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Understanding Your Foreign-Born Client: Perspectives of Immigrants and Refugees

When a client comes from a different country or speaks only a language that we do not, a vital aspect of representation will be understanding how the client's culture impacts their perception and understanding of our legal system. This was the theme of a recent cultural competency training that focused on immigrants from non-Western regions of the world such as Southeast Asia, central Africa, and various Muslim countries.

By **Sophie Feal and Cynthia Feathers** | April 28, 2021



As attorneys, we strive to master the facts and be creative with the law in order to help our clients prevail in their cases. But when our client comes from a different country or speaks only a language that we do not, then another vital aspect of our representation will be understanding how the client's culture impacts their perception and understanding of our legal system. This was the theme of a recent cultural competency training that focused on immigrants from non-Western regions of the world such as Southeast Asia, central Africa, and various Muslim countries.

Cultural Uniqueness

The program speakers began by offering distinct portraits of diverse cultures. The complex connection between culture and law was probed by Prof. David Engel, Professor of Law Emeritus at the University at Buffalo Law School, who has studied law and society in Thailand, where he lived for many years while conducting research on how the Thai resolve legal conflicts involving personal injury incidents.

Buddhism impacts every aspect of life in Southeast Asia, and a belief in Karma is central to the religion. Karma is the cosmic balance that ensures that every evil action brings an increase in suffering, and every good action brings a decrease in suffering. It operates across the



Prof. David Engel

boundaries of death and rebirth, and impacts the communities' views on causation. Being too contentious means bad Karma. Even where a harm was caused by someone else's careless acts, the injuries are deemed the result of Karma. For example, Engel relayed that a woman who suffered a broken leg in a car accident believed that the injury occurred because she had once accidentally broken a dog's leg. In another case, a motorcyclist was hurt when a speeding driver crossed over the center line. The accident victim thought that the incident occurred because she had bad Karma as the result of killing small creatures in the field when she tilled the soil. Interestingly though, the culture may also help prevent accidents and crimes in the first place, since Buddhism also provides that people are responsible for guarding against the conduct of others, by taking precautions and being mindful.

A wrongdoer and a victim are caught in a Karmic cycle that may extend over many lifetimes. A victim who insists on a remedy or punishment only perpetuates this cycle. Forgiveness is the only way to end the cycle of pain and suffering. Consequently, our legal system is alien to many people from Southeast Asia, not only because of their beliefs about Karma and causation, but also because of their views about justice. Southeast Asian

clients may think of the law as existing only for the rich, and justice may be seen as something different than guilty vs. innocent. Justice may mean both sides reaching a consensus—a harmonious outcome regardless of who is right or wrong—in order to placate Karma. Thus, attorneys might consider whether restorative justice and mediation, to the extent possible, could be a more desirable remedy for Southeast Asians facing a legal conflict.

Professor Engel also noted that, on the one hand, many Thai beliefs are widely shared in Southeast Asia, which includes Thailand, Burma, Laos and Cambodia, but, on the other hand, significant differences exist among Southeast Asians based on myriad factors, including the cultures to which these clients are exposed on their journey to the United States and then upon settling here.

Fidèle Menavanza, a lawyer in his native Democratic Republic of Congo (DRC), and a graduate of the University at Buffalo Law School, stressed that there is a rich diversity of culture and language in Africa, which is a massive continent with 54 countries. After a long history of colonialism and dictatorships, African nations achieved independence in the 1960s. Each has a colonially imposed language, such as English, French, or Portuguese, and a wide variety of indigenous languages (up to 2,000) which may cross political borders. There are also sharp differences between urban and rural areas in much of Africa. If a client is from an urban area, s/he may well understand a Western judicial system. However, if a client is from a rural area, s/he may have little exposure to formal law, and will likely have a difficult time understanding our legal system, since criminal justice in Africa often melds the customary law of a tribe and a formal judicial system that is a colonial legacy. In many rural villages, the traditional system addresses most controversies, and tribal chiefs and elders may address a wrongful act by imposing community service, corporal punishment, banishment or another punitive action.



Fidèle Menavanza



Hassan Shibly

Muslim people are also quite diverse, as explained by Hassan Shibly, a civil rights lawyer who immigrated to Buffalo from Syria at age four and served as Executive Director of the Council on American Islamic Relations in Tampa from 2011 to 2021. He cautioned that it is critical to not make assumptions about Muslims. While many Muslims are from the Middle East, Indonesia is the most populous Muslim nation in the world. In fact, in the United States, most Arabs are Christian, whereas many Africans, African-Americans, and non-Arab Asians are Muslim. Also, half of the Muslims in this country were born and raised here. As such, sometimes ethnic, economic and social factors are more important than a person's faith and religious practices.

Shibly further reflected on how culture, religion, and justice intersect. An attorney may encounter a client who declines to assist in his defense, saying, "God will take care of it." If they are Muslim, an appropriate response might be from a story from the Quran, "Leave it to God, but tie your camel." As the story goes, a Bedouin man was leaving his camel without tying it. The Prophet asked him, "Why don't you tie down your camel?" The Bedouin answered, "I put my trust in Allah." The Prophet replied, "Tie your camel first, and then put your trust in Allah." The story conveys that there are means in the world, and we all have an obligation to seek out and use them. So pray—as you take action. In the face of injustice, seek to overcome it and help yourself. That is an act of worship and duty for Muslims, Shibly explained.

He also offered some specific advice about how to show sensitivity toward a Muslim client. Be prepared that s/he may ask for a prayer break during a meeting, since prayers are central to the practicing Muslim community and occur five times a day. (Shibly even spoke at the training program from a mosque.) He also suggested that you not ask your clients what religion they are, since that may cause a fear of discrimination. Instead, ask if they need any religious accommodation.

While Shibly spoke of the freedoms enjoyed in the United States in contrast to many other countries, he also shared a story about the challenge of "traveling while Muslim." Due to a delay of several hours resulting from airport security intensely scrutinizing him, Shibly once missed a flight to Washington, D.C. However, when he ultimately arrived at his destination, he was quickly cleared by security agents and went on without incident to his scheduled meeting—at the White House with President Barack Obama. Such discrimination and differing treatment of Muslims by the federal government has caused a general distrust of *our* government—federal, state and local.

Pervasive Fear of Police and Distrust of Legal Authority

A common theme in the program was the foreign-born clients' fraught relationships with police and legal authority, which is quite common among the refugee populations who have immigrated to New York state, given their past experiences of war and persecution. According to Engel, the police in Thailand are considered corrupt and dangerous by the population, and often expect bribes from those they encounter as either victims or perpetrators. Engel also makes clear that ordinary people almost never invoke the law to resolve conflicts because it is seen as "distant and dangerous," and favoring the "rich and powerful." Engel's research in Thailand may allow us to better understand the perspectives of similarly situated Southeast

Asian communities when they face the U.S. criminal justice system, such as the Burmese, who share a border with Thailand and the Buddhist faith, and may have lived in Thai refugee camps for many years before resettling in the United States.



Ye Myo Aung

In Burma, there is also very much distrust and fear of law enforcement and figures of authority. That point was explored by Ye Myo Aung, a Burmese native, and Operations and IT Manager at the Legal Aid Bureau of Buffalo. Paying bribes to the police to avoid problems with the law is also common in Burma. Moreover, while domestic violence and child abuse may not be uncommon in the refugee camps, there is no real legal authority to address these matters. Hence, refugees from Burma who resettle in New York may not understand our approach to criminalizing these offenses.

Menavanza explained that fear of law enforcement is also prevalent in the DRC and other African nations. He makes clear that, similar to the Burmese, the Congolese do not consider police forces in their country capable of maintaining peace and security. They may have been persecuted by those forces and learned to fear and evade them. There may also be a general unfamiliarity with and distrust of the formal judicial process. Moreover, while African countries have criminal laws similar to our own, they may not be enforced similarly by legal authorities. Instead, and especially with family offenses, customary or tribal courts, are called upon to act.

Ultimately, Menavanza makes clear that the lack of understanding, or even mistrust of, the formal judiciary system they knew prior to immigrating to the United States, along with the reliance on traditional justice mechanisms, may strongly influence the African refugee's attitude toward legal authority.

Shibly echoed the fear of police in Muslim countries, and the fact that new immigrants may be ill adapted to help in their own defense given their personal experiences in the home country. Last year, in a training for 5,000 police officers, he explained to them that many Middle Eastern and other Asian communities associate police with corruption and do not trust them at all. Often the last time they saw a loved one before they disappeared was when he or she was arrested by police.

Body Language

An interesting dynamic between a client and the U.S. legal system may also occur due to a culture's accepted body language. Aung noted that the Burmese show respect to authorities by crossing their arms, lowering their gaze, and bowing their heads—a stance that is at odds with our Western notion that eye contact signifies truthfulness. Further, the Burmese are sensitive about imposing upon, or inconveniencing, other people and are generally reluctant to disagree or ask questions. This is an important consideration for lawyers working with Burmese clients. The attorney may need to patiently make special attempts to convince the client of the importance of participating in his or her own defense.

Menavanza agreed that the Congolese may also avoid eye contact with people in authority out of fear.

Additionally, among orthodox Muslims, a man will avoid shaking a woman's hand or making eye contact with her as a sign of respect, or because modesty is mandated toward the opposite gender. Yet this too might be interpreted in our culture as conveying dishonesty or lack of respect.

Post-Traumatic Stress Disorder

Another common theme at the cultural competency training was the suffering and trauma often experienced by certain immigrant clients, especially refugees. Many Burmese refugees lived in Thai or Malaysian refugee camps before resettling here, after having fled violence and oppression. Burma has an unfortunate history of violent civil war and military rule. Indeed, on Feb. 1, 2021, another coup d'état destabilized the civilian government of Aung San Suu Kyi, and a military commander has again seized power. (The military government changed the nation's name from Burma to Myanmar in 1989, and thus calling the country "Burma" is a way of rejecting the legitimacy of military rule.)

Before resettling in the United States, many refugees from DRC were also persecuted, lost friends and family, fled their homes, and spent years waiting in crowded refugee camps. Shibly also explained that in their native countries, many Middle Easterners may have lacked freedom and justice, and suffered at the hands of dictatorial regimes that persecuted and tortured civilians.

Consequently, refugees often suffer from past trauma and PTSD, which informs their reactions to our legal system. They may not internalize an understanding of due process, freedom of speech, security, and the civil rights we generally enjoy in this country.

Mental Health Support

Foreign-born clients facing criminal charges may, in some cases, be ordered to participate in behavioral or rehabilitative programs. Successful participation might present challenges, ranging from language barriers to a fear of stigmatization due to a lack of cultural familiarity with such services. Western "talk therapy," for example, is not understood by many cultures and may add to the client's feelings of shame. Given the relative unfamiliarity of such programs by non-Western communities, the expectations and requirements involved should be carefully discussed in the client's native language.

Speaker Ting Lee, a Senior Mental Health Counselor at BestSelf Behavioral Health in Buffalo, recognized that the family plays a critical role in a person's well-being in many countries and cultures, and as such, involving spouses or close family in the treatment of recent immigrants can help. She advised that an attorney may request that a treatment provider accommodate such an arrangement. She further observed that a refugee will often have suffered trauma on account of political turbulence, war, and harrowing personal ordeals. Legal and mental health systems can be re-traumatizing, as refugees may be required to relive a deeply distressing experience.

Engaging with clients who have suffered from traumatic experiences requires patience. Importantly, survivors of trauma need social acknowledgment and support, and unfortunately, the U.S. legal system may require them to endure a public challenge to their credibility. Clients may need an opportunity to tell their story in their own way, in a setting of their choice. Lee confirmed that BestSelf counselors are often trained in trauma response and cultural competency and offer services for free or at low charge.

Language Challenges

Overcoming language barriers may also be necessary when representing foreign-born clients. Access to information in their own language presents a daily struggle for new immigrants who are not proficient in English. Aung explained that offices which work with many clients of limited English proficiency might want to contract with a telephonic translation service that provides on-demand interpretation and document-translation services. However, bear in mind that an interpreter may not be available for a specific dialect. In Burma, for example, there are eight major ethnicities, 135 subethnic groups, eight main languages and then many dialects of each language.

Counsel must strive to find an interpreter who not only knows the relevant language or dialect, but also possesses the ability to interpret legal terminology with precision. Attention must be paid to important nuances, such as the difference between what a client “must” vs. “shall” do. Some legal terminology may be non-existent in a certain language or dialect, and thus an analogy or a definition should be provided by the attorney, and not the translator for whom this may be difficult. The attorney should also ensure that the client and the interpreter are fully able to understand each other before beginning an interview, let alone a court proceeding.

When counsel speaks directly to clients having limited English proficiency, they should articulate clearly and speak slowly, avoid slang and idioms, casually use synonyms to increase understanding, and avoid a raised voice, which could be found disrespectful or even intimidating. Except in emergencies, friends or family should not serve as interpreters. They may be biased and omit information deemed harmful to their loved one. Further, their knowledge of legal vocabulary may be very limited.

Legal Assistance

The training on cultural competency was developed by an organization that works with noncitizens facing yet another challenge—criminal charges or Family Court litigation that can impact immigration status. The training program creator was the Western New York Regional Immigration Assistance Center (WNYRIAC), and the CLE co-sponsor was the New York State Defenders Association (NYSDA). The event was developed recognizing that Erie, Onondaga, Oneida, and Monroe counties are currently the top four counties for refugee resettlement in New York state, and the largest resettled populations include the Burmese and the Congolese, as well as smaller groups of Afghans, Syrians and Iraqis. NYC, of course, has a large array of immigrants, ranging from lawful permanent resident to the undocumented, in addition to some resettled refugees.

The Western New York center is one of six such offices located throughout the state. This statewide network was created in 2015 by the New York State Office of Indigent Legal Services, which funds and oversees the centers. Free services are offered to all attorneys providing mandated representation to noncitizens in criminal defense and family law matters. The RIACs provide expert legal support to the defender community on the complex law regarding immigration consequences of criminal convictions and Family Court dispositions. The goals include avoiding removal proceedings and helping deal with such proceedings where they are inevitable.

Support from the Center attorneys, who possess deep expertise in “crim-imm,” can help ensure that attorneys representing noncitizens in criminal matters provide competent representation—as constitutionally required. More than a decade ago, the U.S. Supreme Court held that attorneys have an ethical obligation to affirmatively advise their noncitizen clients, based on individual facts and with specificity, of the consequences of pleas on their immigration status. See *Padilla v Kentucky*, 559 US 356. The failure to do so can constitute ineffective assistance of counsel, in deprivation of the client’s Sixth and 14th Amendment rights.

Conclusion

Throughout its history, our country has seen competing forces influencing immigration law and policy. Some demonize the “other,” resist immigration, and do not welcome refugees. Others have found, or deepened, a resolve to welcome immigrants and refugees, to fight racial injustice, and to guard against bias and xenophobia. The recent cultural competency training transcended its purpose as a primer on effective legal representation of foreign-born clients, particularly in criminal and family matters. It was a spectacular and poignant reminder of the richness present in our country, brought by immigrants with fascinating and diverse cultures and ideas. It is our duty to become educated about their cultures to sensitively and ably help them resolve any legal issues they may encounter.

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