Habit One

Brief Description:

Habit One, Degrees of Separation and Connection, creates two ways of mapping the client’s and the lawyer’s worlds to explore how culture might influence their relationship and fact gathering. The habit of examining the lawyer-client relationship through a cultural lens, Habit One invites the lawyer to map impressionistically the overlap between the lawyer and the client's worlds using a Venn diagram, with circles representing the lawyer’s and client’s universes. Habit One also asks the lawyer to inventory differences and similarities that the lawyer perceives between lawyer and client. Using these two methods, the lawyer focuses on the lawyer’s and client’s multiple identities (the inventory) and on particular identity factors that may heavily influence connection and distance (the Venn diagram.) When students represent groups, they can use Habit One to identify similarities and differences of the leaders and themselves as well as among the group members and among the group and themselves.

Habit One allows a lawyer to compare his impressionistic views of his commonalities and divergences from his client to specific facts known about the lawyer and the client across various characteristics. Through this focus on similarities and differences, Habit One allows lawyers to identify hot button issues in their own identity and life experiences, which may play a disproportionate role in the lawyer-client relationship, often manifesting as negative judgments about clients who are different. Habit One also enables lawyers who see themselves as similar to clients to be alert to assumptions of similarity that cause lawyers to substitute their world view for their clients’. The search for similarities also may be useful for creating connection and empathy. Finally, Habit One can help the lawyer focus on how fact gathering is shaped by assumptions that he is making about similarities and differences between himself and the client.

Exercise 1. Directly Applying Habit One -- Lists & Venn Diagram

1. Self-Identity – Make a list
   - Take a sheet of paper
   - List all the identities you have
   - Circle the 3 that you think are most important in how you define yourself
   - If one stands out star that one

2. Identity in Relation to Another – 2 different ways to represent.
   - Think about a current Client
   - Venn Diagram similarities & differences
   - Take a minute and identify the similarities and differences in a list
   - Circle the 1- 3 that stand out in each side
   - See if the comparisons shift how you see yourself?

Running the exercise (6 minutes to do & 5 - 10 to debrief)
1. Take out paper – announce you are going to ask them to share info with person next to them.

2. Ask students to make self–identity list, give some examples using yourself or post a slide that defines categories, or just let students do it without examples & see what you get. Some will leave out categories that others might use to define them. Eg. some white students leave out race, some men leave out gender.

3. Ask students to identify a client (or client group) they are working with for purposes of using Habit 1 – we usually suggest students use a client who themselves or the case is occupying a lot of the student’s time and mental energy. (You may want to use the Critical Incident work sheet to identify a client for focused work during the class.)

4. Ask students to draw a Venn diagram of the similarities and difference of a client they want to focus on. You will need to explain and illustrate the Venn diagram idea as many had math long ago. We usually show what the circles would look like if you are very similar to and very different from your client.

5. Next ask students to make a list of similarities and differences. About 2 minutes into their list making, tell students that if their lists of similarities are long look for differences and if their list of differences is long look for more similarities.

6. If we have the time, we like students to apply Habit One at least twice during the class with different comparison subjects. When students do this, they often describe themselves differently. This allows students to see that the characteristics and identities that shape interactions can change depending on the context.

7. Students working with client groups may find Habit One work more complex but instructive as they identify the similarities and differences between the members of the group themselves and with the lawyer.

**Debriefing Exercise 1**

In the debrief, we want to gather insights from the students and give some of our own thinking about why we pay attention to similarities and differences. We usually start the debrief with a very open ended question: “Did anyone notice anything about the relationship or the case because of doing this. Students will usually offer insights they did not have.

Questions for the Debrief:

1. *Did anyone notice anything about the relationship or the case as a result of doing this?*

   In every class, we have students who see something new about their cases. Often a student pair will offer that the list making helped them see why they were feeling judgmental about a client.
Sometimes, we ask them to imagine how their client might draw these circles. While dangerous in some ways, as the lists may be more likely to be based on stereotype than individual client knowledge, the exercise causes them to remember that other important similarities or differences to the client may be influencing the relationship. Students often remark that they know much less about the client than they might have thought, and also that their knowledge is imbalanced - detailed in some areas of the client’s life and nonexistent in other critical areas.

2. “Did you get different insights from the lists & the diagrams? They often note that the Venn diagram caused them to think differently than making lists and they gained different insights from each activity. For example, even with a short similarities list a student can feel very similar to the client because of an over-arching similarity such as race or ethnicity or, alternatively, the student may have many similarities and yet, for other reasons, find herself feeling very distant from the client as result of class or gender differences.

3. Why might we care about acknowledging both difference and similarities? Habit One helps students balance appropriately empathy and professional distance and assess the attorney client relationship. Habit One also assists lawyers to challenge assumptions and implicit bias.

Acknowledging Difference to Avoid Substituting Your Experiences for the Clients.’ In class and in supervision, we encourage students with long lists of similarities or whose circles overlap broadly to ask themselves what, if any, differences they may be overlooking. By pondering this question, students can recognize that even though similarities promote understanding, misunderstanding may also flow from an assumption of precise congruence and the student needs some distance from the client to provide professional judgment. The student may also judge client negatively because despite their similarities, the client has not been successful in the ways the student has. Sometimes asking the student to identify the differences can help the student see that the client has not had similar opportunities for success.

Acknowledging Similarities to Make Connection. Searching for similarities helps students develop empathy. Research also shows that negative judgments are more likely to occur when a client or lawyer sees the other as an “outsider,” this identification of similarities may help students judge their clients less negatively. People Once recognized, students can explore whether revealing similarities to clients would be helpful in building client relationships. Habit One allows students to examine ways in which these factors affect clients' sense of closeness to and distance from their lawyers. In representing groups, Habit One may give lawyers insight into why certain group members seem easier to connect to than others.
Acknowledging Identities Helps Challenge Biased Thinking. Even if negative judgments persist, this list making activity can often assist students to identify the source of potential biased thinking and to remain alert to the necessity of bridging the huge gap between the clients’ experiences and their own. Research on Implicit Bias indicates that those who try to bury difference for example, “I do not see Black people” are more likely to operate with implicit bias. Acknowledging the potential for bias and guarding against is essential to challenging bias. See Challenging Bias On this website for more on this.

Identifying Multiple Identities Individualizes Clients & May Help Reduce Biases and Stereotype Thinking Seeing the client as having multiple identities can help see the client as an individual. Biased and stereotype thinking depend on categorical thinking, when lawyers see their clients as people with multiple identities, they are much less likely to categorize and engage in biased thinking. (There may be strategic reasons to identify client as a group member to challenge the bias in the legal system – this individualization is designed for a different purpose.)

Identifying Multiple Identities Allows Students to see that there may be multiple intersecting identities that influence the client’s problems and the relationship between the client & lawyer. By creating a list with all of these identities, the lawyer can see for example that the client is having problems based on youth, poverty, race, and neighborhood. This process of seeing the client more complexly recognizes the value of thinking intersectional and not essentializing clients. (Exploring significance of similarities and differences on trust-building allows students and faculty to explore how racial mistrust and micro-aggression might influence the relationship. Note that if you have not introduced microagression before this – you can add it to the Habits class. See Donald Sue & Peggy Davis & Michelle Jacobs cites in Bibliography for good articles that identify this topic.)

Other Exercises that build on or can be used to introduce Habit One – how similarity & difference affect fact gathering?

A key principle of the Habits is challenging assumption. Fact gathering is filled with assumptions. Students can also reflect on how similarities and differences influence their approach to obtaining information and developing a case or project theory. For example, when lawyers probe for clarification in interviews, they usually ask questions based on differences that they perceive between themselves and their clients and fail to fully explore client behavior or thinking based on perceived similarities.
1. Using Pictures to Spark Understanding About How Culture and Experience Influence Fact Gathering. (5 minutes)

We often start the Habits class with an exercise that was designed by Jayesh Rathod. We show a picture found in Habits Power Point #3 slide x. We show the picture of two young children and a man with backpacks walking in desert type surroundings and carrying a plastic bag. The picture is an ambiguous one in which people can attribute lots of different meanings: We ask people to do a quick write – what do they see? We quickly gather ideas after 1 minute of writing. Students give the participants different roles (eg. father, brother, friend, kidnapper for the adult in the picture & different activities (eg. backpacking, garbage collection, going to school, in a desert crossing the border.)

Question for Debrief:
Why do we attribute different meaning to the same picture? We use this conversation to illustrate categorical thinking. In attributing meaning to this picture, we are using categories – roles played by adults & children who are with each other, influence of scenery, category of backpacks, garbage bags, etc. current common narratives – children crossing the border. (the actual picture came from a website that was anti-immigrant.) Note that categorical thinking is efficient except when the categories are laced with bias and stereotype thinking or when they short change full factual development.

2. Using Video Interviews to Illustrate How Culture and Experience Influence Questioning.

One way to teach this insight is to show an interview clip and ask students what information they want to follow-up and what questions they will ask. When different students propose different questions, the teacher can begin to explore why we inquire about some, but not other, information. This inquiry usually uncovers concrete examples where students develop questions because clients are making different choices than they would or where the students perceive an inconsistency between what the clients are saying and doing and what the student knows based on their experience. Often different students will want to gather different information. Exploring these differences in class provide an opportunity to show how our experiences cause us to fill in and question differently. This inquiry will also uncover when students make assumptions based on perceived similarities and consistencies and therefore fail to follow up with questions.


We ask students in groups using big sheets of paper to draw a picture of this story:

“There was a shooting. The next door neighbor heard the shot and looked out the window just in time to see the culprit run
Students are given 4 – 5 minutes to draw.

Then we post the drawings and look at similarities and differences. The drawings often differ in how the houses/apartments look, the neighbor can be looking out of tall building or 1 story house. The shot can come from large multi-storied apartment or two-storied house. The neighborhoods differ – suburban, urban. Neighbor usually woman; the culprit usually is a man. Race may differ.

This exercise comes from Bridgette Carr who introduced it at a new clinical conference. Sue uses this exercise in an immigration class to illustrate the importance of making sure we are not filling in and painting a full picture for the fact finder. She tells a story of a client who lost an asylum application because he claimed he saw the police in the front of the house and jumped from a second story window in the back of the house to escape the police. The hearing officer found this story incredible. When we were preparing to present this same case to the immigration judge, we asked our client to draw the house and its dimensions, we saw that the house was one room with a short loft for sleeping the window was probably no more than 6 feet off the ground. The hearing officer’s idea of the second story of the “house” differed substantially from our clients.’

By introducing students to the effects of culture on our view of what we perceive as normal and how it drives questioning, we give students additional insight for evaluating the thoroughness and accuracy of their interviews.

However, Habit One does not really provide the student with the tools necessary to elicit an authentic client narrative. For that reason, we often teach narrative theory and narrative information gathering techniques alongside the Habits. A systematic approach to believing and doubting (described in another part of this website) also allows the interviewer to get outside his intuitive, culturally-bounded, information-gathering process. Habit One gives us insights into why questioning driven by the lawyer’s experience and culture is insufficient and motivates the student to apply Doubting and Believing and narrative inquiry to interviewing.

Here are some summary points:

* Bias Decreases When We Pay Attention to Sources of Bias
* Bias Decreases When We Individualize the client
* Pay Attention to Cultural Context when Fact Gathering
* Difference and Similarity Influences Trust Building
* Difference and Similarity Influences Negative & Positive Judgment & Understanding
* Difference and Similarity Influences Organizing and Assessing Facts