

Culturally Effective Legal Interviewing and Counseling for the Mexican Immigrant—A Case Study

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A bilingual lawyer, who is a fifth generation Mexican-American, interviews a Mexican immigrant who comes to the law clinic through a referral from a community service partner, an organization assisting immigrants.¹ The client tells the lawyer that her husband is a good man. He brought her and her children to the United States after raising money to do so by living in the United for three years and working as a field hand. He is a legal permanent resident, but she is undocumented. During the last harvest cycle, he was involved in an injury on the job. Employers who employ field workers are not required to purchase workers compensation insurance in New Mexico². Thus, the accident was a devastating blow to the family's financial situation. At a neighbor's suggestion, the client began to clean houses and take in ironing to help deal with the precarious financial situation. However, in the past few months her husband has begun to drink too much.³ He has begun to yell at her in front of the children and most recently, after a few drinks, he hit her.

The client does not want a restraining order or a divorce. She does not want to fill out the petition under the Violence Against Women Act⁴ (VAWA) and petition for residence status, which would give her a temporary work permit. This is because the act requires her to describe the abuse and her intention to leave her husband. Instead, she wants the lawyer to talk to her husband and to help him get a job that would accommodate his work injury. The lawyer is frustrated, because she has been trained about the remedies offered by the legal system such as a restraining order, a divorce or separation, or a VAWA petition.⁵ She cannot understand why the client would try to protect her husband.⁶ While the lawyer speaks Spanish very well, she worries

¹ A slightly different version of this case study is included in *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic*, 28 WASH U. J. SOC.POL'Y & L. (forthcoming). The case study grows out of various cases handled over the years by the UNM Clinical Law Program and is not based on any particular client's case.

² . See NMSA 52-1-6 (B) (2007).

³ Raul Caetano, *Acculturation and Drinking Patterns Among U.S. Hispanics*, 82 ADDICTION 789 (1987); Sarah E. Zemone, *Re-examining Whether and Why Acculturation Relates to Drinking Outcomes in a Rigorous National Survey of Latinos*, 29 ALCOHOLISM CLINICAL & EXPERIMENTAL RESEARCH 12 (2005).

⁴ . 8 U.S.C. 1641 (b) (2000).

⁵ . Translating legal terminology has its own challenges. See, e.g. Antoinette Sedillo Lopez, *Translating Legal Terms in Context*, 17 LEGAL REF. SER. Q. 105 (1999) (describing difficulties of translating legal terms from one legal culture and language into another).

⁶ . The lawyer understands from the clinic training that the client may not be ready to leave her husband. See Sarah

*about whether the client understands her.*⁷ *She thought that her own background as a Mexican-American would help her in the representation and is disappointed that she apparently has such a communication gap with her client.*

Immigrant women's legal representation is affected by their language, race, culture and legal status.⁸ The lawyer reads about the limitations of the Violence Against Women Act and discusses prior cases with other supervisors and community activists who have worked with immigrant women. The Law Clinic has represented immigrant women from Latin American cultures that are in abusive marriages seeking relief through the Violence Against Women Act and in obtaining temporary restraining orders, in the past so others have experience in this type of case. The standard approach is to interview the client, obtain evidence of the abuse and prepare a petition for filing. For many women, this conversation is extremely difficult and the women seem to have very little support for their decision to leave their abusive husbands. Within many Latino communities, marriage is sacred and not easily dissolved.⁹ Many Latina immigrants do not actually want to end the marriage; they want the violence to stop.¹⁰ In addition, some of the women seem to think that in some cultures a mild level of violence is not

M. Buel, *Fifty Obstacles to Leaving, aka. Why Abuse Victims Stay*, 28 THE COLORADO LAWYER 19 (1999). However, the client's strong desire to *protect* him is difficult for the lawyer to understand.

⁷. See Clark D. Cunningham, *A Tale of Two Clients: Thinking About Law As Language*, 87 MICH. L. REV. 2459 (1989) (discussing difficulty in representing a Spanish speaking client and discussing whether there was a shared understanding of the meaning of the Spanish term "*culpable*").

⁸. See E. Erez, *Immigration, Culture Conflict and Domestic Violence/Woman Battering* 2 CRIME PREVENTION & COMMUNITY SAFETY: AN INTERNATIONAL JOURNAL 27 (2000).

⁹. See Julia Perilla, *Domestic Violence as a Human Rights Issue: The Case of Immigrant Latinos*, 21 HISPANIC J. BEHAVIORAL SCIENCE 107, 123-124 (1999) (describing some of the cultural issues faced by Latinas).

¹⁰. See Leigh Goodmark, *Law is the Answer? Do We Know That for Sure? Questioning the Efficacy of Legal Interventions for Battered Women*, 23 U. ST. LOUIS PUB. L. REV 7 (2004); Cecelia M. Espenosa, *No Relief for the Weary: VAWA Relief Denied for Battered Immigrants Lost in the Intersections*, 83 MARQ. L. REV. 163 (1999).

considered “abusive” but rather appropriate discipline.¹¹ Further, the dissolution of the family will probably ultimately put more financial strain on their financial situation. The fact that the husband is unable to support his family is a deep wound to his sense of worth.¹² That wound may be causing the anger that may result in the violence. Perhaps some assistance to the husband in seeking employment and some culturally appropriate counseling would help the husband stop the violence. The VAWA has had the unintended consequence of breaking up immigrant families by encouraging divorce and separation. Further, the language barrier they often experience isolates immigrant women. There are not enough attorneys who can truly communicate with them.¹³

The lawyer has the advantage of being able to communicate with the client directly and that is to be commended. The lawyer needs to be assisted in learning to suspend judgment about the client and approach her with respect and understanding to gather information about the client’s needs.¹⁴ She needs to develop self-awareness about the effect of her feelings on the client. The Latin American woman requires linguistically appropriate and culturally sensitive counseling so that the attorney can truly understand her objectives. The lawyer must also guard against the client’s potential deference to authority, which might lead her to follow the attorney’s

¹¹ Perilla, *supra* note 9 at 108.

¹². See David Bacon, CHILDREN OF NAFTA: LABOR WARS ON THE U.S./MEXICO BORDER (2004) (describing the desperate economic plight of Mexican workers).

¹³. See *Report: the Erlenborn Commission Report: The Legal Services Corporation*, 15 GEO. IMMIGR. L. J. 99, 132 (2000) (language barriers for Spanish speaking clients are formidable); Daniel J. Rearick, *Reaching Out to the Most Insular Minorities: A Proposal for Improving Latino Access to the American Legal System*, 39 HARV. C.R.-C.L.L. REV. 543, 545 (2004) (it will require a coordinated response by law schools including accessible language training to serve non-English speaking communities).

¹⁴. See Alex J. Hurder, *Negotiating the Lawyer Client Relationship: A Search for Equality and Collaboration*, 44 BUFFALO L. REV. 71 (1996) (describing the need for lawyers to negotiate a lawyer client relationship of collaboration and equality resulting in joint decision-making).

objectives of the representation rather than her own.¹⁵ The client should be referred to social services that will meet her needs and those of her children before she is required to decide what to do about her marriage.¹⁶ The lawyer should work with culturally sensitive social workers and counselors to support the client.¹⁷ The attorney should communicate with the client so that the client can have a better understanding of the legal implications of the limited tools for assisting with domestic violence.¹⁸ The client's stated goal of stopping the violence and preserving the family is not consistent with the American legal system's goal of stopping the violence by separating the husband from the family. And, the client needs to know that in the United States striking a spouse violates the law. The lawyer needs to develop effective language, communication and listening skills to understand the client's needs and to communicate the limitations and possibilities of the legal system. The lawyer should be creative in seeking multi-disciplinary solutions that might address the client's objectives more effectively than filing a VAWA petition at this time. If she begins a VAWA petition and does not complete it, she may suffer adverse immigration consequences.

If the lawyer is uncomfortable with her knowledge of some of the cultural issues, she can meet with social workers and others who know about the specific Latino cultural context in this case. The lawyer can be coached to become more empathetic about the client's dilemma and

¹⁵ H.M. Bauer & M.A. Rodriguez, S.S. Quiroga & Y.G. Flores-Ortiz, *Barriers to Health Care for Abused Latina and Asian Immigrant Women*, 11 JOURNAL OF HEALTH CARE FOR THE POOR AND UNDERSERVED 33 (2000)

¹⁶ Enlace Comunitario is an Albuquerque social service organization that provides holistic and culturally appropriate services to immigrant women. See, <http://www.enlacenm.org/>

¹⁷ Maria E. Zuniga, *Latinos: Cultural Competence and Ethics* in CULTURALLY COMPETENT PRACTICE, SKILLS, INTERVENTIONS AND EVALUATIONS, Edited by Rowena Fong and Sharlene Furuto (2001).

¹⁸ Arlene N. Weisz, *Legal Advocacy for Domestic Violence Survivors: The Power of an Informative Relationship*, http://www.ncdsv.org/publications_legal.html (visited 1/20/08).

urged to keep the client relationship intact so that if and when the client is ready to use the tools of the legal system, she will consider coming back. The most important goal for an interview with a domestic violence survivor is to make the client (or potential client) feel comfortable enough to come back.¹⁹

Thus, a lawyer should strive to develop an understanding of the client's cultural background; to develop a respectful relationship with the client; and, to develop effective listening and communication skills to address the client's needs.²⁰ And the lawyer should view herself as part of a multi-disciplinary team that can help the client address all of the barriers the immigrant woman faces in making the best decision for her future. This will make the potential representation more effective.

¹⁹. Michael J Strube, Linda S. Barbour, *The Decision to Leave an Abusive Relationship: Economic Dependence and Psychological Commitment*, 45 J. MARRIAGE & FAMILY 785 (1983). Michael J Strube, Linda S. Barbour, *Factors Related to the Decision to Leave an Abusive Relationship*; 46 J. MARRIAGE & FAMILY 837 (1984).

²⁰. *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic*, 28 WASH U. J. SOC.POL'Y & L. (forthcoming).