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ASK THE EXPERT: CULTURAL EVIDENCE AND THE JURY



Kathy Kellermann is a [Jury Consultant](#) and [Researcher](#), who followed the case of Tony Yonko. The *Editor* has previously reported on this case. According to news accounts, expert Anne Sutherland testified during the mitigation stage regarding the defendant's background as a Gypsy, and the fact that violence was not a part of the Gypsy culture. See [NCTimes](#).

The jury ultimately recommended the Death Penalty on February 1, 2008. See [news account](#) of jurors comments. The *Editor* asked Kathy Kellermann about the impact this testimony might have had? Also, what advice can she provide to attorneys who want to present cultural evidence in criminal trials?

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WILL EVIDENCE OF CULTURE ALWAYS HAVE A POSITIVE IMPACT ON A JUROR?

Not necessarily. The jury in the Yonko case, which heard evidence about the defendant and his Gypsy ethnic background, might have been influenced in a negative way. The jury was primarily white and definitely "American". Gypsies are people belonging to an "out-group" from the jurors, and gypsies are not a particularly positively regarded out-group by many Americans. As a result, fronting that status may have been unhelpful, drawing attention to that which the "in-group" already dislikes about the "out-group".

IS THERE SOME OTHER WAY THAT SUCH EVIDENCE COULD BE PRESENTED SO THAT IT IS MORE BENEFICIAL?

In general, it may be more effective for defense counsel to put on an argument about how the defendant tried to overcome his gypsy culture (i.e., to say "I am no longer part of that out-group."). This in-group/out-group differentiation, for example, is an important part of understanding why minorities disproportionately receive the death penalty (in pure numerical terms), and disproportionately receive the death penalty for "equivalent" crimes. The research evidence shows that we treat people of poorly regarded out-groups less well, we attribute more blame to them for identical behavior, we are willing to more easily punish them, and we often see their behavior as being due to "who they are" rather than "the circumstances they are in." Members of poorly regarded outgroups are perceived negatively, given little latitude to deviate from "acceptable" behavior, and are often seen as "objects" rather than "people" .

BUT DOESNT THE JURY UNDERSTAND THAT THIS MIGHT BE EVIDENCE IN SUPPORT OF MITIGATION RATHER THAN CULPABILITY?

The Gypsy culture expert also testified about how stealing is part of the culture, which may have reinforced a negative aspect of the culture, rather than keeping focused on positive or at least neutral aspects of the culture. Given the defendant was accused of stealing from elderly people, this testimony could also have made recidivism seem likely. Also, given the defendant was accused of murdering someone while in the act of stealing from them, this testimony could also have made the possibility of another murder seem likely.

As human beings, we don't sympathize easily with members of outgroups. Separating/distinquishing/etc. a person from a poorly



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regarded outgroup is a more effective strategy. Now, that all said, some people are more likely, and some people are less likely, to engage in in-group/out-group thinking, and some people go out of their way to sympathize with "underdogs" (e.g., out-groups). However, the gypsy culture has not received the type of attention, for most Americans, to put it into the "these folks should receive sympathy" category, and so fewer jurors in California would naturally sympathize with gypsies or see them as a downtrodden group for whom they should be sympathetic. The natural pool of people, who are less likely to engage in in-group/out-group thinking about gypsies was small because of where the trial occurred, and made smaller by emphasizing the cultural differences (that are not highly regarded).

POSTED BY LINDA FRIEDMAN RAMIREZ AT 2:08 PM

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