

Cultural Considerations in Domestic Violence Cases

A National Judges Benchbook



全国妇联
文化考虑
在家庭暴力案件中
国家法官手册

Cultural Considerations in Domestic Violence Cases

A National Judges Benchbook



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DEDICATION:

This Benchbook is dedicated to the memory of Gil Lopez, San Francisco, California. Mr. Lopez, a member of the Benchbook's National Advisory Committee, devoted much of his life to multicultural training and conflict resolution. His contributions to the formation of this Benchbook will have lasting impact.



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*Something we were withholding made us weak,
Until we found it was ourselves.*

— Robert Frost

*I dreamt last night,
Oh marvelous error,
That there were honeybees in my heart,
Making honey out of my old failures.*

— William James

*That Justice is a blind goddess
Is a thing to which we black are wise:
Her bandage hides two festering sores
That once perhaps were eyes.*

— Langston Hughes, "Justice"

Life is change. Growth is optional. Choose wisely.

— Karen Kaiser Clark




Chapter 1

Defining Culture and Achieving Competence

**Cultural Considerations
in Domestic Violence Cases**
— **A National Judges Benchbook**






Life is change. Growth is optional. Choose wisely.

— Karen Kaiser Clark

*There is no sin punished more implacably by
nature than the sin of resistance to change.*

— Anne Morrow Lindbergh



Chapter 1

Defining Culture and Achieving Competence



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Chapter 1

Defining Culture and Achieving Competence



I. Purpose and Scope of Benchbook

A. [§1.1] PURPOSE

This Benchbook, designed primarily as a reference for state court judges, provides a framework for considering cultural issues that arise in cases involving domestic violence. Moving beyond basic judicial education on domestic violence, this book thoroughly examines relevant case law, legal writing and scholarly debate about cultural considerations. The term “culture” is used broadly in this Benchbook to encompass gender, race, ethnicity, national origin, language, sexual orientation, and other designations people use to identify themselves or others (see §1.6 for Benchbook definition). Although judges are the primary audience, this book will also prove informative to court staff, domestic violence advocates, attorneys, and others who become involved with the court system.

The mere mention of cultural considerations will challenge some judges, because a primary, traditional justice system premise is that a judge is neutral and justice is colorblind. Yet, if justice were colorblind, the cultural framework essential to each person’s sense of individuality and humanity would be lost (for additional discussion of justice as colorblind, see §1.24). On a daily basis, a

judge encounters people in court from many different cultural backgrounds. Some litigants might share parts of a judge's cultural identification, while other persons appearing before the court do not share any. In using this reference, judges become part of a larger community discussion about how the justice system can fairly and effectively meet the needs of a multicultural society. This Benchbook attempts to stimulate the judiciary's increased, ongoing discussion and awareness of cultural issues in the context of cases involving domestic violence.

B. [§1.2] CONTEXT OF DOMESTIC VIOLENCE

Issues of culture frequently arise within the complex framework of domestic violence cases, which commonly pose difficult issues in the context of highly charged emotions. Unlike crimes that involve strangers, intimate relationships found in domestic violence cases compound the challenges of determining the facts, keeping victims safe, and holding offenders responsible. Furthermore, despite dramatically increased media attention to high-profile cases and heightened public education about domestic violence during the past ten years, some people still do not believe that domestic violence warrants intervention and punishment by the state. For the Benchbook definition of domestic violence and additional discussion about the incidence of domestic violence, see Part IV, below.

Increased legislative and public policy efforts have strengthened the laws governing domestic violence. Focused judicial education has heightened judges' ability to handle cases involving domestic violence. The increasing diversity of the entire United States warrants attention to cultural issues that arise in domestic violence cases. This Benchbook can help judges develop greater cultural awareness and improve cultural competence in their work (see Part V).

C. [§1.3] SCOPE OF BENCHBOOK COVERAGE

This Benchbook helps judges identify many of the cultural issues that arise in domestic violence cases. This reference also

provides an analytical framework to help judges focus on individual persons in handling cultural issues without being distracted or influenced by cultural misinformation and generalizations. In addition, the Benchbook offers recommendations and guidelines for handling cultural issues that arise at various stages of criminal and civil cases involving domestic violence. The book assumes that judges are part of the larger community effort to end domestic violence. Judges' willingness to reference this Benchbook and try its recommendations furthers the objectives of an aware, culturally competent judiciary.

Judges can use this Benchbook, for example, to identify and analyze cultural issues that arise in many contexts, including:

- Qualifications of an expert on culture and the relevance of his or her testimony in a criminal case (see Chapter 2, Part II);
- Defendant's contention that his or her views and reactions to a situation were reasonable according to his or her cultural beliefs (see Chapter 2, Part II);
- Sentencing of a domestic violence perpetrator (see Chapter 2, Part IV);
- Determination of child custody and visitation (see Chapter 3, Parts III, IV);
- State court or tribal court jurisdiction over American Indian children under the Indian Child Welfare Act (see Chapter 4);
- Immigration implications for victims and perpetrators who appear in state court proceedings involving domestic violence (see Chapter 5);
- Language and other barriers that inhibit equal access to the courts (see Chapter 6).

This Benchbook does *not* serve as an encyclopedia of characteristics or stereotypes about the world's various cultures. Thus, for example, a judge cannot use this book to find a list of the primary characteristics about the Hmong culture. Any such list would