

CREATING A CULTURALLY SENSITIVE TEAM

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Introduction

As defense attorneys we have many ethical obligations. When we create a culturally sensitive team, we are able to fulfill our ethical obligations more efficiently, we are able to tell our client's story to the trier of fact more effectively, and we are better able to serve our clients in general. Here are five steps to creating a culturally sensitive team.

Step No. 1:

Create a Team that is Diverse or Willing to Familiarize Itself with Other Cultures

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

ABA Model Rule of Professional Conduct 1.1

In order to provide competent representation, it is important for the defense team to get to know people who are different than they are. The team must learn about other cultures through meeting people, discussing unique issues faced by them, and appreciating their cultures. If everyone on your team has the same background and experience that you have, you need to reach out to others

and learn about their experiences. Also, make an effort to watch movies and read books about other cultures. Then, as you learn about the experiences of others, the team should discuss the issues faced in each culture.

Diversity is exceptional, and with our differences, we enhance the experiences of everyone around us. If possible, attempt to include members on your team with different backgrounds, so that you will have different perspectives. Existing as a person from a diverse background also presents different challenges. As a defense team, it is extremely important to learn about the challenges that are faced by individuals in other cultures, because those experiences are relevant to our relationships with our clients and their families, as well as with our witnesses. Once we are able to understand some of the challenges that our clients, their families, and our witnesses face on a daily basis, we are able to make them feel more comfortable and able to obtain information from them to properly assist our clients at trial or at sentencing,

We have all observed attorneys who do not understand the backgrounds of their witnesses. When an attorney is not culturally competent, it is difficult for that attorney to obtain the necessary information from the client or witnesses, and then it is almost impossible to effectively convey the defense's theory to the jury. By creating a culturally sensitive team, we are able to create a comfort level with our clients and others in the case, obtain the necessary information, and convey the information effectively to the trier of fact.

[Step No. 2](#)

The Team Should Communicate Regularly with the Client

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;***
- (3) keep the client reasonably informed about the status of the matter;***
- (4) promptly comply with reasonable requests for information; and***
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.***

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

ABA Model Rule of Professional Conduct 1.4

It is extremely important for a culturally competent team to spend extra time with the client, to really get to know him or her and to keep the client informed as to what is occurring in the case. By doing so, the client will ultimately make the best decision in his or her case. In all cases, but especially when there are cultural differences, the team needs to build a trusting relationship with the client, and needs learn more about the client, his or her culture, and challenges that he or she has faced in life.

The team should give the client extra time during each visit to find out what the client cares about, what his or her concerns are, and how the team can help the client. Team members should try to help the client with some issue outside of legal work, such as calling a family member to let them know when a hearing is scheduled, or letting a family member know how your client is doing. In spending time with your client and building a trusting relationship, you will also get to know things about his or her culture that will assist you in effectively communicating with your client and the family.

In addition, getting to know the client and his or her culture will assist the team in understanding the people with whom the client spends time, who may

ultimately be witnesses in the case or who may know the witnesses. It will be important for the defense team to contact witnesses, and if the client trusts the team, he or she will let the family members and witnesses know that they should open up to the attorney, investigator, or paralegal. Once the team earns the respect of the client, it is much easier to obtain the cooperation of family members and witnesses.

Step No. 3

Engage in Culturally Sensitive Communication

And it is equally imperative that every criminal defendant- if the right to be present is to have meaning- possess 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding.' Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1962) (per curiam) .

Negron v. New York, 434 F.2d 386, 389 (2nd Cir. 1970)

When you have a client that speaks a different language, it is important to use an interpreter. A language barrier is something that must be overcome, but it is important to address it carefully. This seems basic, but it is important to hire a court certified interpreter even if members of your team speak the language. Be careful not to make it a practice to use your paralegal, investigator, or law clerk as an interpreter when you meet with the client. This can cause resentment within your team because it can be perceived as unfair for one team member to be required to act as an interpreter, instead of in his or her capacity as a paralegal, investigator, or law clerk.

Also, it is also unfair to the client to have someone interpreting for him or her who may not be a court certified interpreter. The client has a right to have all of his or her legal advice provided by an interpreter who is proficient in the language. The best practice is to use a court certified interpreter to assist in client

meetings and witness interviews, unless it is absolutely necessary for a team member to interpret.

If you do not speak the language, it is often helpful to learn a few words in your client's language and attempt to say a few words in the language to the client. The team members' attempts to communicate with the client or witness can be an effective way to create a bond.

Finally, it is sometimes helpful to use the same interpreter for all of your meetings with the client. Many times, as the defense team, we are discussing our client's background that may have included abuse or other issues that tend to be embarrassing. If a client is comfortable with a certain interpreter, it may be beneficial to use that same interpreter for each meeting, and even for court, if it is allowed.

Step No. 4

Avoid Cultural Appropriation

Cultural appropriation is the act of adopting elements of an outside, often minority culture, including knowledge, practices, and symbols, without understanding or respecting the original culture and context.

<https://www.dictionary.com/e/pop-culture/cultural-appropriation/>

It may be very tempting for team members to attempt to identify with your client by explaining to him or her how they have similar interests, all based in your client's culture. Be very careful, however, because cultural appropriation can be extremely offensive.

Always be respectful of your clients culture. If you have questions about you client's culture and experience, ask honest questions. Talk to your client about their experiences and yours, and show them that you are empathetic to their experiences.

It is important for team members to be genuine when interacting with clients, family members, and witnesses. But at the same time make sure that each team member is sensitive when discussing matters that may have originated with your client's culture, but has been used in other cultures without giving proper credit.

Step No. 5

A Culturally Sensitive Team must Acknowledge its Own Implicit Biases

Also known as implicit social cognition, implicit bias refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual's awareness or intentional control. Residing deep in the subconscious, these biases are different from known biases that individuals may choose to conceal for the purposes of social and/or political correctness. Rather, implicit biases are not accessible through introspection.

Implicit Bias, State of the Science: Implicit Bias Review 2015, Kirwan Institute

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

We all have biases. It is important for your team to understand and acknowledge its biases, so that no team member offends other members of the team, the client, the client's family, or witnesses. When team members acknowledge their biases, they are less likely to believe stereotypes and ask offensive questions based on stereotypes.

The team members should consider taking the Harvard's Implicit Associations Test: <https://implicit.harvard.edu/implicit/takeatest.html>. Once team members have identified their own biases and address them, they will be more culturally sensitive and will be able to work together to serve the client more effectively.