncertain meaning.

Finally, how does parallel-universe thinking relate to giving one's client "the benefit of the doubt?" Should positive judgment also trigger parallel-universe analysis?

[c] Conclusion

Habit Three is the paradigmatic habit. It exemplifies nonjudgmentalism, it reminds us of the importance of openness and helps us keep a healthy respect for alternative explanations that might be quite clear to the client even when implausible to us. It combines this openness with the search for isomorphic attribution, in an easy to learn and use form. Parallel-universe thinking is extremely time efficient and an essential part of every cross-cultural lawyer's practice.

§ 6-6 Habit Four—Red Flags and Correctives

Jeff, an experienced attorney of twenty years, is a fourth-generation Austrian-American. He is also Jewish. Whenever he meets his neglect clients, he introduces the legal terminology in the same way. He has found an explanation that works to explain unusual terminology like "plea," "finding," "neglect," and the like. One day he finds himself explaining these concepts in the usual way to his new client Charles, a bright, verbal, eight-year-old African-American boy who lives in the housing project in the center of the city. Although Charles has been described to Jeff by the caseworkers as articulate and voluble, Charles is extremely subdued and quiet throughout the explanation. When Jeff tries to get Charles to respond to his questions, Charles repeatedly states "I didn't do nothing wrong." Thinking of the many children who believe they are brought into court or believe they are responsible for the problems in their family, Jeff launches into a standard explanation that neglects are civil proceeding against his parents not against him. Charles remains quiet and withdrawn. Jeff shrugs and tries to determine if Charles is happy living where he is currently. Charles tells Jeff that he is fine where he is living and asks if he can leave. Jeff shrugs and says yes, and reminds Charles and his caseworker of the next court date. Charles at the next court date asks if he needs to be present in court and is told by Jeff that he has the choice of whether to appear. Charles asks to be in the courtroom. He listens alertly to all that happens in the courtroom. As they leave, Charles says to Jeff "How come there were no police in there?" Jeff asks Charles why he thinks police would be in there. Charles explains to Jeff that everyone he's known who's ever had a lawyer was put in jail. "You only get a lawyer if you've done something wrong," says Charles.

[a] Habit Four: The Habit of Not Making Habits When Communicating With Clients

Habit Four identifies the signs of filtering communication while opening the door to a larger understanding of cross-cultural communication between a lawyer and any given client.

Habit Four focuses on important skills that are needed to communicate information accurately to clients as well as to interpret the information the clients communicate to us accurately as well. Habit Four cautions the lawyer, in the words of my collaborator Sue Bryant, to make it a habit not to make habits in communicating with clients. Indeed, it is our very rituals and "standard operating procedures" that lay the traps for faulty communication with an individual client. Particularly for the lawyer working with high-volume and high-stress, rote patterns of communication and structuring of client interviews can become

common and dangerous. Habit Four is designed to alert the lawyer to signs of faltering communication and to begin to suggest correctives toward optimal cross-cultural communication.

Of the five habits, Habit Four is the most under construction. Because Habit Four addresses the critical question of lawyer-client communication, it may evolve into a whole class of habits of its own. In its present form it focuses on faltering communication and ways out of moments of faltering communication, which in turn, we hope, will equip the lawyer to improve individualized communication with clients in daily life. Successful cross-cultural communication requires a lawyer to remain alert, aware, and mindful throughout the communication process, avoiding as much as possible being on automatic pilot when speaking with or responding to the client. Specialized attorneys in particular tend to have scripts for particular counseling moments: for instance, the lawyer may always describe the role of the local child care agency or the local judge in a particular way using the same words no matter which client they are speaking with. Lawyers often have standard ways of beginning interviews, explaining confidentiality, explaining key legal concepts or legal actors, and standard office practices. A mindful lawyer uses these scripts with great care, especially in cross-cultural encounters, developing a wide variety of communication strategies adapted thoughtfully to each individual client. This lawyer also seeks continual indications that the client understands what is being discussed. Habit Four focuses the lawyer on looking for "red flags" that inform him or her when accurate authentic communication is not occurring.

Habit Four takes place in two contexts: in the moment-to-moment process of communicating with a client, or in analyzing those encounters afterwards for signs of successful and unsuccessful communication. In the moment, the lawyer continually asks himself or herself the question "Do I know if my client and I are understanding each other?" This sort of mindfulness¹ may cause the lawyer to notice so-called "red flags," indications that communication is breaking down between the lawyer and the client.

A lawyer can begin by brainstorming about red flags that he or she has already noticed in past communications with clients. For every lawyer this repertoire of red flags will be different. The following examples may be a useful starting place, and may jog a lawyer into identifying other examples:

- the client appears bored, disengaged, or even actively uncomfortable,
- the client has not spoken for many minutes,

¹ Brookfield and Preskill in "The Dispositions of a Democratic Classroom" within *Discussion as a Way of Teaching* define mindfulness as "Paying attention. Paying close attention to another's words is no small feat. It calls on 'all our resources of intelligence, feeling, and moral sensitivity.'"

- the lawyer has not taken any notes for many minutes,
- the client is using the lawyer's terminology instead of the lawyer using the client's words,
- the lawyer is judging the client negatively,
- the client appears angry,
- the lawyer is angry,
- the lawyer is distracted, bored,
- the lawyer finds himself or herself thinking about matters irrelevant to the case while the client is speaking,
- the lawyer finds himself or herself thinking about matters irrelevant to the case when the lawyer is speaking! Or
- the lawyer finds himself or herself using a script or speaking "by rote."

These are only a few examples of dozens of red flags that could be identified for any given client or any given lawyer-client relationship. The final example of the lawyer "on rote" bears special emphasis. As noted above, almost all lawyers develop "patter" or standardized explanations of important concepts that occur in their daily practice. It does not, however, make sense to use the same words, phrasing, or tone of voice in describing the same concept, if each client must understand each concept for himself or herself anew in each interview. Yet these moments of standardized rituals may be the moments when the lawyer is the least mindful about the effect of his or her communication. The lawyer may even be rushing through these standardized introductory materials to get to the heart of the interview.

Habit Four urges lawyers to find ways to prevent themselves from launching into these standard explanations and to shake themselves out of complacency and refocus themselves on being in the present with the client. Being "on rote" risks tuning out from this client's actual understanding of this concept. The lawyer may be on rote because the lawyer understands the concept inside out, but in each individual interaction, the goal of counseling is for the *client* to understand the concept inside and out. Doing that requires individualized attention, no matter how many times the lawyer has explained the concept before.

Perhaps the most difficult work of Habit Four is the beginning: being shaken out of complacency. The very goal of Habit Four is to interrupt lawyers on autopilot and bring them back to the moment of interaction with the client. This is why developing specific identifiable discrete red flags is important for every lawyer. For instance, once a lawyer discovers that he is apt to yawn during moments of disconnection from the client, every subsequent yawn can become a red flag that

alerts him to the faltering communication and brings him back to this client at this time. Like the faulty engine or door-open lights in a car, red flags can alert lawyers to a developing problematic situation before it leads to any harm to the client or to the relationship.

After identifying the red flag, the second step is to return to the moment and return the conversation to the proper track. As a general principle, this corrective step generally requires doing anything possible to return to the second principle outlined in the overview above: remaining present with this client, ever respecting his or her voice, dignity, and story. Thus, the lawyer should consider tailoring explanations of general principles of law using language and references that are specifically designed to dovetail with the client's state of priority and concerns. In this way, the lawyer in counseling and speaking mode can individualize explanations in a way that conveys to the client the lawyer's continuing dedication to the client's interests and issues.

The lawyer in listening mode can also use a focus on remaining present with the client and the client's story to correct a red flag *before* it harms communication. In general, the lawyer should engage in "attentive listening" to the client's story and voice. When a red flag demonstrates that the lawyer's concentration is faltering, the lawyer can redirect the conversation to the client's words, understandings, priorities and narrative. In general, seeking to get the client to a narrative and expressive mode is often the most helpful. When the client is telling his or her story actively, the lawyer can actively learn about the client and his or her culture and the way the client approaches problem solving and decision making at hand.²

Some specific correctives along the lines outlined here are:

- to turn the conversation back to the client's state of priority;
- seek greater details about the client's priorities and concerns;
- give the client a chance to explain in greater depth her concerns about the legal case;
- ask for examples of critical encounters in the client's life that illustrate the problem area;
- explore one example or incident in depth;
- ask the client to describe in some detail what a solution would look like;

² Note that even narrative mode may be more difficult for people in some cultures than for others. For lawyers who work repetitively with people from the same culture, it might be useful to seek cultural-specific information about the role of narrative in the culture as well as the conversational styles with professional helpers in fashioning Habit Four correctives.

and

- use the client's words.

Again, these are only a few examples of many ways in which client-focused correctives can be sought in lawyer-client communications. Note that these correctives are themselves also the starting places for lawyer-client communication. Even when a lawyer does not see a red flag occurring, the goal of remaining present with the client and seeking his or her dignity, voice, and story remain overarching goals for every lawyer-client interaction. Whether in providing counseling, or eliciting information, the lawyer using this goal as a rubric will find himself or herself increasingly mindful of ways to individualize each experience with a client.

Over time Habit Four can develop a third phase. Encounter by encounter, the lawyer can get a sense of his or her repertoire of red flags in any given lawyer-client relationship and understand the correctives that "work well" with this client. Client by client, the lawyer can gain self-understanding about the red flags that are emblematic of his or her communication and correctives that specifically target those red flags. In the moment, red flags can remind a lawyer to be aware of this client and focused in this moment; upon reflection, red flags can help a lawyer avoid communication problems before they develop with future clients. This third piece of Habit Four can be expanded further if lawyers who work together or reflect on their practice together pool red flags that they have encountered in their own experience. Lawyers who have missed problem moments that others have identified can use their colleague's insight to increase their own mindfulness. In beginning the process of starting to identify red flags in one's practice, it may be easiest to start by observing behavior in one's client. It may be easier to observe a client appearing bored than to recognize one's own complacency or distraction.

[b] Learning Habit Four

Figure 6. *Habit Four: Red Flags and Correctives*

1. *Compare in detail the facts about the two moments; remember numerosity*

Tough

Client silent

Smooth

Client actively conversing

2. *Identify Red Flag*

In the future, how could you identify in the moment, when lawyer-client communication falters?

Concrete signs:

3. *Fashion a Corrective*

Once I identify it, how can I fortify the communication again?

Concrete Ideas

What makes this client different from the rest?

[c] Using Habit Four in Daily Practice

Habit Four requires the lawyer to redouble the commitment to nonjudgmentalism, especially about his or her own performance. A lawyer who identifies a red flag and then spends energy in the moment chastising himself or herself for being bored or distracted or for lapsing in mindfulness, robs valuable energy and concentration from the client encounter at hand. The best thing a lawyer can do in that moment is to refrain from the wasted energy of such a reprimand, and return to the lawyer-client interaction. If the lawyer must spend energy in dialog with himself or herself about lapses in communication, perhaps the lawyer can congratulate himself or herself for identifying a red flag rather than wallowing in guilt or shame. Whatever the strategy, the lawyer is encouraged to spend as little time in the moment on anything except a redoubled commitment to return to the client's needs and viewpoints as soon as possible.

Even when the immediate correctives do not come to mind, identifying a red flag is in itself an active service to the client. As with parallel universes, the very awareness and refocus on the goal of true communication with the client may be the only corrective that is necessary. The act of refocusing alone may be all that is needed to ensure quality interaction.

Early in a career, Habit Four requires the same kind of ultra pinpointed awareness of interactions that new lawyers often have naturally. The new responsibility of having a client, one's constant concern about whether one is prepared enough to take on that responsibility, and the fear of making a large mistake of some kind all tend to increase the adrenalin flowing during lawyer-client interactions. Early in a practice is an excellent time to begin Habit Four to identify the relatively fewer moments when lawyer-client communication is faltering because of lawyer complacency. The lawyer also is often hyper-aware of how successful the communication seems to be and therefore Habit Four awareness of client reactions may also be heightened at that time.

As lawyers become more experienced and senior, the problem of being shaken out of complacency grows substantially. By this point, however, lawyers who have faithfully been using Habit Four may have developed their own repertoire of red flags that they can keep track of during an interview. It might also be useful during a break in a meeting to consider how the interview has been going and

what the high and low points of communication seem to be.

Because Habit Four occurs in the moment, it is an extremely efficient habit. The gathering of Habit Four information over time need only require finding a useful place to keep track of red flags that are identified so that they can be reviewed and avoided in further interactions. Again, it is critical to stress that these reviews should be done with a fact-finding inquiring mind, rather than a self-judgmental, condemnatory spirit. Again, a lawyer who takes the time to prevent these red flags from occurring should congratulate himself or herself for this effort rather than chastising himself or herself for having developed a repertoire in the first place. It is clear that every lawyer has a repertoire; those that have the courage to confront themselves with it should be given some extra credit!

[1] Special Considerations for Lawyers Representing Children

Lawyers for children learn early the futility of trying to communicate to each client in the same way. In particular, standardized explanations, quick jargon-laden explanations of repetitive events in court proceedings will often fly right above the heads of child clients. A lawyer on rote with a child client is immediately headed for disaster. Communication strategies are recommended in Chapter 4, *above*, and Appendix C.3 focuses on starting every communication from the client's context and working outwards.

Lawyers for children should expect that red flags developed in a particular case are even more specialized and specific. This is especially true both because our clients' attention spans are shorter, and because the context in which we see our child clients is often broader and more varied.

[2] Special Considerations for Lawyers in High-Volume Practices

Again, the efficiency of this habit is its beauty. Taking place as it does in the moment, it requires no additional time. To the extent that it reroutes an encounter that is going awry, it is a time-saver. If a lawyer is concerned about saving time, a lawyer should be focused on making sure true communication happens for as much as any given encounter as possible. If a lawyer barely has time to communicate with a client once, he or she certainly does not have time to correct failed communication again. Mindfulness and alertness in the moment are the most efficient strategies even for the most pressed lawyer.

While Habit Four encourages lawyers not to develop entrenched habits of communication, one default rule might be useful for high-volume lawyers. In order to maximize the lawyer's ability to hear this client's unique voice and story, the lawyer might benefit from adopting a "fifty-percent listening rule." This rule suggests that for any length of time a lawyer has to spend with a client, whether it is one minute, fifteen minutes or an hour, the lawyer uses a default that the client should be speaking for at least half of that time. If the lawyer finds himself or

herself speaking throughout entire lawyer-client encounters, this should be an automatic red flag that the lawyer is not getting a chance to hear the client's voice and story. Especially in high-volume practices, where the lawyer cannot meet with a client often, a client encounter spent completely in the lawyer's voice is one in which the lawyer is having no opportunity to gather individualized information. The fifty-percent listening rule can help guard against that eventuality.

[3] Areas for Further Study

As noted above, of all the habits, Habit Four is most in need of expansion and further clarification. Focusing on faltering communication is an excellent start, but certainly not the end of thinking about cross-cultural communication between lawyer and client. For instance, identifying the equivalent concept of good communication—what is the answer if a red flag symbolizes a moment of faltered communication, what are equivalent images and strategies for maximizing good communication? We know the contours of the answer in Principle Two's exaltation to remain present with the client respecting his or her dignity, voice, and story. But how can we develop further habits of cross-cultural lawyering that make concrete and in the moment the positive moments of communication? Expanding Habit Four to focus on all moments of lawyer-client communication with the same level of concreteness and step-by-step approach is clearly the next step in expanding habits for good cross-cultural communication, a cornerstone of cross-culturally competent lawyering.

§ 6-7 Habit Five—The Camel's Back

It was one of those days. Sarah, a local lawyer for children, had a sick child at home and a completely disrupted day even before she got to the office. On her voice mail were two emergencies, including a huge setback in a long and difficult case. She ran to court without breakfast only to find a seething judge and a hostile opposing counsel. The car broke down on the way back to the office. When she finally got there, she received a call from an angry teenager. After tremendous efforts, she arranged a critical forensic appointment with an extremely reputable, competent, and extraordinarily busy local psychiatrist who rearranged his schedule to make an hour and a half appointment available for her. Then her client called to tell her that the doctor had refused to see her because she had appeared fifty minutes late for the appointment. "What was the big deal? He had put aside an hour and a half. So I was a little late." Sarah exploded. "How do you expect me to keep you at home when you just can't keep up your end of the bargain? Do you know how much work it took me to arrange that appointment?" Sarah's client began to cry angry tears and hung up.

Sarah sat at her desk with her head in her hands. Anger competed with remorse. "How could she do this to me?" she thought angrily. Then, "How could I yell at her, a child? I didn't even find out the facts of what happened. I just exploded." As remorse flooded over Sarah, she made another realization. This was the second time she exploded at a client in the past two weeks. "Is it a coincidence that both of them are African-American?" she asked herself. Suddenly, she was paralyzed by shame. Feeling like an utter failure, she had little energy for the urgent work for this client and other clients that awaited her on her desk.

[a] Habit Five: The Sadder-but-Wiser Habit

Like the proverbial straw that breaks the camel's back, Habit Five recognizes that there are innumerable factors, which, when gathered together in a critical mass, can lead to a cross-cultural disaster. Despite our best efforts, lawyers find themselves violating their most precious principles of respect and courtesy to clients when enough bad things have happened. Habit Five offers the lawyer described above a strategy other than brooding and self-berating. Habit Five offers a way to analyze the events that break the lawyer's back in the inevitable regrettable moments in his or her practice. It allows the lawyer to analyze those without excessive shame and paralyzing guilt, and to turn that analysis into a proactive effort on behalf of future clients and future client interactions. A lawyer who proactively uses Habit Five can mend from the inevitable breakdowns, and prevent himself or herself in the future from reaching the breaking point.

Habit Five asks us to identify how certain lawyer-client interactions derail and to plan corrective strategies to prevent future derailments. Habit Five derives from a theory of a car accident prevention called Final Factor Analysis. We have all heard of drunk drivers who miraculously make it home without killing themselves or anyone else while we also know that even the most careful drivers fall prey to car accidents not of their own making. Analysts reconstructing car accidents have found that final factor analysis explains that a confluence of variables cause accidents when enough factors come together to form a critical mass. Thus, being drunk may not be enough in itself to cause an accident, but if one is driving drunk, the radio is blaring, the children are fighting in the back seat, one is preoccupied with work, sleep deprived, and driving into the sun, these factors might be enough to cause an accident. Naturally, there are factors that are more likely to get one into an accident than others, but thankfully there are others that one can control. In the accident-prone scenario described above, obviously the driver can decline to drive while drunk, or find another driver. The driver can also control other factors, turning off the radio, quieting the children, clearing his mind and refocusing on the driving, delaying driving until he has gotten better sleep, wearing sunglasses, or driving a different route.

In the example of the lawyer described at the beginning of this section, many of the horrible events of that day were clearly outside her control. But some were not. The lawyer's failing to eat and car trouble clearly contributed to the lawyer losing control with her client at the final moment. Had the lawyer controlled even one of those factors, simply by fortifying herself with proper food, for instance, perhaps the lawyer could have marshaled enough resources and resiliency to deal with the day from hell. What is clear is that the lawyer who allows enough factors to build up is most in danger of falling back on old conditioning regarding stereotype and losing track of the lawyer's most valued beliefs about proper behavior with clients.

Thus, even in the midst of the shame of an aftermath such as that described above, there is hope as well. If one can analyze the events leading to the awful and regrettable moments the lawyer experienced, and control the factors that the lawyer can control, perhaps the lawyer can prevent the straw that broke the camel's back from being placed on his back in future client encounters.

[b] Learning Habit Five

In the moment, Habit Five asks the lawyer to look unblinkingly in some factual depth at moments of breakdown. The lawyer examines an event in a client interaction that the lawyer does not want to repeat. The lawyer carefully identifies, in brainstorming mode, the factors that have occurred that lead to that breakdown; every factor that existed, no matter how seemingly irrelevant, should be inventoried at first. The lawyer should gently, but firmly, force himself or herself to include old conditioning, stereotype, and bias in that inventory. Is this the second African-American client at whom you have exploded this week?

Once the inventory is complete, the lawyer can sort the list in two ways. First the lawyer can identify those factors that the lawyer can control. Most of these factors tend to have to do with the lawyer's own resources; sleep levels, hydration, food, mental rest, exercise, and level of distraction.¹ In looking over these habits, these factors that the lawyer can control, the lawyer can further sort by identifying controllable factors that recur over time. A one-time fluke or crisis is not something that the lawyer should focus on as much as the lawyer's tendency to skip meals, failure to get enough sleep, or failure to take breaks during the day.

Figure 7. *Habit Five: Proceeding With Care: The Camel's Back.*

1. *Compare in detail the two incidents—remember numerosity.*

¹ Note to the extent that Habit Five often suggests that lawyers care thoughtfully for themselves in order to fortify themselves against these moments, these self-care recommendations will track the recommendations for lawyers fighting vicarious trauma. See Chapter 9, *below*.

Like to forget
Factors working against you

Model
Factors working for you

2. *Look at all these factors.*

Number 1–5 in the “like to forget” situation the factors which figured most prominently.

Of all factors above, number a–e those factors that occur most frequently in your daily life.

3. *For every item with both a number and a letter next to it:*

- a. Brainstorm five ways to address or eliminate it in your daily life.
- b. For salient items in the second column, brainstorm five ways to expand that in your daily life.

Once the lawyer identifies factors that tend to recur over time, the lawyer should actively brainstorm to create corrective strategies for recurring factors. The lawyer should be buoyed by the hopeful implications of final factor analysis: controlling a single factor may be all that is necessary to prevent a further breakdown from occurring. If only the final straw broke the camel's back, controlling even that tiny factor may be enough to prevent a similar regrettable incident in the future.

Over time, the second part of Habit Five suggests that lawyers can reorient other daily habits permanently to control factors that will always be troublesome. A lawyer may find that skipping breakfast regularly is simply out of the question, if the lawyer is to have the stamina to live through a difficult stress-filled day. A lawyer may determine that making time for regular exercise is the best preventive strategy for surviving the difficult workday. Over time, the lawyer may develop a daily routine that permanently lifts certain straws from the camel's back, and provides red flags for the few times in which the straw is replaced.

For instance, a lawyer who generally does not skip meals finds himself doing so on a rare occasion. Such a lawyer could use that unusual reversion to a dangerous practice to alert himself that a breakdown is more likely, as a red flag, if you will.

In concert with other lawyers, the lawyer can pool identification of straws that break the camel's back as well as correctives that lift the straw in order to proactively prevent breakdowns and to benefit from the analysis of other like-minded colleagues. In thinking through Habit Five, we sometimes call it the “apple in the backpack” strategy. A lawyer more likely to fly off the handle when his blood sugar is low might find that a corrective as simple as putting a piece of fruit in his brief case in the morning is all that is needed to fend off that

eventuality. By giving that specific example to colleagues, a lawyer may help those around him or her also develop similar proactive strategies or other proactive strategies that will benefit all.

[c] Thoughts About Fitting Camel's Back Analysis into Daily Life

Like the red flag analysis, camel's back analysis requires the abandonment of self-judgment to be at all effective. Otherwise, the lawyer will encounter tremendous resistance because the events that Habit Five asks the lawyer to examine tend to be the ones that the lawyer is most frustrated with or horrified by. Approach those events as a treasure trove of potential proactive strategies for the future as well as a mine of important facts that the lawyer can use to the benefit of future clients. In doing so, the lawyer will gain a tremendous ally against the self-judgment that can paralyze camel's back analysis. Properly used, Habit Five can help the lawyer fend off even the most horrendous of breakdowns in his daily work, and move forward with the expectation that those breakdowns are forever in the past.

This habit, used in conjunction with Habits One, Three, and Four, acts synergistically. This habit encourages one to take the insights that one has from Habits One, Three, and Four and generalize them and use them proactively. For instance, used in conjunction with Habit Four, the lawyer can act proactively to prevent red flags from occurring once the lawyer has examined *when* red flags are most likely to occur. Camel's back analysis ends up working hand in hand with proper self-care for the lawyer. As noted in Chapter 9, the lawyer who systematically drains himself or herself of his or her best resources and abilities ends up depriving the client of the best legal resources that he or she can create. Often, the best thing that the lawyer can do for the client is to fortify himself or herself through the difficult work of the day. Rather than waste emotional energy feeling guilty about taking care of himself or herself, the lawyer can see properly planned self-care is the greatest gift he or she can offer the client.

[1] Special Consideration for Lawyers for Children Using Habit Five

As the example that began this section demonstrates, lawyers for children may have the hardest time forgiving themselves in the first instance for having made dreadful mistakes in their interactions with child clients. Lawyers for children may therefore lose sight of the fact that these mistakes in their client interactions are not only common, they are inevitable. Thoughtful lawyers who have cared deeply for their clients will find it especially hard to move past the shame of revisiting these moments, as Habit Five requires. But it is absolutely critical that they do it for this client and for later ones. Because mistakes made by lawyers in dealing with child clients are even more problematic because of the difficult power and age dynamics involved, they are the most important to prevent. Therefore, Habit Five can be argued to be the most important for lawyers for children and

perhaps the most difficult for lawyers for children to engage in. However, if a lawyer for children can overcome the resistance that Habit Five inevitably brings, the reward for both lawyer and client can be enormous. Remember here that a commitment to non-self-judgmentalism is absolutely key to getting started with Habit Five.

[2] Special Considerations for Lawyers in High-Volume Practices Using Habit Five

As with Habit Two, Habit Five will initially seem like an additional demand on time. This is only true if one ignores the tremendous drain of time and energy that failed interactions, the stuff of Habit Five, inevitably entail. The lawyer who was described at the beginning of this chapter was sapped of the energy for the day well before noontime. That same lawyer could have continued to be productive had she been able to avert the blow-up that later consumed most of her energy and self-esteem. Easy to learn and immediately useful, Habit Five may be in the end the most efficient of all habits. Because it steadily improves one's problem-solving over time, and may steadily improve the lawyer's commitment to the quality of life in so far as he or she can control it, Habit Five may offer the greatest payoff for the least effort. In addition, Habit Five offers hope to the lawyer who sees so much around him or her that fails to serve the client properly and is outside of the lawyer's control. Controlling the small solvable problems that Habit Five identifies may help the lawyer improve his or her practice and the system's service to the client.

[3] Areas of Further Study for Habit Five

Because resistance to revisiting these difficult moments in one's work life is by far the biggest impediment to Habit Five, further research on ways to overcome such resistance is also critical. Non-self-judgmentalism, a critical component of resisting resistance should also be further examined here. In addition, looking at ways in which offices and groups of lawyers or collegial peer support groups can support each other and do a Habit Five analysis would be of tremendous use. Habit Five, like the other habits, when done in consultation, may implicate difficult issues of confidentiality when discussing cases with clients outside the law firm. Discovering ways of promoting the important self-reflection and debriefing that Habit Five requires without straining confidentiality or burdening clients is a further area of study.²

§ 6-8 Conclusion

The five habits of cross-cultural lawyering outlined above are important first

² See § 9-5(b), below

steps in the ongoing struggle to combat assumption and bias in our practices. Habit One focuses the lawyer on the lawyer-client relationship and the components of counter-transference that the lawyer may be bringing into the relationship. Habit Two offers the lawyer, with a little effort, an overview of the many factors that impinge upon his or her approach to a case, with a special emphasis on identifying the constructive and immediate focus of lawyer-client activity. Habit Three offers an in-the-moment method of suspending judgment about client's behavior in the absence of concrete fact. Habit Four focuses the lawyer on the critical question of lawyer-client communication and offers concrete strategies for rectifying communication as it goes sour. Habit Five offers a hopeful way out of the difficult moments (when the lawyer knows that he or she has failed to live up to his or her highest aspirations for lawyering) by offering the lawyer a way to analyze those experiences and develop proactive strategies for the future. Taken together, the five habits offer the lawyer daily practice skills that are learnable and easy to implement. Taken separately or together, even used sporadically, these habits can move the lawyer closer to the kind of cross-cultural competence that we have been searching to teach and practice for over a decade.

Chapter 7

MAKING DECISIONS WITH THE CHILD CLIENT*

SYNOPSIS

- § 7-1 **Introduction: The Decision-Making Loop**
- § 7-2 **Steps of the Decision-Making Process Common to Representation of All Child Clients**
 - [a] **Steps One and Two Reviewed: Have the Child Understand the Legal Context, Have the Lawyer Understand the Child-in-Context**
 - [b] **Step Three: Take a Snapshot of the Child-in-Context**
 - [c] **Step Four: Understand All Actually Available Options**
 - [d] **Step Five: Counsel the Child About All the Available Options and Learn Her Wish: The Five Principles of Action Planning**
 - [1] **Principle # 1. Action Planning Should Begin Where the Child Is and Should Lead in the Direction the Child Wants to Go**
 - [2] **Principle # 2. The Counseling Process Should Concretely Link Legal Requirements with the Client's Available Options**
 - [3] **Principle # 3. The Counseling Process Should Incorporate Methods That Are Meaningful and Also Constructive for the Client**
 - [4] **Principle # 4. Be as Clear as You Can Possibly Be, But No Clearer**
 - [5] **Principle # 5. Counsel the Child About Her Own Best Interests**
 - [e] **For the Lawyer Assigned to Represent the Child's Informed Counseled Wishes, an End Point**
- § 7-3 **When the Lawyer Is Not Bound by the Child's Counseled Informed Wish**
 - [a] **Where the Lawyer Is Explicitly Required to Represent the Child's Best Interests**
 - [b] **When the Child Cannot Formulate an Informed Wish**
 - [c] **The Child Who Cannot Adequately Act in Her Own Interests**

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