



## Physical Anthropology Section - 2013

### 18 Acculturation and the Use of the Cultural Defense

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After attending this presentation, attendees will be familiar with the literature exploring how levels of acculturation can influence the notion of a "cultural defense." Case examples will be discussed to explore cultural defenses that were used previously in criminal proceedings. The appropriateness of this defense, as well as both the benefits and risks associated with "raising" such a defense, will be explored. Lastly, the presentation will address the role of the mental health professional in cases where culture may factor prominently.

This presentation will impact the forensic science community by showing how the topics covered are important in terms of understanding sentence mitigation in cases where culture is believed to have played a role in criminal offense.

Within the literature, there is much debate regarding the role of acculturation in the implementation of a cultural defense. Acculturation has been a part of the research literature since the 1930s. Over the years, the definition has evolved to describe a fluid-like process in which there is a constant flow of communication between the immigrant and the environment. As this communication transpires, the immigrant is actively internalizing and identifying with symbols of the dominant society. Consequently, the level of the individual's acculturation becomes an integral component in the assessment of a raised "cultural defense." Acculturation may provide a meaningful context from which to explore the behavior of the alleged offender, which may thus impact the severity of his or her criminal culpability.

According to some authors on this topic, a cultural defense should only be allowed for individuals who have yet to assimilate/acculturate to the values and laws of the dominant culture. Past criminal cases such as Kong Pheng Moua, a Hmong man, who abducted and raped a Hmong woman in 1984, under his culture's traditional practice of "marriage by capture," as well as other cases, have shown that culture can be an extremely important variable within the criminal justice system. There are those who question whether the use of a "cultural defense" should be allowed as a viable defense by the defendant. That is, should these individuals who retain their cultural beliefs or aspects of it, and who commit crimes based on those beliefs, be permitted to use their culture as a mitigating variable? On the other hand, there are those who support such considerations in criminal proceedings.

Some mental health professionals have argued that when considering the cultural defense as a mitigating factor, it is important to assess to what extent and degree the defendant's culture played in his or her behavior. If a cultural defense becomes an acceptable defense, what then are the implications for criminal culpability within a multicultural society? Will the nature of the crime be a significant factor? Will the specific type of cultural background of the defendant be a factor?

Most would agree that, while individuals may belong to a group in which there exists certain beliefs or practices, such individuals should nevertheless be held responsible for criminal offenses. However, in light of the undue influence that the person's cultural beliefs may have had, it may well warrant consideration for mitigation in the sentencing phase of trial.

A chief element of the presentation will be to discuss the role of the mental health professional as an expert in these cases, highlighting issues that need to be considered when conducting an evaluation where culture may be of notable importance. When culture is raised as a defense, it is important for the examiner to determine the level of acculturation and the degree to which the individual holds steadfast to the beliefs and cultural practices of his or her group, despite the possibility that the individual's cultural defense claim may be tenuous. Consequently, the complex nature of these cases in which culture may disguise true intent or mental illness, requires the mental health professional to remain sensitive and cognizant of the impact culture has on the cognitive, emotional, and behavioral functionings of the individual.

**Cultural Defense, Acculturation, Criminal Culpability**