

“IT’S IN THEIR CULTURE” : FAIRNESS AND CULTURAL CONSIDERATIONS

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Learning Objectives

At the end of this segment, you will be better able to:

- Define the terms culture and cultural competence and enhance respect for the dynamics of difference.
- Identify ways in which culture is relevant in the courtroom.
- Recognize cultural misinformation and avoid assumptions about a person or the facts of a situation based on misinformation.
- Assess implicit and explicit biases that are brought to the bench that might influence courtroom demeanor or the interpretation of facts and making of decisions in cases.

For a minute.....

You are facing the Old Royal Observatory, Greenwich. Walk around its walls until you come to a brass strip set in the pavement. The smooth, gold band in the ground marks the Prime Meridian, or Longitude Zero... Stand to the left-hand side of the brass strip and you are in the Western hemisphere. But move a yard to the right, and you enter the East: whoever you are, you have been translated from a European into an Oriental¹.

Young, R.C. (1995) Colonial Desire: Hybridity in Theory, Culture and Race. Routledge:London, p.1

Culture....

- Culture shapes an individual's experience.
- Culture shapes the perpetrator's response to intervention and acceptance of responsibility.
- Culture shapes access to other services that might be crucial for all.
- The culture of the courtroom, the personnel of the courts, the victims and the perpetrators will impact outcome.

What Is Culture?

Stable pattern of beliefs, values, thoughts, norms

Transmitted from generation to generation

Adaptation for the next generation

The problem is that this is an outdated definition.

Definition Of Culture

A critical definition of culture refers to shared experiences or commonalities that have developed and continue to evolve in relation to changing social and political contexts, based on:

- race
- ethnicity
- national origin
- sexuality
- gender
- religion
- age
- class
- language
- disability status
- immigration status
- education
- geographic location (space)
- rural, urban,
- time, or
- other axes of identification
- within the historical context of oppression

Cultural Context

In all cultures, contexts of privilege and access are created by certain norms against which all other sub groups are compared.

In the U.S. mainland, attributes of the dominant culture include English as a primary language, “whiteness”, Christianity, physically able, male, economic resources and heterosexuality.

Cultural Context

- Privileges and access arise from having one or more of the above attributes of identity. Privilege includes not having to recognize own culture as norm, access to resources, connections and status.
- Privileges for one group can create the dynamics of domination.

Cultural Context

Domination begins with half-truths, misinformation, lies about persons based on differences. Misinformation becomes ingrained in society and others are thought to be deficient and eventually the target group internalizes the misinformation.

Working Assumptions

CULTURALLY COMPETENT ASSUMPTIONS:

Cultures are contradictory.

- widespread acceptance of domestic violence
- traditions of resistance.
- values that are nurturing and oppressive.

Each person a unique individual with their own responses.

Each individual comes into the courtroom encounter with cultural experiences and perspectives that might differ from those present in the courtroom.

Making sense of the world

History of understanding difference through over generalizations or stereotypes

A form of social categorization

New Brain science and the use of categorization

Prescriptive and Descriptive stereotypes

Stereotype matching advantage and stereotype threat

Link between stereotype, prejudice and discrimination

Ways in which it shows up in the courtroom

Misinformation

- Misinformation comes to us from many sources.
- The human mind naturally organizes ideas into categories based on experiences and observations; i.e. Sandra Bullock
- Certain aspects of a particular culture may be true of particular individuals or families within a particular space and time period. These aspects are not true for everyone from that group at all times and in all locations.

Misinformation

- All stereotypes are generalizations but all generalizations are not stereotypes.
- Focusing on one or more aspects of a group and generalizing to all muddies your ability to truly assess a case.

Misinformation

- Power and privilege arise from having one or more of the attributes of the dominant culture. Privilege includes not having to recognize own culture as norm, access to resources, connections and status.
- Privileges for one group can create the dynamics of domination.
- Domination begins with half-truths, misinformation, lies about persons based on differences.

Misinformation

- The manner in which privilege is expressed might vary across different cultures; the fluidity of power is dependent on the historical context of oppression as well as intersection of other categories such as class, sexual orientation, disability, immigration status, and so on.

Practical Applications of Cultural Competence

Culture is operating:

- Internally
 - blinding preferences - explicit and implicit bias
- Externally
 - you heard information or observed demeanor that would suggest presence of cultural difference
 - party directly raised culture as an issue

Practical Applications

In All Cases:

Increase awareness of one's implicit bias. For example,

- Challenge your assumptions.
- Use inclusive language.
- Do not assume English Proficiency or traditional family.
- Do not assume people have resources.

Practical Applications

In A Particular Case:

Analyze the facts and circumstances.

- What do you know from general knowledge about the particular culture?
- What are the stereotypes that are masked as general information?
- Have you used specific questions to learn about the person's cultural experiences?
- How do you evaluate the person's specific experiences in light of the generalized information?

Practical Applications

Know the services in the community:

- Work with a cross section of the community.
- Give culturally appropriate referrals.
- Account for barriers and access to services

Practical Applications

Explain the system's values to both parties. Adapt culture of the court to meet needs of the diverse people.

- Remember, it takes time for people to accept new systems and ideas.
 - Repetition and patience are the key.
- Consider:
- Are the interpreters being used appropriate for this case?

“World Travelling¹” method of Cultural Competency

Culturally challenging practices require a vision of independence and connectedness:

- understanding oneself in one’s own historical context with an emphasis on the overlaps, influences, and conditions one observes in the other.
- Understand one’s historical relationship to the other - see the self as the other sees you
- must see the other in their own context.

Arrogant perception creates distance between oneself and “the Other”.

¹Gunning, Isabella. 1992. “Female Genital Surgeries,” *Columbia Human Rights Law Review* 23(2):189-248.

Culture....

Culture cannot and should not be used as an excuse for bad or unacceptable behavior.

Remember that explanation \neq justification.

Understanding the cultural context can help shape appropriate access and responses that bring about justice.

In the end.....

Requires we set up an intentional process for ourselves to check our knowledge

Continual process of self-assessments and audits

