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“You’ve Been Down This Road Before”: Framing Foreign LL.M. Students’ Navigation of the Acculturation Process as an Effective Model for Library Research Instruction

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“You’ve Been Down This Road Before”: Framing Foreign LL.M. Students’ Navigation of the Acculturation Process as an Effective Model for Library Research Instruction

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Abstract:

This Article presents a discussion of how academic law librarians can conceptualize, frame, and offer effective research instruction to foreign LL.M. students. It begins by presenting an overview of the American law school as an institutional and cultural paradigm into which foreign students insert themselves. Then, it provides an overview of student sojourners: their motivations and goals, their issues with culture shock, and their acculturation strategies and processes. This is followed by a discussion of the cultural aspects of academic law libraries in the United States, which present foreign LL.M. students with a unique set of acculturation challenges and opportunities. A foreign-student-focused analysis of selected aspects of research instruction follows, including information literacy; developing a research plan that accommodates researcher uncertainty; and contextual, intersubjective information processing. The Article concludes with practical advice that academic law librarians can offer, as guidance and encouragement, to foreign LL.M. students who are required to complete a major research project, such as an LL.M. thesis.

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INTRODUCTION

In the late 1800s, graduates of Columbia Law School gained the option to stay on and study an extra year to earn an additional degree, the newly-introduced LL.M. (Master of Laws).¹ Since then, LL.M. programs in U.S. law schools have evolved significantly. Today, for example, it is possible to get an LL.M. in Agricultural Law from the University of Arkansas School of Law, or to attend St. John's University School of Law's LL.M. program in International Sports Law Practice.² The LL.M. degree has also grown into a global phenomenon. Not only are law school graduates in foreign jurisdictions flocking to U.S. law schools to pursue LL.M. degrees in U.S. legal studies,³ but law schools outside the United States have also jumped on the bandwagon and established LL.M. degree programs themselves.

In March 2017, I took a leave of absence from my job as a Foreign, Comparative, and International Law Librarian at Harvard Law School, where I provide research instruction to LL.M. students, and enrolled as a student in the LL.M program in German Law at the University of Würzburg. I

¹ Julie M. Spanbauer, *Lost in Translation in the Law School Classroom: Assessing Required Coursework in LL.M. Programs for International Students*, 35 INT'L J. LEGAL INFO. 396, 406 (2007).

² See American Bar Association, *LLM International Law Programs: U.S. LL.M. Directory* (Nov. 12, 2018), <https://perma.cc/SWY5-N2DP>. Among other interesting, rather niche options listed in this directory: an LL.M. in Tribal Policy, Law, and Government offered by Arizona State University's Sandra Day O'Connor College of Law, Chapman University School of Law's LL.M. in Prosecutorial Science, an LL.M. in Higher Education Compliance from Delaware Law School, George Washington University Law School's LL.M. in International Environmental Law, and an LL.M. in Employee Benefits from the John Marshall Law School. *Id.*

³ See generally Mindie Lazarus-Black & Julie Globokar, *Foreign Attorneys in U.S. LL.M. Programs: Who's In, Who's Out, and Who They Are*, 22 IND. J. GLOBAL LEG. STUD. 3 (2015). According to a recent survey, "114 of the 195 ABA-accredited law schools in the United States admit international students, and ... the vast majority of these students are admitted to LL.M. programs(.)". Spanbauer, *supra* note 1, at 398. Some law schools state directly that their LL.M. are designed for students from outside the U.S. See, e.g., University of Chicago Law School, *The Basic Features of the LLM Program*, <https://perma.cc/5BRK-RVST> ("In recent years virtually all of the students admitted to the LL.M. program have been graduates of foreign law schools."); University of Virginia Law School, *Graduate Studies*, <https://perma.cc/KU2L-CP5H> ("Virginia's Graduate Studies Program provides an American legal education to lawyers who have obtained their first law degree in their home countries."); Wake Forest University School of Law, *LLM*, <https://perma.cc/W3X7-25FP> ("The Wake Forest Law LL.M. degree program is designed primarily for international lawyers and students who hold a first degree in law from their home countries and desire to enhance their legal careers by studying the laws of the United States."); and Cornell Law School, *Admissions: LL.M.*, <https://perma.cc/R5ME-EBC4> ("To be considered for admission to the General LL.M. program, students must have earned a first degree of law outside the United States prior to the start of the program.").

finished the degree requirements in about 15 months, and graduated (in my case, this means “received my degree in the mail”) from the program in July 2018.⁴

Being a foreign LL.M. student is quite extraordinary. Like all foreign graduate students, I faced challenges that took with time, hard work, creativity, and patience to overcome. I had frustrating days, during which I felt like I could not do a single thing right and should just board the next plane home. It was, it turned out, a year-long master class in resilience, resourcefulness, and perseverance.

My main motivation for pursuing an LL.M. in German law was professional:⁵ immersing myself in a civil law system for a year would make me a better foreign law researcher. Additionally, Harvard Law School’s LL.M. program is comprised almost entirely of foreign students,⁶ each of whom must write a 25- or 50-page research paper.⁷ I knew I would provide better research instruction to these students after walking walked a mile (a kilometer?⁸) in their shoes myself.

⁴ It is basically impossible to finish an LL.M. degree at the University of Würzburg in a 12-month period, which I discovered only after I started the program. However, I wanted to go back to focusing full-time on my work at Harvard as soon as possible when my year of leave was over, so I felt compelled to complete the requirements relatively quickly. I am very grateful to the faculty members at the University of Würzburg who graded my thesis (Prof. Dr. Stefanie Schmahl and Prof. Dr. Kyrrill-A. Schwartz) and conducted my final exam (Prof. Dr. Horst Dreier, Prof. Dr. Wolfram Buchwitz, and Prof. Dr. Tobias Reinbacher) in accordance with my relatively accelerated schedule. I am especially indebted to Prof. Dr. Schmahl, who served cheerfully and skillfully as my faculty supervisor. Not only did she consistently provided me with excellent encouragement and feedback, she also served as an outstanding example of how to supervise foreign students with kindness and caring.

⁵ I had wanted to get an LL.M. in German law for many years, and my relationship with and admiration for Germany and German culture go way back. I started learning German in high school and was a German major in college. After graduating, I served as a Fulbright teaching assistant at a German high school during the 1995-96 academic year. As a J.D. student, I studied at a German law school for a semester during my 2L year, and it was during that time that I met an American who was working toward his LL.M. in German law, which, naturally, brought out my competitive side (“If he can do it, so can I.”). Furthermore, I had been offered a one-year position teaching Legal English and substantive U.S. law courses in the University of Würzburg’s foreign law and languages program. I figured that, as long as I was there, I might as well enroll in the LL.M. program too.

⁶ The LL.M. class of 2018-19 at Harvard Law School has 188 students, 98% of whom come from outside the United States. *LL.M. Class Profile*, Harvard Law School, <https://perma.cc/8MFZ-VU4H> (hereinafter *HLS LL.M. 2018-19 Class Profile*).

⁷ *LL.M. Course and Writing Requirements, Recommendations, and Options*, HARVARD LAW SCHOOL GRADUATE PROGRAM HANDBOOK (2018-19), <https://perma.cc/KX5J-QSPZ>.

⁸ Proposals to convert the United States to the metric system have been failing for more than 200 years. See Daniel Engber, *Why Hasn’t the U.S. Adopted the Metric System? Short Answer: It’s Complicated*, POPULAR SCI. (June 14, 2016), <https://www.popsci.com/why-hasnt-us-adopted-metric-system>. The costs of converting would far outweigh the benefits, although metric may be with us in more ways than we realize: for example, “(w)e buy soda in liters, machine car parts in millimeters, and measure medicine in milligrams.” *Id.*

The requirements for completing an LL.M. in German law at the University of Würzburg are academically daunting. Looking back on it now, I am amazed that I did all of the following, in German,⁹ in just over a year: (1) take German law classes each semester and pass oral exams;¹⁰ (2) participate in a seminar, which would include submitting a paper and giving a presentation;¹¹ (3) pass a comprehensive oral exam at the end of the year on German public law, civil law, and criminal law;¹² and (4) write a thesis.¹³ But I did, and I graduated *magna cum laude*.

My LL.M. year was rich academically, and it also provided me with personal lessons and benefits. I had to develop strategies for persevering when things got difficult. I got better at identifying my information needs and informing myself (which includes asking for help) so that I could meet those needs. I think about life in academia differently now, and clearly see that foreign students need particular types of support and encouragement that they may not always be getting from their host institutions. How can we in academia, especially in the academic law library, best support these students and help them optimize their academic experience during their time in our community? That question served as the impetus for researching and writing this Article.

⁹ From the earliest point, my main concerns were related to language. My German was sufficiently proficient to apply for admission to the program – I had passed the level B2 German-language exam, as required, which indicates “advanced language skills.” See GOETHE INSTITUT, GOETHE-ZERTIFIKAT B2, <https://perma.cc/SB8Q-SWV3>. To matriculate as a university student, you must also pass, with a score of 2 or 3 (out of a possible 3) the Deutsche Sprachprüfung für den Hochschulzugang (DSH), a 5-hour language exam that includes reading comprehension, grammar knowledge, and scholarly writing. However, I was not familiar with German legal language, and had only a vague idea of the intricacies of civil law legal systems in general and of Germany’s legal system in particular.

¹⁰ *Verlauf des Magisterstudiums*, JURISTISCHE FAKULTÄT, UNIVERSITÄT WÜRZBURG, <https://perma.cc/CPL5-5LJ5>.

¹¹ *Id.*

¹² *Magisterprüfung*, JURISTISCHE FAKULTÄT, UNIVERSITÄT WÜRZBURG, <https://perma.cc/U6FF-XXRE>.

¹³ *Id.* My 60-page LL.M. thesis was focused on public law: I examined the protection of fundamental rights guaranteed in Germany’s constitutional instrument, the Basic Law (*Grundgesetz*) when a function that is normally performed by the government is privatized, or outsourced to a private actor, which is known generally as the constitutional law principle of the State Action Doctrine. See Jennifer Allison, Magisterarbeit: Privatisierung der öffentlichen Staatsaufgaben von dem Hintergrund des Grundrechtschutzes in Deutschland (2018) (unpublished LL.M. Thesis, Universität Würzburg) (available through the author’s BePress Selected Works page, <https://perma.cc/6SUF-U4RU>). I focused my inquiry on Germany’s private security industry, which receives government contracts to provide security services for residential facilities for asylum seekers (*Asylbewerber*). See *id.* I argued that, even though the security guards are technically private actors, they, too, should be bound to protect the residents’ fundamental rights in accordance with Article 1 of the *Grundgesetz*, which prohibits the violation of human dignity, and that their harsh and violent treatment of the residents was unconstitutional. See *id.*

In Part I, I explore legal academia in the United States as an institutional and cultural paradigm.

Not only are students at American law schools required to adhere to strict administrative rules and requirements, but there are also cultural elements, some of which could be viewed as uniquely American, that set behavioral expectations in this community. In what kind of environment do foreign students immerse themselves when they pursue LL.M. degrees in the United States? This discussion provides context for my exploration of the phenomenon of the student sojourner in Part II. Who are these people who choose to study overseas? What are their motivations and goals? When they immerse themselves in a new culture, what kinds of difficulties do they face, and how can they develop acculturation strategies that best help them adjust and thrive as foreign students?

Then, in Part III, the focus of the article shifts to the U.S. academic law library, which I explore as its own cultural paradigm. Compared with those in other countries, libraries at American law schools provide unique and expansive service offerings. As librarians, how can we best help foreign students acclimate to and navigate our law libraries? This is followed by a discussion of aspects of research instruction that are extensively analyzed in the librarianship literature (information literacy, process-based research, and contextual analysis of research results) and how they can be incorporated into an effective instruction methodology for teaching research to foreign LL.M. students. The Article concludes with suggested practical advice that academic law librarians can present to foreign LL.M. students who are required to complete a major research project, such as an LL.M. thesis.

I. LEGAL ACADEMIA: AN INSTITUTIONAL AND CULTURAL PARADIGM

A foreign student who decides to pursue an LL.M. degree in the United States enters an institutional and cultural paradigm that may be very different from legal academic in their home jurisdiction. This section describes this paradigm and provides a background against which to better understand the culture shock and acculturation challenges foreign LL.M. students experience.

a. The Law School as an Institution

The United States law school, as an institution,¹⁴ has developed and changed significantly throughout the history of American university education. Early on, the law school was seen merely as an ancillary department in the university that existed only to contribute to a well-rounded education, which also included history, philosophy, and other subjects, of future American leaders.¹⁵ Practicing lawyers, on the other hand, generally ascended to the profession merely by completing an apprenticeship under an attorney that included studying legal principles and providing practical assistance.¹⁶

By the late 1800s, a shift had taken place, not only in the nature of American legal education, but also in the purpose of the law school itself. The American law school was “revolutionized” in 1870 by the introduction of a legal pedagogical device at Harvard Law School, the “case method,” which was developed partly to establish law as an academic and scientific discipline.¹⁷ Under this method, law professors taught from casebooks: “collections of reports of actual cases, carefully selected and arranged to illustrate the principles of law, what they meant, and how they developed.”¹⁸

The case method reflected the growing influence of the “legal formalism” doctrine at the time, under which “the common law consisted of a systematic, eternal array of broad principles and specific doctrines, all interconnected and logically consistent.”¹⁹ Reading and analyzing cases, as a means of learning how, through “inductive reasoning,” to analyze novel legal problems, became the cornerstone of

¹⁴ In the economics literature, an institution is viewed as a structural construct within which human interactions take place according to an established expectational framework. See Douglass C. North, *Institutions*, 5 J. ECON. PERSPECTIVES 97 (1991). Order is imposed on these interactions through the establishment of formal institutional rules and regulations and the organic development of behavioral norms. See *id.*

¹⁵ Bethany Rubin Henderson, *Asking the Lost Question: What is the Purpose of Law School*, 53 J. LEGAL EDUC. 48, 53-54 (2003).

¹⁶ Steven B. Dow, *There's Madness in the Method: A Commentary on Law, Statistics, and the Nature of Legal Education*, 57 OKLA. L. REV. 579, 580 (2004).

¹⁷ Henderson, *supra* note 15, at 54; see also Dow, *supra* note 16, at 580-81. The case method, of course, is still in use in law school classrooms throughout the country to this day, despite criticism that it fails to teach students how to “think like a lawyer.” Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 515-16 (2007).

¹⁸ LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 468 (2005 3rd ed.).

¹⁹ Dow, *supra* note 16, at 581.

legal education in the United States.²⁰ This style of pedagogy, which also features the Socratic inquiry method of questioning students,²¹ is still practiced in American law schools today, and underscores the emphasis in a common law jurisdiction like the United States of the importance of judicial opinions.²²

The American law school also gradually took on a significant role in grooming future generations of lawyers. By the late 1800s, the country needed a class of highly educated, effectively controlled professional attorneys.²³ American law schools adopted strict entry requirements and designed their curricula to produce graduates who could pass the bar exam and practice effectively as lawyers, thereby becoming “the gatekeepers of the legal profession.”²⁴

In order to be accredited, the modern American law school must meet educational standards established by the American Bar Association (ABA).²⁵ These standards require a law school to establish

²⁰ *Id.*

²¹ The Socratic inquiry method is a pedagogical device designed to facilitate discussion during class sessions. Students are assigned cases to read before class and are expected to answer questions about those cases posed by the professor. Under the purest form of this method, the professor is seen less as a lecturer and more of a “Socratic guide, taking the student by the hand and leading him to understand the concepts and principles hidden by the cases.” FRIEDMAN, *supra* note 18, at 468. Whether or not this relatively benign characterization of the Socratic method in American law schools is accurate is a highly debatable point, as many American law students dread and fear “getting called on” in class. *See infra* notes 38-41 and accompanying text.

²² In contrast, as an LL.M. student in Germany, which is a civil law jurisdiction, I did not read a single judicial opinion by a German court in any of my law courses, although I did read and cite a few opinions from the *Bundesverfassungsgericht*, or Federal Constitutional Court, in my LL.M. thesis. *See generally* Allison, *supra* note 13. German legal education involves studying statutory law, and statutory provisions are clarified by *Lehrbücher* (textbooks) which are introductory treatises written for law students. There are no assigned readings in courses in German law schools; instead, students, when preparing for exams, read the content of one or more textbooks for each topic that was discussed during the lectures. Textbooks can be purchased relatively cheaply, and the law library’s holdings also includes multiple copies of each of the most well-regarded titles. Students are expected to purchase small, inexpensive statutory code books and bring them to every class session, where they are referred to often. For a graduate of a U.S. law school, attending German law school classes is a relatively stress-free affair – the Socratic method is not employed, and the student is merely expected to listen to and write notes about the lecture. I can well imagine how stressful it is for foreign LL.M. students at U.S. law schools who are unaccustomed to the Socratic method and get called on in class, especially if they lack confidence in their English skills. Law school in Germany is also comparatively easy on the pocketbook: not only are the fees are extremely low, but there is no requirement to buy outrageously-priced casebooks for every class. I know that there is a great degree of “sticker shock” for foreign LL.M. students the first time they see the prices of casebooks in the law school bookstores in the United States.

²³ Henderson, *supra* note 15, at 54-56.

²⁴ *Id.* at 56.

²⁵ *See AMERICAN BAR ASSOCIATION, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2018-2019 v (2018), <https://perma.cc/2PUC-W6H2>.*

a curriculum that ensures that certain “learning outcomes” are met, including “knowledge and understanding of substantive and procedural law.”²⁶ Law schools must also require their students to complete a minimum number of courses and hours of study, and establish programs that enforce academic standards, provide academic advising and support, and assess and evaluate student learning outcomes.²⁷ Furthermore, a certain percentage of a law school’s graduates must pass a bar exam in order for the school to keep its ABA accreditation.²⁸ Although the ABA does not accredit LL.M. programs, a law school may not establish one if doing so “would have an adverse impact on the law school’s ability to maintain its accreditation for the JD program.”²⁹ If the ABA finds no such adverse impact, then it “acquiesces” to the school’s establishment of the LL.M. program.³⁰

American law schools must establish an extensive bureaucratic infrastructure to ensure that the ABA’s accreditation rules and regulations are met. Perspective students learn very quickly that acquiring a legal education in the United States means jumping through many procedural hoops and following a lot of strict rules: from admission to enrollment, and from sitting for exams and submitting papers to, eventually, graduating.

b. The Law School Culture

A law school in the United States naturally has many American cultural³¹ attributes. Cross-cultural studies indicate that certain cultural traits predominate in the United States, including “high levels

²⁶ *Id.* at 15.

²⁷ *Id.* at 20, 23.

²⁸ *Id.* at 24-25.

²⁹ AMERICAN BAR ASSOCIATION, OVERVIEW OF POST J.D. AND NON-J.D. PROGRAMS, <https://perma.cc/M73E-PA5U>.

³⁰ *Id.*

³¹ Although in common usage the word “culture” signals a refined or artistic quality, the study of culture in the social sciences implies a broader framework. In social anthropology, for example, culture is taken to refer to “a learned complex of knowledge, belief, art, morals, law and custom,” that is a “conscious creation of human rationality.” *Culture*, in A DICTIONARY OF SOCIOLOGY (John Scott ed.) (4th online ed. 2015), <http://www.oxfordreference.com>. A key element of culture in this context is that it is something shared between a group of people who consider themselves to be a community because they share at least one attribute of identity. See *Culture*, in A DICTIONARY OF CRITICAL THEORY (Ian Buchanan ed.) (2018), <http://www.oxfordreference.com>. In the American legal education literature, culture has been defined as “incentive structures and peer pressure, dominant rituals and unspoken habits of thought that construct and then define the interpersonal, institutional and

of trust, individualism, and a generalized morality.³² In addition, the view that hard work is key to ensuring economic and general success is a notable aspect of American culture that has not necessarily been observed to the same degree in other countries.³³

American law schools are not known for cultivating an environment of well-being and happiness among their students.³⁴ It has been observed that U.S. law students "exhibit signs of psychological distress, including elevated levels of depression, stress, and anxiety," and that this distress is directly related to attending law school.³⁵ One cause of this may be that, at American law schools, "adversarial conflict provides the underlying framework of interaction, knowledge generation, and problem solving."³⁶ This cultural emphasis on competition is blamed for discouraging collegiality among students, as well as encouraging uniform thinking at the expense of creativity, compassion, and more fair and just definitions of success and accomplishment.³⁷

cognitive behaviors and beliefs of members of the (legal) education community." Sturm & Guinier, *supra* note 17, at 519.

³² Alberto Alesina & Paola Giuliano, *Culture and Institutions*, 53 J. ECON. LIT. 898, 912 (2015). These particular attributes were also found to be common in northern Europe, the UK, Australia, and New Zealand. *Id.*

³³ *See id.*

³⁴ See, e.g., Susan L. Brooks, *Fostering Wholehearted Lawyers: Practical Guidance for Supporting Law Students' Professional Identity Formation*, 14 U. ST. THOMAS L.J. 412, 417 (2018) ("Countless scholars and studies have shown that legal education ... often undermine(s) self-esteem and well-being.").

³⁵ Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y L. & ETHICS 357, 357-59 (2009). There is also evidence that U.S. law students experience higher rates of alcohol and drug use than their peers who do not study law. Sue Shapcott, Sarah Davis, & Lane Hanson, *The Jury is In: Law Schools Foster Students' Fixed Mindsets*, 42 L. & PSYCH. REV. 1, 4-5 (2018).

³⁶ Sturm & Guinier, *supra* note 17, at 526. Law schools continue to send the message to their students that "'thinking like a lawyer,' getting straight A's, and finding a high paying job at a big law firm are the only things that matter." Brooks, *supra* note 34, at 418.

³⁷ *See generally* Sturm & Guinier, *supra* note 17. The literature on goal research indicates that there are two classes of achievement goals – those focusing on performance, "where the purpose is to perform well on a particular task," and those focusing on learning, "where the aim is to acquire a new knowledge or skill." Heidi Grant & Laura Gleyser, *Goal Content Theories: Why Differences in What We Are Striving For Matter*, in THE PSYCHOLOGY OF GOALS 77, 81 (Gordon B. Moskowitz & Heidi Grant eds.) (2009). Because U.S. law school culture is so focused on competition, especially given the fact that one needs good grades to land the best-paying, most prestigious jobs after graduating with a J.D., it is difficult to imagine that very many American students go to law school based purely, or even primarily, on a personal goal of learning more about the U.S. legal system. LL.M. students, on the other hand, may be motivated to a higher degree by learning goals related to law and language. This can make the effects of cultural differences and culture shock that foreign LL.M. students experience at U.S. law schools even more significant and harder to overcome. *See infra* notes 61-67 and accompanying text.

The Socratic method in particular, which involves professors interrogating students in class on the finer points of assigned cases, is often cited as a highly objectionable manifestation this adversarial sensibility,³⁸ especially for students who, for various reasons, feel like outsiders.³⁹ However, the Socratic method has its positive attributes as well: its use can enhance and improve the legal education experience,⁴⁰ and, when incorporated as part of a “solution to gender, race, and class disparities in law school performance and comfort(,)” it can foster more inclusive classroom discussions.⁴¹

There is a segment of the American legal academy that is willing to take a hard look at U.S. legal education culture, and contemplate ways in which it can be improved.⁴² Scholars who write about cultural problems in U.S. law schools have offered several improvement proposals, including reimagining and reconfiguring law student feedback and assessment frameworks to make them more positive⁴³ and

³⁸ “The most common complaint against the Socratic method is that it is cruel and psychologically abusive. Socratic professors are quick to criticize imperfect student answers, subjecting students to public degradation, humiliation, ridicule, and dehumanization.” Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113, 118. Harvard Law School Professor Emeritus Duncan Kennedy, in a work written while he was a law student, characterized it “an assault” that is symbolic of the “hostility” exhibited by law professors toward students. Duncan Kennedy, *How the Law School Fails: A Polemic*, 1 YALE REV. L. & SOC. ACTION 71, 72-73 (1970).

³⁹ See Jeannie Suk Gerson, *The Socratic Method in the Age of Trauma*, 130 HARV. L. REV. 2320 (2017). Professor Suk Gerson notes that she has heard from some of her students that being subjected to the Socratic method of questioning during law school classes caused “ill effects on their sense of equality, identity, and well-being.” *Id.*

⁴⁰ The major benefits of the Socratic method, according to its proponents, is that it makes classroom discussions “lively and stimulating” and that, by mandating participation, it “encourag(es) students to prepare for class.” Kerr, *supra* note 38, at 117.

⁴¹ Suk Gerson, *supra* note 39, at 2344. Despite her initial criticism of the Socratic method, Professor Suk Gerson frames it as a positive instrument for ensuring that diverse views are aired and heard during classroom discussions:

Specifically with respect to the goal of inclusion, a professor asking students questions and devoting class time to listening and following up on students’ answers compares favorably to professors leading volunteer-driven discussions in which some voices are more likely to be silent, ignored, or talked over. In contrast to entrenching hierarchy, the Socratic Method can be a powerful leveler.

Id. at 2342.

⁴² Among the strongest champions of legal education reform are those who teach practice-oriented courses, including legal writing professors and others referred to as “skills faculty.” See Mary Beth Beazley, *Finishing the Job of Legal Education Reform*, 51 WAKE FOREST L. REV. 275 (2016). A major complaint about the difficulty in implementing such reforms is the comparative influence of those tenured law faculty members who have been referred to in the literature as “Brahmins,” who not only strongly favor the traditional way of teaching law, but who also hold positions of power and influence in law schools, “either as deans or thought leaders.” *Id.* at 276. These professors have no desire to change their teaching methodology, which includes “a modified Socratic lecture and a single final examination.” *Id.* (citing Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. ASS’N LEGAL WRITING DIRECTORS 12, 14 (2002)).

⁴³ See Carrie Sperling & Susan Shapcott, *Fixing Students’ Fixed Mindsets: Paving the Way for Meaningful Assessment*, 18 LEGAL WRITING: J. LEGAL WRITING INST. 39, 41-42 n.9 (2012).

offering support services and programs designed not only to assist law students in crisis, but also to help prevent law student crises from happening in the first place.⁴⁴

There are also some cultural aspects of legal education in the United States that are inherently positive. For example, an important aspect of the law school experience is that, through the difficulties it presents, it gives students with important and effective opportunities for personal growth, whether they are “grappl(ing) with arcane cases that seem to make no sense” or “learn(ing) to keep faith in themselves and the process.”⁴⁵

Foreign LL.M. students willingly insert themselves into the American legal education institutional and cultural paradigm described in this section. They bring with them their own motivations, goals, strengths, and challenges, many of which are common among foreign students. The next section explores particular attributes of foreign students, referred to in the literature as “student sojourners,” to better understand this unique population.

II. THE STUDENT SOJOURNER

A student sojourner is a person who lives in a foreign country for a period of time to achieve a specific academic accomplishment, and then returns to his or her home country.⁴⁶ Students are motivated⁴⁷ to study abroad for many reasons, such as to gain knowledge and experience that they can

⁴⁴ See Peterson & Peterson, *supra* note 35, at 361. It has been observed that student assistance programs (SAPs) implemented by law schools are often “reactive” and provide little more than a referral to a mental health professional who is affiliated with the university. *Id.* Unfortunately, these programs are often not well-equipped to provide pre-crisis services that can help prevent episodes of significant distress. *Id.* Peterson and Peterson advocate for a student support model that is based on positive psychology principles instead, under which law schools would develop programs with “preventive measure that will foster optimal psychological function for future classes of law students.” *Id.* at 362.

⁴⁵ Susan Grover, *Personal Integration and Outsider Status as Factors in Law Student Well-Being*, 47 WASHBURN L.J. 419, 421 (2008).

⁴⁶ See COLLEEN WARD ET AL., THE PSYCHOLOGY OF CULTURE SHOCK 142 (2nd ed. 2001).

⁴⁷ In the literature related to the psychology of goals, motivation is the tension created by “a discrepancy between an actual state and a desired state” that a person attempts to lessen by achieving a goal that reflects the desired state. Nira Liberman & Reuven Dar, *Normal and Pathological Consequences of Encountering Difficulties in Monitoring Progress Toward Goals*, in THE PSYCHOLOGY OF GOALS 277, 277 (Gordon B. Moskowitz & Heidi Grant eds.) (2009).

take back to benefit their home countries,⁴⁸ to "foster international good will and harmony,"⁴⁹ and to develop their language skills.⁵⁰ A university that hosts foreign students also benefits – the scholarly interests and talents of foreign students enhance the intellectual life of the university, and these students also bring a sense of multiculturalism to the campus community.⁵¹ Furthermore, foreign students provide a university with additional source of income.⁵²

Foreign students and the universities that host them have complementary goals. To accomplish these goals, the university must establish an administrative system through which foreign students can

⁴⁸ WARD ET AL., *supra* note 46, at 144.

⁴⁹ *Id.*

⁵⁰ This is especially true if the host country's language is English. Future employment prospects may depend heavily on a person's English language fluency, such that an international student may "rate the development of proficiency in English as more important than getting the degree itself." Lynda Yates & Ridwan Wahid, *Challenges to Brand Australia: International Students and the Problem with Speaking*, 32 HIGHER ED. RESEARCH & DEV. 1037, 1038 (2013).

⁵¹ See Rachel A. Smith & Nigar G. Khawaja, *A Review of the Acculturation Experiences of International Students*, 35 INT'L J. INTERCULTURAL RELATIONS 699, 700 (2011); Shelley Rose Adrian-Taylor et al., *Conflict Between International Graduate Students and Faculty Supervisors: Toward Effective Conflict Prevention and Management Strategies*, 11 J. STUD. INT'L ED. 90, 91 (2007).

⁵² A common complaint about LL.M. programs at U.S. law schools is that they are nothing more than a grab for foreign money. See, e.g., Karen Sloan, 'Cash Cow' or Valuable Credential?: Law Schools Add LL.M. Programs, But Their Value May Be Limited, NAT. L.J. (Sept. 20, 2010), <https://advance.lexis.com>. A group of U.S. law professors, over an informal lunch in 2015, were unanimous in viewing their law schools' LL.M. programs as "cash cows" designed to

bring in wealthy foreign students, get them to pay full sticker price, plug them into existing J.D. courses (i.e., no additional curricular expenditure), implement an explicit two-tier grading system (i.e., all LL.M. students receive high grades), and pass the LL.M. students so that they can either sit for an American bar exam or return home with a new and presumably valuable credential.

Workplace Prof, *Regulating LL.M. Programs*, LAW DEANS ON LEGAL EDUCATION BLOG (Mar. 14, 2015), <https://perma.cc/RS45-ESQH>. Some potential students also classify LL.M. programs in this way, as evidenced by this posting on an LL.M. online discussion board:

Cash cow ist so ziemlich jedes LL.M.-Programm einer namhaften Uni: Man kriegt eine Menge Leute in einem juristischen Studiengang unter (jedenfalls viel mehr als in einem naturwissenschaftlichen, wo man Laborinfrastruktur braucht), und diese Leute sind in aller Regel auch recht zahlungswillig. Also eine ideale Kombination für die Unis, hier ihr Prestige zu versilbern (wie das ja ganz ähnlich auch beim MBA läuft). (*Translation: Really, every LL.M. program at a well-known university is a cash cow: they admit a lot of people into a legal studies program (in fact, many more than in a natural sciences program, which requires laboratory facilities), and these people are, generally, also very willing to pay. Indeed, an ideal combination for the universities to silver-plate their prestige (as is also happening, quite similarly, with MBA programs)).*

"Schnitte," *Re: LLM Bewerbung USA/UK – Aussichten*, JURAWELT-FORUM (Apr. 16, 2018, 12:40pm), <https://perma.cc/DSH7-F8EU>.

apply and be accepted for admission, and for the student must complete the application process in a satisfactory and timely manner.⁵³

a. Pursuit of the Goal: Getting In, Getting There, and Getting Set Up

No matter how enthusiastically one contemplates and embraces the idea of studying overseas, the reality of the situation can test the patience and fortitude of even the most motivated student. The quantity of procedural hurdles to clear before they are actually sitting in a classroom at the host institution soon becomes painfully apparent when the student starts compiling their application materials.⁵⁴ Even at this early stage, students whose goal is to study abroad must get in the habit of setting up a plan, with defined milestones and realistic deadlines that accommodate potential confusion and difficulties over which they will have no control, to achieve their goal.⁵⁵ An important element of this planning process involves engaging in “mental contrasting,” in which a person with a goal “imagine(s) a desired future ... and then reflect(s) on the respective negative reality.”⁵⁶

Finishing the application and submitting it on time is the first test. For admitted students, additional procedures follow, requiring more planning and dealing with potential obstacles, including issues related to immigration, finances, travel, and setting up a household⁵⁷ in the host country. Although

⁵³ “(G)oals are understood and experienced as desirable future states that one intends to pursue through action adjudged as helpful or useful (hence constituting means) to goal attainment.” Arie W. Kruglanski & Catalina Kopetz, *What is So Special (and Nonspecial) About Goals?*, in THE PSYCHOLOGY OF GOALS 27, 40 (Gordon B. Moskowitz & Heidi Grant eds.) (2009).

⁵⁴ See, e.g., Harvard Law School, *LL.M. Application Deadlines and Materials*, <https://perma.cc/L622-VUVD>; University of Chicago Law School, *LL.M. Program: The Application Process*, <https://perma.cc/T9JR-UUX8>; NYU Law School, *Graduate Admissions*, <https://perma.cc/Q4R8-R5MH>.

⁵⁵ “Failing to prepare and plan for upcoming hindrances on the way toward achieving a desired future compromises one’s chances of success.” Gabriele Oettingen & Elizabeth J. Stephens, *Fantasies and Motivationally Intelligent Goal Setting*, in THE PSYCHOLOGY OF GOALS 153, 161 (Gordon B. Moskowitz & Heidi Grant eds.) (2009).

⁵⁶ *Id.* at 157. People who are working toward goals often seem to derive value in what is commonly known as a reality check, and the literature seems to support this phenomenon. It has been observed that mental contrasting, when used as a “metacognitive strategy” in striving toward large goals as well as engaging in everyday activities, has a number of positive effects, including “better time management, task effectiveness and reports of self-discipline.” *Id.* at 173.

⁵⁷ It is a fact of modern life that “setting up a household” in a foreign country has been made easier by technology. Finding a suitable place to rent overseas can now be done online, as I did before moving to Germany for my LL.M. year. I must have watched the video tour of my new apartment on the rental agency’s website 100 times before I left! I was much less anxious knowing that I would have a nice place to live when I arrived. Sojourners can also

there are temporary respites from the stress of dealing with these arrangements,⁵⁸ the reality is that there is an oppressive amount of detail-oriented pre-departure work involved in becoming a foreign student, which is felt especially keenly by those who are inexperienced in or uncomfortable with organizing an undertaking like this. However, a student who wants to make this goal a reality will find a way to do this, and develop organizational skills that will serve them well as foreign students along the way.

Upon arrival in the host country, there is often a full slate of orientation activities in which foreign students are expected to participate. That these events are organized by someone who is an expert in the lay of the land, and that all students have to do is show up on time and listen, can be a welcome change for people who have spent months organizing and planning alone.⁵⁹ This is also when foreign students meet each other and begin the process of making friends and establishing a local support network.⁶⁰ However, for the first time, every foreign student is faced with realities about their new situation that they were not prepared for. Specifically, this is when culture shock sets in.

research how to set up a bank account and mobile phone service before they even arrive in the host country, which can drastically reduce the legwork required to complete these tasks once they arrive and significantly lessen one's anxiety about moving somewhere new. However, having been a sojourner in the pre- and post-Internet eras, life was much simpler, at least in some ways, when a mobile phone with internet access was not a necessary accoutrement, and one's means of communicating with people at home were limited to occasional letters and weekly phone calls. It is much easier (and less expensive) to buy a stamp or use a phone box at the post office than to set up cell phone and internet service.

⁵⁸ For example, the flight can be an especially wonderful opportunity for a foreign student to quietly gather their thoughts and get some rest before arriving in the host country. The current trend toward installing wi-fi capabilities on airplane is one of the things I personally regret the most about modern life. Flights can be a bubble of internet-free calm and solitude in a world in which, increasingly, everyone can be reached all the time. Although I am not alone in feeling this way, wi-fi-less flights are, regrettably, likely to soon go the way of the dinosaur. See Paul Ewart, *Wi-Fi On Planes: 7 Reasons It's The Worst Idea Ever*, news.com.au (June 27, 2017), <https://perma.cc/2XG8-M8KQ>.

⁵⁹ Unfortunately, there were no official orientation events for LL.M. students at the University of Würzburg, so I was not able to take advantage of an opportunity to attend a formal program to learn about how the LL.M. year would work. I was fortunate, however, in that I had a dual life in Würzburg: I was not only an LL.M. student, but I was also an instructor in the law faculty's foreign law and languages program. This allowed me to join an existing team of people who were very familiar with how the university functioned, and they provided me with a lot of helpful advice and support.

⁶⁰ There were only three other students that I knew who were working toward LL.M. degrees during my year in Würzburg, and I was the only American among this group. However, we were not the only foreign (non-German) students studying at Würzburg's law faculty. Many European students take advantage of Erasmus Programme, a Europe-wide initiative which "allows for students to study at universities in the EU member states for set periods of time." ERASMUS PROGRAMME, WHAT IS THE ERASMUS PROGRAMME?, <https://perma.cc/3BUF-CRWU>. Again, I was fortunate because many of the Erasmus students did not speak German well enough to take German-language

b. Culture Shock

Culture shock is “the experience of those suddenly immersed in a culture very different from their own.”⁶¹ The use of the word “shock” in this context is deliberate: it has been incorporated into the language used to describe this phenomenon because this “inherently stressful life change” requires the person experiencing it “to be resilient, adapt, and develop coping strategies and tactics.”⁶² Culture shock can be triggered by many aspects of daily life as they assert themselves in a foreign culture: “new demands, new food, new language, new weather, new transportation, new philosophy, new harassments, and new pleasures, too(.)”⁶³ These demands occur at multiple levels, including “cognitive, behavioral, emotional, social, and physiological(.)”⁶⁴ When one experiences culture shock, they may feel that their home country is “dreadfully and painfully absent in its familiar cultural context.”⁶⁵

law classes; as courses I taught were all in English, I had many of them as students. This provided me with a perfect opportunity to get to know my fellow foreigners.

⁶¹ *Culture Shock*, in A DICTIONARY OF SOCIOLOGY (John Scott ed.) (4th online ed. 2015), <http://www.oxfordreference.com>.

⁶² Yuefang Zhou et al., *Theoretical Models of Culture Shock and Adaptation in International Students in Higher Education*, 33 J. HIGHER ED. 63, 65 (2008).

⁶³ Barbara Gallatin Anderson, *Adaptive Aspects of Culture Shock*, 73 AMERICAN ANTHROPOLOGIST 1121, 1123 (1971). Anderson’s article is a fascinating exploration of the effects of culture shock on a group of American anthropologists who go to India to do field work, because she includes an extensive discussion of the characteristics and unusual patterns of the group members’ dreams during the sojourn. *See id.* The framework of their dreams evolved in stages. *Id.* at 1122. In the early days of the sojourn, people dreamed about their own pasts and exotic places. *Id.* This was followed by a phase in which people dreamed about their loved ones, although interactions with them in the dream landscape occurred mainly at a distance. *Id.* Then, in the last phase, people reported dreams that took place in India and also featured their loved ones from home who had not made the trip. *Id.* Reading Anderson’s article, I wish that I had kept better track of my own dreams during my LL.M. year in Germany. They likely would have provided interesting clues in how I was dealing with culture shock.

⁶⁴ Raquel Faria Chapdelaine & Louise R. Alexitch, *Social Skills Difficulty: Model of Culture Shock for International Graduate Students*, 45 J. COLLEGE STUDENT DEV. 167, 168 (2004). The “cognitive” view of culture shock is based on the postulation that “cross-cultural adjustment depends upon individuals’ ability to make correct attributions about the cultural values, beliefs, behaviors, and norms of the new society.” *Id.* According to the “behavioral” view, however, “culture shock occurs because individuals do not know the systems of reward and punishment associated with verbal and nonverbal behaviors in the host culture.” *Id.* There is also a “phenomenological” school of culture shock, which posits that people experience it “because they can no longer use their own cultural references to convey and validate central aspects of their identity in the new culture.” *Id.* at 169. Finally, when culture shock is viewed in a “sociopsychological” way, it is seen as requiring “both (a) affective or psychological adjustment and (b) social adjustment,” which means that people experiencing culture shock not only feel isolated (psychological impact), but also have insufficient cultural knowledge and strongly identify with their own culture (social impact). *Id.*

⁶⁵ Anderson, *supra* note 63, at 1123.

Foreign students who study law in the United States may experience culture shock more than those in other academic disciplines. If they lack knowledge about the common law legal system and are unfamiliar with U.S. legal language and legal education, it can be difficult for them to “successfully negotiate a law school classroom and its requirements.”⁶⁶ Even if the law school requires non-native English speakers to get a high Test of English as a Foreign Language (TOEFL) score to be eligible for admission, this type of test cannot accurately assess one’s ability to deal with “the pace of spoken English in the classroom and with the informal English and cultural references” that U.S. law students hear and are expected to understand every day.⁶⁷

c. Acculturation

Acculturation is the “cultural change that results from continuous, first-hand contact between two distinct culture groups”⁶⁸ that can result in stress that causes both physical and mental difficulties for foreign students.⁶⁹ Acculturation is a highly personal process that is influenced by many variables, including “personality, language fluency, training and experience, acculturation strategies, values, and reasons for migration.”⁷⁰ The relative success of a foreign student’s adjustment to his or her new environment may also be influenced by certain demographic factors, such as age.⁷¹ Unfortunately,

⁶⁶ Spanbauer, *supra* note 1, at 416.

⁶⁷ *Id.* at 400; *see also* Adrian-Taylor et al., *supra* note 51, at 109 (“(I)nternational graduate students must recognize that an acceptable TOEFL score is not the only indicator of readiness or capability of having successful experiences of using English in graduate school.”).

⁶⁸ J.W. Berry, *Acculturation and Adaptation in New Society*, 30 INT’L MIGRATION 69 (1992).

⁶⁹ Acculturative stress can manifest itself in many ways, including “sleep and appetite disturbance, fatigue, headaches, increases in blood pressure, and gastrointestinal problems,” as well as “isolation, helplessness, hopelessness, sadness, feelings of loss, anger, disappointment, and a sense of inferiority.” Smith & Khawaja, *supra* note 51, at 706. Among foreign students who seek counseling, “(d)epression has been highlighted as one of the predominant complaints.” *Id.*

⁷⁰ Zhou et al., *supra* note 62, at 69.

⁷¹ Younger students, because they are more likely to possess “greater openness and flexibility,” may have an acculturation advantage over older students. Akhtar & Kröner-Herwig, *supra* note 72, at 804. However, the opposite could also be true: older students may have an easier time with this adjustment due to their maturity and “having acquired more coping skills over time.” *Id.* I have lived in Germany as a sojourner three times; my LL.M. year, at age 45, was much easier than the others. I handle the cognitive and emotional challenges better, and am much more self-aware and protective of my own needs for rest, exercise, and solitude. I also have a level of discipline that I did not have when I was younger, and find it much easier to plan and focus.

personal concerns related to family relationships, including marriage⁷² and parenting,⁷³ as well as immigration status,⁷⁴ and finances,⁷⁵ can leave foreign students with insufficient time or energy to address their acculturation challenges.

Situational characteristics, including "length of cultural contact, amount of intra- and inter-group contact, cultural distance, amount of life changes, and social support," can also affect the acculturation process.⁷⁶ For example, regarding intra-group contact, foreign students may perceive "a range of individual and social obstacles" when seeking social contact with domestic students,⁷⁷ and may decide to not even try interacting with them if they think it will be inconvenient or difficult.⁷⁸ This can impair successful acculturation, because contact with local students is an important source of "cross-cultural training" during one's study abroad experience.⁷⁹ Through these contacts, foreign students improve "their ability to cultivate individual agency," as well as develop "their new cultural environment and ... their spoken competence in English."⁸⁰

⁷² "Married international students ... (might) ha(ve) fewer adjustment problems than single students(, because) it seems that the social support of a partner can ameliorate the impact of stress." Mubeen Akhtar & Birgit Kröner-Herwig, *Acculturative Stress Among International Students in Context of Socio-Demographic Variables and Coping Styles*, 34 CURRENT PSYCH. 803, 804 (2015). My experience as a foreign LL.M. student was much easier because my husband was willing live apart for a year. He and I spoke nearly every day, and he was my primary source of emotional support.

⁷³ For parents of young children, earning an LL.M. may involve a larger group effort, with multiple relatives as stakeholders. This can, incidentally, provide certain advantages. As a U.S. law professor who works with LL.M. students observed, "Chinese women are increasingly enrolling in LL.M. programs to gain skills to offset the informal social connections of their male colleagues, advance the social mobility of their families, and increase their English skills Marriage and children did not deter these lawyers: their husbands encouraged their studies abroad and their parents stepped in to take care of their children." Lazarus-Black & Globokar, *supra* note 3, at 15.

⁷⁴ See *id.* at 18-21 (discussing the significant initial and ongoing immigration-related hurdles faced by foreigners who come to study in the United States, especially those imposed after the terrorist attacks of September 11, 2001).

⁷⁵ It has been found that "financial problems are experienced by the majority of international students, with contributing factors including work restrictions in the host country and greater tuition fees." Smith & Khawaja, *supra* note 51, at 704. According to a law school administrator who works with LL.M. students, in order to get a visa to study in the United States, a student must "prove that they could pay tuition, had \$10,000 to cover living expenses for the year, and had \$1,700 to pay for medical insurance and other incidentals." Lazarus-Black & Globokar, *supra* note 3, at 20.

⁷⁶ Zhou et al., *supra* note 62, at 69.

⁷⁷ See Yates & Wahid, *supra* note 50, at 1038.

⁷⁸ Chapdelaine & Alexitch, *supra* note 64, at 179.

⁷⁹ *Id.*

⁸⁰ Yates & Wahid, *supra* note 50, at 1039. These casual interactions are a vital component of the study abroad experience because "language learned in a formal class setting does not necessarily lead to cross-cultural

When all of these variables are put together, foreign students may experience long-term anxiety.⁸¹

This concern is especially acute for foreign students who have difficulties building and maintaining a support network.⁸² Ideally, this network includes both host country natives and non-natives,⁸³ and is most effective at alleviating anxiety and uncertainty if it includes at least one person with whom a deeper level of friendship, beyond being superficial acquaintances, has been established.⁸⁴

The bottom line is that every foreign student must establish their own sense of belongingness in the host country’s culture, since belonging is a “fundamental human motivation” that “influences a person’s emotional and cognitive patterns” and indicates resilience.⁸⁵ Establishing this sense of belongingness should not, however, rest entirely on the shoulders of foreign students themselves:

understanding and communicative competence.” Johanne Myles & Liying Cheng, *The Social and Cultural Life of Non-Native English Speaking International Graduate Students at a Canadian University*, 2 J. ENG. FOR ACAD. PURPOSES 247, 250 (2003).

⁸¹ The literature notes that empirical research related to how foreign students handle stress throughout the length of their experience abroad can be difficult to conduct because “identifying cooperative research participants, testing them before cross-cultural relocation, and following them through at least the first year of a sojourn are difficult undertakings.” WARD ET AL., *supra* note 46, at 82. However, there are studies that suggest that a student sojourner first experiences a positive mood and outlook, known as “entry euphoria,” that then diminishes as the challenges the student faces increase and the student’s coping skills and energy decrease, which is later followed by an upswing in mood and confidence as the student further adjusts. *Id.* at 80. In the sojourner literature, this is known as a U-curve adjustment model. *See id.* at 80-83.

⁸² In a study of more than 400 international students who “were examined in terms of the depression and anxiety levels they might experience as a result of their adjustment to living in the United States,” it was found that “social support … contributed significantly to the variance in anxiety.” Seda Sümer et al., *Predictors of Depression and Anxiety Among International Students*, 86 J. COUNSELING & DEV. 429, 434 (2008). Particularly, “students with lower levels of social support were more likely to have higher levels of anxiety, suggesting that higher levels of social support might enable international students to be more socially active and interact with people more often and, as a result, reduce (their) feelings of depression and anxiety.” *Id.*

⁸³ See Andy S.J. Ong & Colleen Ward, *The Construction and Validation of a Social Support Measure for Sojourners: The Index of Sojourn Social Support (ISSS) Scale*, 36 J. CROSS-CULTURAL PSYCH. 637, 656-57 (2005); Smith & Khawaja, *supra* note 51, at 707.

⁸⁴ It has been observed in the literature that people experience the least amount of anxiety and uncertainty in interpersonal communication with close friends regardless of their inherent cultural differences. *See* William B. Gudykunst & Robin B. Shapiro, *Communication in Everyday Interpersonal and Intergroup Encounters*, 20 INT’L J. INTERCULTURAL RELATIONS 19, 21, 25 (1996). Accordingly, “for intercultural differences to be overcome…close friendships must be formed.” *Id.* at 41.

⁸⁵ Chris R. Glass et al., *Uneven Experiences: The Impact of Student-Faculty Interactions on International Students’ Sense of Belonging*, 5 J. INT’L STUDENTS 353, 354-55, 362 (2015).

universities to employ a resilience-based educational framework that incorporates “strategies to enhance the sense of belongingness for all students, thus increasing the likelihood for cross-cultural interaction.”⁸⁶

That said, foreign students can help themselves by choosing their own acculturation strategy carefully. Assimilation strategies generally fall under two categories. Some students tend to choose more isolationist strategies, such as separation (the “maintenance of a traditional way of life outside full participation in the larger society”⁸⁷) or marginalization (when people “lose cultural and psychological contact with both their traditional culture and larger society”⁸⁸).

There are also acculturation strategies that focus more on inclusion. Of these, the most extreme negation of one’s home culture is assimilation, which involves “relinquishing one’s one cultural identity and moving into the larger society(.)”⁸⁹ Foreign students may choose this option, which by its nature involves “relinquishing essential aspects of the personal self” because they sense that they have something positive to gain by doing so.⁹⁰ However, any gains realized by employing this strategy are likely to be accompanied by inestimable losses of personal agency.

There is also a middle ground, referred to in the literature as integration, in which the student chooses to “retain cultural identity *and* move to join the dominant society(.)”⁹¹ Of the four integration strategies, integration makes the most sense for people who are interested in serving as a bridge between the two cultures, as it represents a “pull toward or longing for wholeness” that can benefit not just the

⁸⁶ *Id.* at 117. A 2014 study found that a foreign student’s sense of belonging can be positively influenced by whether he or she perceives that diversity is valued by the institution. Chris R. Glass & Christina M. Westmont, *Comparative Effects of Belongingness on the Academic Success and Cross-Cultural Interactions of Domestic and International Students*, 38 INT’L J. INTERCULTURAL RELATIONS 106, 115 (2014). The authors of this study discovered that, for international students, “discriminatory experiences exerted a negative direct effect on belongingness, and belongingness exerted a direct positive effect on academic success and cross-cultural interaction.” *Id.*

⁸⁷ Berry, *supra* note 68, at 72-73.

⁸⁸ *Id.* at 73.

⁸⁹ *Id.* at 72; see also Zhou et al., *supra* note 62, at 67 (“(A)ssimilation means that (sojourners) see themselves as high in host culture identification but low in home culture identification(.)”).

⁹⁰ Grover, *supra* note 45, at 422.

⁹¹ Berry, *supra* note 68, at 72; see also Zhou et al., *supra* note 62, at 67 (“Integration means that sojourners perceive themselves as high in both host and home culture identifications(.)”).

individual, but the society as a whole.⁹² However, even foreign students who choose integration must still deal with the difficulty of navigating between “two distinguishable phenomena: learning behaviors from the new culture; and shedding features of one’s original culture.”⁹³

Not everything about the acculturation process for foreign students is negative, however. Many foreign students are highly motivated, and arrive in the host country with an “understanding that they must adapt to our institutions, and are eager to do so.”⁹⁴ This can be a motivating, energizing factor for them, especially when culture shock is at its peak.⁹⁵ In addition, foreign students learn very quickly how to find information and follow directions. Applying for admission to a foreign university and completing the requirements to earn a degree involves jumping through so many procedural hoops that students have no choice but to develop their ability to navigate a process-based framework.⁹⁶ Furthermore, student sojourners invariably develop their adaptability and creativity during their time abroad. Eventually, successfully navigating situations that seem unclearly or insufficiently explained, of dubious necessity, or completely impossible becomes second nature, as opportunities to practice and hone these skills arise time and time again. Finally, and perhaps most importantly, foreign students must also be resilient in the face of perceived and actual defeats and failures. The ability to persist when situations get confusing, complicated, and demoralizing is definitely a necessary character trait of any foreign student whose goal is to successfully complete the program.

⁹² Grover, *supra* note 45, at 423.

⁹³ Berry, *supra* note 68, at 73-74.

⁹⁴ Mary Alice Ball & Molly Mahony, *Foreign Students, Libraries, and Culture*, 48 COLLEGE & RESEARCH LIBRARIES 160, 161 (1987).

⁹⁵ When I first arrived in Germany, I was quick to stock my (comparatively tiny) refrigerator with German groceries, to read German novels and newspapers, speak German with everyone, and to watch German TV shows. My strategy was to embrace the differences rather than to retreat from them, especially early on, when I had the energy and enthusiasm to do so. I also had not lived in Germany for several years, and I had missed it, so I was eager to wring as much German experience out of my time there as possible.

⁹⁶ German universities are highly regimented places, and I learned early on during my time as an LL.M. student to make lists of everything I needed to do, and to follow them to the letter. I was constantly terrified that I would miss a deadline and all of my hard work would go to waste. By the time I started research and writing my thesis in earnest toward the end of my year abroad, I had months of intense schedule-following under my belt, so it felt like second-nature to develop a plan for that final project and stick to it.

III. CONDUCTING RESEARCH IN THE ACADEMIC LAW LIBRARY: ACCULTURATION, WRIT SMALL?

In Germany, I was an LL.M. student and a legal language and substantive law instructor, so I did not have many opportunities to field research questions or provide legal research instruction like I do as a librarian.⁹⁷ I really missed the work, and looked forward to returning to the law library when my leave was over to apply what I had learned through this experience.

The American academic law library has unique cultural attributes that require foreign students to go through what amounts to an acculturation process before they can become effective researchers. According to both the literature⁹⁸ and my own experience as a librarian,⁹⁹ foreign students view library services as valuable and appreciate the library's instructional offerings. The best research instruction that we can provide to foreign students takes their acculturation experience into account, and reminds them that they already have skills they need to navigate the library and its collections successfully.

Why should academic law librarians care about this topic? In general, LL.M. program require the completion of a scholarly research paper or thesis. They may be expected to select, develop, and articulate a workable research topic, in addition to securing a faculty supervisor, relatively early in the academic year.¹⁰⁰ Then, the student will have to find and analyze print and electronic library materials

⁹⁷ Of course, as soon as people found out that I was a law librarian, they would ask me questions about American legal research. The law school subscribed to Westlaw, and I made sure my courses had research-focused elements because I wanted every student to learn how to use this database to find U.S. primary and secondary materials. My classes also included research exercises using U.S. government websites so that my students learned how to use free websites for research as well. Several students told me how grateful they were that my classes included practical research training for U.S. law.

⁹⁸ "International students tend to respond positively to library instruction. Research shows that it reduces anxiety and increases motivation to use library resources for this population." Amanda B. Click, *International Graduate Students in the United States: Research Processes and Challenges*, 40 LIB. & INFO. SCI. RESEARCH 153, 154 (2018).

⁹⁹ Throughout my career as a law librarian, I have been the most fortunate recipient of gratitude from many LL.M. students with whom I have worked. There are too many examples to list here. The important thing is that our services – our time, our support, our knowledge, and our caring – matter a great deal to these students. We provide real value to the law school in the work that we do with this population. That said, I am not willing to rest on the success I have had in the past in working with them. I consider it a professional responsibility and privilege to provide the best possible service to them in every transaction, and to never stop learning about ways that I can serve them better.

¹⁰⁰ Using Harvard Law School's procedure as an example, the deadline for LL.M students to find a faculty supervisor and submit an acceptable research proposal is generally in mid-October. As the HLS academic year

related to their topic, and use the information gleaned from this process to write their paper. Clearly, the library plays an integral role in their meeting this requirement.

a. The Culture of the Academic Law Library in the United States

An academic law library is, first and foremost, a library. A common cultural attribute of libraries is that they provide consistently quiet, safe, and comfortable spaces for people to work, along with access to, among other things, print books, electronic databases, printers, scanners, and the internet. In a law school, the types of “work” typically done in libraries include reading to prepare for class, outlining and studying for exams (including the bar exam), and researching and writing legal briefs and memos, seminar papers, and other scholarly works.

Another important cultural element of libraries is their staff. People who work in a library process library materials, manage library access, maintain the physical library facility, and answer questions and provide research assistance and instruction to library users. Those who do this work in an academic law library in the United States, especially those who provide research or reference services, are very willing and highly qualified to offer these services.¹⁰¹ This can represent a significant cultural shift for foreign LL.M. students, whose experience in their home jurisdictions may have been that librarians were too busy¹⁰² or underqualified¹⁰³ to provide meaningful research assistance. They also may

begins in early September, this means they only have about six weeks to accomplish this, while at the same point adjusting to their classes and getting their reading done.

¹⁰¹ More often than not, an academic law librarian in the United States, especially one working in a public services setting, will have both a master’s degree in library science and an American law degree. See Jennifer Allison, *Law Librarianship*, in *MASTERING SUBJECT SPECIALTIES: PRACTICAL ADVICE FROM THE FIELD* 57, 62-63 (Karen Sobel ed., 2016). Additionally, librarians in American law libraries are expected to be skilled in “legal research, legal bibliography, the organization of legal materials, (and) law library administration.” American Association of Law Libraries, *Become a Legal Information Professional: What Are the Educational Requirements to be a Law Librarian?*, <https://perma.cc/CTK6-PDL2>. It is also assumed that they have “knowledge of legal information systems,” and “a good foundation in technology,” including familiarity with legal databases. *Id.*

¹⁰² The staff of the academic law library at the University of Würzburg includes only one professional librarian, who serves as both the only reference librarian (*Fachreferent*) and the director of the library. Universität Würzburg, *Teilbibliothek Recht: Beschäftigte der Teilbibliothek*, <https://perma.cc/YJF4-FE76>. This staffing configuration is typical for academic law libraries throughout Germany.

¹⁰³ Rachel Fleming-May & Lisa Yuro, *From Student to Scholar: The Academic Library and Social Sciences PhD Students’ Transformation*, 9 LIBRARIES & THE ACADEMY 199, 212 (2009)

have internalized a cultural message, common among foreign graduate students in the United States, that asking a librarian for help is just not done.¹⁰⁴

Foreign LL.M. students in the United States, therefore, must become acculturated with regards to the library, and be informed that there are qualified librarians working there who are available to provide research assistance and instruction. Prior to the start of the academic year, the law library should offer library tours, led by reference and public services librarians, that are specifically oriented toward LL.M. students. It is important that these tours are brief, feature relatively simple language, and only convey the most necessary information.¹⁰⁵

Post-orientation law library programming for LL.M. students can be much richer. As they settle into their life as law students, their needs become more significant and complex. Academic law libraries should, therefore, develop a robust offering of synchronous and asynchronous services geared toward foreign LL.M. students and their research interests and needs, including library training courses,¹⁰⁶ research guides,¹⁰⁷ and personal research consultation meetings.

¹⁰⁴ It has been observed that, in the graduate education research culture in U.S. universities, students tend to consult with professors and colleagues for research assistance before they will turn to librarians. *Id.* at 211.

¹⁰⁵ Based on my own experience and that of observing others, foreign students who have just arrived in a new host country, especially if they are not native speakers of the language, are overwhelmed and exhausted during orientation. They are subjected to constant lectures and information in a foreign language, and they may be having a hard time getting enough rest due to jet lag, concerns about their living arrangements, lack of familiar food, too little exercise and fresh air, and too much caffeine. They do not need all of the information about the library during this tour. They will benefit most from knowing where they can sit quietly, where they can find the bathroom, and that, when they are ready, the librarians will be happy to meet with them and answer their questions. See Megan Hodge, "*The Library is Very Huge and Beautiful*": A Library Orientation for English Language Learners, in PLANNING ACADEMIC LIBRARY ORIENTATIONS 195 (Kylie Bailin et al. eds., 2018) (noting that it is critical to keep library tours for foreign students during orientation short because "30-60 minutes of lecture is often too long for even native English speakers to maintain interest and engagement, and it is even more difficult for students still learning the language.").

¹⁰⁶ See, e.g., Jennifer Allison, *Harvard Law School Library Research Guide: LLM HOLLIS Training – Fall 2018*, <https://perma.cc/82GS-EVJD>; Jennifer Allison, *Harvard Law School Library Research Guide: Bluebook Citation for LLM Students*, <https://perma.cc/5H6T-3LUR>; Jennifer Allison, *Harvard Law School Library Research Guide: Zotero Training for LLM & SJD Students*, <https://perma.cc/QX9B-4TP2>.

¹⁰⁷ See, e.g., Jennifer Allison & Stephen Wiles, *Harvard Law School Library Research Guide: LLM Paper Research – Getting Started*, <https://perma.cc/8APG-6V4D>; Stephen Wiles, *Harvard Law School Library Research Guide: Finding a Paper Topic*, <https://perma.cc/8DV7-T7SG>; Jennifer Allison, *Harvard Law School Library Research Guide: Constitutional & Administrative Law LLM Long Paper Writing Group*, <https://perma.cc/BQX3-HF8Z>.

The scholarly literature on librarianship provides a wealth of information to consider in designing these offerings, much of which can be adapted to meet the specific needs, goals, strengths, and challenges of foreign LL.M. students. Three aspects of research instruction that are especially relevant for foreign LL.M. students are discussed in the sections that follow: information literacy, formulating a research plan, and practicing contextual information analysis.

b. Law Libraries and “Information Literacy” Instruction

Perhaps no topic is more explored in the library and information science literature than information literacy.¹⁰⁸ This concept has evolved significantly since it first appeared in the 1970s, where it was characterized simply as having the skills to find information.¹⁰⁹ As technological advances made it easier to access a lot more information, there was a shift in the literature¹¹⁰ toward an understanding of the several skills that information literate people have: not only can they readily recognize that they have an information need, but they also have the skills to develop a research strategy and to use tools to find information.¹¹¹ Information literate people were also seen to have acquired certain “attitudes,” including “persistence, attention to detail, and caution in accepting printed word and single sources.”¹¹²

Information literacy skills also came to be seen as an integral part of the higher education process.¹¹³ Libraries, by providing a “meaningful framework” of cross-disciplinary knowledge, are uniquely situated to instruct students on “synthesizing specialized knowledge into broader societal

¹⁰⁸ In late January 2019, a Google Scholar search of the term “information literacy” returned “about 168,000 results,” over 500 of which were published in 2019 alone.

¹⁰⁹ One of the earliest appearances of this term was in a 1974 paper by Paul Zurkowski, which defined information literate people as those who are “trained in the application of information resources to their work” and who have “learned techniques and skills for utilizing the wide range of information tools as well as primary sources in molding information solutions to their problems.” PAUL G. ZURKOWSKI, NAT’L COMM. ON LIBRARIES & INFO. SCI., THE INFORMATION SERVICE ENVIRONMENT RELATIONSHIPS AND PRIORITIES: RELATED PAPER NO. 5, at 6 (Nov. 1974), <https://perma.cc/6U52-2D9M>. This characterization of information literacy – simply as having the skills to find information – was common in the literature throughout the 1970s. See Shirley J. Behrens, *A Conceptual Analysis and Historical Overview of Information Literacy*, 55 COLLEGE & RESEARCH LIB. 309, 309-11 (1994).

¹¹⁰ See Behrens, *supra* note 109, at 311-319.

¹¹¹ *Id.* at 312.

¹¹² *Id.* (quoting WILLIAM DEMO, THE IDEA OF INFORMATION LITERACY IN THE AGE OF HIGH-TECH 13-14 (1986)).

¹¹³ *Id.* at 313-317.

contexts.”¹¹⁴ Accordingly, when information literacy instruction is offered by librarians through the library, students are more likely to complete their formal education with the skills and cognitive development they need to be lifelong learners.¹¹⁵

There are several frameworks for user-focused, process-based information literacy instruction. Among them, a common theme has emerged: librarians have a responsibility to offer research instruction that focuses on “four fundamental processes that enable the skilled use of information tools: planning, accessing, judging, and communicating.”¹¹⁶ This is especially significant when it comes to research instruction for foreign LL.M. students – if they must complete a scholarly paper or thesis in order to graduate, they must master all four of these processes.

c. The Research Process: Following a Plan that Accommodates Uncertainty

Carol Collier Kuhlthau’s 2003 book, *Seeking Meaning: A Process Approach to Library and Information Sciences*, is based on the premise that there is “convincing evidence that information seeking is an intellectual process.”¹¹⁷ The library must shift away from the facilitation of locating resources and toward maximizing researcher efficacy, which can be done by focusing on “users’ tasks, problems, and processes in information gathering,”¹¹⁸ and viewing information seeking as a “constructive” process.¹¹⁹

¹¹⁴ *Id.* at 315 (quoting PATRICIA S. BREIVIK & E. GORDON GEE, INFORMATION LITERACY: REVOLUTION IN THE LIBRARY (1989)).

¹¹⁵ *Id.* at 313. Despite the fact that, in university setting, librarians are more than willing to offer information literacy instruction, because they are not professors, they lack access to formal instructional opportunities in which credits can be given and student attendance can be encouraged. See Sheila Webber & Bill Johnston, *Conceptions of Information Literacy: New Perspectives and Implications*, 26 J. INFO. SCI. 381, 384 (2000). This may result in information literacy instruction efforts that “fail to engage the student at anything but the most superficial level.” *Id.* at 385.

¹¹⁶ Catherine L. Smith & Miriam L. Matteson, *Information Literacy in the Age of Machines that Learn: Desiderata for Machines that Teach*, 68 LIBRI 71, 73 (2018).

¹¹⁷ CAROL COLLIER KUHLTHAU, *SEEKING MEANING,:* A PROCESS APPROACH TO LIBRARY AND INFORMATION SERVICES 1-2 (2nd ed 2004).

¹¹⁸ *Id.* at 3.

¹¹⁹ *Id.* at 5.

To explore this concept, Kuhlthau turned to psychotherapist George Kelly’s Personal Construct Theory (PCT),¹²⁰ which is based on creating constructs, or “patterns that one formulates to make sense of the world.”¹²¹ Creating a new construct occurs in a series of phases, including doubt, hypothesis formulation, assessment, and assimilation.¹²² When a researcher experiences uncertainty as they find and absorb new information,¹²³ it creates a “turning point in the process of construction.”¹²⁴ At this point, the researcher may “choose to reject the new idea(, or) … formulate a hypothesis to move the investigation of the idea toward assimilation.”¹²⁵

The constructive research process is the foundation of Kuhlthau’s Information Search Process (ISP) research framework,¹²⁶ which “articulates a holistic view of information seeking from the user’s perspective in six stages.”¹²⁷

1. During stage one, *initiation*, the researcher “becomes aware of a lack of knowledge or understanding.”¹²⁸
2. This is followed by the *selection* stage, in which the researcher identifies “a general area, topic, or problem(.)”¹²⁹

¹²⁰ *Id.* at 17-20. Kelly developed his Personal Construct Theory based on his belief that, in psychotherapy, “(n)either the client (n)o the therapist has to lie down and let facts crawl over him.” George A. Kelly, *Personal Construct Theory and the Psychotherapeutic Interview*, 1 COGNITIVE THERAPY & RESEARCH 355, 358 (1977). Instead, Kelly contends that “(w)hatever exists can be reconstrued” and that present constructions are neither “perfect” nor “final.” *Id.* Kelly describes how, in psychotherapy, a client can undergo an “(a)lteration or replacement of constructs,” a process that requires “a loosening of the client’s constructions” through a “creative kind of effort.” *Id.* at 362. Kelly characterizes this process as a “cycle,” with a “second phase … involv(ing) tightening and validation of the newly placed or newly formed constructs.” *Id.*

¹²¹ KUHLTHAU, *supra* note 117, at 17.

¹²² *Id.* at 19. Helpfully, at least within the context of research instruction for foreign LL.M. students, this is not unlike the acculturation process by which foreigners assess a cultural paradigm and then work to carve out a place for themselves in it. *See supra* notes 68-95 and accompanying text.

¹²³ KUHLTHAU, *supra* note 117, at 92.

¹²⁴ *Id.* at 18.

¹²⁵ *Id.*

¹²⁶ Carol C. Kuhlthau, *From Information to Meaning: Confronting Challenges of the Twenty-First Century*, 58 LIBRI 66 (2008).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

3. During stage three, *exploration*, the researcher first encounters information that may be “inconsistent (and) incompatible” with what they initially thought they would find.¹³⁰
4. Because of this, the *formulation* stage requires the researcher to process these inconsistencies and incompatibilities and form a “focused perspective” about the research problem.¹³¹
5. Stage five is *collection*, during which the researcher gathers “information pertinent to the focused perspective” and has a second opportunity to both access and judge new information.¹³²
6. Finally, in the *presentation* stage, the researcher has acquired “a new understanding” and is able to “explain his or her learning to others or in some way put the learning to use.”¹³³

Having a research plan with a strategy for dealing with uncertainty is “central to the model of the ISP.”¹³⁴ Researchers who are not prepared to deal with “incompatible, inconsistent information” discovered during research may experience “heighten(ed) anxiety and frustration, perhaps to the point of quitting,”¹³⁵ which Kuhlthau refers to as being “in the dip.”¹³⁶ Foreign LL.M. students, of course, already have experience dealing with uncertainty caused by confusing incoming information – they started doing this the first day they showed up in the United States, if not sooner. They have probably already been “in

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Kuhlthau, *supra* note 126, at 67.

¹³³ *Id.*

¹³⁴ *Id.* at 68.

¹³⁵ *Id.* In the psychology literature, planning is cited as a necessary exercise toward the achievement of goals, because it gives one a framework for action when the path toward the goal becomes difficult. “Planning helps to alleviate critical volitional problems of goal achievement, such as being too easily distracted from a goal pursuit or giving up in the face of difficulties when increased effort and persistence are needed instead.” Peter M. Gollwitzer, *The Volitional Benefits of Planning*, in *THE PSYCHOLOGY OF ACTION: LINKING COGNITION AND MOTIVATION TO BEHAVIOR* (PETER M. GOLLWITZER & JOHN A. BARGH EDS.) 287, 287 (1996); *see also* Oettingen & Stephens, *supra* note 55.

¹³⁶ Kuhlthau, *supra* note 126, at 68. During this phase, unfortunately, researcher uncertainty is exacerbated, rather than alleviated, by the massive amount of information easily available through the internet, paid subscription databases, and print books. *Id.* The literature on information overload supports this contention. *See, e.g.,* SIVA VAIDHYANATHAN, *THE GOOGLIZATION OF EVERYTHING (AND WHY WE SHOULD WORRY)* 175 (2011) (“Too much unprocessed information interferes with the generation and utility of knowledge: it can generate anxiety, wasted effort, and paralysis.”).

the dip" that is created by culture shock at least once and likely have a strategy and process in place for working through confusion and developing a construct that allows them to make sense of the situation.¹³⁷

Librarians can frame uncertainty as something positive and beneficial. In her 2015 book, *The Cunning of Uncertainty*, social scientist Helga Nowotny stated unequivocally that uncertainty is an unavoidable part of any research process,¹³⁸ and can act as a valuable reality check by inviting us to critically examine our personal world view, and how we use it to make sense of a situation, with a fresh perspective.¹³⁹ Uncertainty can motivate people to increase their knowledge, but it can have the quality of a "double-edged sword(,)" that is "exciting for some (and) feels threatening to others."¹⁴⁰ Nowotny, like Kuhlthau, suggests coping with uncertainty by "proceed(ing) step-wise, in ordered sequences(.)"¹⁴¹ These steps should include an early "exploration" phase of research, in which "there is ample room for the imagination, wild speculations, reiteration, (and) failure(.)"¹⁴²

Experiencing, confronting, and working through uncertainty is also viewed as a beneficial learning methodology in the experiential legal education literature. Law school provides many opportunities for students to experience "(d)isorienting moments" that they feel ill-equipped to cope with or make sense of.¹⁴³ The literature suggests that, in this situation, it can be helpful for the student to engage in "a cycle of planning, doing, and reflecting."¹⁴⁴

¹³⁷ See *supra* notes 61-67 and accompanying text.

¹³⁸ HELGA NOWOTNY, THE CUNNING OF UNCERTAINTY 115 (2015). As an interesting side note, I found this book, which is classified with a "BC" (Logic) call number in the Library of Congress Call Number System, while I was browsing the stacks at Harvard's Widener Library, heading in the direction of the "BF" (Psychology) books about acculturation. I consider myself lucky that I happened to make this discovery, as I found Nowotny's book to be one of the most compelling books I have read in a long time. As more and more libraries experience space constraints that require the removal of books to offsite storage that is closed to the public, it is my guess that these types of serendipitous discoveries by researchers will happen less and less frequently. While this is a reality of modern libraries, it is also too bad. This also serves as testimony of the value to law librarians of getting out of the "K" (Law) call number range every once in a while, and exploring what else the library has to offer.

¹³⁹ *Id.* at 36.

¹⁴⁰ *Id.* at vi.

¹⁴¹ *Id.* at 155.

¹⁴² *Id.* at 155-56.

¹⁴³ Brooks, *supra* note 34, at 422.

¹⁴⁴ *Id.*

When working with foreign LL.M. students, librarians should emphasize the value of formulating and following a research plan, which may be like the plan the student developed and used when they were applying for admission to the LL.M. program and completing their pre-matriculation administrative tasks. The plan should provide a series of steps to progress through the project, and should accommodate the inevitable uncertainty and confusion the student will experience during the research process.¹⁴⁵

d. The Research Process: Contextual, Intersubjective Information Processing

Just having a research plan that accommodates researcher uncertainty is not enough to ensure that a foreign LL.M. student will complete their major research paper or thesis well. The student will likely require additional instruction on how to process the information that they discover during their research in light of the unique contextual variables that they bring to the project.

In his 2014 book *Radical Information Literacy*,¹⁴⁶ Andrew Whitworth acknowledges that information can be viewed as “a mere property, transmitted via a network or system.”¹⁴⁷ However, he argues that, in the information literacy sense, information is learned, processed, and developed by the recipient, who uses it as bridge toward greater understanding.¹⁴⁸ This means that “by contextualising, through active cognitive work at a particular place and time,” raw data becomes information and, eventually, knowledge.¹⁴⁹ Whitworth calls this phenomenon “intersubjectivity,”¹⁵⁰ which is a principle

¹⁴⁵ Kuhlthau frames this research methodology as a “Guided Inquiry” approach, in which researchers are encouraged to “think of inquiry as a journey and that they need to find a trail through the information.” Kuhlthau, *supra* note 126, at 72.

¹⁴⁶ ANDREW WHITWORTH, RADICAL INFORMATION LITERACY: RECLAIMING THE POLITICAL HEART OF THE IL MOVEMENT (2014). Whitworth’s book includes some interesting ideas about how information literacy should become more radicalized than I had not considered before. In reading the book, I take his idea of “radicalization” to mean that the current hierarchical information structure, in which institutions of higher education exert hegemonic power and control over information, should be restructured so that individuals in their capacity as members of a collective or a community can exercise more authority over information than they currently do. While I appreciate that Whitworth’s idea probably has some relevance in the context of this Article and in terms of my role as a research librarian in an institute of higher education, any discussion of that aspect of Whitworth’s work is beyond this Article’s intended scope.

¹⁴⁷ *Id.* at 11.

¹⁴⁸ See *id.* at 11-12.

¹⁴⁹ *Id.* at 11.

¹⁵⁰ *Id.* at 12-13.

that can be found in many social science disciplines.¹⁵¹ At the heart of this concept is subjectivity, or the idea that one constructs reality based on his or her own view of the world.¹⁵² Then, as the person encounters the subjective views of others, he or she processes new information and creates an intersubjective sense of reality, which is a phenomenon known as "social constructionism."¹⁵³

In phenomenological sociology, intersubjectivity is used as an expression of how a community, through shared processing of its members' subjective experiences, comes to an agreement about what is real and known.¹⁵⁴ According to Whitworth, this concept has particular applicability in an information literacy context: the community is "collective" in which "collective matrices of interpretation" are established.¹⁵⁵ These matrices provide the collective's members with "(an) essential tool() for making judgments about information."¹⁵⁶

The idea that each of us has a collection of information-processing matrices, developed through our interactions with our communities throughout our lives, is helpful to consider when working with foreign LL.M. students. From the moment they arrive in the host country, they continue to build upon

¹⁵¹ Intersubjectivist theories can be found in philosophy, sociology, psychology (especially psychoanalysis), pastoral theology, and the psychology of religion. Pamela Cooper-White, *Intersubjectivity*, in *ENCYCLOPEDIA OF PHILOSOPHY AND RELIGION* (DAVID A. LEMMING ED.) (2014 ed.), <https://link.springer.com>. There is also discussion of intersubjectivity, in connection with "the security of the referential common ground," in the linguistics literature. John Heritage, *Intersubjectivity and Progressivity in Person (and Place) Reference*, in *PERSON REFERENCE IN INTERACTION: LINGUISTIC, CULTURAL, AND SOCIAL PERSPECTIVES* 255, 261 (2007). In this context, intersubjectivity is when two people who are having a conversation are, in essence, on the same page in terms of knowing who or what is being referred to, or "recognitional reference." See *id.* at 259-61.

¹⁵² Subjectivity is "the perception or experience of reality from within one's own perspective (both conscious and unconscious) and necessarily limited by the boundary or horizon of one's own worldview." Cooper-White, *supra* note 151.

¹⁵³ Cooper-White, *supra* note 151.

¹⁵⁴ *Intersubjectivity*, in *A DICTIONARY OF SOCIOLOGY* (JOHN SCOTT, ED.) (4th online ed. 2015), <http://www.oxfordreference.com>. An early 20th century mathematician, Edmund Husserl, developed phenomenology as a way of exploring how consciousness "bring(s) together typical and enduring elements in the stream of experience, build(s) up typical models of things and people, and build(s) a shared social world." *Phenomenology (Phenomenological Sociology)*, in *A DICTIONARY OF SOCIOLOGY* (JOHN SCOTT ED.) (4th online ed. 2015), <https://www.oxfordreference.com>. What has come to be understood as intersubjectivity is key to phenomenological theory because it enables "a view of the world arrived at through mutual confirmation and negotiation between different and independent perspectives" and a "reciprocity of individual perspectives and an interchangeability of individual standpoints." NICK CROSSLEY, *INTERSUBJECTIVITY: THE FABRIC OF SOCIAL BECOMING* 3 (1996).

¹⁵⁵ WHITWORTH, *supra* note 146, at 15-16.

¹⁵⁶ *Id.* at 17.

their pre-existing information-processing matrices, which have been developed as citizens, students, and lawyers in their home jurisdictions. The information-processing matrices of foreign LL.M. students are unique in the context of a U.S. legal education environment, and optimized to explore a new, more complex version of reality. This makes foreign LL.M. students uniquely situated to develop a rich, intersubjective view of the information that they discover during their research.¹⁵⁷

How can the concept of intersubjectivity be incorporated into research instruction? An information literacy instructional framework that was developed in 2006 by Christine Bruce, Sylvia Edwards, and Mandy Lupton: *The Six Frames for Information Literacy Education*,¹⁵⁸ accomplishes this very well. Each of the six frames in this framework (content, competency, learning to learn, personal relevance, social impact, and relational) reflects a “particular view” of information literacy, and indicates how its respective view can affect information literacy instruction methodology.¹⁵⁹

Of these six frames, the relational frame appears to best incorporate Whitworth’s ideas about information processing. This frame goes beyond merely finding information, or developing specific information literacy skills, and instead encourages librarians to approach research instruction according to a holistic understanding of the researcher’s needs and goals, thereby “enabl(ing) students to develop more complex understandings” of the information discovered during research.¹⁶⁰

¹⁵⁷ I definitely found this to be the case while I was researching my own LL.M. thesis, particularly when it came to the State Action Doctrine. *See generally* Allison, *supra* note 13. Based on what I had learned in law school and my own American sensibility, I had internalized the idea that binding private actors to protect individual rights was probably not a good idea because it was too great an infringement on personal freedom, which I had viewed as a basic principle of American law. However, the U.S. Constitution lacks a provision that provides that human dignity is inviolable, whereas this principle is codified in Article 1 of the German Basic Law. This caused me to look at the State Action Doctrine in a new light, and to consider the idea that, perhaps, guaranteeing that protection for individual rights like human dignity may be more important than protecting personal freedom, and that, at least, a balancing test could be employed to determine when protection of personal freedom had, perhaps, gone too far, and created an unacceptable injury to individual rights. As with many areas of law, there is a lot of gray area here to explore. Now that I have both a German and an American perspective on this doctrine, I hold a much more nuanced view of it than I did in the past.

¹⁵⁸ Christine Bruce et al., *Six Frames for Information Literacy Education: A Conceptual Framework for Interpreting the Relationships Between Theory and Practice*, 5 INNOVATION IN TEACHING & LEARNING IN INFO. & COMP. SCI. 1 (2006).

¹⁵⁹ *Id.* at 3.

¹⁶⁰ *Id.* at 6.

Bruce, Edwards, and Lupton define the relational frame as follows:

View of information literacy	Information literacy is a complex of different ways of interacting with information.
View of information	Information may be experienced as objective, subjective, or transformational.
Curriculum focus	Bringing about awareness of the critical ways of seeing or experiencing.
View of teaching and learning	Teachers bring about particular ways of seeing specific phenomena, learning is coming to see the world differently.
View of content	Examples selected to help students discover new ways of seeing. Critical phenomena for learning must be identified.
Assessment	Designed to reveal ways of experiencing.

*Table 1: Bruce, Edwards, and Lupton's Relational Frame for Information Literacy Instruction*¹⁶¹

A librarian who provides research instruction to foreign LL.M. students may, therefore, want to consider introducing an additional element to the research process: encouraging the use of an intersubjective methodology to analyze the material found to determine its contextual value.¹⁶² This can show the researcher that they are a single point in a contextual continuum: the information was created according to a certain subjective viewpoint, and their role is to process and use that information according

¹⁶¹ *Id.* at 4-5.

¹⁶² A useful way to think about context as it relates to scholarly research is as a framework that includes "inherently relational" subjective and objective variables that influence how a researcher processes information discovered during research. See NARESH KUMAR AGARWAL, EXPLORING CONTEXT IN INFORMATION BEHAVIOR: SEEKER, SITUATION, SURROUNDINGS, AND SHARED IDENTITIES 81 (2018) (Synthesis Lectures on Information Concepts, Retrieval, and Services #61). Criticism of the viewpoint that context simply is the container or environment in which the researcher is located is characterized, effectively, as too easy: "When faced with the difficulty of understanding the full nuances of a person's context when engaged in information behavior, we tend to substitute it with the easier answer of a container or environment surrounding the actor." *Id.* Instead, environment can be viewed as one of many types of contexts in which the researcher processes information, with other types being:

(C)ontext as setting, context as role, context situation, context as actor's mind, context as information horizon/field and pathways, context as constraints, context as life world/information world, context as common ground and ordinariness, context as discourse, context as information ground, context as assigned meanings during interactions, contexts as proximity and relevance, context as time, place, embodiment and portability, and context as legacy and determinant.

Id. at 21. In expanding on each of these types, Agarwal cites studies that provide examples of how they came to be defined and developed. See *id.* at 9-18.

to their own intersubjective perspective. Doing this will help the researcher remember the value of their unique perspective in the creation of knowledge.¹⁶³

Therefore, the librarian should work with the student to ensure that they not only have a firm understanding of the context in which they are processing information, but are also prepared for context to change and evolve during the research process. If this results in researcher uncertainty, the librarian recommend that the researcher employ mechanisms for dealing with uncertainty that were helpful to them when they first arrived and were engaged in the acculturation process. The librarian can also remind the researchers that uncertainty can be positive because it encourages creative thinking and critical exploration of one's own worldview. Finally, the librarian can observe that, when the researcher "formulat(es) ... a focus or a personal perspective of the topic" their emotional state will "change from vague to clear" and their interest in seeing the research project through will increase.¹⁶⁴

CONCLUSION: PRACTICAL ADVICE FOR STUDENTS

Academic law librarians have a lot of knowledge and skills to offer to foreign LL.M. students. We can teach them how to navigate the library, how to use the library catalog and electronic databases to find information, how to organize the articles and books that they find, and how to cite them the American way in their papers. We can offer classes and provide one-on-one private research consultation meetings. All of these service offerings can help empower our foreign LL.M. students to write great research papers, and this is really important.

¹⁶³ Whitworth suggests that information literacy can only be established by considering multiple contextual viewpoints: "An information literate person is not only competent at retrieving information, but is also able to understand possible variations between the context in which the information was produced and the context in which it must subsequently be understood and used." WHITWORTH, *supra* note 146, at 73. This definition of information literacy incorporates Whitworth's understanding of a hermeneutic inquiry into the information landscape. *See id.* at 74-75. Whitworth defines hermeneutics as "a research approach which seeks to understand a text and its interpretation as a single whole, building bridges between the intentions and perceptions of both author and reader, thus investigating variation in how texts are interpreted." *Id.* at 75.

¹⁶⁴ Kuhlthau, *supra* note 126, at 67.

However, there is also a broader pedagogical goal at play here. Information literate people know how to plan and conduct a research project from beginning to end. To do this successfully, they must be aware of and incorporate their own unique skills, experience, strengths, and challenges into the process. We can help them do this. To conclude, I offer the following seven practical suggestions for foreign LL.M. students that can be incorporated into a research instructional plan designed to serve them.

**Completing Your LL.M. Research Paper or Thesis As Painlessly As Possible:
7 Suggestions from the Law Library**

1. Inform yourself about what the requirements of the project are as soon as you can, so that you have the time you need to get everything done.
2. Develop a workable strategy for meeting your goal of completing this research project by realistically assessing the work that needs to be done, the time in which you have to do it, and the challenges that you think you might face along the way.
3. Set up a process-based research plan, broken down into multiple tasks. Check off each task as you finish it so that you have a record of your accomplishments.
4. That said, the research process will not go perfectly smoothly from beginning to end, because that is not how research (or, as you know, life) works. Expect that you will find things that make you feel uncertain and confused, and make sure your research plan includes the time and strategies you need to deal with this. You might even need to go back and re-do research tasks that you'd thought you'd finished as you learn more about your topic. This is normal and OK. Just make sure you plan for it.
5. Make sure that your information needs are met. Although you can ask anyone for advice about finding information, teaching you how to do research for an LL.M. thesis is what librarians in a law library do better than anyone. Plus, we like students and want to help them.
6. Your combined experience in your home jurisdiction and here at our law school has created in you a unique ability to think more richly and deeply about your topic than anyone else. Make sure that your research plan includes enough time to process the information based on everything you know from before, and everything you have learned since coming here. Your job is to develop your own contextual understanding of your topic such that you can communicate it effectively in your final paper. Your contribution to the knowledge about your topic is important!
7. Design your research plan so that you have enough time to research and write and do everything else you need to do: read for your classes, eat, exercise, socialize, and rest. It is not easy to be a foreign student, and you need to make sure that you are taking good care of yourself.