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Letters to the Editor [comments]

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To the Editors,

The five articles on “Dealing with Difference” in the Fall, 1997 issue of the *Review* make insightful and thought-provoking contributions on this crucial issue. The authors’ insights, however, naturally raise fresh questions, and I would like to pose one of these: what is the role of “objectivity” in lawyering that is sensitive to difference?

I don’t want to defend the model of the lawyer as all-knowing-expert-without-a-point-of-view; we aren’t all-knowing and we have plenty of points of view that need examination and re-examination, as these articles demonstrate. We certainly need to challenge our own assumptions, and to listen, and listen sensitively, to our clients’ perspectives.

But we need to do more than that as well. Isn’t listening well partly a matter of connection, and also partly a matter of distance? When a client fiercely asserts a particular point of view, for example, don’t we have some reason to wonder, even as we seek to understand the client’s own words, whether the intensity of the client’s expression masks some inner doubts on the client’s part? Similarly, when a client’s story departs sharply from our “common sense,” we surely need to consider whether our common sense is deceiving us—but don’t we also need to entertain the possibility that the parts of the client’s account that trouble us really are troublesome, and point to some omission, or distortion, or misjudgment by the client? (The role of “common sense” was an important topic in my small group in Portland this spring.) So, too, when we counsel a client, isn’t it important for us to be able to gauge, as well as possible, whether the client’s perspective will make sense to others empowered to judge it? And if lawyers are legitimately counselors about moral as well as legal considerations, don’t we need the ability to disengage from a client—even a client who passionately justifies her position in the context of a life of much suffering and victimization—enough to consider whether she may be taking an unfair position herself?

None of this, it seems to me, is inconsistent with recognizing the importance of dealing with difference. But I think these considerations do suggest that lawyers need to combine sensitivity to their clients with an ability to evaluate their clients’ words, and their clients’ prospects, with a measure of independence and objectivity. If that is right, then we as clinical teachers face further challenges besides the task of heightening our own, and our students’, sensitivity to differ-

ence: we need to articulate how lawyers can combine the virtues of sensitivity and objectivity (and work towards this balance in our own teaching and lawyering), and we need to figure out how to teach students ways to find this balance for themselves. How should we respond to these challenges?

These questions are prompted by what the authors of the articles on “dealing with difference” have already written, and their articles suggest some of their views on these matters, but I would be very interested to see their further thoughts about what the right answers are.

Sincerely,
Stephen Ellmann*

* Professor Ellmann of New York Law School is a former Editor-in-Chief of the *Clinical Law Review* and currently serves on its Board of Editors.