

Cultural Humility Sessions to Build Competence: A Training for Pro Bono Attorneys

Welcome!

Thank you for joining us in this training and for your work as pro bono lawyers. This 3-hour training consists of 4 modules, the first three modules include a recording and readings and exercises. We have designed these to introduce topics through recorded presentations that are preceded and followed by exercises that we hope will deepen your understanding of the presented material as well as give us feedback on the modules and exercises.

We plan to incorporate your reflections and feedback into our live session so your participation in the following is warmly encouraged. We also will use your comments to make changes to future training so your thoughts about the recorded presentations, materials and exercises are very much appreciated. **At the end of each module you are asked to send feedback to members of the training team. Please do this before Module 4, our live session, so that we can build on your reflections for our final session.**

Module 1: Introduction to Key Concepts

Before this module, trainees are asked to take two Implicit Association Tests at <https://implicit.harvard.edu/implicit/takeatestv2.html>. Please take the race test and one other. Reading: The Charter for the Law Firm Anti-Racism Alliance that is attached as Handout#1.

After the Introduction module, please read and do exercise #1 (attached.) The final part of the exercise asks that you send your reflections to lmoy@lasny.org and bryant@law.cuny.edu.

Module 2: Intersectionality

After the watching the recording, please do Exercise #2. The final part of the exercise asks that you send your reflections to lmoy@lasny.org and bryant@law.cuny.edu. Please do this before the live session so that we can build on your reflections for our final session.

Module 3: Ensuring Language Access and Working with Interpreters Effectively

Before watching the recording for this module please read: TIPS AND GUIDELINE FOR AABANY PRO BONO CLINIC'S VOLUNTEERS, JUNE 29, 2020 (attached): **and** Excerpt on working with interpreters, that appeared in Bryant and Peters, *Six Practices for Connecting with Clients Across Culture: Habit Four, Working with Interpreters and Other Mindful Approaches*, in AFFECTIVE ASSISTANCE OF COUNSEL: THE LAW AS A HEALING PROFESSION, edited by Marjorie Silver. (2006).

After watching the recording, please review the rest of the resources and readings, especially those attached. Please send your reflections on this Module to karenkithan.yau@gmail.com and bryant@law.cuny.edu

Module 4: Please submit your reflections and thoughts from the first three modules to lmoy@lasny.org and bryant@law.cuny.edu before Module 4, our live session.

Handout #1



Purpose

To leverage the resources of the private bar in partnership with legal services organizations to amplify the voices of communities and individuals oppressed by racism, to better use the law as a vehicle for change that benefits communities of color and to promote racial equity in the law.

Context

Lawyers and law firms are uniquely positioned to analyze and advocate to change laws and policies that encourage, perpetuate or allow racial injustice. Many legal services organizations have spent decades working to dismantle systemic racism, and the private bar has historically been involved in serving underrepresented communities and individuals, supporting entities that serve those communities and advancing civil rights causes primarily through law firm *pro bono* programs. Recent events have affirmed and highlighted the need and responsibility for law firms to do more in partnership with legal services organizations to identify and dismantle structural or systemic racism in the law.

The collaborative efforts of law firms, in partnership with legal services organizations, other sectors of the legal profession and key stakeholders, have the potential to create deeper and more lasting change than through firms acting independently.

Focus

The LFAA will facilitate the coordination of its member firms to best enable legal services organizations and the LFAA to create large-scale, coordinated *pro bono* projects that are both immediate and long-term in scope. Member firms will dedicate substantial *pro bono* resources to initiatives that address systemic racism as outlined herein. Law firms acknowledge their ongoing responsibility to increase diversity, equitable access to opportunities and inclusion of people of color within their ranks and, in tandem with the LFAA's *pro bono* efforts, the leaders of the LFAA law firms are committed to examining and eliminating internal policies and practices that may perpetuate racial inequities within law firm structures.

Mechanisms

National collaboration across law firms.

Development or enhancement of partnerships with legal services organizations and other stakeholders focused on race equity.

Elevation of the voices of people and communities of color by leveraging the platforms of law firm leaders and law firms.

Collaborative advocacy.

Coordinated effort among law firm *pro bono* professionals and diversity and inclusion professionals.

Involvement of corporate in-house legal departments in the LFAA initiatives.

Action Items

Host a summit of key stakeholders to prioritize the LFAA's work facilitated by experts in the areas of racial justice and systemic project design.

- Listen to and be guided by experts (including legal services organizations) and affected communities.
- Blueprint a Systemic Racism Legal Inventory.
- Charge the law firm *pro bono* professional community via the Association of Pro Bono Counsel (APBCo) with the organization and advancement of the LFAA.
- Commit law firm leadership to continued action through the LFAA.

Develop Systemic Racism Legal Inventory: a catalogue of laws, rules, policies and practices that result in negative outcomes for people of color, with priority focus to tackling anti-Black racism as determined by affected communities and policy experts.

Implement legislative and regulatory advocacy strategies to change laws, rules, policies and practices identified in the Systemic Racism Legal Inventory.

Initiate high-impact litigation as required to effectuate reform identified in the Systemic Racism Legal Inventory.

Evaluate the effectiveness of the LFAA through regular convening of stakeholders.

For more information, please email LFAA contact Brenna DeVaney at Brenna.DeVaney@skadden.com.

Cultural Humility Sessions to Build Competence: Post Module #1 Exercise #1

Brief overview

1. This training will cover a range of topics addressing how culture impacts client representation, particularly in the pro bono context.
 - We'll look at definitions of culture later in this module. But for introductory purposes we can define culture as those characteristics that shape community identity and affect group socialization, such as language, cognitive constructs, social habits and forms of interaction and behavior, as well as artistic patterns and preferences, clothing style, cuisine, family and friendship codes, religion, moral beliefs, relationships to authority, etc.
2. This training will examine, among other things, how *differences* in culture that can impact any client representation, are often particularly acute in the context of pro bono representation, to which unique power differential dynamics attach. That's because:
 - On the one hand, pro bono clients are by definition low-income or otherwise economically vulnerable, whereas providers of pro bono legal services are almost invariably economically privileged vis-à-vis their clients, if not vis-à-vis society in general.
 - Additionally, pro bono clients tend to be disproportionately from historically non-privileged communities, whereas lawyers serving these clients are often (though certainly not always) from historically privileged communities.
 - Finally, in many instances the very reason pro bono clients need to rely on free legal services is because their presenting legal issues result from systemically unjust social, political, and economic systems – i.e., systems that reflect if not reinforce racism, sexism, homophobia or other phenomena that betray the premise of equal justice under the law. For example, why might a foreclosure defense pro bono client be a senior disabled veteran Black homeowner? Perhaps because he got behind on his mortgage after losing his low-skilled job (the only work he could secure because of longstanding racism and his having service-connected PTSD), and not having secured the benefit of veteran's disability payments (for lack of ability to secure counsel to advocate for him).
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3. How can attentiveness, or inattentiveness, to cultural differences affect representation?

- It can facilitate, or impede, developing attorney-client rapport:

- In the above example, an affluent white pro bono attorney might struggle to connect with her client because she has never been at risk of home foreclosure, or experienced serious financial difficulty of any kind; might have always worked in high-skilled employment and never experienced racism or disability; and might have no familiarity with military culture or the challenges of navigating a complex bureaucracy to attain benefits to which she was entitled.
 - On the other hand, a self-reflective and culturally sensitive attorney in this position may be able to develop a kind of “allyship” with the client, in part by accessing her experience of sexism in the legal industry, which might give her a sense of having felt as an “other” and experiencing the sting of discrimination, while conducting research into the client’s background – e.g., researching articles that could prove helpful, speaking with a Black colleague who comes from a military family who is open to having such a conversation, or spending extra time speaking with the client to learn more of the client’s story.

- It can affect one’s sensitivity to cultural cues and practices that directly impact the representation:

- For example, an attorney unfamiliar with the fact that in some cultures it is considered disrespectful to look someone directly in the eye, particularly an elder or other authority figure, might assume her client’s tendency not to make eye contact reflects a lack of candor. In a criminal law or immigration context, where client credibility will be central, this mistaken assumption could be disastrous for the representation.
 - On the contrary, an astute attorney working with an Indian immigrant woman client might successfully argue (as one of our pro bono attorneys once did) that his client’s dowry should be deemed a nondischargeable debt in the estranged husband’s bankruptcy case, having come to understand (and therefore be able to argue) from a cultural perspective that a dowry is akin to alimony, which is typically nondischargeable

- Cultural differences can play a role in implicit bias:

- A personal example – after getting married, I called a financial services company to “add my new spouse as a co-owner on my accounts.” Hearing a male voice on the phone, the financial services rep said, “congratulations – now, I’ll need your wife’s name, date of birth, social ...” In fact, I’m a man married to another man. But the account rep’s own lived experience (which creates implicit bias in all of us) presumably led him to assume

that “a man marries a woman” – or, to more easily forget later life-learned lessons that that is not always the case.

- The account rep might not have been overtly homophobic, but his slip-up created an awkward moment that among many other things made me wonder how closely he was listening to me. In that context, and most certainly if it had been in a legal context, this dynamic runs the risk of ‘closing up a client’ who, to participate effectively in the representation, needs to trust the provider of legal services enough to feel comfortable disclosing often a significant amount of highly personal information.
 - Bottom line, the example above shows the account rep’s implicit bias – i.e., an assumption that ‘things of a certain sort are supposed to be a certain way,’ or ‘people of a certain sort are supposed to fit a certain mold.’
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4. The point of cultural diversity training in the pro bono context is to help us grow in cultural awareness – vis-à-vis others, but also vis-à-vis ourselves – so that we serve pro bono clients with the awareness and versatility for nuanced communication that is required to discharge our obligations with the utmost competence and respect.

Work Sheet Exercise #1

1. Identify 7-10 characteristics that inform your cultural identity – these could be things pertaining to your geographic origin or ethnicity or race; family status; gender, sexual orientation or gender expression; religion or other worldview; artistic or athletic skills or interests; political affiliation; etc.
 - Star the two characteristics that you feel particularly strongly inform your identity
2. Identify with whom in your workplace you share the two starred characteristics. Is it a large number of people, or small number of people?
3. Does this suggest that you are an “insider” who occupies a space of privilege in your workplace, or are you an “outsider” who may have less visibility or influence vis-à-vis those with the greatest power?
4. Insider/Outsider Role

If you identified characteristics to suggest you occupy an insider’s status within privileged space, please answer these questions:

- Identify people in your workplace who do not share those characteristics:
 - What are their names?
 - Be honest and see if you can identify (or if not identify, imagine) ways in which their outsider status makes it more difficult to achieve things at work, or navigate the dominant environment.
 - (An example – imagine the experience of a Black woman associate walking into a law firm conference room full of White partners, most all of them men. Would they immediately assume she is a highly talented associate with subject matter expertise in the issue at hand – or might some assume she is a paralegal or secretary? And/or, might *she* feel more reticent than a White male associate walking into such a context and sharing her knowledge, fearing the former might be in play in her listeners’ minds?)

If you identified characteristics to suggest you occupy an outsider status, please answer these questions:

- Identify people in your workplace who do not share those characteristics.
 - What are their names?
 - Be honest, and see if you can identify (or if not identify, imagine) ways in which their privileged status makes it easier for them to achieve things at work or navigate the dominant environment. How does this affect your own work, or sense of self? (See the last part of the example above.)

5. Role reversals: opposite privilege/outsider roles:

- If you identified above being privileged in your work space because of characteristics that strongly inform your identity, now identify places where those same characteristics have made you an outsider – or, identify other characteristics that are important to you, but that made you an outsider in a particular context. What was the impact of outsider status on your morale and sense of self? Ability to perform and succeed?
- If you identified above being an outsider in your work space because of characteristics that strongly inform your identity, now identify places where those same characteristics have given you privilege or belonging – or, identify other characteristics that are important to you, that gave you privilege and belonging in a particular context. What was the impact of privileged status on your morale and sense of self? Ability to perform and succeed?

Reflection on exercise: what insights did you gain from this exercise? How might these be helpful in your pro bono work? Any suggested changes to Module #1 or the exercise?

Please send your reflection on Exercise #1 to your facilitators:

lmoy@lasny.org and bryant@law.cuny.edu.

Cultural Humility Sessions to Build Competence

Post Module #2 Exercise #2

In this exercise which builds on exercise#1, we ask you to think about the concept of intersectionality in the context of your representation of clients. To do this, we will use Habit One from the Five Habits of Cross-cultural lawyering.

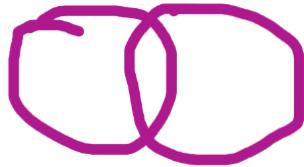
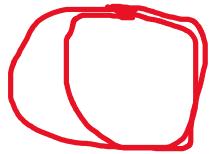
Brief Description:

Habit One, **Degrees of Separation and Connection**, creates two ways of mapping the client's and the lawyer's worlds to explore how culture might influence their relationship and fact gathering. The habit of examining the lawyer-client relationship through a cultural lens, Habit One invites the lawyer to map impressionistically the overlap between the lawyer and the client's worlds using a Venn diagram, with circles representing the lawyer's and client's universes. Habit One also asks the lawyer to inventory differences and similarities that the lawyer perceives between lawyer and client. Using these two methods, the lawyer focuses on the lawyer's and client's multiple intersecting identities (the inventory) and on particular identity factors that may heavily influence connection and distance (the Venn diagram.) When a lawyer represents groups, they can use Habit One to identify similarities and differences of the leaders and themselves as well as among the group members and among the group and themselves.

Habit One allows lawyers to compare their impressionistic views of commonalities and divergences from their client to specific facts known about the lawyer and the client across various characteristics. Through this focus on similarities and differences, Habit One allows lawyers to identify hot button issues in their own identity and life experiences, which may play a disproportionate role in the lawyer-client relationship, often manifesting as negative judgments about clients who are different. Habit One also enables lawyers who see themselves as similar to clients to be alert to assumptions of similarity that cause lawyers to substitute their world view for their clients'. The search for similarities also may be useful for creating connection and empathy. Finally, Habit One can help lawyers focus on how fact gathering is shaped by assumptions that they are making about similarities and differences between the lawyer and the client.

Applying Habit 1:

- I. Take the identity list that you prepared for Exercise #1
2. Use this list to think about identity characteristics of yourself and your client.
 - a. Identify a current or former Client (a pro bono client if you have one) use a client or a case that is occupying a lot of your time or mental energy.
 - b. Create a Venn Diagram thinking about similarities & differences between you and your client. If you see yourself as very **similar** to your client, you would draw circles that largely overlap. If you think of yourself as very different your circles would look very separate. m



- c. Using the same client, take a minute and identify the similarities and differences in identity characteristics in a list
- if your lists of similarities are long look for differences and if your list of differences is long look for more similarities.
 - Circle the 1- 3 that stand out in each side
 - See if the comparisons shift how you see yourself?

Debriefing Exercise 2

1. *Did you notice anything about the relationship or the case as a result of doing the lists or diagrams?*
2. *Did the list making help you think about intersectionality and multiple identity factors that might influence the case or your relationship with your client?*
3. *How do you think your client would have drawn these circles?*
While dangerous in some ways, as the lists may be more likely to be based on stereotype than individual client knowledge, this questions asks us to remember that other important similarities or differences for the client may be influencing the relationship.
4. *Did you get different insights from the lists & the Venn diagrams?*
5. *How does acknowledging both difference and similarities assist the lawyer? How does seeing multiple identities assist the lawyer? Habit One helps lawyers balance appropriately empathy and professional distance and assess the attorney client relationship. Habit One also assists lawyers to challenge assumptions and implicit bias.*

Please send your insights from the debrief as well as feedback on Module #2 to lmoy@lasny.org and bryant@law.cuny.edu. We will use your thoughts and insights in the live session and also use your feedback to improve our training modules.

Module 3

Before watching the recording for this module please read:

TIPS AND GUIDELINE FOR AABANY PRO BONO CLINIC'S VOLUNTEERS, JUNE 29, 2020
(attached):

Excerpt on [working with interpreters](#), that appeared in Bryant and Peters, *Six Practices for Connecting with Clients Across Culture: Habit Four, Working with Interpreters and Other Mindful Approaches*, in *AFFECTIVE ASSISTANCE OF COUNSEL: THE LAW AS A HEALING PROFESSION*, edited by Marjorie Silver. (2006).

Post watching the recording please read :

- Challenges for Interpreters, INTERPRETER MANUAL, *see attached*; review *after* watching the recording for module 3
- UCS Benchcard and Best Practices For Judges Working with Court Interpreters, INTERPRETER MANUAL, *see attached*; review *after* watching the recording for module 3

Please send your reflections on this Module to karenkithan.yau@gmail.com and bryant@law.cuny.edu

SOME SUGGESTED ADDITIONAL RESOURCES & BIBLIOGRAPHY OF SELECTED ARTICLES ON WORKING WITH INTERPRETERS

- " NEW YORK RULES OF PROFESSIONAL CONDUCT, Effective April 1, 2009, as amended through June 1, 2018
(See <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=50671>)
- " Canons Of Professional Responsibility For Court Interpreters, from NEW YORK STATE UNIFIED COURT SYSTEM COURT INTERPRETER MANUAL AND CODE OF ETHICS ("Interpreter Manual")
- Munee I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA LAW REVIEW 999 (2007)
- " Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL LAW REVIEW 29 (2001)
- " Marjorie Corman Aaron, *Client Science: Advice for Lawyers on Initial Client Interviews*, UNIVERSITY OF CINCINNATI COLLEGE OF LAW SCHOLARSHIP AND PUBLICATIONS (2013) <http://clientsciencecourse.com/wp-content/uploads/2013/11/Advice-for-Lawyers-on-Initial-Client-Interviews.pdf>
- " Annette Demers, *Cultural Competence and the Legal Profession: An Annotated Bibliography of Materials Published Between 2000 and 2011*, 39 INT'L J. LEGAL INFO. 22 (2011) <https://www.cambridge.org/core/journals/international-journal-of-legal-information/article/cultural-competence-and-the-legal-profession-an-annotated-bibliography-of-materials-published-between-2000-and-2011/491D58CBFAB6DAD02212ACCAF676C9C7>

Challenges

As the language facilitator in court proceedings, the interpreter faces a variety of challenging situations. To ensure that the record of interpreted proceedings is clear, the interpreter shall be aware of the following:

Linguistic

- The interpreter shall orally translate the exact response of the witness or speaker, even if the answer to a question is non-responsive.
- When an interpretation is challenged, the interpreter shall seek guidance from the court. The court will determine whether the interpreted matter is substantial enough to warrant any changes, and will make the final determination as to the acceptable interpretation for the record.
- When an interpreter is required for a witness in a jury trial, jurors are advised that they must rely on the translation provided by the interpreter. Jurors are also instructed to inform the court if they disagree with the interpretation rendered (See Appendix D: NY Pattern Jury Instructions, PJI 1:87). If this occurs, the interpreter must seek guidance from the court and not engage in debate with the juror.
- If a witness testifying in a foreign language uses a few words in English, the interpreter shall repeat those words for the record. If the witness utters a full English response, the interpreter shall not repeat the words, sentences or phrases but shall seek direction from the court.
- When an objection is made, the interpreter shall interpret everything that was said up to the objection and instruct the witness by hand gesture not to speak until the court has ruled on the objection.
- When a communication problem arises between the interpreter and the LEP or Deaf or Hard of Hearing person, (e.g., an individual is being disruptive or does not allow the interpreter to speak), or when there is a need to instruct the witness as to proper usage of the interpreter by the LEP or Deaf or Hard of Hearing person, the interpreter shall bring the matter to the attention of the court.
- A court interpreter shall **not** characterize or attempt to explain testimony.
- The court interpreter shall **not** mimic any gestures made by the LEP person.
- A court interpreter shall **not** correct erroneous facts or make any inferences from any statements made during a proceeding.
- An interpreter shall inform the court, at an appropriate time during the proceedings, if the quality of interpreting is at risk due to fatigue.
- Depending on the jurisdiction and the resources, interpreters may work in teams to reduce fatigue. ASL interpreters frequently work in teams, because of the physicality involved in sign language interpreting. Court managers may implement Team Interpreting for spoken language interpreters as well where deemed necessary.⁷

For more information about Team Interpreting, contact the Office of Language Access at (646) 386-5670.