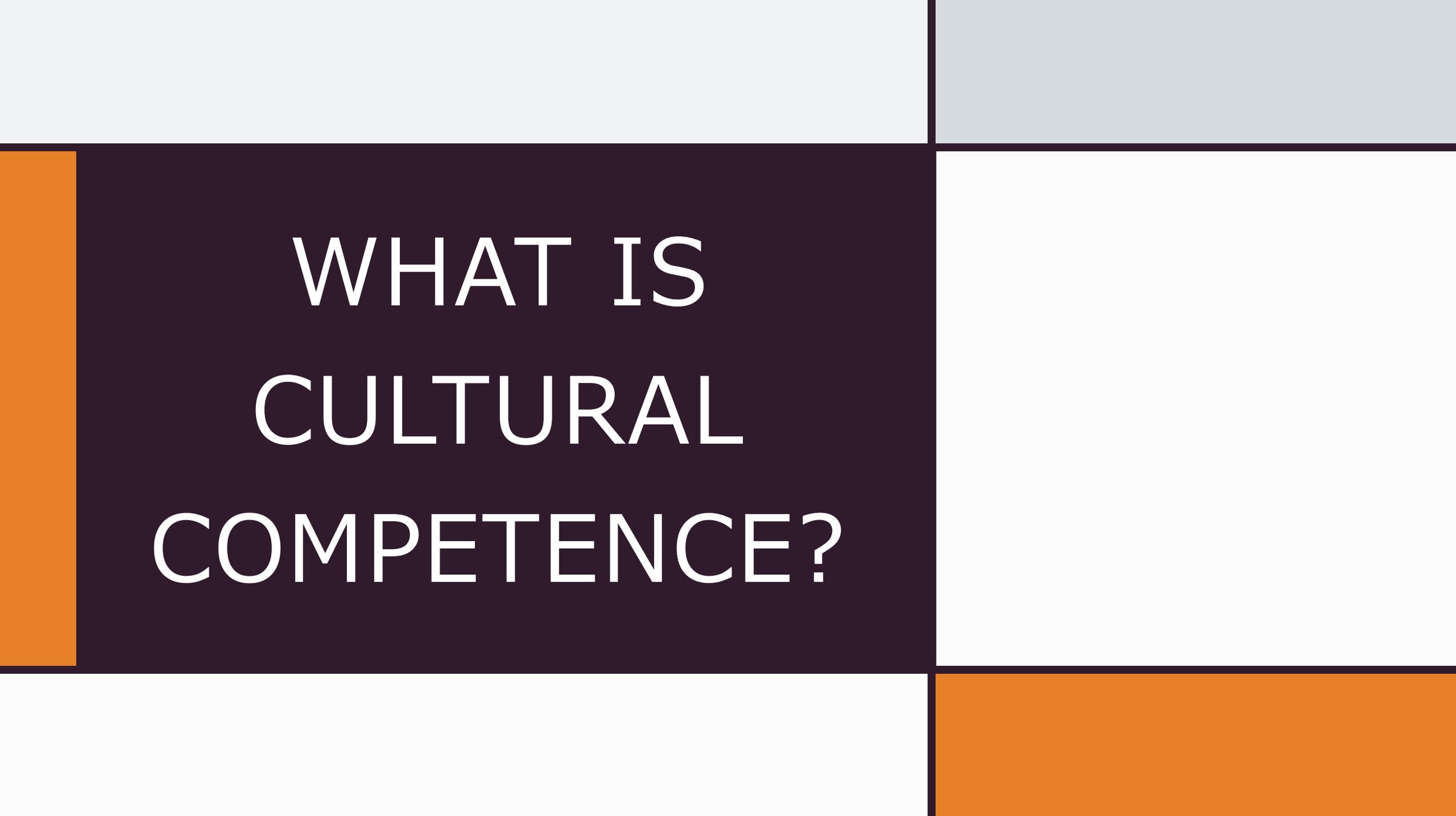


**SETTING THE PACE:
CULTURAL COMPETENCE
IN THE LEGAL RESEARCH
CLASSROOM**

**Clanitra Stewart Nejd
MAALL 2020 Virtual Annual Meeting
October 16, 2020**

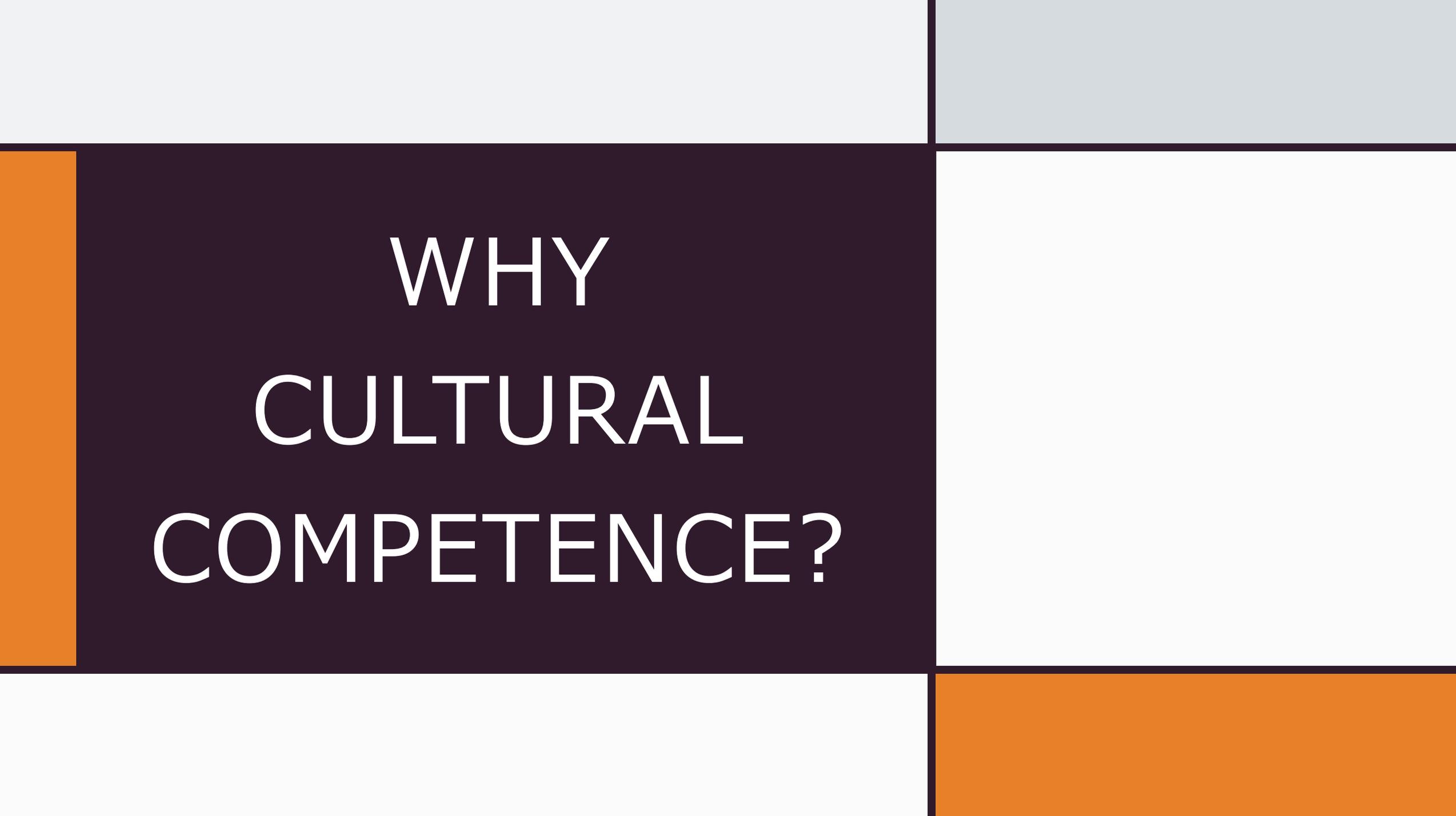




WHAT IS CULTURAL COMPETENCE?

Cultural Competence Defined

- Varied and evolving definitions from varied disciplines
- [Examples of definitions](#) from the National Center for Cultural Competence (Georgetown University)
- **Typically involves:**
 - Awareness and recognition of personal biases
 - Support for access, diversity, equity, and inclusion
 - Action in response to knowledge (e.g., change or intervention)



WHY
CULTURAL
COMPETENCE?

Importance of Cultural Competence

- **Modern-day legal practice increasingly involves diverse clients and colleagues worldwide.**
- **Ethics and professionalism align closely with cultural competence.**
- **Cultural issues affect clients' needs and decisions. Properly advising and representing clients requires some understanding of cultural issues.**
- **Given the current political and social climate in the United States and worldwide, the need for cultural competence has intensified.**

ABA Model Rules of Professional Conduct: Rule 1.1. Competence

“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

Comment 2 reads, in part:

“Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge.”

Comment 5 reads, in part:

“Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners.”

ABA Model Rules of Professional Conduct: Rule 1.3 Diligence

“A lawyer shall act with reasonable diligence and promptness in representing a client.”

Comment 1 reads, in part:

“A lawyer should [. . .] take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.”

ABA Model Rules of Professional Conduct: Rule 2.1 Advisor

“In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.”

Comment 2 reads, in part:

“It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.”

ABA Standards and Rules of Procedure for Approval of Law Schools: Standard 302 – Learning Outcomes

“A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

- (a) Knowledge and understanding of substantive and procedural law;**
 - (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;**
 - (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and**
 - (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.**
- Interpretation 302-1 specifically references cultural competency in the list of potential “other professional skills.”**
 - Interpretation 302-2 allows a law school to “[i]dentify any additional learning outcomes pertinent to its program of legal education.**

Other Considerations: ABA Diversity Plan

- [American Bar Association Diversity Plan](#)
 - In support of ABA Goal III to “eliminate bias and enhance diversity”
 - Objective 1: “Promote full and equal participation in the association, our profession, and the justice system by all persons.”
 - Objective 2: “Eliminate bias in the legal profession and the justice system”

WHY IN THE
LEGAL
RESEARCH
CURRICULUM?

Cultural Competence in the Legal Research Classroom

- **Cultural competence and topics on access, diversity, equity, and inclusion should be a component of every law school class, not solely legal research.**
- **Legal Research, Legal Writing and other skills-based law school courses are uniquely suited to address cultural competence.**
 - Instructor and student interactions beyond class lectures
 - Interactive environment and simulation-based exercises
 - Multiple assignments = multiple opportunities
 - Regular use of a variety of outside sources (*e.g.*, databases, secondary sources, statutes, cases, etc.) than can be strategically used for addressing these issues.



HOW TO
INCORPORATE
CULTURAL
COMPETENCE

Five Tips for Incorporating Cultural Competence

Reconsider	Tip 1: Reconsider the Facts in Your Fact Patterns
Incorporate	Tip 2: Incorporate Relevant Causes of Action
Discuss	Tip 3: Discuss Disparate Impact
Explore	Tip 4: Explore Real Life Examples
Modify	Tip 5: Modify What You Already Do

Tip 1: Reconsider the Facts in Your Fact Patterns (1)

- **Consider the basic details of your fact patterns.**
 - **Names of parties** - Does your fact pattern include names? If so, do those names reflect the diversity of cross-cultural names you would encounter in real life?
 - e.g., “Chad and Heather” as opposed to “Nia and Marcelo”
 - **Backgrounds of parties** – Does your fact pattern either directly or implicitly provide any details about the background of the parties involved? If so, do those details reflect any stereotypical attitudes?

Tip 1: Reconsider the Facts in Your Fact Patterns (2)

- **Consider the basic details of your fact patterns.**
 - **Roles played by each party** – Consider the roles you assign to parties in your fact pattern
 - Are there any inequitable patterns to the characteristics of the “authority figures” (e.g., lawyers, police officers, doctors, etc.) in your fact patterns vs. the characteristics of those in need of help

Tip 2: Incorporate Relevant Causes of Action

- **What causes of action or legal claims are being addressed in your fact pattern?**
- **Are there causes of action or legal claims that naturally lend themselves to discussion of diversity, inclusion, or equity issues?**
- **Helpful source:**
 - Causes of Action 2d (West)

Examples:

Housing Discrimination

Employment Discrimination

Discrimination Based on Age/Gender/Race

False Imprisonment

Search and Seizure

Racial Profiling

Sexual Harassment

Use of Public Spaces

School Expulsion

Intentional/Negligent Infliction of Emotional Distress

Wrongful Arrest/Excessive Force

Environmental Justice

Assault/Battery/Intimidation

Tip 3: Discuss Disparate Impact (1)

- **Consider including issues that are supposedly neutral in terms of race, gender, etc., but that would disproportionately affect one or more diverse groups**

- **Example from “Diverse Interactions” session at AALL 2018:**

Tyrone Bennett, a 32-year-old African-American male, worked in the kitchen of a local restaurant for the past five years. Recently, the Head Chef position at the restaurant became vacant and Tyrone was promoted to Head Chef. Tyrone’s supervisor explained that because the new position required him to deal directly with the customers, he would have to maintain a clean, shaven face. Tyrone informed his supervisor that he could not shave his face due to a medical condition that causes him to develop painful shaving bumps on his face after shaving. He promised to keep his beard well-groomed. Tyrone was demoted from his head chef position.

Tip 3: Discuss Disparate Impact (2)

- This fact pattern alludes to *pseudofolliculitis barbae*, a dermatological condition caused by shaving that overwhelmingly affects African-American males. It can lead to serious scarring and other skin damage on the face and nape of the neck.
- Without specific cultural knowledge, a lawyer evaluating Tyrone's legal issue would not be able to identify a potential disparate impact argument.
 - *Bradley v. Pizzaco of Nebraska, Inc.*, 7 F.3d 795 (8th Cir. 1993).
 - *Richardson v. Quik Trip Corp.*, 591 F. Supp. 1151 (S.D. Iowa 1984).

Tip 3: Discuss Disparate Impact (3)

- **Other examples:**

- Rules about hairstyles applied unfairly to minorities (hair discrimination laws)
- Noise provisions or disturbance-related provisions in leases as applied to victims of domestic violence
- Zoning ordinances preventing transitional/supportive housing for the mentally ill
- Voting laws leading to disenfranchisement

Tip 4: Explore Real-Life Scenarios (1)

- **The news offers a wealth of real-life scenarios that can be used incorporate cultural competence into legal research.**
- **These scenarios can be modified as appropriate for use in fact patterns, exercises, assignments, etc.**
- **Using real-life scenarios often makes instructors who are apprehensive about incorporating cultural competence into their classes more comfortable.**

Tip 4: Explore Real-Life Scenarios (2)

Recent Examples:

- Alleged Age Discrimination in Employment - <https://news.bloomberglaw.com/daily-labor-report/former-jeopardy-employee-sues-sony-alleging-age-discrimination>
- Pay Gap and Gender/Race - <https://www.nbcnews.com/pop-culture/pop-culture-news/netflix-loses-motion-dismiss-mo-nique-s-race-gender-bias-n1234167>
- Removal of Protections against Discrimination in Social Work Services Based on Sexual Orientation, Disability, and Gender Identity - <https://www.texastribune.org/2020/10/14/texas-social-workers-rule-discrimination-lgbt-disabilities/>

Tip 4: Explore Real-Life Scenarios (3)

- **Resources for Real-Life Scenarios**

- General news sources
- Legal Blogs
- *ABA Journal* and *National Law Journal*
- Cases Shared Via Equal Employment Opportunity Commission's E-RACE (<https://www.eeoc.gov/initiatives/e-race/e-race-initiativeeradicating-racism-and-colorism-employment>)
- U.S. Department of Justice Civil Rights Division Cases and Matters Search (<https://www.justice.gov/crt/search-cases-and-matters>)

Tip 5: Modify What You Already Do

- **We all have limited time to develop our curriculum.**
- **Incorporating cultural competence into legal research does not require a complete overhaul of your existing materials or lesson plans.**
- **Begin by modifying what you already do.**

Tip 5: Modify What You Already Do (1)

- **Teaching Statutory and Regulatory Research (Examples)**
 - Include statutes and regulations related to disability, gender, race, age, religion, sexual orientation, etc.
 - Discuss arguably problematic entries in indices when relevant
 - Discuss arguably problematic and/or outdated names of statutory and regulatory titles, chapters, parts, subparts, etc. when relevant

Tip 5: Modify What You Already Do (2)

- **Teaching Case Law Research (Examples)**
 - Students need to understand the historical context behind the law and that language has evolved over time.
 - Consider how certain terms have changed over time, particularly those that identify individuals in diverse groups
 - Research might reveal older cases that use different terminology than expected.
 - *Evolution of terms that address race and ethnicity*
 - *Evolution of terms that address mental disabilities or mental illness*
 - *Evolution of terms that address sexual orientation*
 - *Evolution of terms that address immigrants*

JUST REMEMBER. . .

Just Remember. . .

- **Consistency is key.**
 - Across the 1L research curriculum and across the entire legal research curriculum if possible
- **Instructor comfort levels matter.**
 - Remember that there are established provisions that support including cultural competence in legal research instruction.
 - Your comfort level will may grow over time.
 - Rely on your colleagues for discussion of ideas/support.
- **Student comfort levels also matter.**
 - Make expectations clear in the syllabus.
 - Set the stage for a respectful discussion that does not isolate any segment of the class.
- **Pushback does not mean failure.**

ADDITIONAL RESOURCES

Additional Resources: Articles

Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001).

Ederlina Co, *Teaching Cultural Competence as a Fundamental Lawyering Skill*, 23 LEGAL WRITING: J. LEGAL WRITING 4 (2019).

Shamika D. Dalton, *Incorporating Race Into Your Legal Research Class*, 109 LAW LIBR. J. 703 (2017).

Shamika D. Dalton & Clanitra Stewart NejdI, *Developing a Culturally Competent Legal Research Curriculum*, AALL SPECTRUM, Mar.-Apr. 2019, at 18.

Janet S. Kole, *Honing Cultural Competence*, 101 A.B.A. J. 26 (2015).

Christina A. Zawisza, *Teaching Cross-Cultural Competence to Law Students: Understanding the Self as Other*, 17 FLA. COASTAL L. REV. 185 (2016).

Additional Resources: Presentations

AALL 2018 Annual Meeting & Conference

- [Diverse Interactions: Addressing Race and Implicit Bias in Legal Research Instruction](#)
(Speakers: Shamika Dalton, Raquel Gabriel, Clanitra Stewart NejdI, & Michelle Rigual)

AALL 2020 Annual Meeting & Conference

- [Fear and Loathing in Teaching Legal Research: Addressing Cultural Competence and Managing Implicit Bias](#)
(Speakers: Mike Martinez, Jr., Sherri N. Thomas, & Ronald Wheeler)

AALL/FCIL-SIS Webinar

- [Cross-Border Cultural Competency: Teaching Foreign Law Students and Training International Lawyers](#)
(Speakers: Jodi Collova, Karina Condra, Heidi Frostestad Kuehl, & Mike McArthur)

Contact Information

Clanitra Stewart Nejd

Head of Professional Development

Research Services Librarian & Lecturer in Law

Alyne Queener Massey Law Library

Vanderbilt University

(615) 343-5902

clanitra.s.nejd@vanderbilt.edu