

Lawyers increasingly function in a world of disappearing borders. Thanks to technology, travel, and global business expansion, people from different cultures interact today far more often than ever before. Lawyers everywhere and in every kind of practice feel the impact of the global economy. A growing number of law firms have offices, lawyers and operations worldwide. The National Law Journal largest 250 US law firms employed 15,231 lawyers in their foreign offices in 2007, an increase of more than 11% from the year before.¹ But even sole practitioners may represent clients with international problems and international clients with problems in the US. Today it is common for lawyers in every kind of firm to work with clients and agencies in other countries, deal with vendors around the world, and have co-workers or employees from different countries. In this kind of practice environment, lawyers must be able to operate effectively with people in other cultures. They need to be *culturally competent*.

Cultural competence (sometimes referred to as "cultural intelligence") is the ability to adapt, work and manage successfully in new and unfamiliar cultural settings. Culturally competent people can "grasp, reason and behave effectively" when faced with culturally diverse situations, where assumptions, values and traditions differ from those to which they are accustomed.²

Cultural competence has particular importance for lawyers:

- Whose practice involves interactions with clients, lawyers, agencies or vendors in other countries
- Who represent multinational or foreign clients
- Who manage or participate in global client teams or project teams
- Who take expatriate assignments, internal secondments (i.e., short-term assignments to one of the firm's offices in another country), or extended business travel to other countries
- Who hire lawyers or manage law offices in other countries
- Who evaluate the performance of or make promotion decisions about lawyers in other countries.

Law firms today are not meeting the cultural competence needs of these lawyers. Many law firms do devote considerable resources to diversity training and initiatives, but cultural competence goes beyond the kind of diversity that most firms address. American diversity programming deals with cultural differences, but the focus is on diversity within the context of American culture. Cultural competence places diversity in a global framework. It involves the ability to function in settings where American values and norms do not prevail. It refers to the ability to navigate through a strange environment when you are the cultural outsider.

Firms that recognize the value of cultural competence and develop their lawyers' cultural intelligence can have a distinct competitive advantage in the marketplace. By preparing lawyers to meet the especially demanding nature of working and managing in a global environment, firms can minimize culture-based misunderstandings and errors, leading to better quality legal work and higher satisfaction for both clients and lawyers. Improving cultural competence can also result in greater profitability. In a survey of 450 managers in multi-national companies, McKinsey found that effective management of cultural diversity in a global setting was highly correlated with financial success as measured by profit per employee.³ In companies with proficient cross-cultural management, they found that foreign office profits increased through higher productivity, more cross-selling, client expansion, work referrals from other offices, and leveraging of global resources.

Elements of Cultural Competence

Being culturally competent does not mean fully understanding the cultural norms and dynamics of every nation where a lawyer or firm may have business dealings. That would be an impossible undertaking. While it is advisable for lawyers to have some familiarity with the customs, norms and etiquette of the cultures they deal with, they do not have to develop substantive expertise about any particular nation to be culturally competent.

Rather, cultural competence is a way of approaching any new and different cultural situation. Someone who is culturally competent is aware of their own cultural background; recognizes that culture influences the business attitudes and behaviors of others; and is motivated to understand and adapt to other cultures in order to facilitate communication, management, and successful business results.

Cultural competence has three components:

1. **Knowledge** –the ability to learn about one’s own and other cultures and to appreciate the different perspective of another culture, nation, religion or ethnicity;
2. **Mindfulness** – the capacity to observe and interpret the cultural cues in a situation, and to continuously reflect on and learn from one’s own actions; and
3. **Behavioral skills** – the ability to adapt to a particular situation based on a range of appropriate possibilities.

These elements involve being sensitive, alert and open to cultural diversity in its broadest sense. Rather than assuming that American customs and behaviors predominate, cultural competence entails seeking to understand and show respect for other cultures. It also means engaging in continual learning because culture is fluid and adaptation requires flexibility.

Culturally competent lawyers are sensitive to how cultural differences might impact their legal business. They pick up cues from other people’s behavior and from their physical surroundings. They consider whether a client’s positions and actions may be attributed, at least in part, to cultural factors, and then use that information in shaping their own conduct. If they make a faux pas, they recover and correct quickly. When they demonstrate that they are trying to learn and respect the local culture, people generally forgive their errors. In contrast, lawyers who repeatedly ignore or disregard local customs are likely to generate distrust and even hostility.

Applying Cultural Competence

Lawyers usually learn and adjust rapidly to new situations in familiar surroundings. However, when the setting is unfamiliar or unsettled (e.g., in emerging countries where the legal structure and business framework are evolving), the adaptation process may take far longer and produce discomfort and confusion. Lawyers may become flustered when regulatory agencies take conflicting positions, or when there is a total disconnect between the literal meaning of words that people use and what they really intend. On the positive side, cultural competence can build considerable good will in simple ways. A lawyer who realizes that the local culture values certain courtesies, like gift-giving, can strengthen relationships with a few simple mementos.

Two areas where cultural competence is particularly important are representation of foreign clients and working on global teams. Foreign clients seeking legal assistance may have expectations based on their country’s legal system, business practices, social context, and political environment. Lawyers who represent foreign clients need to appreciate the political and economic implications of the engagement in the client’s country and in the

US, as well as the practical issues of whether the firm is capable of serving the client's legal needs. They must carefully and thoroughly clarify the client's expectations at the outset and be sure that the client understands the scope – as well as the limits – of the engagement. The conversations needed to elicit client expectations, establish clarity, and build a strong and trusting attorney-client relationship, are often difficult and risky. Without cultural intelligence, a lawyer may cause unnecessary offense, create misimpressions, or undermine the client relationship.

Global teams also present special challenges. Leaders of global teams need to foster productive and effective work relationships in order to build well-functioning teams. But global teams are usually virtual, which means members may not know each other and may never meet in person. Teams may include people from multiple countries whose varied work habits, cultural norms and interpersonal manners must be reconciled in order for the team to function smoothly and get the work done. Members may have accents that impede effective communication and lead to misunderstandings and even conflict, especially when communication by teleconference and email makes it difficult to pick up on visual or environmental cues. When conflicts do arise from cultural differences, team leaders need skills to resolve them remotely.

How can lawyers become more culturally competent?

Fortunately, cultural competence can be learned and honed. Law firms can teach lawyers skills that enable them to acculturate and become productive more rapidly, to build trust-based and cooperative work relationships more efficiently, and to work in global client teams more effectively. Surprisingly, however, few US-based law firms provide cross-cultural skills training, even when their lawyers frequently work in global teams or represent multi-national clients. This may in part be because they assume that lawyers' skills translate easily to any cultural setting, or because they believe that people in other countries will naturally accept and adapt to US cultural norms. It may also be because the globalization of law firms is a fairly recent phenomenon and professional development has not yet caught up to the need for specialized skills in global practice.

The growing importance of cultural competence should spur law firms to add it to their professional development programs. There are many ways that law firms can heighten lawyers' cultural awareness and sharpen their abilities to interact across cultures. Here are some suggestions:

- **Formal training:** Firms can offer training programs highlighting key aspects of global cultures that impact lawyers' effectiveness in foreign settings. Clifford Chance, for example, has a class for all junior lawyers on cultural awareness and working on international teams. The firm's Clifford Chance Academy, which provides comprehensive training and career development resources for all its lawyers, emphasizes that as a global firm, its lawyers must be capable of working in an international business arena. Its comprehensive curriculum is explicitly designed to help lawyers acquire expertise, know-how and technical knowledge across jurisdictions, and to learn the skills and behaviors necessary to be successful in a large, global firm.

Other ways that firms can provide this training include:

- Adding cross-cultural diversity to the firm's usual diversity training.
- Conducting programs about business protocols in specific countries or groups of countries (e.g., Asian countries) where the firm practices.
- Incorporating international customs and practices into classes on business etiquette.

- Teaching cross-cultural issues as part of negotiations, litigation, and transactional skills programs.
- **Cultural Information:** Law firms can provide materials for lawyers that inform them about customs, business practices and other cultural factors that may influence their dealings in other countries. They can start a library of books on the subject of appreciating and working in other cultures and put a reading list on their intranet. They can ask lawyers who have spent time working or living in other countries to record their own experiences, observations, and tips for colleagues. When lawyers go to work in foreign offices, firms can assign someone in the host office to orient them to the office and to local customs and practice.

Before my younger son spent his junior year in Stanford University's year-abroad program in Kyoto, the school sent him a handbook explaining what life would be like for him in this new place. The handbook helped prepare him for common situations that he might encounter. It covered issues that ranged from local food to finding healthcare to common Japanese customs and behaviors that American students might find strange. It did not pretend to be an exhaustive cultural analysis, but it made him aware of certain important cultural differences and prepared him for the transition to life in Japan. Similarly, large global firms whose lawyers sometimes work in foreign offices can create handbooks to help orient those lawyers to their new culture. If a firm has many offices, it might create a template that asks each office to provide certain categories of information that would be useful for foreign lawyers coming to work in that office.

- **Retreats:** Retreats that bring together lawyers from different countries provide an excellent forum for discussing cross-cultural differences. When Paul Hastings acquired a small firm in Frankfurt, it held a retreat there that was attended by partners and associates from its other three European offices, Paris, London and Milan. Panels of partners and associates from those three offices addressed many topics, including how they work with other offices in the firm and interact with lawyers across cultures. The firm also assigned mentors from other offices for the Frankfurt associates and had those associates visit the other European offices.
- **Performance Management:** Firms with offices in other countries evaluate and promote associates based on certain criteria. In articulating those criteria, they should explain how cultural factors may impact the way lawyers behave and also impact how reviewers perceive their performance. Without understanding how the cultural context affects an associate's behavior in areas like decision-making, forthrightness, and even eye contact, a partner may unfairly criticize an associate for conduct that is normal and expected in the associate's culture but different from that of the reviewer.
- **Pre-Secondment and Pre-Expatriation Briefings:** Integration into a foreign work environment can be accelerated by meeting with lawyers and their families before they leave their home office to inform them about work-related cultural issues in their new office and to prepare them for life in another country.

Some law schools are beginning to teach students to become culturally competent. At American University Washington College of Law in Washington, DC, an innovative course in business transactions teaches students to become international business lawyers. Taught by a law school professor and a partner at DLA Piper, the course is built around a simulation exercise and taught concurrently to students at Washington College of Law and the Centre for Energy Mineral and Petroleum Law and Policy at the Dundee University in Scotland. The students in the class (many of whom are LLM and JD students from other countries) represent opposing parties.

Over the course of a semester, they negotiate a cross-border business transaction involving a joint venture agreement, a licensing agreement and a long-term supply contract. The class offers an exceptional opportunity for students to learn about the challenges and opportunities in international and cross cultural business negotiations. For further information about the class, see Daniel Bradlow and Jay Gary Finkelstein, "Training Law Students to Be International Transactional Lawyers," http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1084071.

Lawyers' sensitivity and adaptability to diverse cultural settings will become increasingly important as their practices continue to expand across borders and cultures. Law firms can prepare lawyers for this new world of practice by teaching, promoting and supporting cultural competence.

¹ 2008 Hildebrandt Client Advisory, http://www.hildebrandt.com/PublicDocs/2008_Client_Advisory_013008.pdf

² Soon Ang et al., "Cultural Intelligence: Its Measurement and Effects on Cultural Judgment and Decision Making, Cultural Adaptation, and Task Performance," [Management and Organization Review, November 2007](#) (quoting Schmidt and Hunter).

³ Matthew Guthridge and Asmus B. Komm, "Why multinationals struggle to manage talent," *The McKinsey Quarterly*, May 2008.

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