



Cultural Competency and Humility When Representing UCs

As lawyers working with unaccompanied children, you will have an awesome opportunity to work with clients from diverse demographic backgrounds, many of which may be new to you. The Homeland Security Act of 2002 defines the term “unaccompanied alien child”(UC) as one who has no lawful immigration status in the U.S., has not attained 18 years of age, and with respect to whom there is no parent or legal guardian in the U.S.; or no parent or legal guardian in the U.S. is available to provide care and physical custody. Over time, advocates have eliminated the use of the term “alien” because it dehumanizes the children we work with.

Every child in the immigration system has a unique identity and story and UC come to the United States from all over the world. The Office of Refugee Resettlement (ORR) gathers limited demographic data on UC including age, gender, and country of origin. The data for Fiscal Year 2018 (October 1, 2017 to September 30, 2018) tells us that the majority of UCs referred to ORR are coming from the Central American countries of El Salvador (12%), Guatemala (54%), and Honduras (26%). 3% of UC come from Mexico¹, and less than 5% from all other countries. The majority of UC are teenage and boys. ORR data reflects that for Fiscal Year 2018, 35% of UCs were 17 years old, and another 37% were 15 or 16 years old. Some 12% were 13 or 14 years old and 15% were 12 and under.

UC come to the U.S. for many reasons, such as gang threats and violence, a desire to feel safe and protected, a change in someone’s ability to be a caregiver for them in their home country, a desire to join relatives in the U.S., and a desire for a better future. Every child faces different circumstances, but a fear of gangs and a lack of faith in law enforcement and the justice system are commonly expressed. These factors force children to make a perilous journey to the U.S. They may come alone or with a sibling, cousin, other relative, significant other or friend. They may make their way by car, bus, other vehicle, foot, and through water, and with or without a smuggler. UC speak of tragic experiences in Mexico, including being held for ransom by cartel members, being forced to transport drugs across the border or serve as foot guides to smugglers, and being sexually and physically assaulted.

Then, when UC arrive in the U.S., they are apprehended by Border Patrol who refer them for placement in facilities run by ORR while waiting for reunification with a family member or other approved sponsor. During this time, they are trying to learn about the U.S. immigration system and probably will attend at least one hearing in immigration court before being released. Upon release, the children are then left to navigate U.S. culture and society, where they are often seen as part of the minority and subject to discrimination. A study completed by the Vera Institute of Justice and Fordham Law School’s Feerick Center for Social Justice, completed prior to the current administration, showed the discrimination many of these children face:

A few described being stereotyped because they were Latino. One participant stated that most people automatically assumed he was Mexican because he spoke Spanish. Another participant described being stereotyped as a “delinquent” because of his tattoos and body piercings... Many of the participants described that people, upon meeting them and learning they were unaccompanied, reacted to them with suspicion and confusion. Many attributed this attitude to

¹ UC from Mexico must undergo additional screening before referral to ORR. See https://www.appleseednetwork.org/uploads/1/2/4/6/124678621/children_at_the_border_report_2011.pdf

media portrayals of unaccompanied children and the ignorance of those who did not understand the conditions of their home countries or the reasons they came to the U.S. As one male participant stated, “They might feel we don’t deserve things, so we have to fight to get them.”

Generally, unaccompanied children are also socioeconomically disadvantaged. According to research done by the Migration Policy Institute, 28% of undocumented immigrants in the U.S. live below the poverty level.² 60% are below 200% of the poverty level, which means for a family of 4, for example, their total income is less than \$51,500 per year.³

Why Cultural Competency?

Cultural competency makes us better advocates for our clients. The basic legal eligibility for UC in asylum applications and other forms of humanitarian relief requires identifying very personal and specific information about your client’s culture, and the way society perceives their culture. As one of the first advocates to work with a UC, your role in creating a safe space for your client to share their complete identity and persuasively present that information to an adjudicator is key to effective representation.⁴

The Texas Disciplinary Rules of Professional Conduct require that a lawyer provide Competent and Diligent Representation Rule 1.01. The comments to this rule go on to indicate that “a lawyer should act with competence, commitment and dedication to the interest of the client and with zeal in advocacy upon the client's behalf. A lawyer should feel a moral or professional obligation to pursue a matter on behalf of a client with reasonable diligence and promptness...” Competence is further defined as “possession [of] or the ability to timely acquire the legal knowledge, skill, and training reasonably necessary for the representation of the client.”

Cultural competency, especially in our work with children, can go a long way towards determining the interests of the client and pursuing their case with the appropriate diligence. The ABA’s Model Rules also address these same issues.⁵ These rules can be coupled with the ABA’s Goal III, adopted in 2008, whose purpose is to “promote full and equal participation in the association, our legal profession, and the justice system by all persons and to eliminate bias in the legal profession and justice system.”⁶

² <https://www.migrationpolicy.org/data/Unauthorized-immigrant-population/state/US>

³ <https://aspe.hhs.gov/poverty-guidelines>

⁴ We want to note here that cultural competency can be considered an important part of “trauma informed” lawyer for children. See [the webinar CILA participated in with the Houston Immigration Legal Services Collaborative \(HILSC\)](#) on this topic.

⁵ The ABA’s Model Rule 1.1 addresses competence and mandates that “a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Model Rule 1.3 states that “a lawyer shall act with reasonable diligence and promptness in representing a client.” This Model Rule is further explained in comments, which state that “a lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.”

⁶ American Bar Association, ABA Mission and Goals, www.americanbar.org/about_the_aba/aba-mission-goals.html.

Given what was discussed above about what these children go through, in their own country and in ours, not only do we have an ethical obligation to be culturally competent, we have a moral one. These vulnerable children deserve our highest level of understanding and support, and without cultural competency, our ability to zealously advocate for them is severely limited.

What is Cultural Competency?

The National Center for Cultural Competence (NCCC), defines cultural competence as “a set of congruent behaviors, attitudes, and policies that come together in a system, agency or among professionals and enable that system, agency or those professions to work effectively in cross-cultural situations. The word culture is used because it implies the integrated pattern of human behavior that includes thoughts, communications, actions, customs, beliefs, values and institutions of a racial, ethnic, religious or social group. The word competence is used because it implies having the capacity to function effectively.”⁷

For legal professionals, cultural competency is often thought of as just being able to work in new cultural settings.⁸ This is very important, but leaves out some important elements. Lawyers need to actively obtain awareness of other cultures as a practical and necessary way of communicating with and effectively representing their clients. Not only that, it allows us to advocate more effectively for our clients by “develop[ing] new theories, practices, policies, and organizational structures that are more responsive to all groups.”⁹

<https://www.psychologytoday.com/us/blog/partnering-in-mental-health/201408/bren-brown-empathy-vs-sympathy-0>

Implicit Bias

To be culturally competent, attorneys must be aware of their implicit bias. The Kirwan Institute for the Study of Race and Ethnicity at the Ohio State University explains implicit bias as “the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.”¹⁰ Popular author Malcolm Gladwell, in his 2005 book *Blink* discussed implicit bias in the following way:

All of us have implicit biases to some degree. This does not necessarily mean we will act in an inappropriate or discriminatory manner, only that our first “blink” sends us certain information.

⁷ <https://nccc.georgetown.edu/curricula/culturalcompetence.html>

⁸ Sylvia Sevens, Cultural Competency: Is There an Ethical Duty, Oregon State Bar Bull. (Jan. 2009).

⁹ Aastha Madaan, “Cultural Competency and the Practice of Law in the 21st Century,” Probate & Property Magazine, March 14, 2018.

https://www.americanbar.org/groups/real_property_trust_estate/publications/probate-property-magazine/2016/march_april_2016/2016_aba_rpte_pp_v30_2_article_madaan_cultural_competency_and_the_practice_of_law_in_the_21st_century/

¹⁰ <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>

Cultural Competency

To put it in terms that make sense for an immigration-based practice with children, cultural competency starts with having an understanding

- 1) of your own culture and beliefs and where they come from,
- 2) that there are other cultures that do things differently from your culture,
- 3) that this is not good or bad but just is a fact, and
- 4) that in order to communicate effectively with and advocate well for your client you need to recognize how their culture makes them who they are.



Acknowledging and understanding this implicit response and its value and role is critical to informed decision-making and is particularly critical to those whose decisions must embody fairness and justice.

An important first step towards understanding your implicit biases and thereby increasing your cultural competency is to know what your implicit biases are. Many of us may think we know what our biases are, or believe that we don't have them. But it can be very enlightening to take one of the tests at the sites listed below and see what your results are. It is important to remember that no matter what the tests say, you are not a "bad" person, rather, you are a product of your environment, upbringing, and society. And remember that by taking an assessment to become aware of your biases you are heading in the right direction.

<https://implicit.harvard.edu/implicit/takeatest.html>

<https://nccc.georgetown.edu/assessments/>

Some questions to consider after taking the evaluation

1. Were you surprised with the result?
2. How did it make you feel?
3. What do you want to do about it?

Reflecting on Privilege and Cultural Humility

Cultural humility is a lifelong process of self-reflection and self-critique whereby an individual not only learns about another's culture, but starts with an examination of their own beliefs and cultural identities.¹¹ Cultural humility includes an openness to suspending what you think you know about yourself, including privileges that you may never had reason to notice, and recognizing that culture includes the multidimensional intersection of race, ethnicity, gender identity, gender expression, sexual orientation, physical or mental ability, language, age, religion, professional status and other perspectives. Many people have both privileged and oppressed identities that intersect with each other. For example, a white lesbian woman carries the intersection of white privilege with the historical oppression of women and LGBTQI+ people. A black able-bodied man carries the intersection of male and able-bodied privilege with the historical oppression of black people.

It is often easier to identify those aspects of our own identity which are historically oppressed because we receive daily messaging from all aspects of society about those identities including the movies and television shows we watch, the professional spaces we occupy, the school systems our children attend and the laws that we analyze every day. Identifying our privileges, and the power that comes with them, requires reflecting upon those aspects of our cultural identity for which we might not otherwise be confronted with. For example, a study of demographic information collected by the ABA from 44 state bar associations shows that 85% of lawyers in the United States, as of January 1, 2019, were white and 64% were men.¹² It follows that a white attorney does not have to look far for a colleague, mentor, lawmaker, judge, bar licensing official, or supervisor that is also white. White privilege requires that just

¹¹ Tervalon & Murray-Garcia (1998), available at https://melanietervalon.com/wp-content/uploads/2013/08/CulturalHumility_Tervalon-and-Murray-Garcia-Article.pdf

¹² https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-demographics-2009-2019.pdf



by virtue of being a white attorney, you are part of the dominant group which tends to be respected, assumed the best of, and given the benefit of the doubt. That just isn't the case for people of other races, no matter how wealthy, smart or hard-working they are.¹³

Vu Le, a non-profit executive and well-known blogger in the non-profit world describes the experience of identifying privilege:

When you have privilege, you will have gaps in knowledge: Cisgender men will never know what it is like to be a woman or to be transgender. White colleagues will never truly know the challenges experienced by colleagues of color. People who are currently able-bodied may not yet understand the inaccessibility and discrimination faced by people who use wheelchairs. We must believe the people of marginalized identities when they point out something we, due to our privilege, can never fully know.¹⁴

In short, fulling understanding your complete cultural identity can allow you to realize that you may be making certain incorrect assumptions about your clients and course correct.

Assumptions

Cultural humility, competency and self-reflection are hard and every great attorney will have examples of assumptions they have made in their representation and how the assumption has affected their client.

Given the recent media coverage and spotlight on UCs, when a child tells you their story, it may feel like you have heard it before. But remember, this is the first time that this specific child is telling their story to you, and maybe to anyone. They deserve your attention to the specific detail of their story, especially after what they have been through. And those details could be what sets their case apart and makes it stronger.

It is also common for practitioners to have a preconceived idea of what kind of relief will work for a child, before hearing their full story. We assume that returning to Central America would be a terrible idea for them, that they must want to stay here no matter what the cost. There are so many things going on in these children's lives. They are away from everything that is familiar to them. They may be with parents or relatives that they do not remember. They are trying to adapt to a new culture, including school, that could be very different from their own. These things are all very scary for children. Children can be surprisingly resilient, but they can also be surprisingly good at hiding their fears, especially if this is what was expected of them back home or here with their family.

Treating the child as an individual with their own story can go a long way to finding out what this child needs and wants. This is actually what is paramount when representing any client, even children. As discussed above, Texas Disciplinary Rules of Professional Conduct 1.01 requires that a lawyer have "commitment and dedication to the interest of the client." It is important to note that it does not say the "best interest" of the client, just the interest. Rule 1.02 goes on to say that "a lawyer shall abide by a client's decisions." It is not our job to apply our cultural norms to a child's situation and determine what

¹³ <https://www.tolerance.org/magazine/fall-2018/what-is-white-privilege-really>

¹⁴ "Hey people with privilege, you need to be OK with making mistakes and being called out" Nonprofit AF. <https://nonprofitaf.com/2018/09/hey-people-with-privilege-you-need-to-be-ok-with-making-mistakes-and-being-called-out/>



is in the best interest of our child clients (if that is needed a child advocate can be appointed). Our job is to listen to the client, tell them what options they might have, in an age appropriate way, and let the child decide what they want to do.

One of the most empowering things you can do for a child, your client, is to listen to them, make them feel heard, and respect their right to choose what happens to them.

What do I do now?

On a practical level, there are some cultural tendencies that can cause problems for a lawyer that has deadlines and requirements dictated by state court judges, immigration judges, and USCIS. How can an attorney recognize these cultural differences and deal with them in a sensitive manner?

Set Aside Time for Self-Reflection

One of the most important pieces of cultural competency is self-reflection. Check in with yourself often, and take time to process in safe spaces, with people you trust including a professional counselor, as appropriate. Here are a few tools for understanding your own multi-faceted cultural identity and implicit bias:

Create Space for Cross-Cultural Communication

Save time and spaces for understanding your client's story and cultural understanding, as well as explaining cultural norms in the U.S. including how the immigration system here works. Acknowledge that it may be different from what they are used to. Acknowledge that it may/will be difficult for the client to do what you need them to do in the manner and timeframe in which you need them to do it. You can also explain that you are not making demands lightly, but you know from experience that, if the client does not have the correct documentation at the correct time, their chance to win their immigration case will be foreclosed.

Perhaps ask the client to tell you what things are like where they come from, so that you have a point of reference as to how different things are or are not, and you can understand where they are coming from. For example, ask them how they would get a copy of their birth certificate in home country. You can then explain the process for doing the same thing here where the client is now residing. When you let the client know how different the process is here, they can also begin to understand the culture of this country that is requiring so much of them.

Recognize your knee jerk reactions and look for alternative explanations

However, even when you do what is suggested above, there still can be issues. So, what do you do? In the *Five Habits of Cross-Cultural Lawyering*, the authors give a wonderful example from the world of family law about how to relate better to a client¹⁵:

[A] lawyer has a client in a custody dispute who has consistently failed to follow a court order to take her child for a psychiatric evaluation, the lawyer might assume that her client has something to hide. Although the client tells the lawyer she will do it, it remains undone. A lawyer using parallel universe thinking can imagine many different explanations for the client's behavior: the client has never gone to a psychiatrist and is frightened; in the client's experience,

¹⁵ Susan Bryant & Jean Koh Peters Chapter 4, *The Five Habits of Cross Cultural Lawyering*, in *RACE, CULTURE, PSYCHOLOGY, AND LAW*, edited by Kimberly Barrett and William George, Sage Publications (2004)



only people who are crazy see psychiatrists; going to a psychiatrist carries a lot of shame; the client has no insurance and is unable to pay for the evaluation; the client cannot accept that the court will ever give the child to her husband, who was not the primary child caretaker; the client may fear she will be misinterpreted by the psychiatrist; or the client simply did not think that she needed to get it done so quickly.¹⁶

The authors go on to explain that by stopping after our initial reaction to a client's action or inaction, and taking the time to recognize that other things may be going on, we can then look at whether there is an important piece of information missing that you need to get from your client.¹⁷ Realizing that there may be a different, cultural reason for the problem can also galvanize us to gain that cultural information that could actually be important in the case.

Communicate with humility

The situation described above can be avoided, or at least resolved more quickly, through open communication with your client. Once you have realized that there may be alternative explanations to your client's inaction, talk with them about the issue. You can give examples like "I had a client once who was brought up to think going to a psychiatrist meant you were a crazy person and carried with it a very shameful association. What is it like where you are from?" You can explain that the culture here is different and the people that are reviewing the application are from here and will not have this negative connotation—in fact they will expect you to have gone to a psychiatrist. Emphasize the importance for their case, rather than the fact that they may need to see a therapist/psychiatrist given what they have been through.

However, when giving examples, don't assume that you know the reason for their inaction. As shown from the example above, there could be myriad different reasons why the client has not done what needs to be done. Give the client space to articulate their own reason. To get around some of these issues, you could go back to the idea of setting expectations. Here are some examples of things that may help:

1. Create a list of documentation you need from the client. Go over this list with the client and explain the importance of each piece of documentation and how it fits in to the case.¹⁸
2. Give written deadlines for receiving the documentation and information required. Go over the deadlines and explain why you need these things when you need them.
3. Explain the usual flow of a case like the client's case. Giving them a roadmap helps them know what is coming next and can reduce anxiety. But make sure to emphasize that each case is individual to the person, so other things may come up.
4. Tell them you will communicate with them if anything changes, and THEN DO IT. It is part of earning and keeping your client's trust.

Some people might say that this is too much information and too overwhelming for your clients and/or their caretaker. But we have a duty to communicate all things necessary to our clients, in an age

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Yes, you may realize later that you need something else. Tell the client that at the beginning—that you tried to think of everything possibly necessary, but there may be something else that you need at a later date.



appropriate and culturally-sensitive way, and we also have to give them the benefit of the doubt that they are capable enough to understand what is going on.

Thank you

As the ABA Children's Immigration Law Academy, we would like to take this opportunity to thank you. Thank you for taking a case and working with these deserving children. Thank you for reading this practice advisory. We know that these topics are difficult and often make us uncomfortable. But even the fact that you have taken the time to read this advisory and think about these issues means that you are putting in more effort than most. We all have privilege of some sort, and some have more than others, but we can use that privilege to listen to, advocate for, and lift up these unaccompanied children in their journey through our complex and overwhelming immigration system. Thank you for being a UC Champion!

