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Elimination of Bias in the Legal Profession: The Cross-Cultural Law Practice

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INTRODUCTION

Within the last five years, over 1.5 million immigrants have made California their home, a trend which will continue in the years ahead. Indeed, the composition of our already multicultural state continues to change; your own practice is changing just as fast.

This article will introduce techniques which will enable you to understand these new clients more completely, present their cases more effectively, and heighten your awareness of issues of bias inherent in their representation, from case-intake through courtroom behavior. Awareness of bias issues in today's evolving cross-cultural society is essential, both to prevent discrimination against, and to assure fairness for, your client.

WHO COMES TO SEE YOU

Most of my clients are individuals, as compared to business entities. However, even if the client is a partnership or corporation, I will usually be visited by the individual person responsible for the case. This is the customary mode of meeting with new clients in our society.

But working for an individual can take on a new dynamic with a multicultural client base. Sometimes an entire family, five or six people, will come in. Sometimes the head of the family will visit you on behalf of a son or daughter, or even a wife. In some cultures the wife will not speak to people considered strangers; the husband will speak. Sometimes your visit will be with a local community leader or a tribal chief.

Within five minutes of the first interview, you realize that things are not as you expected. A flurry of issues immediately arise as you

survey the situation. Who is the client? Am I getting accurate information? What about client confidence issues? What is the relationship among all the people in this room? And, who will pay the fee? How do I avoid any subconscious bias I might have against this non-traditional setting? Of course, all these ethical and practical questions are crucial, but you will be approaching them in a new way. Be patient.

THE MESSAGE IS IN THE TELLING

In addition to cultural differences, there are language differences. Avoid using an interpreter if at all possible. Very often, a new client who speaks English only with difficulty will come to your office with a friend or relative to interpret. During the first meeting or two, it is probably well to use the client's interpreter to gain confidence and establish a relationship. But, you should try to move into the English language as soon as possible. All good lawyers know why. The root of a lawyer's work is based on a relationship. The more direct that relationship is, the better you will do.

If your client simply does not know enough English to be of any help to you at all, then one possible alternative is to associate another lawyer who is conversant in the client's native tongue. It doesn't really matter whether the lawyer specializes in the same sort of legal problems that the client brought to you; the important thing is to get the relationship going. The next best alternative is to use an interpreter who is skilled in both English and the client's native tongue.

The most problematic type of interpreter is the client's friend or relative. This is because you can't trust the interpreter to limit himself or herself to interpreting. There is a strong temptation on the part of the interpreter to explain or edit both the client's statement and your advice. Furthermore, the interpreter will almost certainly interject his or her own subjective interpretation and advice as part of the process.

In court, avoid using an interpreter unless absolutely necessary. I have always felt that the feeling of what your client has to communicate is even more important than the exact words the client might use. By the time the case comes to court, you and your client should be able to communicate effectively in English, even if the client's level of English is only intermediate. If you speak simply, ask questions in simple language, and ask for simple answers, the client should do very well. The full meaning of the client's story will come through.

Conversely, if an interpreter filters that same testimony, the jury misses the emotion behind it. It is like taking a shower in a

raincoat.

The chances are that your adversary will not be able to ask questions in the same simple way that you have, and certainly won't have the same relationship that you have. This means that cross-examination may be very limited and weak.

Let me give an example. Several years ago, I tried a case on behalf of a young woman who had been locked up and held hostage by two henchmen, who said they were private detectives. The client's father was an important witness. He had been born and raised in south Texas. His first language was Spanish, but he spoke English quite well. He had spent twenty years in the military, and, at the time of trial, worked for the United States government. Although he had a noticeable accent, he had no trouble communicating in English, under most circumstances.

When the time came for the father to testify at trial, at first things went just as planned. But describing his daughter's ordeal was extremely painful to him, and as we got to the heart of his testimony, his speech became a mixture which was neither English nor Spanish, but some of both. As his voice broke and the tears rolled down his face, the jurors were on the edges of their seats. The court reporter had a terrible time of it, but the meaning, the feeling, came through.

ASK THE CLIENT WHAT HE OR SHE WANTS TO ACCOMPLISH

Sometimes the answer to this question will be astonishing, and I recommend that you not ask this question in the first or second meeting. Very often, you will receive an answer to this question which makes no sense to us at all, and is completely useless. It is in such a situation that we must again remind ourselves of cross-cultural differences, so as to avoid any misunderstanding or bias which may result from such a response from a new or prospective client.

An example of the type of answer to the question regarding the client's expectations might be: "We want to win."

The next question that the lawyer asks is, "Well, what does winning mean to you?" The client responds with a simple "We want to win." This conversation can go on for half an hour in the same way, without getting anywhere. This means that you have to look elsewhere to gain insight into what the cultural meaning of "winning" is in this client's context.

I remember one particular case that was fiercely litigated, and went to trial. Throughout the proceedings, the clients insisted, "We

want to win." I spoke extensively about settlement. I said that if their case was settled, then both sides would come away with something. I was then asked, "If we settle the case, will the judge say that we won?" I responded that if they settled the case, the judge would say that both sides had won. The response was, "Oh, then keep on going."

In my practice, I represent many Samoan people. Like us, the Samoans compromise their differences. However, they do so in a very different way. For them, it is important for a judge to say who is right and who is wrong. After the decision, they compromise.

HOW DO THE CLIENTS SOLVE PROBLEMS IN THEIR OWN CULTURE?

Another easy way to understand the client's perspective is to ask how such a problem is solved in the native culture. At first the client might be confused, not understanding why you are asking the question. The point is, if you can gain some general background concerning the client's culture, you will be better prepared to understand your client.

For example, in one case I represented a Navajo individual in a criminal case. He was completely confused by the process. I asked him how disagreements were resolved in the Navajo community. This question elicited a blank stare. Fortunately, I had a little background in Native American culture. I asked him whether the custom would involve getting all the people who were involved in the disagreement, as well as the elders in the community, together, having all the parties assembled discuss the problem. I knew that the custom was for such talking to go on indefinitely, until everybody agreed together that the solution or punishment was reasonable and fair. Through this discussion, I gained the client's confidence, and showed that I was willing to try and understand his needs.

IT'S ABOUT TIME

Einstein taught us that time and space are relative, and so it is with law practice. Most other cultures do not follow the clock as we do. If you say ten o'clock, perhaps the client will arrive at eleven, perhaps at three, perhaps the next day. This may be perfectly proper in the client's culture. To practicing attorneys, it is unacceptable.

Be patient. You are not going to change this in one session. Moreover, the client is not going to understand your exasperation. One technique works almost all the time. I advise the client as follows: "It is important to show respect to the judge. In our culture, to be on time is polite. And if you are late for court, the judge will

think you are very impolite, and will be very angry." Most cultures that operate on relative time also place a high value on courtesy. I usually only have to say this lecture once.

HOW DO YOU LOOK?

In some countries, there is a sharp division between the ruling class and all others. If you are wearing a suit and sitting behind a big, solid desk, you are part of the ruling class. If your client is a refugee, you will be instilling fear instead of comfort.

Ask the client to come in on a weekend, when you can dress more casually. Sometimes, I meet with clients in the easy chairs in my reception room. Sometimes we sit around an open table, rather than the big, heavy desk. This greatly lowers the intimidation factor.

On the other hand, the client may expect the lawyer to dress and maintain the law office in a fashion consistent with very high social standing, and if you misjudge this, you will lose the client's confidence. Accordingly, a modest amount of background research into a client's cultural upbringing may yield great benefits, both in the way the client perceives you, and in how you understand the client. One can eliminate bias on both sides of the equation.

VISITING THE CLIENT AT HOME

Sometimes a visit to your client's home will give you tremendous insight. For example, which family members surround the client? How is the home furnished? Think about what these, and other things, tell you about your client's hopes, dreams, and background. If you can do this, your understanding of your client will be broadened invaluablely.

TAKE THE CLIENT TO COURT

The courthouse can be a scary place, even to an experienced lawyer. How much more frightening such a place must be to people without any familiarity with our legal system.

In El Salvador, if you enter the courthouse through the front door, you won't walk out through the front door. You may not walk out at all. Even in cultures where such problems may not exist to such an extreme, the courthouse remains a foreboding place.

Therefore, I recommend that you take your client to court. Together, watch as a witness testifies, perhaps in a case similar to the client's own. Point out who the various people in the courtroom are, and describe what their jobs are. Basically, acclimate the client to the experience. Remember, a judge and jury may soon be watching your client. The way your client

behaves, however unintentional such behavior may be, can trigger a latent bias in a juror, or can affect the bench's perception of your client. The more you can do to eliminate bias against your client, the more you will increase your client's chance for fairness and success in the American legal system.

CONCLUSION

In today's society, and in the legal profession in particular, cultural competence is a necessity. Make an effort to understand your client's culture. Be aware of communication and behavioral nuances that cause misunderstanding and bias against your client. Help your client understand the system, and your role in it. Such efforts will be rewarded not only by increased effectiveness in your cross-cultural law practice, but in your learning about the many cultures that comprise the United States.

About the Author

David Michael Bigeleisen holds a Bachelor's Degree from Cornell University and a J.D. from the University of San Diego. He has over twenty years of experience, including extensive trial and appellate work. His practice, located in Daly City, California, emphasizes criminal and juvenile cases, with a special emphasis in child molestation and child abuse cases. He has been recognized statewide for his pro bono work.

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