

Cultural Competency and Ethical Considerations when Representing Children

A Deep Dive into Cultural Competency and Legal Applications by Edith Coral Johnson

Overview

What is culture and why is it important?

What is cultural competence, and why is it important?

How can we achieve cultural competence with the clients we represent?

What is Culture?

- "The customary beliefs, social forms, and material traits of a racial, religious, or social group."
- "Culture." Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/culture>. Accessed <https://www.merriam-webster.com/dictionary/culture> 1 Jul. 2022.



Why Culture Matters



- Culture gives context and meaning
- Affects how people process their experiences
- Gives them perspective on their values and expectations
- Culture affects how we access services
- It influences how and where we go for services or support
- It shapes when we believe we need services

Cultural Competency and Cultural Awareness

Cultural Competence is...	The ability of individuals and systems to respond <i>respectfully</i> and <i>effectively</i> with people of all cultures, classes, races, ethnic backgrounds, sexual orientation, and faiths or religion in a way that recognizes, affirms, and values the worth of the individual, families, tribes, and communities, and <i>protects</i> and <i>preserves</i> the dignity of each.
Cultural Awareness is...	Recognizing the nuances and specifics of one's own culture and the culture of others.

Cindy Izquierdo, [Not Your Average Summer Camp: Children in Immigration Detention](#), 22 SCHOLAR 101 (2020).

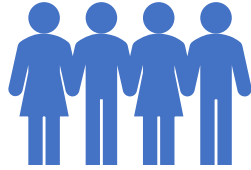
Cultural Competency

Three main characteristics.

- **First, Cultural Sensitivity** – which requires recognizing and appreciating diversity.
- **Second, Cultural Knowledge** – this entails "the factual understanding of basic anthropological knowledge about cultural variation" through reading, research, expert consultation, as well as meaningful interactions with a community made up of people with diverse backgrounds.
- **Lastly, Cultural Empathy** – which is the ability to engage emotionally with an individual's cultural perspective."

Cultural Competency has three main characteristics

- Cultural Sensitivity
- Cultural knowledge
- Cultural empathy



How do we achieve Cultural Competence?

Recognize	Recognize extent of diversity in culture we are not a monolith
Respect	Respect families as primary course of culture
Increase	Increase sensitivity to diversity in culture
Commit	Commit to policy or procedural changes in your interactions to support cultural diversity
Accommodate	Accommodate necessary adjustments to promote sensitivity

Diversity and You

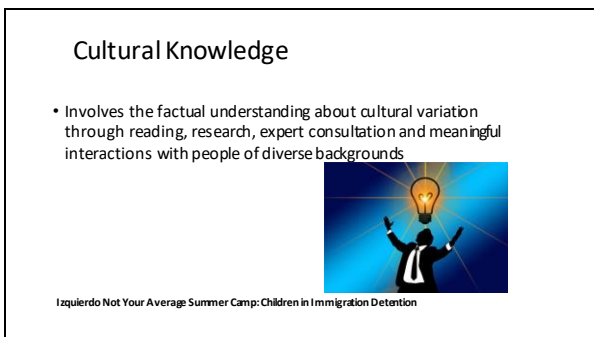
Do you interact with diverse groups of people?

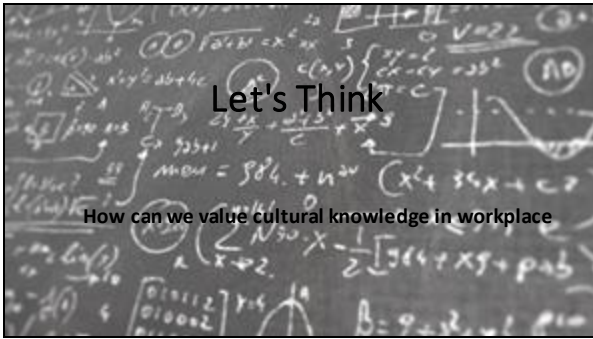
Do you desire to acquire knowledge and skill in dealing with culturally different populations to make your representation effective?

Do you engage in open and honest dialogue about culture and diversity?

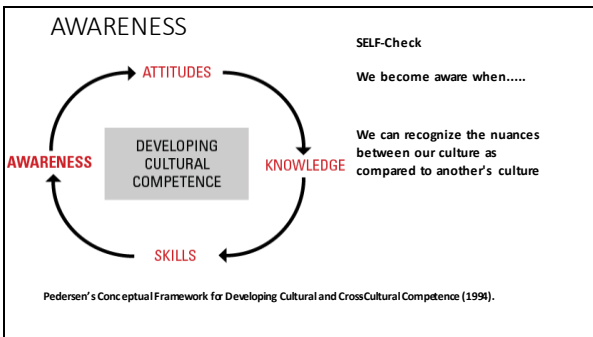


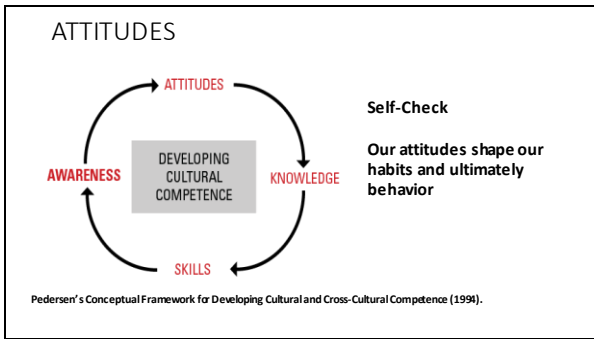


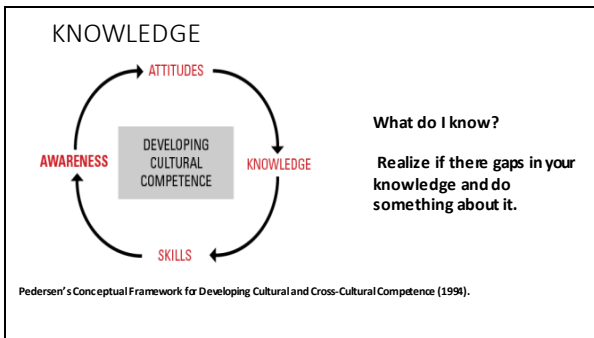


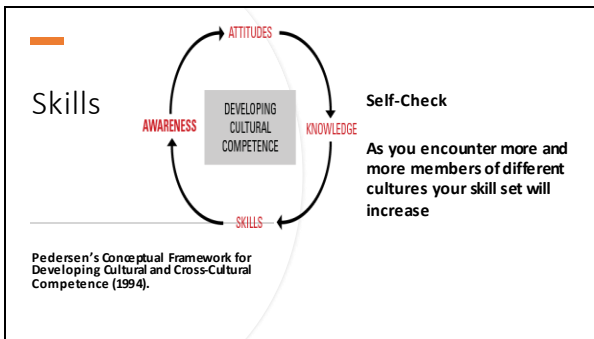















Interrelation of Cultural Competency as an Attorney

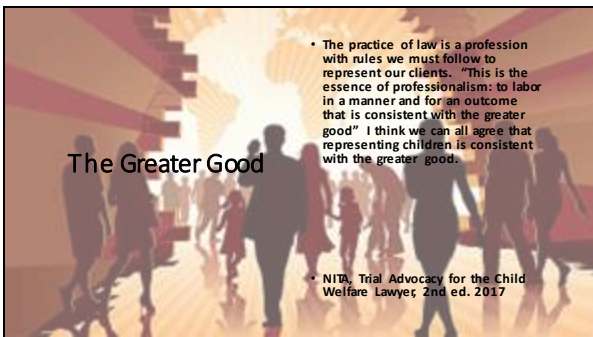
- All services should respect the right to privacy and be sensitive to the age, culture, native language, and individual complex needs of a child.
- Attorneys should consider the range of ages and cultural sensitivity and should not adversely affect minors' health, or physical or psychological well-being.
- Lawyers without cultural competency training are unlikely to have had experience in interviewing and counseling clients with different cultural backgrounds. Without this training they might have difficulty in understanding the client's goals.



Kisthardt "Working in the Best Interest of the Children: Facilitation the collaboration of layers and Social workers in Abuse and Neglect cases"

The Greater Good

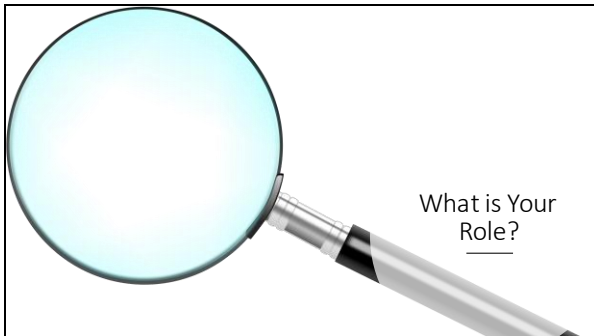
- The practice of law is a profession with rules we must follow to represent our clients. "This is the essence of professionalism: to labor in a manner and for an outcome that is consistent with the greater good." I think we can all agree that representing children is consistent with the greater good.
- NITA, Trial Advocacy for the Child Welfare Lawyer, 2nd ed. 2017



Representing Children ...



- Children and parents can be difficult
- The legal system can be rigid
- Adversarial environment with counsel, other agencies etc.
- Children facing trauma



What is Your
Role?

Ethical Considerations

- We have ethical issues to consider in the representation of children
- How we relay information to them? Do they have a Guardian ad Litem or Guardian?
- Who do you represent?



Effective Representation


- All children and families are entitled to the best representation possible
- What is the Best Way to Represent the Child's Best Interest?
 - Rule 40(b)(2) provides factors to determine what is in the child's best interest. The main objective of the guardian ad litem is to act in the best interest of the minor. The factors in the rule focus on the child's physical and emotional needs. There is a heavy emphasis on proper communication and socialization of the child. There is a need for extra sensitivity in the event the child suffered abuse.


What is the goal of your client?

Listen

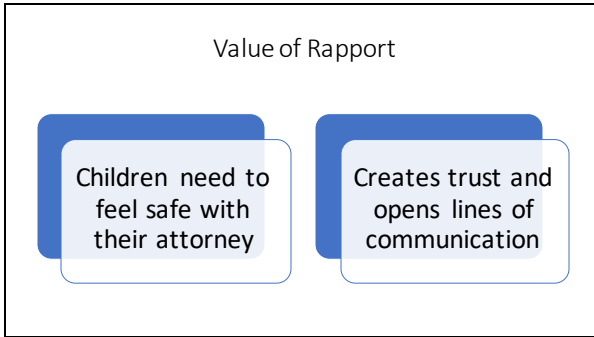
Advise

Research

How?   When?

Where? 

Communication with your Client








Issues with Confidentiality

- Can a lawyer share information about a case generally? If so with who?
- Consider Rule 1.6 (a) (2) -- disclosure implied authorized to carry out the representation

Trauma informed lawyering.... Why is it important ?

Trauma-informed lawyering is an approach that puts clients first by putting their realities of trauma experiences at the forefront of engaging with the client.



THE PEDAGOGY OF TRAUMA-INFORMED LAWYERING SARAH KATZ & DEEHA HALDAR*

Interplay of experience and trauma

- Imported memories and experiences from country of origin
- As the influx of vulnerable populations increase due to war, poverty, institutional corruption and government instability, cultural and tribal violence, natural disasters, it is critical that judges and lawyers help families understand the immigrant experience as it relates to judicial systems.
- Strengthen capacity of agencies to respond to the specific needs of women and children within family structures to reduce isolation and help encourage safe access to services for adults and child victims.

Culture and the Immigrant Experience: Navigating Family Courts

Goal in Trauma Informed Lawyering

Do not re-traumatize your client

Protect yourself as you seek to effectively represent your client

Provide dignity as you relate to your client

Empathy when addressing your client or their needs

Secondary Trauma In Lawyering Stories, Studies and Strategies

Psychology of Compassion



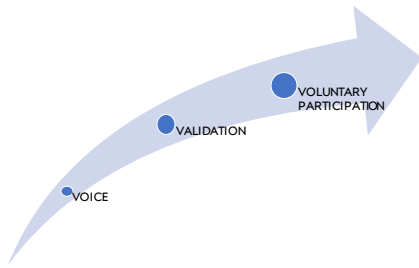
Sensitivity or concern for the suffering of others and a commitment to alleviate or prevent it



When individuals feel that the legal system has treated them with fairness, respect and dignity it has a therapeutic effect.

Therapeutic jurisprudence: Foundations, Expansions, and Assessment

The three "V's" to representing traumatized clients



VOICE

“a chance to tell [one’s] story to a decision maker.”

Therapeutic Jurisprudence: Foundations, Expansions, and Assessment

VALIDATION

- “Validation” means that the tribunal genuinely considered the litigant’s story.

Therapeutic Jurisprudence: Foundations, Expansions, and Assessment

VOLUNTARY PARTICIPATION

- When parties experience both voice and validation, “they are more at peace with the outcome. These qualities “create a sense of voluntary participation,” in which the legal proceeding is perceived as being less coercive in nature

Therapeutic Jurisprudence: Foundations, Expansions, and Assessment

When we practice the 3 V's we will have:

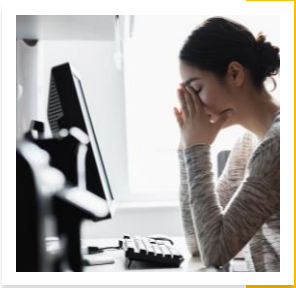
VOICE + VALIDATION +
VOLUNTARY
PARTICIPATION =

[W]hen individuals feel that the legal system has treated them with fairness, respect, and dignity, it has a therapeutic effect

Therapeutic jurisprudence: Foundations, Expansions, and Assessment

Secondary trauma in lawyers

Is the stress of working with a trauma-exposed client begins to interfere with a pro bono lawyer's professional or personal life?



Understanding Secondary Trauma: A Guide for Lawyers Working with Child Victims

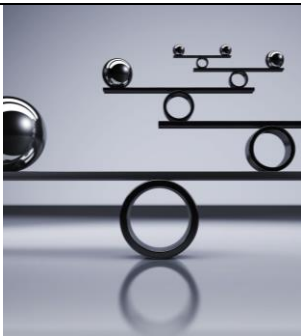
How to avoid Secondary Trauma

- Clients and students in clinics who work with traumatized clients who were victims of abuse or trafficking must be taught about "trauma informed" lawyering to avoid retraumatizing the client or traumatizing themselves bearing witness to client's stories or evidence surrounding their cases


Secondary Trauma in Lawyering Stories, Studies and Strategies

Remember


- Be sensitive to your client's needs and to yourself
- Balance is key



Remember



SELF CARE as a Lawyer



The impact of stress on self-care

- Obsessive thoughts
- Feelings of inadequacy
- Difficulty concentrating
- A sense of worry and/or impending danger
- Sleep disturbances
- Heart palpitations
- Sweating, fatigue and muscle tension

Is it Stress or Anxiety?

Stress

- Typically caused by an external trigger
- Work deadlines, fight with a loved one, poverty, chronic illness, etc.



Anxiety

- Persistent, excessive worries that don't go away even in the absence of stress

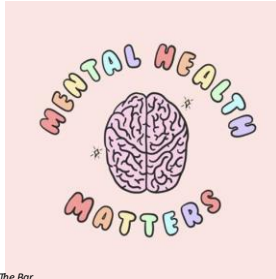
A lawyer's mental, emotional and physical state affects their duties to:



Mental Health in the Legal Profession Participants over the course of their legal career:

- Insomnia;
- Loss of appetite or weight loss;
- Increased irritability;
- Mood swings;
- Substance abuse;
- Lack of energy; or
- Out-of-control behavior despite repeated attempts to stop.

From the [September/October 2007 issue](#) of Diversity & The Bar



What to do?



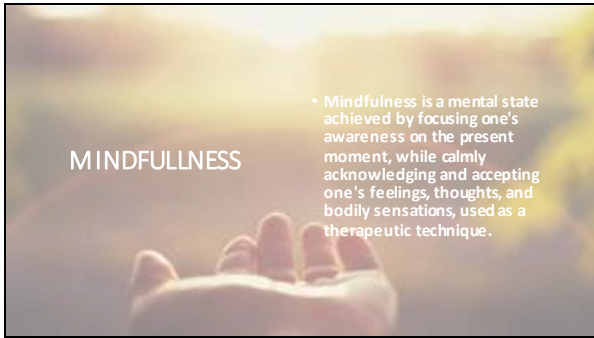


Do what works for you!



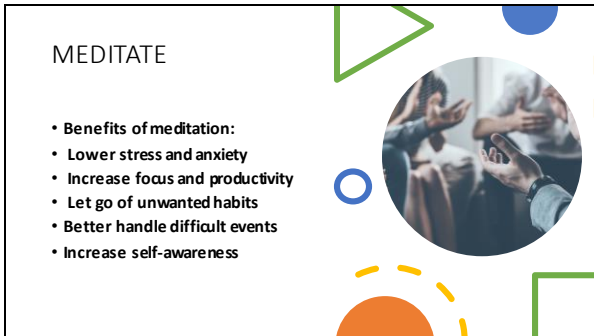
MINDFULNESS

- Mindfulness is a mental state achieved by focusing one's awareness on the present moment, while calmly acknowledging and accepting one's feelings, thoughts, and bodily sensations, used as a therapeutic technique.








MEDITATE

- **Benefits of meditation:**
- Lower stress and anxiety
- Increase focus and productivity
- Let go of unwanted habits
- Better handle difficult events
- Increase self-awareness




Work is meaningful when we believe:

-  - It matters
-  - It's valuable
-  - It contributes to personal growth/greater good
-  It's a good fit with your values



TAKE AWAYS --- Be Aware



What is your role? Who do you represent?

Do I need to adjust how do I interact with my client?

- Due to age?
- Family dynamics
- Due to his/her culture

Is my client possibly traumatized?

- Does this change how I need to communicate?
- Avoid burn out and practice SELF CARE!



Questions?

"Each child belongs to all of us, and they will bring us a tomorrow in direct relation to the responsibility we have shown to them."

~Maya Angelou

References

- Jeena Cho, "The Anxious Lawyer; an 8-Week Guide to a Joyful and Satisfying Law Practice Through Mindfulness and Meditation", Jeena Cho and Karen Gifford 2016 ABA Publishing.
- Leslie Gordon, "How lawyers can avoid burnout and debilitating anxiety"; 2015; ABA JOURNAL.
- Cindy Izquierdo, *Not Your Average Summer Camp: Children in Immigration Detention*, 22 SCHOLAR 101 (2020).
- Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering* Spring 2016 Teaching Trauma-Informed Lawyering 361.
- Mary Kay Kisthardt, *Working in the best interest of children: Facilitating the collaboration of lawyers and social workers in abuse and neglect cases*, Rutgers Law Record, Vol. 30, No. 1, 2006.

References

- Scott Mitchell, Mental Health in the Legal Profession, [September/October 2007 Issue](#) of Diversity & The Bar
- P.B. Pederson, (1994). A handbook for developing multicultural awareness. Alexandria, VA: American Counseling Association
- Hon. George F. Phelan & Donald G. Ye, culture and the Immigrant Experience: navigating Family Courts, 32 J. Am. Acad. Matrimonial Law 89 (2019)
- Mark Rabil, Dawn McQuiston, & Kimberly D. Wiseman, Secondary Trauma in Lawyering: Stories, Studies, and Strategies, 56 Wake Forest L. Rev. 825 (2021)
- Christina Rainville, *Understanding Secondary Trauma: A Guide for Lawyers Working with Child Victims*, 2015, American Bar Association
- David C. Yamada, Therapeutic Jurisprudence: Foundations, Expansion, and Assessment, 75 U Miami L Rev. 660 (2021)
