

Culture and Race in Provider-Client Relationships

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Abstract

Given that minority group members are underrepresented in the teaching, medical, and legal professions, minority group members often have White teachers, doctors, and lawyers. This is frequently the case even when students, patients and clients would prefer service providers similar to them in racial or ethnic background. This paper identifies possible cultural barriers to effective one-on-one relationships between White teachers, doctors and lawyers and those who receive their services, explores the potential for biased expectations to influence the services provided and outcomes attained, and contrasts the goals of White and minority educators, doctors, and lawyers, arguing that these differences have potentially negative implications for service recipients. Policy approaches to mitigating potential problems caused by the lack of match are considered, as are potential problems arising from an overly narrow emphasis on match.

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Without a doubt, racial and ethnic minorities in the United States experience outcomes inferior to those of Whites in education, health, and law. White students receive higher standardized test scores, are less likely to drop out of high school, and are more likely to obtain higher education than their African-American, Hispanic, and Native-American counterparts (Garcia, 2004; Kaufman, Alt & Chapman, 2001; Lomawaima, 2004; National Center for Education Statistics, 1998). Recent statistics also document significant differences between the health statuses of minorities and non-minorities. For example, African-Americans, American-Indians, Hispanic-Americans, and Asian-Americans suffer and die from a long list of diseases at higher rates than Whites, and also receive an inferior level of medical care compared to Whites (Institute of Medicine, 2002). Although fewer statistics exist to document racial and ethnic disparities in legal outcomes, an examination of outcomes in the criminal justice system shows dramatic disparities. For example, the lengths of the sentences given to defendants of different backgrounds varies substantially (Department of Justice, 2001), with Black and Native-American offenders serving sentences that are far longer than those given to their White counterparts.

A complex set of factors contributes to these racial and ethnic disparities in educational, medical, and legal outcomes. There is no doubt, for example, that there is a marked link between socio-economic background and many kinds of educational attainment (Knapp & Woolverton, 2004) that contributes to group differences in educational outcomes. Likewise, differences in



and legal settings, because one's resources can determine both whether one has access to professional services and the quality of the services received (Bloche, 2001; ABA, 1994).

Differences in social class and wealth do not account completely for the disparities in educational, medical, and legal outcomes, however. For example, they certainly do not explain the entire achievement gap in education. Hedges and Nowell (1998) found that controlling for socioeconomic status reduced the Black-White achievement gap by one-third, but did not obliterate it. Likewise, in medicine, racially disparate outcomes persist even when studies control for access to health care and socioeconomic status (Institute of Medicine, 2002).

This paper focuses on one of the many possible causes of racial and ethnic disparities in outcomes in education, medicine, and law – the fact that most service providers and clients (teachers and students, doctors and patients, lawyers and clients) belong to different racial or ethnic groups. Specifically, most such relationships pair a minority client with a White service provider, who occupies the position of power in such relationships.

Given the current demographics of provider and client populations, it is likely that the large majority of clients of color will have White service providers, rather than having, or having the opportunity to decide if they wish to have, a service provider from their own racial or ethnic group. For example, the racial and ethnic composition of the teaching workforce is very different from the racial and ethnic background of students in public schools (King, 1993), and this disparity seems likely to increase in coming years (Sleeter, 2000-2001), making it likely that many students of color will rarely, if ever, have a teacher from their own racial or ethnic background. Similar demographic disparities mark service provider and client populations in medical and legal settings (Sullivan Commission on Diversity in the Healthcare Workforce, 2004, p. 24; ABA, 2004; U.S. Department of Commerce & U.S. Census Bureau, 2002), and the



situation is likely to become more extreme in the future, as the number of students from underrepresented minority groups applying and being accepted to medical schools and law schools has declined in recent years (ABA, 2004; AAMC, 2002; Bergen, 2000; Carlisle & Gardner, 1998).

The amount of empirical evidence supporting the view that racial or ethnic match between provider and client can improve outcomes varies across educational, medical, and legal settings, but in each area evidence supports the belief that racial match can make a difference. The potentially positive effect of racial or ethnic match is most directly supported in the area of education, although a recent review of this research highlights the fact that there are relatively few large-scale studies of this issue given its potential importance (Gay, Dingus & Jackson, 2003).

Although the evidence is far from conclusive, several studies do support the idea that there can be a measurable academic benefit to racial and ethnic “match” between students and their teachers. For example, analysis of a massive database led Ehrenberg and Brewer (1995) to conclude that “other things held constant, African American teachers do appear to improve the gain scores of African American students at the high school level (p. 10), although no similar effect was found for elementary school students.” In addition, Murnane (1975) found that African American teachers have a markedly more positive impact on African American students’ achievement than do White teachers. Two other large quantitative studies of elementary school students also suggest test score gains for students of color related to having teachers of the same racial or ethnic group (Dee, 2001; Lopez, 1996). In a rather different but nonetheless relevant study Ehrenberg, Goldhaber and Brewer (1995) concluded that match influences whether teachers a) recommend students for academic honors, b) believe students work hard, and c)

expect students to go to college, although they found little association between achievement gains and teacher/student match with regard to race, gender and ethnicity for White, African American, and Hispanic students.

Although evidence of the effect of provider-client match (in terms of race and ethnicity) is less direct in medical and legal settings, studies on various aspects of provider-client relationships in these settings provide reason to believe that racial match would often be beneficial. For example, studies of the effect of racial match on the quality of doctor-patient relationships and of the importance of these relationships to medical care suggest that racial match between doctor and patient can affect both medical treatment and outcomes (Kaplan, Et al., 1995). Although the legal profession is just beginning to ask to what extent the lawyering process is compromised when providers and clients come from different racial and ethnic backgrounds, studies of the effects of these different backgrounds on important features of the parties' working relationship (for example, on perceptions of and assumptions about factual and legal situations, as well as on patterns and styles of communication) suggest that racial match might well improve some aspects of the delivery of legal services.

Although this paper proposes that racial match between provider and client can contribute to improved outcomes for clients of color in education, medicine, and the law, it should not be read to suggest that racial match is a panacea for all racial and ethnic disparities. Neither should it be read as a call for segregation in the provision of services. Indeed, there are situations in which racial *mismatch* may be desirable. A client faced with a jury trial, for example, might feel that it was wise to choose a lawyer of a different race or ethnicity in certain situations. Also, the pairing of teachers and students from different racial and ethnic backgrounds could well develop



students' appreciation for different cultures and backgrounds and prepare them to function effectively as citizens in a pluralistic democratic society.

The concern motivating this paper is that at present it is often not possible for clients of color to obtain a service provider matching their race or ethnicity when the client feels that this would be in his or her best interest. This situation is unfortunate because there are numerous reasons to believe that lack of match may create obstacles to the effective provision of services for clients of color.

We next turn to a discussion of the ways in which lack of match can cause difficulties in provider-client relationships in the fields of education, medicine and law. Following that, in the conclusions section, we address two issues. First, we discuss policies that should help to make match possible in a higher proportion of service provider-client relationships in these three settings. Second, because the approaches recommended to facilitate match are long term and hence are unlikely to solve problems related to lack of match in the immediate future, we discuss alternative policies that may help to mitigate problems connected to lack of match.

Consequences of Lack of Match in Educational Settings

Cultural Barriers to Effective One-on-One Student-Teacher Relationships

Interactions between teachers and students are crucial to the educational process (Davis, 2003). Teachers use such interactions to draw conclusions about students' motivation, to make decisions about their academic needs and how best to meet them, and to make judgments about their academic capabilities, all of which are likely to have a significant impact on students' classroom experiences and on their long-term educational outcomes. Furthermore, research strongly suggests that positive relations with teachers can play a crucial role in fostering student engagement and motivation (Wigfield, Eccles, & Rodriguez, 1998).

Differences in cultural background between teachers and students can pose barriers to the development of effective one-on-one interaction. First, considerable evidence suggests that even when a teacher and a student speak the same language, contrasting speech patterns associated with their group membership can cause problems¹. Heath (1983) found that language use patterns common in the African-American community differed markedly from those used by White teachers. Lee (2001) reports that White teachers often find patterns of speech common among African-American youth difficult to understand, and even rude or frightening. Furthermore, Phillips (1983) concluded that Native-American students participated more in classrooms where the language participation structure was similar to the one they used at home and in their community than in classrooms where the language participation structure differed markedly from the students' non-school contexts. Such differences may well influence students' grades as well as their participation levels. For example, Cazden (1988) found that African-American adults evaluated positively both topic-centered stories, an approach common among White children, and episodic stories, an approach common among African-American children. However, White adults were much more likely to find episodic stories confusing and to infer that students telling such stories were low achievers. Furthermore, there is reason to believe that non-verbal communication patterns also differ across groups and that such differences can also impede effective one-on-one communication (Byers & Byers, 1972; Irvine, 1990).

Differences in communicative patterns also seem likely to disrupt the formation of strong personal ties between students and teachers, ties that play an important role in students' development. Indeed, when asked to describe the characteristics of the teachers who had most influenced them in a positive way, talented young adults, the majority of whom were African-American college graduates, most commonly characterized them as "approachable," "easy to

relate to,” and “perceptive of and sensitive to student needs” (Johnson & Prom-Jackson, 1986). All other things being equal, it seems only reasonable to expect that minority students, especially those living in highly segregated areas, would find teachers from similar racial or ethnic backgrounds more approachable and easier to relate to than White teachers. In addition, one factor related to academic disengagement and failure for some students of color is that success in school is rejected because it is perceived as “acting White,” (Ogbu, 1988; Fordam & Ogbu, 1986). Teachers of color could help dispel this belief.

Teachers who are racially or ethnically similar to their students may also be especially effective role models for these students. For example, in a longitudinal study of young adolescents, roughly half of whom were students of color, Zirkel (2002) found that students who had at least one race- and gender-matched role model at the beginning of the study performed better and thought more about their futures for up to two years after having had this role model than students who had never had such a role model.

Cultural Barriers to Parental Involvement

Research has identified parental involvement as very important to the educational success of children (Irvine, 1990; McLeod, 1996; Tizard, Schofield, & Hewison, 1982). Yet, cultural differences between parents and school staff can undermine many kinds of parental involvement, even among parents who strongly value education (Lightfoot, 1978). It is common for minority and low-income parents to feel alienated, powerless, and culturally estranged from their children’s schools and to avoid involvement with them at least partly for these reasons (Irvine, 1990). Feelings such as these seem likely to be magnified when their children’s teachers are White. The fact that some White teachers make negative and inaccurate assumptions about the background and education of minority parents [Smith & Andrew (1988) as cited in Irvine, 1990]

or feel uncomfortable about personal contact with minority parents (Larke, Wiseman, & Bradley, 1990) only reinforces this tendency.

Possible Biases in Expectations and Their Effects

Most teachers, no matter what their racial or ethnic background, enter teaching with the goal of being of service to their students (Su, 1996). However, some teachers react more positively to some students than to others, and students' race and ethnicity can impact these teachers' reactions. For example, Baron, Tom, and Cooper's (1985) meta-analysis of studies of teachers' expectations found that teachers often have higher expectations for White students than for students of color that that they have higher expectations for middle class children than for those from less affluent backgrounds. (Most of the teachers in most of these studies were White.)

Teachers' backgrounds do sometimes appear to influence their expectations regarding students from different groups. For example, Beady and Hansell (1981) found that Black elementary school teachers working in Black schools had higher expectations regarding the likelihood that their students would attend college than White elementary school teachers working in Black schools. In addition, Alexander, Entwisle, and Thompson (1987) found that both White and African-American teachers from high-status backgrounds were more likely than others to negatively evaluate students from minority and low-status backgrounds, although Black teachers were slightly more positive about such students than White teachers.

Not surprisingly, there is evidence that teachers' negative reactions to students based on their group membership can impede students' academic progress. Johnson, Gerard and Miller (1975) created a discrimination index that reflected the extent to which teachers underestimated the "brightness" of their minority students compared to their White students (a measure based on how the teachers' ratings of their minority and White students' intellectual capabilities differed

from students' actual capabilities as measured by test scores). African-American and Mexican children whose teachers had high discrimination scores fared poorly over time in academic growth compared to African-American and Mexican-American children whose teachers had low discrimination scores. It seems reasonable to assume that group-based negative reactions are more likely to occur when teachers and students are from different groups, thus suggesting yet another reason why match between teachers and students with regard to their ethnic or racial group may be helpful to minority students.

Less Pressure for System Change

Given the current dearth of teachers of color, students of color are not likely to have teachers from their own racial or ethnic background, and this is likely to impact their entire school environment. Specifically, the presence of teachers of color in schools serving students of color seems likely to increase pressure for change. For example, Carr and Klassen (1997) found that racial minority teachers in Toronto were generally much more supportive than their White colleagues of their school districts' efforts to implement anti-racist policies, including efforts to diversify the curriculum. Teacher support for such changes is likely to have important implications for students, because curriculum materials and pedagogical approaches that are culturally relevant to students can stimulate student engagement and achievement (Au & Mason, 1981; Au, 1997; Cummins, 1986). For example, Allen and Boykin (1991), in a study designed to see whether matching aspects of a learning context to aspects of home culture promotes learning, discovered that African-American children learn word pairs better when moving to music than when sitting still. The opposite was true for White students.

A comparison of White and minority (mainly Asian-American, African-American, and Hispanic) individuals enrolled in a teacher education program found that those who were

members of minority groups were often “clearly committed to entering teaching as social change agents” (Su 1996, p. 125), in striking contrast to their White counterparts who were much less likely to be critical of the educational system and our society in general. In addition, minority group members in the teacher education program were more likely to be aware of unequal educational opportunities for other minority group children, to want to teach in inner city schools, and to emphasize the importance of reaching out to minority group parents (Su, 1997).

The presence of minority group teachers does appear to create change that affects students’ experiences and outcomes. For example, Meier, Stewart, and England (1989) found that large urban school districts with relatively high proportions of African-American teachers had lower rates of corporal punishment for African-American students and less disproportionate suspension and expulsion rates than those with few such teachers.

Consequences of Lack of Match in Medical Settings

While little empirical evidence directly suggests that doctor-patient racial match improves medical treatment and outcomes, studies do provide reasons to believe that racial match may often be beneficial, and that lack of match can increase the likelihood of problems that have important implications for patient care and patient outcomes.

Cultural Barriers to Effective One-on-One Doctor-Patient Relationships

Medical treatment would seem to rely— more than teaching or delivering legal services, at least— on the observation and analysis of objective, scientific data. However, medical treatment also is a social act (Eisenberg, 1979) that may well be influenced by doctor-patient match. Studies have found that, as with other provider-client relationships, the quality of the doctor-patient relationship can have a significant effect on clients’ outcomes. In particular, higher quality care and better medical outcomes have been associated with a team-like,

“participatory” style of medical decision making that involves give-and-take between doctor and patient, with the doctor involving the patient in treatment decisions and giving the patient a sense of control over those decisions and a sense of responsibility for his or her care (Bensing, 1991; Kaplan, et al., 1995).

The chances for developing this ideal relationship improve when doctor and patient have positive feelings toward one another. Physicians tend to give more time, attention, and follow-up care, as well as to give more information to, seek more information from, and pay more attention to information offered by patients for whom they have positive feelings and whom they view as intelligent and rational. In turn, doctors’ positive feelings increase patients’ satisfaction with their care, and patient satisfaction correlates with positive medical outcomes (Eisenberg, 1979; Gerbert, 1984; van Ryn & Burke, 2000).

Recent studies based on patient reports and third party observations have found that minority patients generally enjoy less participatory visits with their doctors than do White patients (Cooper-Patrick, et al., 1999; Hall, et al., 1993; Kaplan, et al., 1995; van Ryn & Burke, 2000). In light of studies that have found that people react more positively to those they see as similar to themselves than to those they see as different (Berscheid & Reis, 1998), it seems reasonable to suggest that White doctors may be less likely than doctors of color to have the kind of positive attitudes toward patients of color that are conducive to developing participatory relationships. In one recent study, for example, doctors, most of whom were white, reported having more negative perceptions of their African-American patients than of their White patients. The cardiac care physicians in this study reported that they regarded their African-American patients as less intelligent, less educated, and less rational than their White patients. They also expected their African-American patients to be less likely than their White patients to

participate in cardiac rehabilitation or to comply with medical advice, but more likely than the White patients to abuse alcohol or other drugs. In addition, the doctors expressed lesser feelings of “affiliation” toward their African-American patients: they less frequently rated them as being “very pleasant” or viewed them as “the kind of person I can see myself being friends with” (van Ryn and Burke, 2000).

Patients of color may also hold negative expectations of White physicians that impede the development of a participatory relationship. Some of these expectations are founded in medicine’s history of racial discrimination, which has included such practices as racial segregation of services and medical experimentation on Black patients such as the well-known Tuskegee syphilis experiment of 1932-1972 (Bowser, 2001; Randall, 1996). As the Institute of Medicine explained in a 2002 report, “These stereotypes may paint the physician as an arrogant clinician, or as ‘the White man who experiments on minority patients,’ or as a person who cannot be trusted with the whole truth” (Institute of Medicine, 2002, p. 128). At the same time, patients of color may place an especially high value on warm and respectful treatment by their doctors. Indeed, African-American patients express a greater desire for camaraderie with their doctors than White patients, but also (and unlike White patients) express dissatisfaction with, mistrust of, and disdain for the health care system, based in part on their suspicions of racial and economic discrimination (Ferguson, et al., 1998; Brooks, 1992).

In situations pairing a patient of color and a White doctor, negative feelings and racial stereotypes may channel the parties’ interactions in way that conforms to and confirms both parties’ expectations. Prejudice may show up in the doctor’s behavior even if he or she does not recognize it. When physicians feel uncomfortable with or dislike a patient, not only are they less likely to behave in a friendly, patient-centered manner, but they may even cut off the encounter

prematurely, before a thorough interview or examination can be completed. They also may resort to a standard “script” for discussion that is guided by preconceived notions and discourages the patient from offering individuated information (Wang, 2004).

Patients of color, in turn, may reciprocate and reinforce negative feelings when interacting with a White physician. Because of the importance they place upon their relationships with their doctors, members of groups with a history or expectation of being treated poorly by medical professionals may react especially negatively to physicians whose behavior suggests that they do not like, are not interested in, or do not respect them. Further, their suspicions of medical professionals can lead patients to view common medical practices as insulting or degrading. For example, African-American patients may become offended when White health care professionals wear plastic gloves for a physical examination, believing that they do so because they are unwilling to touch a Black person’s skin (Hoberman, 1999; Ferguson, et al., 1998). A “chain reaction” can come into play, with the patient responding to the doctor’s questions disagreeably or unhelpfully, or by providing the doctor with little information about his symptoms or asking few questions about his condition. Such behavior in turn may reinforce the doctor’s perception that the patient is not intelligent or rational and discourage the doctor from asking questions of or sharing information with the patient (Wang, 2004).

It is not surprising, then, that minority patients report more participatory treatment and higher levels of satisfaction in racially concordant settings than in others (Cooper-Patrick, et al., 1999; LaVeist & Carroll, 2002; LaVeist & Nuru-Jeter, 2002; Saha, et al., 1999). A number of important benefits result from racial and ethnic match between doctors and patients of color: patients in matched relationships trust their doctors more, feel that they are treated with greater respect, and communicate more effectively with their doctors because they are more likely to

share cultural beliefs, values, experiences, and language (Cooper-Patrick, et al., 1999; Malat, 2001; Saha, et al., 1999). The draw of cultural affinity may even be what is needed to encourage individuals to obtain medical care at all, for cultural barriers can deter people from seeking medical attention when they need it (Sullivan Commission, 2004). Indeed, one study found that Black patients with Black doctors were more likely to report that they received preventive care and necessary medical care than Black patients with physicians of other races (Saha, et al., 1999).

Possible Biases in Expectations and Their Effects

The evaluative goals of the typical medical encounter, combined with the time and resource constraints under which they must be met and the power differential between doctor and patient, encourage the individual practitioner not just to rely on group-based stereotypes and other mental shortcuts, but also to structure the interaction and to process the information derived from it so as to confirm his or her preformed judgments, rather than to form an accurate impression (Wang, 2004). A combination of situational pressures and negative expectations therefore can affect not just the quality of the parties' relationship but also the accuracy of diagnosis. It also may lead doctors unwittingly to prescribe, and patients to prefer, treatment choices that are less than optimal.

Mental health diagnosis and treatment of African-American patients provide an especially vivid illustration of the influence of racial bias, because the kinds of judgments that must be made can implicate a wide range of racial stereotypes (including the stereotypes of Blacks as being aggressive or violent, less complex intellectually or psychologically, or more likely to engage in substance abuse than Whites) and because mental health professionals may feel less empathy or optimism for Black patients than for White patients (Whaley, 1998). These

stereotypes and attitudes may set off a self-fulfilling process by which a White mental health professional, feeling uncomfortable with a Black patient and expecting him to be aggressive or hostile, behaves in a racially prejudiced manner, leading the patient to act in conformity with such stereotypes and the clinician to make a more severe diagnosis or to recommend a more restrictive intervention than might actually be warranted (Whaley, 1998). Further, White clinicians who do not appreciate their African-American patients' mistrust of Whites may misinterpret their symptoms of "cultural paranoia" and misdiagnose their conditions—for example, mistaking depression for schizophrenia (Whaley, 2002). Similarly, a lack of familiarity with cultural factors may lead White mental health professionals to assess Asian American patients inappropriately (Sue & Sue, 1987).

Doctors also might encourage patients to make treatment choices that are not ideally tailored to their situations but instead are consistent with the doctors' race-based assumptions. The inferiority of the decision might not be apparent, because the patient might actually prefer that course over a better-suited treatment plan. To view that choice as solely based on "patient preference," however, can be misleading, because physicians have great power to shape patient preferences through their ability to control how options are presented, as well as how much information is disclosed, and because patients are unlikely to go against a doctor's advice due to the physician's greater knowledge and power (Bloche, 2001; Noah, 1998; Shin, 2002). Further, patient "preferences" actually may be a product of racial bias to the extent that they are shaped by the patient's experiences in and expectations of the health care system. As Crossley has explained, a "vicious cycle" may be at work in which the history of discrimination causes Blacks, as a group, to distrust White doctors and therefore to be "generally more likely to decline aggressive or risky medical treatment," which then leads doctors to "assume that individual black

patients will prefer less aggressive treatment” and therefore to be “less likely to offer aggressive treatment to their black patients” (Crossley, 2003, p. 222). Differences in patient preferences might also reflect individual situations that are the result of racial disparities in treatment. For example, minority patients might prefer less innovative or aggressive treatment if they are not familiar with those procedures (perhaps because they did not receive full information about or explanations of them) or if they believe that they have a low probability of achieving a positive outcome (perhaps because they were referred for the procedure at a relatively late point in their illness) (Bowser, 2001; Katz, 2001; Whittle, et al., 1997).

Finally, a doctor’s expectation that the patient will not comply with a demanding treatment regimen may produce its own confirmation, because the doctor may present the recommendation in a perfunctory or unassertive way or may convey negative expectations that “dampen” the patient’s interest in and compliance with the recommended care. In addition, a patient who does not trust or feel affiliation with his or her doctor may be less inclined to comply with a prescribed treatment plan (Bloche, 2001; Shin, 2002).

Less Pressure for System Change

The disproportionately small number of physicians who are individuals of color may affect patients of color negatively not just because it may deprive many of the benefits of potentially more participatory relationships and appropriate care. It also makes it less likely that these patients will receive care in an environment that is attuned to their concerns and needs. For example, physicians who themselves are members of under- represented minority groups may be more aware of, motivated to address, and equipped to help reduce healthcare disparities in the settings in which they work. A 2001 survey of medical-school graduates showed “striking differences” between the views of minority and non-minority respondents on societal issues,

with much higher percentages of minorities than non-minorities expressing strong agreement with the views that “access to health care continues to be a major problem”; “everyone is entitled to receive adequate medical care”; and “physicians can influence health and disease and prevention” (AAMC, 2002, p. 50). Studies also have found that minority physicians are more likely than non-minority physicians to practice in areas with a shortage of physicians or a higher proportion of residents from underserved minority groups, and are more likely to care for minority, indigent, and uninsured patients (AAMC, 2002; Komaromy, et al., 1996; Keith, et al., 1985; Moy & Bartman, 1995). As members of the minority *and* the medical communities, moreover, physicians of color can “play a key role” in “hold[ing] the system accountable” (Sullivan Commission, 2004, p. 18).

Consequences of Lack of Match in Legal Settings

The issue of match in racial or ethnic background between the service-provider and the client in legal settings has not been the focus of a great deal of empirical research. However, some lawyers in a range of practice areas are beginning to acknowledge the importance of this topic (Troccoli, 2002; Hing, 1993; Alfieri, 1991; Acevedo, et. al, 1999/2000; Pierce & Brodsky, 2002). Furthermore, there is body of work relevant to trying to understand the implications of such lack of match that will be discussed below.

Cultural Barriers to Effective One-on-One Client-Lawyer Relationships

In order to provide high-quality legal services, lawyers undertake certain fundamental tasks (Haydack, et. al., 1996; Krieger & Neumann, 2003). They must gather information from clients in order to assess their clients’ legal positions. They must then identify the legal alternatives and the consequences of each. Finally, they must decide on and implement a legal strategy that protects and ideally maximizes their clients’ legal position.

It is essential that clients and their lawyers communicate effectively and are in sync about how to resolve the clients' problems in order for these tasks to be completed in a way that best serves the clients' wishes. Emerging social science research suggests, however, that Americans from different cultural backgrounds approach problem-solving in contrasting ways and have distinct communication patterns (Marcus & Lin, 1999; Wylie, 1996; Eades, 2003). Thus, clients from racial and ethnic minority groups who have White lawyers may find that their varied problem solving styles and communication patterns impede the client-lawyer relationship. As illustrated by discussions of Asian Americans, Mexican Americans, and African Americans below, clients of these racial and ethnic backgrounds may find that their norms on conflict resolution and their communication patterns contrast dramatically from those of their lawyers who are White European Americans.

European Americans, particularly Anglo Americans, have been dominant in shaping American culture and the American legal system. Thus, characteristics of their culture tend to be synonymous with those in American culture and the legal system in general. In a summary of research, Marcus and Lin (1999) indicate that European Americans emphasize individual rights and satisfying personal values. Conflict is viewed as the incompatibility of individuals' beliefs or conflicting desires. The goal of the conflict resolution process is to arrive at a solution as efficiently as possible without compromising personal integrity or making concessions. The advocacy model in the legal system, for instance, assumes that the parties will directly confront each other and that each side will stridently argue their particular position. The focus is on rational debate; emotional expression is considered a distraction.

Asian Americans have complex and evolving identities that embrace some aspects of the individualism described above but also retain traditional Asian approaches to conflict (Oyserman

& Sakamoto, 1997). These traditions emphasize an interdependent view of self; a person is defined in relation to others and as part of a social unit. Conflict is considered an undesirable disturbance in the relationship between individuals and thus a disruption in societal harmony. In contrast to European Americans' goal of resolving the conflict, the Asian goal is management or control of conflict. Asian norms for regulating conflict also contrast with those used by European Americans. Studies contrasting American students with Chinese students in Hong Kong (Leung, 1987) and Taiwan (Trubisky, Ting-Toomey, & Lin, 1991) indicate that Chinese prefer indirect expression of their feelings, informal procedures such as mediation, and compromise. While European Americans assume that it is the speaker's responsibility to say specifically what is on her or his mind, Asians avoid direct confrontation and believe that explicit expression might be perceived as rude and disruptive.

There is meager research on Latin American approaches to problem-solving and communication (Marcus & Lin, 1991). The work that is available, however, suggests distinct cultural approaches to problem-solving and communication. In Mexican and Mexican American cultures, for instance, the individual is viewed as part of a hierarchical system of relationships. Individuals interact with an appropriate level of relatedness and show proper conduct and respect according to one's age, sex, and social status (*respeto*). A person's *simpatia*, the ability to both respect and share others' feelings, is highly valued. Elders are respected and their opinions are not questioned (Greenfield & Suzuki, 1997; Lederach, 2001). Hispanic Americans' nonverbal communication has a cultural meaning that is distinct from a traditional Western worldview (Montoya, 2000). For instance, their avoidance of eye contact and their use of pausing and silence are consistent with showing respect and being reflective. The goal is to find solutions

that are appropriate for the particular setting and individuals, while maintaining hierarchical relationships and harmony.

Research on the problem-solving approaches and communication patterns of African Americans also is very limited. However, the emerging research indicates some similarities and differences among European Americans and the other ethnic groups. African Americans appear to emphasize individual uniqueness but also emphasize interdependence with the community (Marcus & Lin, 1991). African Americans value unity, cooperative effort, and collective responsibility. Communication is characterized by an animated, interpersonal, emotional, and confrontational style (Kochman, 1981). One is expected to formulate personal positions and present these positions as advocates; performance is an integral part of the process. One's emotional investment in one's position is viewed as a measure of commitment rather than as an impediment to reasoning. At the same time, the norm is for the parties to have a dynamic exchange and not just one-way communication (Smitherman, 1994).

Given these contrasting cultural models, it would not be surprising if White European American lawyers and their minority clients misunderstand each other and are not in sync about how to resolve clients' legal problems. White lawyers, unfamiliar with their Asian American or Mexican American clients' emphasis on relationships and proper conduct, would most likely not take time to get to know their clients. Instead, they would abruptly proceed with their many direct questions, trying to be as efficient as possible in gathering what they consider to be the essential information. They might misinterpret their client's indirect answers or deference to their higher-status position as apathy, ignorance, uncooperativeness, or even guilt. African American clients might view efforts by their White lawyers to set aside feelings as unrealistic, illogical, or even devious. White lawyers, on the other hand, might observe their Black clients'

affect or anger as inappropriate and thus perceive their explanations and positions as illegitimate and unpersuasive (Smitherman, 1994). Thus, the unfortunate outcome might be that White lawyers would not obtain the information they need to properly perform the fundamental lawyering tasks and thus jeopardize their clients' legal interests.

Possible Bias in Perceptions and Their Effects

Studies indicate that individuals of varied racial backgrounds perceive situations differently (Parker, et al., 1997; Dixon, et al., 2002). In a cross-racial lawyer-client relationship, these differing perceptions can affect how lawyers interpret the client's story and assess the client's legal position. After hearing their clients' story, lawyers have to assess the facts, identify legal alternatives, and decide on a legal strategy. If they are persuaded that their client's story provides the factual basis for a legal claim, they will investigate further. Depending on the lawyers' perceptions of the strength of their clients' legal positions, they may try to negotiate a settlement with opposing parties. If instead, the lawyers' interpretation of the facts indicates that there is not a sufficient factual basis for a legal claim, they will advise their clients of this and terminate their legal services on this matter. But what if the lawyers, in part because of their racial and cultural backgrounds, have a different perspective than their minority clients on what the facts mean?

A successful employment discrimination claim, for instance, requires that an individual show that they are the victims of their employers' illegal discrimination. One large-scale study by the John J. Heidrich Center for Workforce Development at Rutgers, the State University of New Jersey, however, found that a person's race is the key determinant in how people perceive and experience discrimination in the workplace (Dixon et al., 2002). Half of African Americans workers believe that African Americans are treated unfairly as compared to 10% of White

Americans. There are also reported differences in their experiences with discrimination. Thus, 55% of African Americans and 18% of Hispanic Americans, in contrast to 13% of White Americans, indicate that they know of instances in the last year when coworkers felt they were discriminated against because of their race. Following the same pattern, 28% of the African Americans, 22% of Hispanic Americans, but only 6% of White Americans say they personally experienced discrimination.

The Heidrich study suggests that White Americans and Black and Hispanic Americans might reach different conclusions about whether there is illegal employment discrimination. Racism can be subtle and unconscious (Dovidio, 2001) and Black and Hispanic clients might recognize workplace prejudice that is less apparent to their White lawyers. White lawyers may think that their clients have misinterpreted their bosses' and coworkers' actions, especially if there is not evidence of overtly racist conduct or language, and consequently conclude that there is not a plausible basis for employment discrimination claim. The lawyers would advise their clients, including on terms for settlement, on the basis of this professional and culturally-shaped judgment. Yet from the clients' perspective, their lawyers have misconstrued the facts and underestimated the strength of their legal position.

A dispute over an employee's work performance also exemplifies how different cultural perceptions of minority clients and their White lawyers can affect the lawyering process. In a summary of research on how individuals of Asian backgrounds and Western backgrounds think differently, including how they perceive problems, Richard Nisbett cited scores of studies (2003). Particularly relevant to our discussion is his conclusion that individuals of Asian cultures are more likely to believe that each particular situation should be examined on its merits and that different rules might be appropriate for different people. In contrast, he concludes that

European Americans believe that there should be universal rules applicable to everyone and that to set aside these universal rules would be immoral.

Nisbett (2003) cites a study by Hampden-Turner and Trompenaar to illustrate. The participants in the study were asked how they would handle the case of an employee whose work for a company, though excellent for fifteen years, has been unsatisfactory for a year. If there is not reason to expect that performance will improve, (a) should the employee be dismissed on the grounds that job performance should remain the grounds for dismissal, regardless of the person's age and previous record, or (b) is it wrong to disregard the fifteen year years the employee has been working for the company, given that one has to take into account the company's responsibility for the employee's life? More than three quarters of the American and Canadian participants felt the employee should be let go. Only between twenty and thirty percent of the Koreans, Singaporeans, and Japanese agreed with that view. As Nisbett (pp. 65-66) explains:

Westerners' commitment to universally applied rules influences their understanding of the nature of agreements between individuals and their corporations. By extension, in the Western view, once a contract has been agreed to, it is binding—regardless of the circumstances that might make the arrangement much less attractive to one of the parties than it had been initially. But to people from [Asian cultures], changing circumstances dictate alterations of the agreement.

Suppose that in the employment dispute posed above, the lawyer is White and adheres to the Western perspective while the client is Asian and adheres to the Asian perspective. It would not be surprising if the Asian client believes that her termination would be unfair, yet her lawyer would be less sympathetic to the client's position and be less inclined to aggressively fight the client's employer in the event that the client is fired.

The prior discussion deals with employees who are initiating lawsuits as plaintiffs, but possible lawyer bias in perceptions may also concern minority clients when they are defendants, for instance, in criminal cases (Troccoli, 2002). There is an absence of empirical research exploring this concern, but there is research on juror prejudice from which we can draw. While the issues are complex and the results are inconsistent, there is evidence of racial differences in the perception of minority defendants' guilt in some situations (Armour, 1997; Sommers & Ellsworth, 2000; Sommers & Ellsworth, 2001). In a study by Sommers and Ellsworth (2001), for example, White mock jurors were more likely to convict and recommend a more severe sentence for Black defendants than White defendants in trials where racial issues were not emphasized (non-race-salient). In contrast, in trials where racial issues were emphasized (race-salient), White jurors did not treat the Black and White defendants differently. The researchers suggested that White jurors are less likely to demonstrate racial prejudice in race-salient trials because, consistent with current social pressures, they want to appear non-prejudiced. In contrast, when race issues are not obvious, White jurors' guard is down and their prejudice is more subtle and perhaps unconscious. To the extent we can extrapolate the prejudices of White jurors to White lawyers, therefore, minority defendants' concerns about their White lawyers' possible negative bias about their guilt is merited.

Less Pressure for System Change

Given the relatively small number of lawyers of color, minority clients work with their lawyers within a legal system that has not been heavily influenced by minority perspectives. Yet, lawyers' attitudes toward the legal system are important because, over time, they may well not only shape lawyers' behavior but they contribute to the evolution of the system itself. To understand lawyers' attitudes and determine if any racial differences exist, the American Bar

Association and the major Black bar association, the National Bar Association, conducted a study of Black and White lawyers (Carter, 1999). Their findings are relevant to the clients' and lawyers' goal-setting. First, the attitudes of Black lawyers suggest how Black clients might feel and what they might want to achieve. In addition, this study illustrates that lawyers of different racial backgrounds "hear" their minority clients' stories within the context of very different legal and social realities.

For example, the study reveals that Black lawyers have less confidence than White lawyers in the racial equity of the American justice system (Carter, 1999). When asked to describe the amount of racial bias in the justice system, 52% of the Black lawyers indicate "very much" and 45% indicate "some," while 7% of White lawyers indicate "very much" and 56% indicate "some." When asked about their assessment of the ability of the justice system to eliminate racial bias in the future, 59% of the Black lawyers say they are "hopeful," but 38% say they are "pessimistic." On the other hand, 81% of White lawyers say they are "hopeful" with only 15% indicating they are "pessimistic." These different conclusions are not surprising given their contrary personal observations of racial bias. About 67% of Black lawyers, but only about 16% of White lawyers, say they witnessed an example of racial bias in the justice system within the three years preceding the study.

The groups differ further on appropriate law enforcement techniques. White lawyers (49% favor) are more willing than Black lawyers (18% favor) to allow police to create racial profiles of likely criminals (Gibeaut, 1999). Black lawyers, on the other hand, are more willing to allow minority clients to use the civil rights laws to sue governments over decisions that permit environmental polluters to operate in their neighborhoods (Keeva, 1999).

Given these beliefs about the justice system and law enforcement techniques, White lawyers would reasonably be less motivated to make changes in the legal system. In contrast, Black lawyers might see the need for improvements and work toward changes in the legal system. Recent research, for instance, indicates that minority lawyers are more likely than White lawyers to practice in underserved minority communities (Bowen, et al., 1998). These attitudes may also impact the way lawyers carry out the lawyering process for minority clients. White lawyers might assume the efficacy and racial equity of the legal system and thus not accurately gauge their clients' risks. Nonetheless, they may strategize and set goals in ways that are consistent with their beliefs and inadvertently offer legal strategies that do not adequately protect their minority clients. In addition, Black clients may surmise their White lawyers' perceptions and consequently question their lawyers' understanding of "how things really are." Consequently, they may have less confidence and trust in their counsel, share less information, and inadvertently weaken their own legal positions.

Approaches to Mitigating Problems Caused by Lack of Match

Racial and ethnic match is an important provider-client issue in education, medicine, and the law. A lack of provider-client match increases the likelihood of misunderstandings and miscommunication between the service provider and the client with the result that the client may receive less than optimal services. Lack of match may also increase the likelihood that people of color have service providers who are not well-attuned to their interests and concerns and who do not actively strive to change the institutions they are in so that they are more responsive to minority clients.

Because people of color are strikingly underrepresented as teachers, physicians, and lawyers relative to their proportion in the population, a direct approach to increasing the potential

for match between clients of color and service providers is the adoption of policies designed to increase the pool of underrepresented individuals whose educational attainment makes them eligible for the training needed to function in these roles. Preparation to assume the role of teacher requires attainment of an undergraduate degree. To be a doctor or lawyer also requires completion of demanding graduate training. Thus, adopting policies designed to increase the pool of those potentially eligible to assume these roles by increasing the number of well-prepared college graduates of color would be a valuable first step. Such policies could range from providing financial aid targeted toward students of color preparing for such careers to policies designed to increase the retention of minority college students.

Of course, the potential for match is not increased unless these well-educated individuals decide to pursue careers in education, medicine, or law. So a second important step would be to adopt multi-faceted policies specifically designed to encourage underrepresented minorities to pursue careers in these fields. Such policies could range from efforts to stimulate minority students' interest in pursuing such careers through internships and mentorship experiences to the forgiveness of educational loans for individuals who find employment in specific fields to support of professional schools' programs to recruit promising minority undergraduates. Some such policies are already in place. For example, in addition to programs designed to increase the pool of minority group individuals with higher education many states also have policies specifically designed to develop and recruit teachers of color (Educational Commission of the States, 2003a, 2003b). However, often the impact of such policies is not carefully studied, so it is difficult to assess their effectiveness.

Policies focused on encouraging undergraduates from under- represented groups to pursue these careers have the advantage of being more focused than strategies designed to

increase the number of well-trained undergraduates. On the other hand, their ultimate impact is likely to be limited by the pool of well-prepared undergraduates. Indeed, efforts to draw more people into one of these fields might even have the impact of drawing them away from others, as in the case of a potential high school science teacher who ends up deciding to become a doctor.

Finally, once individuals of color have attained the education needed to perform as teachers, doctors, or lawyers, issues of whether they are hired to fill open positions and whether they decide to remain in their chosen fields become crucial for increasing the possibility of match. Such issues are important, as suggested by work that highlights the barriers that minority service providers such as teachers face that contribute to their inability to obtain licensure or their leaving teaching for other fields (Dilworth, 1989; Gay, Dingus & Jackson, 2003). Our analysis, which highlights the potential advantages of match, combined with evidence of continuing discrimination in the employment (Feagin, 2000) suggests the importance of affirmative action policies, most especially in organizations that serve large numbers of minority clients. Although such policies are controversial and are far from a panacea for the problems we discuss in this paper, they do stand as one important component of an overall strategy to increase the possibility for providing match for people of color who prefer a service provider whose background is similar to their own.

The policies discussed above to further match are long-term ones. So, it is not practical to suppose that the problems can be solved in the short run by the policies discussed above. Furthermore, identifying potential problems raised by lack of match should not blind us to the fact that too narrow an emphasis on match could have negative consequences. For example, too inflexible an institutional emphasis on match could be used in a discriminatory way to limit the job opportunities of service providers, especially those of color. An inflexible approach to match

in the area of education could also deprive students of enriching experiences with teachers from backgrounds different from their own.

Nor should our emphasis on the potential problems related to lack of match be taken be taken to suggest that service providers can only be effective when they are from the same racial or ethnic background as their clients. For example, Ladson-Billing's (1990) research on teachers who are especially effective with African- American students concludes that both White- and African-American teachers can provide culturally sensitive and appropriate educational experiences for their African- American students.

If practical considerations suggest that match will be hard to obtain in the short run and other considerations suggest that clients and service providers may not, and even should not, always be matched with regard to race and ethnicity, what are possible ways of mitigating the kinds of problems flowing from lack of match discussed earlier in this paper? Full discussion of this issue is beyond the scope of this article. However, we briefly mention some possible approaches to this problem.

A rough kind of proxy for match which is likely to help mitigate problems caused by lack of match can be achieved by representation of various groups within service providing organizations and the conscious structuring of such organizations to achieve some of the potential benefits of match through other mechanisms. Eulau and Karps (1977) make a very useful distinction among four kinds of representation, all of which seem important to providing services effectively to clients of color. The first kind of representativeness, called policy congruence, consists of making decisions consistent with the policy preferences of those one represents. The second, service responsiveness, deals with representation that secures individual benefits, such as exemption from a regulation, for those represented. The third, allocative

responsiveness, involves seeking group benefits for those represented (e.g. funding for a new clinic in a depressed neighborhood), and the fourth, symbolic representation, concerns the taking of actions that build trust of and support for the representative.

All of these kinds of representativeness could logically be provided by individuals who do not match a particular constituency with regard to race or ethnicity, although many of them would most likely be more readily achieved when match exists. Finding ways to promote such representativeness when match is not possible seems both feasible and desirable. For example, surveys or community meetings could be conducted to gather information about policy preferences of a particular group as a means of enhancing policy congruence, and organizations could construct formal ways of building such information into the policy making process. Both allocative and symbolic representation could be furthered by appointing individuals of color who are well-known for their interest in and concern for minority communities to visible positions of responsibility with the organization, including roles such as membership on a board of directors.

When match is not possible, service providers, as well as the systems that train and employ them, also need to recognize that working with clients from different racial and ethnic backgrounds requires attention to the issue of how cultural differences might impact their effectiveness. They also need to pay attention to strategies and tactics that can be used to minimize problems related to this and to build cultural competence in service providers.

A considerable amount of work on this topic has been done. For example, Eades (2003) suggests a number of things that lawyers can do to work effectively with clients of different cultural backgrounds, including being aware that individuals who speak the same language may come from very different cultures, being explicit about cultural assumptions, recognizing that working across cultures may add to the time and effort needed to serve a client effectively, and

taking responsibility for finding ways to work effectively with those from other cultures rather than assuming that the client is the one who needs to make all the adjustments necessary to achieve a successful outcome. Recognizing the importance of physicians' cultural competence to the quality of the care they deliver, medical schools have instituted training programs to raise students' awareness of racism and prejudice, teach them about diverse cultural beliefs and attitudes toward health care, and develop their communication and assessment skills (Geiger, 2001; Loudon, et al., 1999).

Medical institutions also can develop culturally sensitive assessment procedures to reduce the potential for misdiagnosis due to caregivers' biased expectations and interpretation of symptoms (Whaley, 2002). Similarly, educational institutions have developed and implemented approaches designed to promote culturally sensitive teaching materials and pedagogical approaches (Gomez, 1996; Ladson-Billings, 1999; Merrell Ligon, Rosado, & Houston, 1998; Moll & González, 2004; Zeichner, 1996). Such approaches take time and effort to develop, and their effectiveness is far from proven (Guillaume, Zuniga, & Yee, 1998; Zeichner, 1996). They also require a substantial commitment of training time on the part of service professionals. However, because the professions discussed here generally require large amounts of pre-service training and continuing education, milieus and mechanisms already exist for reaching large numbers of service providers in these fields.

In sum, there is reason to think that lack of match between service providers and clients can pose problems that must be attended to so that the effectiveness of service delivery is not undermined and client outcomes are not jeopardized. One way of mitigating these problems is to pursue policies that are likely to increase the prevalence of match between service providers and clients of color. Policies likely to further the achievement of such goals can be adopted and

would consist of efforts to enhance the pool of educated people of color from whom service providers will be drawn, to build interest in these careers among students of color, to ease the financial burden of undertaking the training necessary for such careers, and to encourage the hiring and retention of service providers of color. In addition, policies related to the fostering of representation of people of color in service providing institutions and the building of cultural competence in service providers also have an important role to play in improving educational, medical and legal outcomes for people of color.

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Footnotes

¹ One of the most fundamental and obvious problems made more likely by lack of match is that the service provider and client do not speak the same language. However, solving that problem leaves many other less obvious ones that are the focus of this paper.