

CHAPTER 11

Cultural Competency

I. Introduction

Culture can play a significant role in a victim's response to sexual violence, and in the reactions of his or her family or broader community. Without an awareness of how culture intersects with sexual violence and informs victim or witness behavior, a court may make assumptions that can cause misunderstanding or offense, at best, and risk the miscarriage of justice, at worst.

This chapter discusses the importance of cultural competency in the courtroom, specifically in cases of sexual assault. It begins with a brief overview of cultural competency and how it relates to the law and the courtroom. Then, it explores the ways in which culture and sexual violence intersect and why cultural competency is essential to maintaining an unbiased courtroom. Finally, this chapter addresses ways in which judges can develop cultural competency and cultivate it in their courtrooms.

II. What is Cultural Competency?

Washington is increasingly diverse and therefore, Washington courtrooms are increasingly diverse. International immigration to Washington doubled between 1990 and 2013¹ and today roughly 30% of the state's population identifies as non-white.² The Tukwila School District has been dubbed the most diverse school district in the country, with high percentages of immigrant and refugee families, significant levels of poverty and homelessness among students, and large numbers of English Language Learners representing over 80 languages.³ Significant socio-economic disparities exist throughout the State⁴ and roughly one in eight Washingtonians lives below the poverty line.⁵ As diversity in Washington grows, cross-cultural encounters become more frequent. The Washington Court system strives to provide access to justice for all Washingtonians and judges regularly interact with individuals and families of different cultural

¹ See *New Americans in Washington State*, American Immigration Counsel (Jan. 1, 2015) https://www.americanimmigrationcouncil.org/sites/default/files/research/new_americans_in_washington_2015.pdf

² See generally *QuickFacts: Washington*, United States Census Bureau <https://www.census.gov/quickfacts/map/IPE120213/53033>

³ See, e.g., *The Most Diverse District in the Nation: A Closer Look at Tukwila School District*, Puget Sound Educational Service District <https://www.psesd.org/news/the-most-diverse-district-in-the-nation-a-closer-look-at-tukwila-school-district>

⁴ See generally *Socioeconomic Position in Washington*, Washington State Dep't of Health (Mar. 25, 2014) <http://www.doh.wa.gov/Portals/1/Documents/5500/Context-SEP-2014.pdf>; see also Andy Nicholas, *All Income Growth is Going to the Richest 1 Percent of Washingtonians*, Washington State Budget & Policy Center (June 23, 2016) <http://budgetandpolicy.org/schmudget/all-income-growth-is-going-to-the-richest-1-percent-of-washingtonians>

⁵ Elena Hernandez, *Scraping By Isn't Enough: What the Poverty Data Doesn't Show*, Washington State Budget and Policy Center (Sept. 17, 2015) <http://budgetandpolicy.org/schmudget/scraping-by-isnt-enough>

and socioeconomic backgrounds on a daily basis. Cultural identities are comprised of many different elements and to understand and effectively engage with cultural differences requires cultural competency.

These types of diversity—racial, ethnic, linguistic, and socio-economic—represent some of many factors that contribute to the development of culture and cultural identity. Although the term “culture” often conjures ideas of race or ethnicity, in reality culture encompasses any ideas, customs, and social behavior that is generally attributed to a group of people:

Culture is often described as the combination of a body of knowledge, a body of belief and a body of behavior. It involves a number of elements, including personal identification, language, thoughts, communications, actions, customs, beliefs, values, and institutions that are often specific to ethnic, racial, religious, geographic, or social groups.⁶

The term “culture” should not be misunderstood to refer only to minority cultures. “Culture”—in this chapter and more broadly—denotes not only minority communities, but also embraces dominant cultures. Thus, in the United States, the term “culture” includes white culture, Christian culture, English-speaking culture, and other majority groups. Many would argue that white culture does not exist,⁷ while others maintain that such an argument is in fact a key component of white culture.⁸ Although the extent of debates over the meaning and extent of white culture exceed the scope of this chapter, the most important takeaway is that “culture” refers not only to minority cultures, but also to the dominant, often invisible, white culture in the United States.⁹

Cultural competence does not require fully understanding all cultural differences and norms. Rather, to be culturally competent requires “having an awareness of one’s own cultural identity and views about difference, and the ability to learn and build on the varying cultural and community norms of others.”¹⁰ Culture cannot be defined as a static or fixed notion, but rather changes and evolves over time, especially in an increasingly globalized world.¹¹ Nor can an individual’s cultural identity be assumed solely based on the most visible markers of identity,

⁶ *Cultural Respect*, National Institute of Health (Feb. 15, 2017) <https://www.nih.gov/institutes-nih/nih-office-director/office-communications-public-liaison/clear-communication/cultural-respect/>

⁷ See generally *The Making & Unmaking of Whiteness* (Birgit Brander Rasmussen et al., eds. 2001); see also Adam Cornford, *Colorless All-Color: Notes on White Culture* (1997)

<http://isites.harvard.edu/fs/docs/icb.topic545410.files/Cornford.pdf>; Jeff Hitchcock, *When We Talk Among Ourselves: White-on White Focus Groups Discuss Race Relations*, Center for the Study of White American Culture, Inc. (Mar. 1995) http://www.euroamerican.org/library/whenwetalk/WhenWeTalk002_Intro.asp

⁸ See, e.g., Mikhail Lyubansky, *Going Where Glenn Beck Wouldn’t: Defining White Culture*, *Psychology Today* (July 28, 2010) http://www.euroamerican.org/library/whenwetalk/WhenWeTalk002_Intro.asp

⁹ See, e.g., Gita Gulati-Partee & Maggie Potapchuk, *Paying Attention to White Culture & Privilege: A Missing Link to Advancing Racial Equity*, 6 *The Foundation Review* 25 (2014)

http://www.racialequitytools.org/resourcefiles/2_Gulati_AB3.pdf

¹⁰ *Why Cultural Competence?* National Education Association <http://www.nea.org/home/39783.htm>

¹¹ See generally *Culture Handbook*, Family Violence Prevention Fund (2005)

http://www.wcsap.org/sites/default/files/uploads/working_with_survivors/new_directors/Culture-Handbook.pdf

such as race and gender. Intersectionality—the interaction of various aspects of identity, such as race, gender, and class—highlights the importance of considering differences *within* cultural groups, in addition to differences among groups.¹² Above all, cultural competence cultivates “the ability to adapt, work and manage successfully in new and unfamiliar cultural settings”¹³ without reducing an individual to a specific cultural identity based on stereotypes or other limited factors.¹⁴

Cultural competency helps to ensure confidence in the judiciary from the parties and the public at large.¹⁵ Specifically, a judge has the responsibility to avoid any manifestation of bias or prejudice in performing judicial duties, even inadvertently.¹⁶ Thus, to avoid even inadvertent bias requires understanding one’s own cultural perspective and approaching cross-cultural interactions with sensitivity and self-awareness. A judge has the added responsibility of ensuring that lawyers in his or her courtroom abide by the same standards.”¹⁷

While some expressions of bias or prejudice may be obvious, others can be subtle and thus be made inadvertently:

Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice.¹⁸

However, while seeking to eliminate bias in courtroom proceedings, a judge must also keep in mind that references or distinctions based on race, color, sex, religion, national origin, disability, age, marital status, changes in marital status, pregnancy, parenthood, sexual orientation, or social or economic status that are relevant to the legal issues of the case do not fall within the meaning

¹² See Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 Stanford L. Rev. 1241 (1993)

¹³ Sylvia Stevens, *Cultural Competency: Is There an Ethical Duty?* Oregon State Bar Bulletin (Jan. 2009) <https://www.osbar.org/publications/bulletin/09jan/barcounsel.html>

¹⁴ Aastha Madaan, *Cultural Competency & the Practice of Law in the 21st Century*, The American Bar Association (2016) http://www.americanbar.org/publications/probate_property_magazine_2012/2016/march_april_2016/2016_abar_pte_pp_v30_2_article_madaan_cultural_competency_and_the_practice_of_law_in_the_21st_century.html

¹⁵ “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” Washington State Court Rules: Code of Judicial Conduct, Canon 1, Rule 1.2

https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=CJC&ruleid=gacjc1

¹⁶ Washington State Court Rules: Code of Judicial Conduct, Canon 2, Rule 2.3

https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=CJC&ruleid=gacjc2

¹⁷ Id.; Rule 2.3 (C)-(D)

¹⁸ Id. Rule 2.3 cmt. 2 (emphasis added)

https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=CJC&ruleid=gacjc2

of “prejudice or bias.”¹⁹ To fully understand the contours of bias or prejudice in the courtroom, understand how actions or words could be perceived by others as bias or prejudice, and identify the line between legitimate and illegitimate references to certain cultural factors require cultural competence.

The court system as a public institution is based on equal access to justice for everyone. A judge has the duty to ensure that “every person with a legal interest in a proceeding has the right to be heard,”²⁰ and the responsibility to maintain decorum, civility, and professionalism in his or her courtroom.²¹ The latter includes the duty to supervise court staff or other judges to ensure they “act with fidelity and in a diligent manner consistent with the judge’s obligations” under court rules.²² To fulfill all of these duties and manage a culturally competent courtroom, a judge must cultivate her or his own cultural awareness and sensitivity toward the broad diversity of cultures among the many people who enter her or his courtroom.

It can be difficult for members of a dominant culture to perceive their own cultural traits. As the majority culture in the United States, white culture is largely defined by the unquestioned dominance, normalization, and privilege that derives from belonging to the majority group.²³ Because whiteness occupies a position of norm or status quo in our country, it can be difficult to see or define, or may simply be conflated with “U.S. culture” more broadly.²⁴ White identity may be seen as a “neutral race identity,”²⁵ as white people rarely have occasion to reflect on their whiteness.²⁶ In fact, the failure to acknowledge or discuss whiteness, and the tendency to relate to other white people as individuals “devoid of race”²⁷ are all features of white culture.

III. How Does Cultural Competency Intersect with Sexual Violence?

Sexual violence is perpetrated within and among all racial, ethnic, religious, socio-economic, gender, and sexual orientation identities. Anyone can be affected by sexual violence and therefore, in the criminal justice context, judges will encounter parties and witnesses from all backgrounds. Sexual violence can be an extremely complex and personal experience, often affecting deeply the identity of a victim or family. The literature shows that every victim of sexual assault has a unique experience, and that culture and cultural differences can impact the

¹⁹ Id. Rule 2.3 cmt. 5

²⁰ Id. Rule 2.6

²¹ Id. Rule 2.12(A)

²² Id. Rule 2.12(A)

²³ See Gulati-Partee & Potapchuk, *Paying Attention to White Culture & Privilege: A Missing Link to Advancing Racial Equity* at 27 (2014) http://www.racialequitytools.org/resourcefiles/2_Gulati_AB3.pdf

²⁴ Id.

²⁵ Nell Irvin Painter, *What is Whiteness?* The New York Times (June 20, 2015) https://www.nytimes.com/2015/06/21/opinion/sunday/what-is-whiteness.html?mcubz=0&_r=0

²⁶ *Whiteness*, The Critical Media Project <http://www.criticalmediaproject.org/cml/topicbackground/race-ethnicity/white/>

²⁷ Lyubansky, *supra* note 9

way a victim experiences sexual violence, communicates about the experience, and relates to the court system.²⁸

A. Cultural Beliefs About Sex, Gender Roles, and Sexual Violence

Beliefs about sex, gender roles, and sexual violence all inform the experiences of sexual assault victims and their families and broader communities.²⁹ Such beliefs may also influence a person's willingness to engage with the legal process. Many of these beliefs derive from cultural identities; thus, cultural competence is a key component of understanding or relating to alleged victims of sexual violence.

A culturally competent approach to the problem of sexual violence involves recognizing one's own beliefs—beliefs that are largely influenced by cultural norms and narratives—about how a victim “should” act. Popular awareness of sexual violence has increased in the United States dramatically in the past decade, which in turn has begun to shift many deeply rooted stereotypes and attitudes toward victims.³⁰ There has been growing recognition of the perils of imposing expectations of how a “real” rape victim “should” act, for example in understanding of the realities of delayed reporting.

Nonetheless, victim behaviors stemming from fundamental cultural differences can continue to present challenges for judges, jurors, and lawyers. Many cultures, including popular culture in the United States, perpetuate attitudes and beliefs that women may not legitimately or safely refuse male sexual advances.³¹ Thus, women may be culturally conditioned to believe that they cannot refuse sexual advances, and may therefore be unable to say “no” or otherwise indicate lack of consent. Such behaviors, absent cultural considerations, may lead outsiders to believe contact was consensual, when in fact it was not. Through the lens of cultural competency, however, one can begin to understand otherwise counterintuitive responses.³²

In communities or cultures that value masculinity and male superiority, sexual assault may be considered more socially acceptable.³³ Some cultures may have traditions of marrying young girls to older men³⁴ or viewing marriage as a man's ownership of a woman, expecting

²⁸ See *Culture Handbook*, Family Violence Prevention Fund (2005) at 7-8

http://www.wcsap.org/sites/default/files/uploads/working_with_survivors/new_directors/Culture-Handbook.pdf

²⁹ See, e.g., Gurvinder Kalra & Dinesh Bhugra, *Sexual Violence Against Women: Understanding Cross-Cultural Intersections*, 55 *Indian J. Psychiatry* 244 (2013) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3777345/>

³⁰ See, e.g., Patricia L. Fanflik, *Victim Responses to Sexual Assault: Counterintuitive or Simply Adaptive?* American Prosecutors Research Institute (2007)

http://www.ndaa.org/pdf/pub_victim_responses_sexual_assault.pdf

³¹ See *Chapter 6: Sexual Violence* in *World Report on Violence & Health*

http://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf

³² Fanflik, *supra* note 32

³³ *Sexual Assault & Cultural Norms*, Stop Violence Against Women (Feb. 1, 2006)

http://www.stopvaw.org/sexual_assault_and_cultural_norms

³⁴ *Sexual Violence*, *supra* note 33

married women to be submissive and sexually available to their husbands at all times.³⁵ Such cultural norms can influence the ways in which victims, perpetrators, their families, and broader communities understand sexual violence, sometimes to the extent that sexual violence becomes normalized and women may not consider themselves to be victims. At the same time, cultures that value masculinity and male dominance may silence male victims of sexual abuse or sexual violence, equating victimization with weakness.³⁶

Cultural understandings of honor can deeply impact beliefs and attitudes toward sexual violence. Cultures and religions that equate women's sexual purity with "honor" may also view women as embodying family "honor."³⁷ As such, an act of sexual violence against a woman can become a violation of her family, which in turn can increase her feelings of shame or responsibility. Attitudes toward virginity play a significant role in responses—by victims, families, or communities—to sexual violence. Many cultures and religions place a premium on a woman's virginity,³⁸ expecting women to remain "pure" until marriage.³⁹ In the extreme, some cultures subject women and girls to "virginity testing."⁴⁰ In these contexts, loss of virginity outside of marriage, even in the context of sexual violence, correlates directly to a woman's future marriage prospects and place in her community.⁴¹ Religious beliefs about virginity can deeply impact the way a victim relates to the experience of sexual violence.⁴² These attitudes may compound a victim's feelings of shame, guilt, or denial, increasing reluctance or refusal to engage with the legal process.⁴³

Family circumstances and dynamics, many of which are culturally informed, can also account for responses sexual violence, particularly when abuse is committed within a family.⁴⁴

³⁵ Id; See also *Communities of Color & the Impacts of Sexual Violence*, Univ. of Michigan Sexual Assault Prevention & Awareness Center <https://sapac.umich.edu/article/57>

³⁶ See e.g. Carol O'Brien, et al., *Don't Tell: Military Culture & Male Rape*, 12:4 *Psychological Services* 357 (2015) <https://www.apa.org/pubs/journals/releases/ser-ser0000049.pdf>; Gabrielle Lucero, *Military Sexual Assault: Reporting & Rape Culture*, 6:1 *Sanford J. of Pub. Policy* 1 (2015) <https://sites.duke.edu/sjpp/files/2015/01/Military-sexual-assault.pdf>

³⁷ *Defining "Honour" Crimes & "Honour" Killings*, United Nations Entity for Gender Equality & The Empowerment of Women (2012) <http://www.endvavnow.org/en/articles/731-defining-honourcrimes-and-honour-killings.html>; *Chapter 6: Sexual Violence* in *World Report on Violence & Health* http://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf

³⁸ Daniel L. Chen, *Gender Violence & the Price of Virginity: Theory & Evidence of Incomplete Marriage Contracts* (2005) http://users.nber.org/~dlchen/papers/Gender_Violence_and_the_Price_of_Virginity.pdf

³⁹ Shadab Shahali, et al., *Barriers to Healthcare Provision for Victims of Sexual Assault: A Grounded Theory Study*, 18:3 *Iran Red Crescent Med. J.* (2016) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4879759/>

⁴⁰ UN: *WHO Condemns 'Virginity Tests'*, Human Rights Watch (Dec. 1, 2014) <https://www.hrw.org/news/2014/12/01/un-who-condemns-virginity-tests>

⁴¹ Shahali, et al., *supra* note 41

⁴² Jill Filipovic, *Purity Culture: Bad for Women, Worse for Survivors of Sexual Assault*, *THE GUARDIAN* (May 9, 2013) <https://www.theguardian.com/commentisfree/2013/may/09/elizabeth-smart-purity-culture-shames-survivors-sexual-assault>; Lisa Aronson Fontes and Carol Plummer, *Cultural Issues in Disclosures of Child Sexual Abuse*, 19 *J. of Child Sexual Abuse* 491 (2010)

⁴³ Shahali, et al., *supra* note 41

⁴⁴ S. Shafe & G. Hutchinson, *Child Sexual Abuse & Continuous Influence of Cultural Practices: A Review*, 63:6 *West Indian Med. J.* 634 (2014) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4663956/>

In the United States, minority children are more likely than white children to be removed from their families and placed into the foster care system.⁴⁵ Community experiences with disproportionate treatment can cultivate distrust or suspicion toward law enforcement and the legal system. When their family faces other struggles, such as poverty, homelessness, or illness, children may remain silent about abuse in order to avoid creating more problems.⁴⁶ Finally, many cultures value preserving the family's reputation over addressing the consequences of abuse and thus believe that situations of sexual violence should be kept private within the family.⁴⁷ These factors can lead to reluctance to disclose abuse or a tendency, once it has been disclosed, to deal with the issue inside the family rather than engage with the legal system.⁴⁸

Cultural attitudes toward homosexuality may also shape responses to sexual violence. As discussed above, for example, cultures that have strict definitions of masculinity or gender roles can create significant barriers to male victims coming forward, especially in cases where the assailant is another man. Regardless of the actual sexual orientation of the victim, perceptions of male-on-male sexual violence can create fear of disclosing abuse or assault. A male survivor who identifies as straight may fear the implications of being perceived as gay in his community or may have internalized concerns that abuse by another man threatens his masculinity or will make him gay. These attitudes can lead to feelings of shame, guilt, or moral failure, which further complicate a victim's experience of sexual violence. On the other hand, a victim who identifies as LGBTQ and belongs to a culture with negative attitudes toward homosexuality may lack family support or be reluctant to engage with the legal system for fear of being outed, which in turn may have significant collateral consequences.⁴⁹

Sexual violence within the LGBTQ community has also been historically overlooked and misunderstood for lack of cultural competence.⁵⁰ In particular, intra-community violence often draws discouraging responses due to denial that sexual violence is committed against same-sex partners.⁵¹ Much of the dialogue around sexual assault focuses on violence committed against women by men, which in turn reinforces the gender binary and ignores the experiences of non-gender-conforming people.⁵² Sexual violence can be targeted at LGBTQ individuals because of their actual or perceived gender identity or sexual orientation; thus, in some cases there is a direct link between cultural identity and victimization.⁵³ And yet homophobia and transphobia

⁴⁵ Lisa Aronson Fontes and Carol Plummer, *Cultural Issues in Disclosures of Child Sexual Abuse*, 19 J. of Child Sexual Abuse 491 (2010)

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ *LGBTIQ Survivors of Sexual Assault*, Oregon Attorney General's Sexual Assault Task Force Advocacy Manual (2010) http://www.doj.state.or.us/victims/pdf/lgbtiq_survivors_of_sexual_assault.pdf

⁵⁰ Lauren Paulk, *Sexual Assault in the LGBT Community*, National Center for Lesbian Rights (Apr. 30, 2014) <http://www.nclrights.org/sexual-assault-in-the-lgbt-community/>

⁵¹ Id.

⁵² *Communities of Color & the Impacts of Sexual Violence*, Univ. of Michigan Sexual Assault Prevention & Awareness Center <https://sapac.umich.edu/article/57>

⁵³ *LGBTIQ Survivors*, supra note 51

within the legal system may cause victims to be reluctant to disclose information pertaining to sexual orientation or gender identity.⁵⁴

Attitudes toward sex and gender roles can differ strongly among generations. Teens and young adults have their own forms of culture, which are often disregarded or devalued by older generations. Teens and young adults are often accused of encouraging sexual violence through “hookup culture”⁵⁵ or being increasingly narcissistic in social media use.⁵⁶ Sexual and cultural norms shift from generation to generation⁵⁷ and judgmental attitudes toward casual sex can lead to victim-blaming in cases of sexual violence.

Many people, regardless of culture, tend to blame or disbelieve victims of sexual violence. However, some studies suggest that victims in minority communities may be subject to a greater degree of victim-blaming.⁵⁸ This can lead to increased hesitance to report or participate in the legal system. The same studies have found that members of racial minority groups in the United States—both men and women—are more likely than white people to hold victim-blaming attitudes or believe that sexual violence is correlated to a woman’s promiscuity.⁵⁹ At the same time, white Americans are more likely to perpetuate stereotypes or attribute rape myths in situations involving minority victims.⁶⁰ In general, communities that society has historically viewed or continues to view as hypersexualized, such as people of color or the LGBT community, receive disproportionate blame for their sexual assaults.⁶¹

Finally, members of discrete, minority cultural groups may face additional cultural challenges based on the nature of their community. A small, tight-knit community, such as an immigrant or refugee population, may rely heavily on social networks for support and survival. When sexual violence is perpetrated within those insular groups, exposing the assault or abuse may cause the victim or their family to lose that support.⁶²

B. Misunderstanding and Distrust of Law Enforcement or the Court System

⁵⁴ *Sexual Violence & Individuals who Identify as LGBTQ*, National Sexual Violence Resource Center (2012) http://www.nsvrc.org/sites/default/files/Publications_NSVRC_Research-Brief_Sexual-Violence-LGBTQ.pdf

⁵⁵ Conor Friedersdorf, *How Does Hookup Culture Affect Sexual Assault on Campus*, The Atlantic (June 28, 2016) <https://www.theatlantic.com/politics/archive/2016/06/how-does-hookup-culture-affect-sexual-assault-on-campus/489098/>

⁵⁶ See, e.g., *Me, Me, Me: The Rise of Narcissism in the Age of the Selfie*, NPR (July 12, 2016)

<http://www.npr.org/2016/07/12/485087469/me-me-me-the-rise-of-narcissism-in-the-age-of-the-selfie>

⁵⁷ Justin R. Garcia, Chris Reiber, et al., *Sexual Hookup Culture: A Review*, 16 *Rev. of Gen. Psychol. Rev.* 161 (2012)

⁵⁸ Devona Robinson, *Ethnic Differences in the Experiences of Sexual Assault Victims*, NYU Dep’t of Applied Psych. (2017) <http://steinhardt.nyu.edu/appsyh/opus/issues/2015/spring/robinson>

⁵⁹ “For example, minority men and women tend to have more victim-blaming attitudes than White Americans.” *Id.* (citing Jimenez & Abreu, 2003; Wyatt, 1992)

⁶⁰ *Id.*

⁶¹ Paulk, *supra* note 52

⁶² Lisa Aronson Fontes and Carol Plummer, *Cultural Issues in Disclosures of Child Sexual Abuse*, 19 *J. of Child Sexual Abuse* 491 (2010)

Judicial encounters with sexual assault victims and their families by definition occur within the court system. It is important to remember the context in which these encounters take place and acknowledge the relationships between culture and the law. Culture can play a central role in how or if a victim accesses the justice system or other services. Basic accommodations, such as the availability of interpreters for non-English speakers or the sensitive use of gender pronouns, can encourage equal access to justice. But a deeper knowledge of how culture interacts with the legal system can provide a more holistic understanding of a victim's behavior and experience in that system.

Culture can strongly influence one's trust or distrust of legal institutions.⁶³ For example, immigrant communities may form beliefs or understandings of U.S. legal institutions based on their knowledge of or familiarity with legal institutions in their countries of origin. Attitudes toward legal or political institutions can be based on a variety of factors, such as levels of general stability, effectiveness, rule of law, and prevalence or control of corruption.⁶⁴ On the other hand, socially isolated groups, such as immigrant, refugee or rural communities, may simply lack familiarity or understanding of the system, which in turn can cause fear. In some cases, distrust or fear of the legal system can be used as an intimidation mechanism to keep victims silent. For example, victims from immigrant or undocumented communities may react with universal distrust of the legal system for fear of negative immigration consequences.⁶⁵ Fear of deportation, of oneself or family member, may be a more pressing concern than addressing sexual violence.

In addition to distrust of the integrity of the court system, many cultures have deep distrust of law enforcement more generally. Cultural identities often form in relation to historic and current power differentials and oppression among different cultural groups or by formal institutions. Trauma or oppression at the hands of law enforcement or bias in the criminal justice system, whether historic, current, or both, can lead to fear, suspicion, or distrust of such institutions.⁶⁶ Whether that distrust derives from experience with law enforcement in other countries or police in the United States, such fundamental suspicion can deeply impact reporting dynamics for sexual assault victims. Minority groups in the United States are more likely to distrust law enforcement.⁶⁷ In communities of color, suspicion of law enforcement and the justice system often results from high levels of police violence or racial profiling.⁶⁸ Such

⁶³ Alberto Alesina & Paola Giuliano, *Culture & Institutions* (2014)

http://scholar.harvard.edu/files/alesina/files/cultureandinstitutions_jel_2014.pdf

⁶⁴ Id. See generally *Legal Culture in the Age of Globalization* (Lawrence M. Friedman and Rogelio Pérez-Perdomo, eds., Stanford University Press, 2003)

⁶⁵ Jeanine Beiber & Kristi VanAudenhove, *Working with Immigrant Survivors*, 4 *Revolution* 2 (2011)
http://www.nhcadsv.org/Revolution_4FINAL%5B1%5D.pdf

⁶⁶ *Communities of Color & the Impacts of Sexual Violence*, Univ. of Michigan Sexual Assault Prevention & Awareness Center <https://sapac.umich.edu/article/57>

⁶⁷ *Race, Trust & Police Legitimacy*, Nat'l Institute of Justice (July 14, 2016) <https://www.nij.gov/topics/law-enforcement/legitimacy/Pages/welcome.aspx>; Conor Friedersdorf, *Addressing Distrust Between Cops & Communities of Color*, *The Atlantic* (June 28, 2016) <https://www.theatlantic.com/politics/archive/2016/06/addressing-distrust-between-cops-and-communities-of-color/488966/>

⁶⁸ *Race, Trust & Police Legitimacy*, supra note 69

suspicion may be prevalent regardless of the capacity in which an individual engages with the system:

The juxtaposition of an overwhelmingly Caucasian criminal justice infrastructure with the low socio-economic profile and varied cultural backgrounds of those brought before the criminal justice system—whether as victims, witnesses, defendants, or otherwise—has combined with other factors to generate increasing skepticism from many communities about the integrity and reliability of the criminal justice system.⁶⁹

In communities of color, victims of sexual violence may fear that reporting will reinforce stereotypes of men of color as “criminals” or “predators”; they may decline to report as a way of protecting their broader communities.⁷⁰ Conversely, in cases where the accused is a white male, especially one of upper-class background, the victim may encounter a system reluctant to view the defendant as a dangerous offender.⁷¹ These same cultural assumptions are amplified in situations where the victim and the offender are of different races. Women of color experience sexual violence at a higher rate than white women,⁷² yet are less likely to report or access services following an assault.⁷³

Distrust of the legal system or law enforcement may also be influenced by gender. Police and law enforcement have a long history of mistreating or disbelieving victims of sexual assault and domestic violence, who are primarily women. For example, a recent report by the Department of Justice of policing in Baltimore revealed patterns of “undue skepticism” toward sexual assault victims, including dismissive, insensitive, or harassing attitudes toward those making reports.⁷⁴

Enforcement violence—that is, violence or abuse of authority by law enforcement agents—is experienced far more often by women of color and may lead to a greater distrust of

⁶⁹ American Bar Association Criminal Justice Section, *Building Community Trust: Improving Cross-Cultural Communication in the Criminal Justice System* (2010)
<http://www.americanbar.org/content/dam/aba/migrated/sections/criminaljustice/PublicDocuments/bctext.authcheckdam.pdf>

⁷⁰ *Communities of Color & the Impacts of Sexual Violence*, Univ. of Michigan Sexual Assault Prevention & Awareness Center <https://sapac.umich.edu/article/57>; Lisa Aronson Fontes and Carol Plummer, *Cultural Issues in Disclosures of Child Sexual Abuse*, 19 J. of Child Sexual Abuse 491 (2010)

⁷¹ See, e.g., Chardonay Madkins, *White, Male Privilege is Killing Us All*, END RAPE ON CAMPUS (July 19, 2016), <http://endrapeoncampus.org/eroc-blog/2016/7/19/white-male-privilege-is-killing-us-all> (reflecting on the now-infamous Stanford rape case as “a perfect model that showcases white supremacist capitalist patriarchy where white male plus wealth equals power.”)

⁷² *Domestic & Sexual Violence & Communities of Color* Oregon Coalition Against Domestic & Sexual Violence <https://www.pcc.edu/resources/illumination/documents/domestic-violence-communities-color.pdf>; *The Impact of Gender-Based Violence on Women of Color*, The Blackburn Center (Feb. 8, 2017)
<http://www.blackburncenter.org/single-post/2017/02/08/The-Impact-of-Gender-Based-Violence-on-Women-of-Color>

⁷³ Id.

⁷⁴ See, e.g., Soraya Chemaly, *How Police Still Fail Rape Victims*, The Rolling Stone (Aug. 16, 2016)
<http://www.rollingstone.com/culture/features/how-police-still-fail-rape-victims-w434669>

law enforcement or the criminal justice system.⁷⁵ Among female sex workers, a strong distrust of police or the legal system is also pervasive.⁷⁶ This distrust can stem from negative interactions with law enforcement, the reluctance or inability of officers to view sex workers as potential victims, or the increased prevalence of abuse of authority.⁷⁷

In Washington State, Native American communities and tribal courts create a unique jurisdictional challenge. There are 26 federally recognized tribes within Washington, each of which operates its own court or belongs to the Northwest Intertribal Court System.⁷⁸ However, state and tribal courts at times exercise concurrent jurisdiction over criminal prosecutions.⁷⁹ American Indian women experience sexual violence at a rate 2.5 times higher than any other race.⁸⁰ The high prevalence of sexual violence against Native women, combined with jurisdictional complexities, can create a difficult situation for state judges to navigate. “The different cultures, legal traditions, political systems, histories, and economic positions of state and tribal courts” amplify the potential conflicts and misunderstandings.⁸¹ In 2013, the Tribal State Court Consortium (TSCC) was created as a collaboration among the Minority and Justice Commission, the Gender and Justice Commission, the Administrative Office of the Courts, and tribal courts across the state with the goal of increasing communication and corporation between state and tribal court systems.⁸² Meaningful collaboration, however, must begin from a place of cultural competence and awareness of the ways in which tribal culture, including legal systems, factor into experiences of Native Americans in the state court system.

Behaviors or attitudes expressed in a courtroom may have little or nothing to do with the underlying sexual violence or assault, but rather indicate distrust or misunderstanding of the U.S. legal system. Awareness and sensitivity to these dynamics and cultural differences are especially important for judges, who many see as the embodiment of the legal system. Judges have the power to control their courtrooms and ensure equal treatment for all.

⁷⁵ See generally Anannya Bhattacharjee, *Whose Safety? Women of Color & the Violence of Law Enforcement*, American Friends Service Committee (2001)

<https://www.afsc.org/sites/afsc.civicactions.net/files/documents/whose%20safety.pdf>

⁷⁶ See, e.g., Susan G. Sherman et al., “What Makes You Think You Have Special Privileges Because You’re a Police Officer?” *A Qualitative Exploration of Police’s Role in the Risk Environment of Female Sex Workers*, 27:4 AIDS Care 473 (2015)

⁷⁷ Id.

⁷⁸ See Ralph W. Johnson & Rachael Paschal, eds., *Tribal Court Handbook for the 26 Federally Recognized Tribes in Washington State*, Washington State Bar Association (1992)

<http://www.msaj.com/papers/handbook.htm>

⁷⁹ See generally *Promising Strategies: Tribal-State Court Relations*, Tribal Law & Policy Institute (Mar. 2013)

<https://www.walkingoncommonground.org/files/Promising%20Strategies%20Tribal-State%20Court%20Final%2013-13.pdf>

⁸⁰ *Tribal Communities*, Office on Violence Against Women, U.S. Dep’t of Justice (Nov. 29, 2016)

<https://www.justice.gov/ovw/tribal-communities#about-ovw-indian-country>

⁸¹ Id.

⁸² See 2016 Minority & Justice Commission Annual Report

<https://www.courts.wa.gov/committee/pdf/2016MJCAnnualReport.pdf>

IV. How Can Judges Be Culturally Competent and Cultivate Cultural Competence in Their Courtrooms?

Cultural competence is not the same as cultural knowledge; to be culturally competent does not require one to know everything about every culture. Rather, cultural competence refers to a “set of knowledge, skills and attitudes that can be developed over time in order to work with those who appear and may be different from us.”⁸³

Cultural competence does not develop overnight, but rather is a complex process that must be cultivated over time and requires continual reconsideration.⁸⁴ Recognizing the role culture plays in sexual violence and access to justice, particularly in the experiences and reactions of victims, is an important first step in developing cultural competence in the courtroom. To begin developing and strengthening cultural competence, consider the following:

- **Recognize and cultivate awareness of your own biases and prejudices.**⁸⁵ Self-awareness is the foundation for cultural competence and requires recognizing how your beliefs and assumptions about sexual violence are influenced by your cultural perspective.⁸⁶ Learn about your own cultural background. Recognize ways in which you have privilege and how that impacts your perceptions and experiences.⁸⁷ Many biases or assumptions about others can exist unconsciously and be communicated through subtle verbal or non-verbal cues.⁸⁸ Everyone has unconscious beliefs and attitudes, known as “implicit bias.”⁸⁹ You can begin to

⁸³ *Culture Handbook*, Family Violence Prevention Fund

http://www.wcsap.org/sites/default/files/uploads/working_with_survivors/new_directors/Culture-Handbook.pdf

⁸⁴ Bronheim S, Goode, T. *Climate of the Learning Environment: Cultural and Linguistic Competence Checklist for MCH Training Programs*. Washington, DC: National Center for Cultural Competence, Georgetown University Center for Child and Human Development; 2013

⁸⁵ Rebecca Clay, *How Do I Become Culturally Competent?* American Psychological Association <http://www.apa.org/gradpsych/2010/09/culturally-competent.aspx>; Susan Bryant, *Five Habits of Cross-Cultural Lawyering*, 8 Clinical L. Rev. 33 (2001); Cynthia Pay, *Teaching Cultural Competency in Legal Clinics*, 23 J.L. & Social Policy 188, 205 (2014)

⁸⁶ *Culture Handbook*, Family Violence Prevention Fund

http://www.wcsap.org/sites/default/files/uploads/working_with_survivors/new_directors/Culture-Handbook.pdf

⁸⁷ See, e.g., Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack* (1989)

https://nationalseedproject.org/images/documents/Knapsack_plus_Notes-Peggy_McIntosh.pdf; See also American Bar Association Criminal Justice Section, *Building Community Trust: Improving Cross-Cultural Communication in the Criminal Justice System* (2010)

<http://www.americanbar.org/content/dam/aba/migrated/sections/criminaljustice/PublicDocuments/bctext.authcheckdam.pdf>

⁸⁸ Hon. Gail S. Tusan & Sharon Obialo, *Cultural Competence in the Courtroom: A Judge's Insight*, From the Bench (2010)

<http://www.mobar.org/uploadedFiles/Home/Publications/Precedent/2010/Fall/Cultural%20Competence%20in%20the%20Courtroom%20A%20Judge's%20Insight.pdf>

⁸⁹ *Implicit Bias*, Perception Institute (Mar. 31, 2017) <https://perception.org/research/implicit-bias/>

examine those biases using implicit bias tests, such as Project Implicit, run by Harvard.⁹⁰

- **Develop awareness and acknowledge others’ cultural similarities and differences between the dominant culture.**⁹¹ Assess the significance of both the similarities and differences and how those may affect someone’s interactions and experiences in the legal system.⁹² Consider if you were unfamiliar with the court system or spoke a different language, would you feel comfortable in your courtroom?⁹³
- **Do not impose your own values or assumptions on others.**⁹⁴ Recognize when you disagree with others’ beliefs or behavior and consider how culture may be at play. Do not assume your perspective is superior.⁹⁵ Consider alternative explanations for behavior that might seem unusual or counterintuitive to you.⁹⁶
 - If you feel frustrated, confused, or uncomfortable with an interaction, take a minute to assess what you are feeling, what specifically makes you frustrated/confused/uncomfortable, and whether the other person with whom you are engaging is doing or saying something you do not understand.⁹⁷
 - Use inclusive language. For example, don’t assume heterosexuality by asking about someone’s “husband” or “wife.” Instead use “partner” or “spouse.”⁹⁸ Avoid using male pronouns to refer to a generic person; instead use “he or she,” “they,” or “one.” Ask how individuals prefer to be addressed and be sure to continue addressing them as they wish to be addressed.⁹⁹

⁹⁰ See Project Implicit, <https://implicit.harvard.edu/implicit/>

⁹¹ Sue Bryant and Jean Koh Peters, *Five Habits for Cross-Cultural Lawyering*, 8 Clinical L. Rev. 33 (2001); Tusan

⁹² Bryant, *supra* note 93

⁹³ *C.f. Six Steps Toward Cultural Competence*, UCARE Minnesota (2000)

<https://www.ucare.org/providers/documents/6stepsulturalcompetence.pdf>

⁹⁴ *Culture Handbook*, Family Violence Prevention Fund

http://www.wcsap.org/sites/default/files/uploads/working_with_survivors/new_directors/Culture-Handbook.pdf

⁹⁵ *Cultural Competency*, Crisis Center http://crisiscenterbham.org/_pdfs/rape_response/Vol9-cultural-competency.pdf

⁹⁶ Bryant, *supra* note 93

⁹⁷ *Strategies for Individuals*, Community Advancement Network (2017) <http://canatx.org/strategies-for-individuals/>

⁹⁸ *C.f. Communication Guide: All Cultures*, Univ. of Washington Medical Ctr. (2011)

<https://depts.washington.edu/pfes/PDFs/CommunicationGuideAllCultures.pdf>

⁹⁹ *Id.*

- Pay attention to cues and follow the lead of the person you are interacting with.¹⁰⁰ This can be especially important in situations involving physical touch, such as shaking hands, or making eye contact.¹⁰¹
- **Recognize the power that judges have in the legal system and the degree to which your actions and decisions can impact the lives of victims and families in the courtroom.**¹⁰² Victims of sexual violence often feel revictimized by their experiences in the criminal justice system.¹⁰³ Being treated with respect, in a culturally competent way, can significantly improve a victim’s experience in the legal system. Watch for red flags that an interaction is not going well and consider whether it may be the result of a cultural misunderstanding.¹⁰⁴
 - Explain what you are doing. Negative experiences can be the result of lack of information. Even if you are doing or saying something that seems obvious to you, consider that others may not understand or know why. For example, explain prior to witness questioning what it means when a lawyer objects and that any arguments between the lawyers are not because of what the witness has done.
 - Explain who the people in the courtroom are and what their jobs are. Remember that even the basic aspects of courtroom procedure may be completely foreign to many people. Explaining to someone what you are doing and why you are doing it, can ease anxiety or fear that stems from not understanding.
- **Develop culturally competent communication skills.** Language is one of the central markers of culture and most obvious barriers to accessing the court system.¹⁰⁵ When communicating with non-English speakers through interpreters, remember to make eye contact and talk to the individual, rather than to the interpreter.¹⁰⁶ Be patient with individuals with limited English proficiency and remember that body language and non-verbal signals communicate a lot.¹⁰⁷ Simple acts, such as the correct pronunciation of names or use of preferred pronouns shows respect and increases comfort in the courtroom.¹⁰⁸

¹⁰⁰ Id.

¹⁰¹ Id.

¹⁰² Cf. *Culture Handbook*, Family Violence Prevention Fund

http://www.wcsap.org/sites/default/files/uploads/working_with_survivors/new_directors/Culture-Handbook.pdf

¹⁰³ Victims Committee, Criminal Justice Section, American Bar Association, *The Victim in the Criminal Justice System* (2006) [apps.americanbar.org/dch/thedl.cfm?filename=/CR300000/newsletterpubs/...pdf](https://www.americanbar.org/dch/thedl.cfm?filename=/CR300000/newsletterpubs/...pdf)

¹⁰⁴ Bryant, supra note 93

¹⁰⁵ *Culture Handbook*, Family Violence Prevention Fund

http://www.wcsap.org/sites/default/files/uploads/working_with_survivors/new_directors/Culture-Handbook.pdf

¹⁰⁶ Crisis Center, supra note 98

¹⁰⁷ Tusan, supra note 90

¹⁰⁸ Crisis Center, supra note 98

- **When in doubt, ask.**¹⁰⁹ One key element of cultural competence is to avoid making assumptions. It is important to respect how people self-identify, which may not always correspond to how you perceive them.¹¹⁰ Develop sensitive and respectful ways to engage with difference and ask questions, rather than assume.¹¹¹
 - Ask open-ended questions, when possible, to allow for answers that you may not expect or may not fit into your framing of the question.¹¹²
 - Ask if individuals in your courtroom are comfortable and, if the answer is no, ask why or what could help them feel more comfortable. Asking about or offering accommodations expresses inclusion and awareness that people may have different experiences of the court system.¹¹³
 - Ask whether individuals in your courtroom have any questions throughout your interactions, rather than waiting until the end, especially when presenting information.¹¹⁴
 - If you don't understand an answer to a question, consider asking it in another way or following up with an open-ended question such as "could you say more?" to encourage the individual to continue explaining what he or she means.

V. Conclusion

As with any skill, cultural competence must be practiced and developed. Improving cultural competence should be considered as an ongoing process requiring self-awareness, self-assessment, and critical thinking, rather than a goal with fixed end or the result of a one-time training. This chapter should be the beginning of the conversation, rather than the end, to ensure equal access to justice for people from all cultural backgrounds.

¹⁰⁹ See, e.g., Serena Patel, *Cultural Competency Training: Preparing Law Students for Practice in Our Multicultural World*, 62 UCLA L. Rev. Disc. 140, 155 (2014)

¹¹⁰ *Some Do's & Don'ts for Working with LGBTQ/T Folks*, The Network/La Red http://avp.org/wp-content/uploads/2017/04/TNLR_Dos_and_Donts_Working_with_LGBTQ.pdf

¹¹¹ Patel, *supra* note 112

¹¹² *C.f. Six Steps Toward Cultural Competence*, UCARE Minnesota (2000) <https://www.ucare.org/providers/documents/6stepsculturalcompetence.pdf>

¹¹³ *C.f. Billy Vaughn, The Top Ten Culturally Competent Interviewing Strategies*, Diversity Officer Magazine <http://diversityofficermagazine.com/cultural-competence/the-top-ten-culturally-competent-interviewing-strategies/>

¹¹⁴ *C.f. Deborah Dixon, How to Develop—and Apply—Your Cultural Competence*, 19 The ASHA Leader 26 (2014) <http://leader.pubs.asha.org/article.aspx?articleid=1921134>