

CULTURAL CONSIDERATIONS IN DOMESTIC VIOLENCE/ABUSE CASES

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As a Cuban American, raised among other Cuban Americans, I did not honestly become aware of cultural differences until I went away to college. My freshman year roommate, whose ancestors were traced back to the May Flower, lived in a suburb of Detroit, Birmingham. Her father was a top executive with Ford Motor Company. She was the youngest of seven children, all of whom were educated at Georgetown University; I am only child, the first in my family to go to college. I will never forget the night she asked me why I was always fighting with my parents when I called home. I remember staring at her with a perplexed look on my face; I could tell she was embarrassed, and she continued, "You are always yelling at them in Spanish." I started laughing, and explained, "No, I am not yelling at them....I am Cuban, this is how we talk." My loud voice and boisterous hand movements, even while on the phone, were misinterpreted by my restrained and proper American roommate as anger. I was completely unaware that I was "yelling" nor that I appeared to be angry.

This is the first time that I realized that cultural customs do have an impact, and, unless we acknowledge and understand our cultural differences a full understanding of most situations is impossible. This need to understand cultural differences is highlighted when representing clients in domestic violence cases. If my college roommate were watching most of my family interactions, she would believe that we

were angry.

I. Understanding Cultural Differences: “Cultural Competency”

Effective representation of victims in civil domestic violence matters requires a comprehensive understanding of the complex dynamics of abuse. (Toward that end, in 2007, the American Bar Association (ABA) Commission on Domestic Violence published an impressive set of aspirational guidelines called *Standards of Practice for Lawyers Representing Victims of DV, Sexual Assault and Stalking in Civil Protection Order Cases*.¹) One of the factors that must be considered is the set of cultural norms that the client brings with her or him. Cultural norms are the behavior patterns typical of specific groups. These behaviors are learned from parents, siblings, peers and other that share the same culture.

Julie Saffen, in *Professional Responsibility in Civil Domestic Violence Matters*,² stated the issue thus:

A client's culture may be a potent factor preventing a victim from leaving an abusive relationship. Thus, cultural competency is an important component of attorney competency. A culturally competent attorney utilizes tools and training to interact with his or her client in a way that is non-judgmental, respectful, and that avoids stereotypes. Cultural competence allows deeper understanding of the client and the client's perspective, which goes to credibility, comprehension of advice, and understanding of the legal process sufficient to participate and assert their rights. Showing respect for culture facilitates building rapport and trust with

¹ Comm'n on Domestic Violence, Am. Bar Ass'n, *Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases* 3 (2007), http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/0908/Standards_of_Practice_for_Lawyers_Representing_Victims_of_DV_SA_Stalking.authcheckdam.pdf [[hereinafter ABA Standards].

² 24 *Hastings Women's L.J.* 3 (2012).

the attorney, while knowledge of a client's culture helps attorneys avoid cultural missteps. The work of Professors Susan Bryant and Jean Koh Peters is bringing cultural competence into today's law school curriculum. Cultural competency is an important skill for law students to recognize and develop early in their careers, and is a critically important tool for competent domestic violence practice. We all must recognize that culture is ever-present in attorney-client relationships, both the client's culture and our own.

As a new practitioner, I defined successful outcomes for my clients in restraining order terms. How long was the order duration? How far was the stay away distance? Was "no contact" ordered? Was supervised visitation ordered? I believed imposing maximum separation between the abuser and the victim and children were safest and best. But for many of my Latina clients, such restraining orders were in direct conflict with their cultural identity as wife and mother and their duty to care for and keep their families together. I quickly learned a successful outcome must be defined in terms of what the client wants, and understanding the client's cultural perspective was crucial to achieving that outcome.

The ABA Standards, Part III.C, reiterates this point. It states, "The lawyer should be aware of the culture of the client and of how violence is understood within that culture. In particular, the lawyer should understand how the culture of the client may affect client-lawyer communication and trust, identification and presentation of evidence, and remedy selection."³

The goal of "understanding culture" - a culture different than our own, is easier said than done:

Culture is like the air we breathe - it is largely invisible and yet we are dependent on it for our very being. Culture is the logic by which we give order to the world. Culture gives us our values, attitudes and norms of behavior. We are constantly attaching culturally-based meaning to what we see and hear, often without being aware that we are doing so. Through our invisible cultural lens, we judge people to be truthful, rude, intelligent

³ ABA Standards, *supra* note 1, at 26.

or superstitious based on the attributions we make about the meaning of their behavior.⁴

So how do we understand the culture of our client, so that we can engage in “cross-cultural lawyering”? The following provides some considerations for cross-cultural lawyering. (Some of the following examples are taken from Susan Bryant’s article.)

1. First, throw away stereotypes and seek to understand the particular client. For example, if we think about birth order alone as a cultural characteristic, we may not see any significance to this factor. Yet, if the client comes from a society where “oldest son” has special meaning in terms of responsibility and privilege, identification of the ethnicity, gender or birth order alone will not be enough to alert the lawyer to the set of norms and expectations for how the “oldest son” is expected to behave. Instead, the lawyer needs to appreciate the significance of the combination of ethnicity, birth order, and gender to fully understand this aspect of the client’s culture.
2. Second, recognize that things we (as Americans) do not consider culturally significant may have greater significance to the client. You may say to the client, “If there is anything that you do not understand, please just ask me to explain” or “If I am not being clear, please just ask me any questions.” The lawyer might assume that a client who does not then ask

⁴ Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 Clinical L. Rev. 33, 40 (2001).

for clarification surely understands what the lawyer is saying. However, many cultural differences may explain a client's reluctance to either blame the lawyer for poor communication (the second question) or blame himself or herself for lack of understanding (the first question). Indeed, clients from some cultures might find one or the other of these results to be rude and, therefore, will feel reluctant to ask for clarification for fear of offending the lawyer or embarrassing himself.

3. Third, recognize that our own biases about the proper roles of men and women may inhibit our representation of a client. "Today, every state criminalizes marital rape to some degree; yet, cultural barriers continue to impede successful prosecution of this crime."⁵
4. Fourth, recognize that cultural cues are subtle. Cultural differences may cause lawyers and clients to misperceive body language and judge each other incorrectly. For an everyday example, take nodding while someone is speaking. In some cultures, this gesture indicates agreement with the speaker; in others, however, it simply indicates that the listener is hearing the speaker. Another common example involves eye contact. In some cultures, looking someone straight in the eye is a statement of open and honest communication while a diversion of eyes signals dishonesty. In other cultures, however, a diversion of eyes is a sign of respect.
5. Cultural differences can determine credibility. In examining the credibility

⁵ Lisa R. Eskow, *The Ultimate Weapon?: Demythologizing Spousal Rape and Reconceptualizing Its Prosecution*, 48 Stan. L. Rev. 677, 677 (1996).

of a story, lawyers and judges often ask whether the story makes “sense.” Consider, though, a client who explains that the reason that she left her native country was that God appeared to her in a dream and told her it was time to leave. If the time of departure is critical to the credibility of her story, how will the fact-finder evaluate the client's credibility? Does the fact-finder come from a culture where dreams are valued, where an interventionist God is expected, or where major life decisions would be based on these expectations or values? Will the fact-finder, as a result of differences, find the story incredible or indicative of a disturbed thought process or, alternatively, as a result of similarities, find the client credible? These cultural differences must be understood so they can be presented to the court.

6. Fifth, in domestic violence cases, it is especially important to remember the role of culture in women's perceptions of men's and women's roles in a marriage. In the United States, as sociologist Phyllis Baker writes, “The overall goal of the cultural script for battered women is to leave and to stay away from their abuser. The script for the legal system is the same.”⁶ In many cultures, however, “a woman could not reasonably be expected to divorce because of religious, cultural or legal constraints, or because evidence indicates that her husband would not recognize a divorce or

⁶ Phyllis Baker, *And I Went Back: Battered Women's Negotiation of Choice*, 26 J. Contemporary Ethnography 58 (1997).

separation as ending the relationship.”⁷ And so she stays. This fundamental cultural difference must be both understood and explained to the court.⁸

7. Immigrant victims may not report their abusers because of a need to preserve their family's image and reputation. Many immigrant women would rather endure violence than risk shaming their families. A Vietnamese proverb exemplifies this view of their role in society: “When a woman is young, she must obey her father. When she is married, she must obey her husband. When a woman is old, she must obey her son.”⁹
8. The status as an immigrant may also effect the domestic violence victim's reticence in reporting the violence. The victim may not seek help due to a fear that the police are the same organization as the Immigration & Customs Enforcement Agency (“ICE”) or at least due to a fear that the

⁷ Blaine Bookey, *Domestic Violence as a Basis for Asylum: an Analysis of 206 Case Outcomes in the United States from 1994 to 2012*, 24 *Hastings Women's L.J.* 107, 114 (Winter 2013).

⁸ See Katharine K. Baker, *Dialectics and Domestic Abuse*, 110 *Yale L. J.* 1459, 1477 (2001) (describing how ethnic and cultural differences influence the modes of conduct of battered women coming from different ethnic or cultural backgrounds).

⁹ Deanna Kwong, *Recent Development, Removing Barriers for Battered Immigrant Women: A Comparison of Immigrant Protections Under VAWA I & II*, 17 *Berkeley Women's L.J.* 137, 141 (2002); see also see Nimish R. Ganatra, *The Cultural Dynamic in Domestic Violence: Understanding the Additional Burdens Battered Immigrant Women of Color Face in the United States*, 2 *J.L. Soc'y* 109, 110 (2001) (detailing the many barriers that immigrant women of color face in pursuing prosecution of their abusers, including “such factors as language and cultural differences, racial discrimination, and immigration laws”).

police will report them to ICE. They also fear that police will not understand them because of their poor English language skills, that, based on past experiences in their native country, police will conspire with their abuser, or that police will arrest them instead. Some do not know that domestic violence is against the law in this country. They are afraid of going to family court if they are undocumented because they believe that discovery of their status will prevent them from receiving services. They are afraid of leaving their husbands because their husbands are the only people who can vouch for their status to ICE, or their husbands are in possession of their immigration or identification documents. They are also afraid because they may have no marketable skills and no means to support their children or themselves, especially because their lack of documentation may preclude them from receiving government benefits.¹⁰

9. Sixth, domestic violence can occur in non-traditional settings. Domestic violence occurs in same-sex relationships at about the same rate as in opposite-sex relationships.¹¹ Our cultural expectations may not recognize this level of violence. Depicting domestic violence as merely an instrument of domination of men over women overlooks the nuanced patterns in which power-- including, but not limited to, gender-related power--may

¹⁰ Jessica H. Stein, *Coalition, Cross-cultural Lawyering, and Intersectionality: Immigrant Identity as a Barrier to Effective Legal Counseling for Domestic Violence Victims*, 11 Conn. Pub. Int. L.J. 133, 134 (2012).

¹¹ Shannon Little, *Challenging Changing Legal Definitions of Family in Same-Sex Domestic Violence*, 19 Hastings Women's L.J. 259, 260-61 (2008).

operate in other scenarios.

10. Seventh, in some cultures, domestic violence exists as a predicate to the culture. To take the most recent international example, in India, domestic violence exists within the cultural norms of a patriarchal social structure.¹² India's concept of family and familial relations adds to the impact of domestic violence. In many households in India, a husband and wife live with the husband's entire family, which in some instances leads to violence being perpetuated by both the husband and the in-laws. A 2002 survey report showed that eighty-five percent of Indian men admitted to engaging in some form of domestic violence in the previous year.¹³ While these cultural norms cannot be an excuse, they must be understood in order to properly represent your client.
11. In some cultures, there is a cultural abhorrence to turning to an outsider. For example, in Israel, women from collectivist societies, such as Arab society or the ultra-Orthodox society, also fear to turn to authorities outside their closed communities and a fortiori to the enforcement agencies in which they have no confidence or trust.

¹² See Paul Subrata, *Combating Domestic Violence through Positive International Action in the International Community and in the United Kingdom, India, and Africa*, 7 *Cardozo J. Int'l & Comp. L.* 227, 236 (1999) ("Wife beating has been widely accepted as an integral part of the patriarchal social structure in India, under which women are considered to be inferior."); Pami Vyas, *Reconceptualizing Domestic Violence in India: Economic Abuse and the Need for Broad Statutory Interpretation to Promote Women's Fundamental Rights*, 13 *Mich. J. Gender & L.* 177, 185 (2006) ("This pervasive gender discrimination is deeply rooted in the notion of patriarchy, endorsed through a woman's life, from her childhood through death.").

¹³ *Id.*

12. Further complicating matters for Arab-American victims is the fact that it is considered taboo for a woman to divorce or live on her own, so a woman forced to leave her relationship and home due to domestic violence would need to have the support of family in order to do so. Arab-American women are expected by their community to stay with their husbands at all costs. "Women are expected to accept physical, emotional, and verbal abuse rather than break up the family." When family members believe that domestic violence is the victim's fault, it seems unlikely that they will support her or allow her to live with them after she leaves her batterer.¹⁴

13. In Asian societies, the family is the most important social unit, and to the extent that individualism exists, males are more highly valued than females. Also, the culture places a great emphasis on "keeping face," which can deter many battered Asian-American women from seeking outside intervention. An Asian victim of domestic violence could place keeping the family's face above her own safety. While she still might be hesitant to report the abuse, she is probably more likely to report it if she thinks the community she is reporting to understands the difficulties she faces.¹⁵

14. In African American communities, there is a cultural bias against reporting

¹⁴ Emira-Habiby Browne, Conference, Issues in Representing Immigrant Victims, 29 Fordham Urb. L.J. 71, 74 (2001).

¹⁵ Karin Wang, *Battered Asian American Women: Community Responses from the Battered Women's Movement and the Asian American Community*, 3 Asian L.J. 151, 168 (1996).

domestic violence for fear of exposing African-American men to “ridicule.”¹⁶

15. Many Hispanic communities emphasize the family and restrict women into subordinate roles. The identities of Hispanic women are dictated by their roles as wives and mothers, and they are therefore dependent on the family unit. They are treasured as self-sacrificing women who always put the needs of their family above their own. This identity is further supported by the influence of Catholicism which dictates that women are supposed to be devout and traditional in their beliefs. The individual identity held by mainstream women is unfamiliar to many Hispanic cultures. This classification brings about a perception of female inferiority that is a precursor to the cultural acceptance of domestic violence.¹⁷

16. Cultural acceptance of violence against women is often present in Hispanic communities because they view it as a private family issue.

¹⁶ Jo-Ellen Asbury, *African-American Women in Violent Relationships: An Exploration of Cultural Differences*, in *Violence in the Black Family: Correlates and Consequences* 89, 100 (Robert L. Hampton ed., 1987). See also See Linda L. Ammons, *Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African American Woman and the Battered Woman Syndrome*, 1995 *Wisconsin Law Review*, 1003, 1021 (stating that “African American women hesitate to seek help from shelters because they believe that shelters are for white women”).

¹⁷ Michelle Decasas, *Protecting Hispanic Women: the Inadequacy of Domestic Violence Policy*, 24 *Chicano-Latino L. Rev.* 56, 71-72 (2003). See also Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 *B.C. Third World Law Journal* 231, 234, 235 (1994) (emphasizing that “[r]acial and cultural differences are critical considerations in analyzing and responding to the crisis of domestic violence” and further concluding that women of Latin descent “experience and respond to domestic violence differently than other women”).

Women who openly confront their husbands' abusive behavior run the risk of being publicly chastised by their community. To discuss abuse overtly brings shame and embarrassment to the whole family. Families place substantial pressure on women not to disrespect the family unit. This pressure creates a strong disincentive for women to seek assistance outside of the family.¹⁸

17. The apparent lack of anti-domestic violence laws abroad becomes a significant problem within the United States when women emigrate. Women who arrive in the United States from countries with cultures that tolerate domestic violence and justice systems that have not effectively criminalized domestic violence, cannot be expected to know that the abuse they are experiencing is unacceptable and unlawful. With this lack of knowledge they may never become aware of the legal and social resources that are available to them. In addition, cultural values are passed on from generation to generation perpetuating a vicious cycle of domestic abuse.

There are two major reasons for presenting a detailed explanation of culture to the court: (1) why the victim of abuse did not seek help earlier; (2) as a defense.

The cultural defense seeks to mitigate or justify the homicide by showing that the defendant's culture and values led him to commit the crime without the necessary bad mind or mens rea. Those who use the cultural

¹⁸ Id. See also Sara Torres, *Hispanic-American Battered Women: Why Consider Cultural Differences*, in *Family Violence and Religion*, 167, 170 (Rev. Dr. Brian Ogawa ed., 1995). These women have been told that maintaining the family unit is more important than their own well-being.

defense sometimes offer evidence showing that in the defendant's culture, the defendant's act would not be criminal but socially acceptable; thus the defendant did not know that his act was wrong. Because this defense only works if the defendant is a recent immigrant without reasonable knowledge of what Americans consider criminal, the more common way to use the cultural defense is to show that the defendant's culture led him to incorrectly interpret the facts or to react in a "heat of passion." Used in this way, the cultural defense works to mitigate the criminal responsibility of the defendant, often reducing the charge from murder to manslaughter.¹⁹

...
A defendant presenting some form of the cultural defense will likely make one of three different claims. First, he will argue that although he committed the crime, the act was justified because the act is not criminal in his own culture. Second, the defendant will argue for a lesser sentence and lesser charge because the crime he committed would have been treated as less severe than murder in his own culture. The idea behind these two types of arguments is that the recent immigrant has not yet had time to assimilate or understand America's social and legal values and thus should be held to the standards of his old country. Third, the defendant will argue that the act he committed was the product of provocation and mental impairment: given his cultural background, he reasonably perceived and responded to the situation. As one commentator summarized, "A cultural defense will negate or mitigate criminal responsibility where acts are committed under a reasonable, good-faith belief in their propriety, based upon the actor's cultural heritage or tradition."²⁰

¹⁹ Sharon K. Suri, *A Matter of Principle and Consistency: Understanding the Battered Woman and Cultural Defenses*, 7 Mich. J. Gender & L. 107, 108 (2007).

"Cultural defense" refers to the practice of presenting cultural arguments in court in order to negate or mitigate criminal responsibility or to mitigate punishment. To date, no state has formally recognized a general cultural defense. Cultural arguments, therefore, are raised through existing defenses such as provocation, necessity, duress, and self-defense. *E.g.*, Alice J. Gallin, *The Cultural Defense: Understanding the Policies Against Domestic Violence*, 35 B.C. L. Rev. 723, 725 (1994); Alison D. Renteln, *A Justification of the Cultural Defense as Partial Excuse*, 2 S. Cal. Rev. L. & Women's Stud., 437 (1993); Note, *The Cultural Defense in the Criminal Law*, 99 Harv. L. Rev. 1293 (1986).

²⁰ See *People v. Kong Moua*, No. 315972-0 (Fresno County Super. Ct. Feb. 7, 1985) (Kong Moua kidnapped and raped Seng Xiong believing that he was fulfilling the customary practice of marriage by abduction or capture, otherwise known as "zij poj niam"); *People v. Dong Lu Chen*, No. 87-7774 (N.Y. Sup. Ct. Dec. 2, 1988) (Dong Lu

If cultural differences are important to understanding your client's actions, then an expert should be called to explain these differences to the trier of fact. As a matter of ethics, if the cultural differences between you and your client are preventing you from understanding your client, and preventing your client from trusting you and being candid with you, you should consider withdrawing from the case. Finally, "While legal arguments are obviously of great importance when presenting controversial issues before the courts, cultural arguments are often essential to the success of social justice movements in shaping public opinion."²¹

offered cultural evidence to show that, as a person from mainland China, his wife's adultery so completely obliterated his sense of control that he was provoked to kill his wife).

²¹ Jessica Feinberg, *Exposing the Traditional Marriage Agenda*, 7 NW J. L. & Soc. Pol'y 301, 336 (2012).