


**Addressing Culture: Systematic Responses to Underserved Immigrant Populations**

Day One  
New Orleans, LA



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**Welcome**

- Leslye Orloff
  - Director, National Immigrant Women's Advocacy Project
- Neelam Patel
  - Team Lead Program Specialist for Training and Technical Assistance, Office on Violence Against Women, Department of Justice



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**Violence Against Women Act (VAWA) and VAWA's Immigration Protections are Gender Neutral**

- VAWA's protections, help, and immigration relief are open to **ALL** victims
- Without regard to the victim's gender or gender identity
- Men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault
- In the overwhelming majority of cases, the perpetrators are male and the victims are female
- During this training, we will generally use
  - "he" to refer to the perpetrator and
  - "she" to refer to the victim



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**Opening Plenary: How to Use  
Culture, Religion  
and the Law for Survivor  
Safety and Justice**

Day One  
Opening Plenary  
New Orleans, LA



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**Introductions**

- Aisha Rahman
  - Executive Director, KARAMAH: Muslim Women Lawyers for Human Rights
- Aparna Bhattacharyya
  - Executive Director, Raksha, Inc.
- Session 1: Commission Loretta Young, State of Delaware- New Castle County
- Session 2: Judge Ramona Gonzalez, State of Wisconsin - La Crosse



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**Goals and Objectives**

By the end of this workshop you will be better able to:

- Understand the critical intersection of culture, religion and the law, and how they each uniquely contribute to survivors' safety
- Understand how to increase survivor safety while providing culturally and religiously sensitive services



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## Ground Rules

No question is a bad/offensive question



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## Working Assumption

- All cultures and religions have components/values that can both support a survivor's safety and at the same time be misused, manipulated and misconstrued in ways that can be harmful to survivors
- Cultures and religions have changed over time to adapt to the times. We have a role in educating our communities in creating safe and supportive spaces for survivors



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## Understanding Culture

The set of values, structures and practices held in common by a group of people, who are usually identified by ancestry, language, and traditions. It can also describe those characteristics that we are born with, some of which are permanent and some of which can be changed.

- Source: Family Violence Prevention Fund(Futures without Violence) Culture Handbook 2005



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### Surface, Deep and Hidden Culture

- time orientation
- food
- religion
- locus of control
- definition of roles by age,
- gender, socio-economic status, occupation, etc.
- theory of health, disease, mental illness
- family priorities
- body language, eye contact,
- facial expressions
- drama
- dance
- dress
- architecture
- modesty
- courtesy
- space orientation
- concept of justice
- gender roles
- posture
- walking gait
- color symbolism
- touching
- sports
- use of silence



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### Iceberg of Culture Exercise



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### Bias

- We have to work with individuals outside our own cultures, ethnicities, languages, and religions
- It's impossible to learn everyone else's culture
- Instead we find that it makes sense for us to start by fully understanding our own culture, and how it shapes our values and beliefs



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### Legal Barriers for Immigrant Survivors

- A distrust of the legal system that originated from their own experience in their country of origin
- Belief that the judiciary does not function independently from the government
- Expectations that people with money, U.S. citizenship or ties with the government will prevail in courts
- Difficulty understanding the U.S. legal system
- Belief that undocumented immigrants will be denied access to legal services or will not be treated fairly because of their status



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### Immigration Status

- Limitations on VAWA visas
- U visas
- Failure to report because of purported bias



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### Islamophobia as a Barrier

- Islamophobia is a hatred or fear of Islam or Muslims, especially when feared as a political force (source Oxford dictionary)
- How does Islamophobia keep survivors from seeking help?
- How does Islamophobia keep service providers/attorneys from helping survivors?



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### Obstacles for Muslim Survivors

- Lack cultural sensitivity when staying in shelters around food and prayer
- Lack of understanding or stereotypes about Muslim community which may make them feel unwelcome in seeking services
- Post 9/11 hate speech or hate crimes
- Negative comments in media about Muslim communities
- Insensitivity by service providers or first responders



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### Community Based Barriers

- Stereotypes of communities and religion
- Lack of awareness of domestic violence and sexual violence
- Lack of training about domestic and sexual violence to religious and cultural agencies and service agencies/refugee resettlement agencies
- Unsafe practices by religious, cultural, and service and refugee resettlement agencies



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### Language Access

- Interpreters may not be available in court, and are not always easy to find
- Limited access to shelter, police and court services because of a language barrier
- Limited bilingual professionals who can provide services
- She may not feel welcome or comfortable seeking or using services
- Likelihood the interpreter will know family or victim
- No guarantee of confidentiality with small communities



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Religion as Empowerment



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Religion, Culture and The Law



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Be Aware: Culture and Religion may appear in the courtroom in several forms

-as a defense to *negate* or *mitigate*

OR

-used *against* a defendant



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### Culture and Religion Can Be Used to Counter a Defendant's Defense

Example:

Defendant accused of murder: State introduces evidence of custom of protecting family honor as evidence of motive. This is a more common use of religion or culture, but evidence also has to be presented that defendant was a staunch follower and did not deviate on that instance. If this is not proven, it lacks relevance



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### Older Case Rulings Reflected Cultural and Religious Consideration in Criminal and DV Cases

- Very small number found religious or cultural defenses valid
- As legal scholars and lawyers debated this issue, we saw it fade
- Most recent case in New Jersey was reversed on appeal and appellate court clearly voiced disfavor



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### How Cultural or Religious Defenses Appear in Criminal/DV Cases

**Negate**

- Offered to justify actions
- Offered to negate mens rea and criminal responsibility
- Testimony of cultural or religious norms through cleric, Imam, or other expert

**Mitigate**

- Offered in sentencing phase
- Offered to reduce sentence
- Uses cultural or religious differences to argue reduced legal blameworthiness



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### Examples of Cultural Defenses

- **Provocation** (My wife must obey me and she has been disobedient)
- **Necessity** - *People v. Kimura*, No. A-09113 (Super. St. L.A. County, Nov. 21, 1985)
- **Duress** - *People v. Chen*, No. 87-7774 (Sup. Ct. N.Y. County, Dec. 2, 1988)
- **Mistake of Fact** - *People v. Moua*, No. 315972-0 (Super. Ct. Fresno County, Feb. 7, 1985)



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### S.D., Plaintiff-Appellant, v. M.J.R., Defendant-Respondent

DOCKET NO. A-6107-08T2  
SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION  
2010 N.J. Super. LEXIS 143  
March 24, 2010, Argued July 23, 2010, Decided



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### Facts of the Case

- Victim and Defendant, both citizens of Morocco, were in an arranged marriage. Victim was married at 17 and shortly thereafter came to NJ for husband's employment as an accountant
- Not long after moving to NJ, she sought a restraining order alleging harassment, assault, criminal restraint, and sexual assault



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### Facts Continued

- State admitted photographs depicting injury to Plaintiff’s breasts, thighs and arm, bruised lips, eyes and right cheek
- Defendant’s Imam was called to testify that a wife must comply with her husband’s demands
- Defendant’s statement that “you must do what ever I tell you. I want to hurt your flesh. This is according to our religion” was admitted into evidence



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### Finding of NJ Trial Court

The Court found that “the defendant could not be held responsible for the violent sexual assaults of his wife because he did not have the specific intent to sexually assault her; and because his actions were *consistent with his religious practices*”



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### S.D. v. M.J.R. (NJ Super Ct. App Div.), A-6107-08, July 23, 2010

- This case was REVERSED UPON APPEAL finding that the act was knowing regardless of his beliefs
- A “must read” case. Appellate Court does great civil/criminal summary, and gives well reasoned explanation of why religion and culture cannot be a defense



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### The Finding of the NJ Trial Court Were Contrary to Several Supreme Court Decisions

Previous Supreme Court decisions held that:  
“an individual’s responsibility to obey  
generally applicable law – particularly those  
that regulate socially harmful conduct –  
cannot be made contingent upon his or her  
religious beliefs”



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Judges should not recognize  
religion or culture as a legal  
defense or justification for  
domestic violence



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Judges Can Exercise Discretion and  
Should Consider Religion and  
Culture To Increase Victim Safety



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### PFA Statutes Permit Courts to Enter "relief necessary to prevent further violence"

- Consider entering custom tailored orders that will empower the victim and provide safety
- Keep in mind that the victim's needs, beliefs, and desires may not match your own for numerous reasons
- Communication and understanding is KEY



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### Crafting Protection Orders and Terms of Probation

#### Do not assume

- Ask the survivor what her goals are
- No contact
- Financial support, custody
- No unlawful contact
- Reunification
- Counseling

#### Take the Time to Ask

- Who/what/where her support network is
- What does she think she needs to be safe
- What worries her the most

#### Take time to inform the victim of her options



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### Technical Assistance and Materials

- Power Point presentations and materials for this conference at [www.niwap.org/go/NOLA2015](http://www.niwap.org/go/NOLA2015)
- **NIWAP Technical Assistance:**
  - Call (202) 274-4457
  - E-mail [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu)
- Web Library: [www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)



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## Questions



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## Evaluations



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## Thank you!

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