

Understanding Our Clients

Poverty and Cultural Humility for Indigent Defense

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Learning Objectives

- ▶ Understand how the rules of professional conduct lay the expectation for cultural humility in law
- ▶ Learn about what cultural humility is and how it applies to indigent clients
- ▶ Understand that lawyering is almost always cross cultural

Missouri Rule Of Professional Conduct

Preamble (7)

- ▶ A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. All lawyers, therefore, should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Missouri Rule Of Professional Conduct

Preamble (2) Advocate

- ▶ As an advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others
 - ▶ Ex) Using cultural humility to advocate on behalf of your client means not imposing your worldview on your client: always remember express interest vs. best interest
 - ▶ SIS vs. Client who tells you they cannot do probation
 - ▶ Client who would rather continue to use drugs then do a drug treatment program, so they prefer a short prison sentence or time served offer

Missouri Rule of Professional Conduct:

Rule 4-2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

- ▶ Ex) informing your client about the racial climate of a particular jurisdiction or judge and what you intend to do about it
- ▶ Ex) explaining what your client can or cannot wear in the courtroom if their religion or culture requires a head covering and that you will advise the court before your client gets there
- ▶ Ex) informing your client that the judge is up for re-election, so maybe delaying the case is best

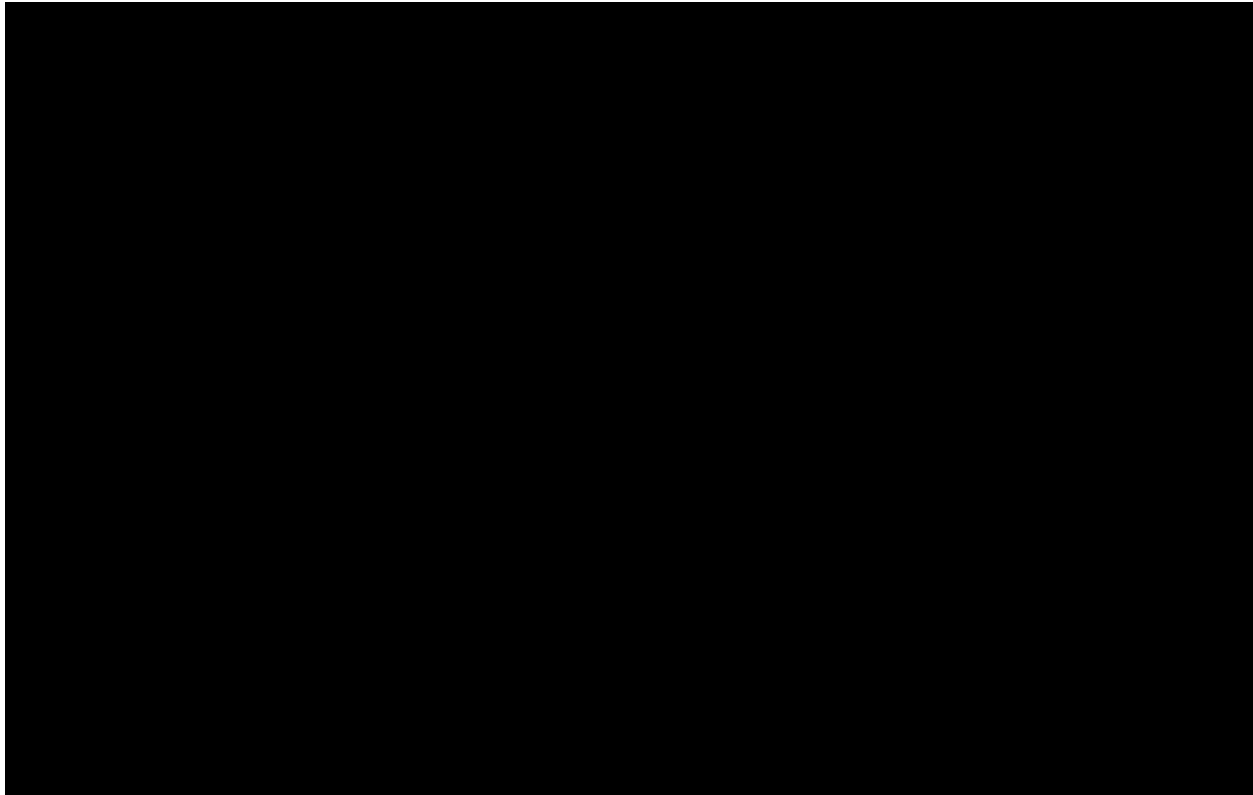
Cultural Humility and the Lawyer

- ▶ Cultural humility is the lifelong process of self-reflection, self-critique and commitment to understanding and respecting different points of view, and engaging with others humbly, authentically and from a place of learning
- ▶ 4 principles: self reflection, client as expert, community based advocacy, institutional consistency
- ▶ In order to understand our clients' world view, you will have to think about what place you are coming from yourself so that you can set that frame of reference aside when listening to your client's story.
- ▶ Point Exercise

Cultural Humility vs. Cultural Competency



What is Cultural Humility?



WHO ARE MSPD CLIENTS? Human Beings

- Mothers
- Fathers
- Children
- Brothers
- Sisters
- Employees
- Friends
- Neighbors



- ▶ Indigent
- ▶ Marginalized
- ▶ Lack basic needs
- ▶ Traumatized
- ▶ Fear
- ▶ Hunger
- ▶ Sickness
- ▶ Mental Illness

They have jobs, hopes, dreams, families, children, likes, dislikes, faith and feelings. The poor and the working poor.

Missouri Disproportionately Incarcerates Marginalized Groups



If you belong to a group that the Supreme Court had to decide whether or not you have the same rights as another human group, you are a member of a vulnerable population.

Poverty In Missouri and Cultural Humility

12.1% of Missouri's population live in poverty each day according to the 2020 census
Approximately 730,000 people.

Poorest County in Missouri is Shannon County, 28.5% of residents live in poverty



INCARCERATION RATE OF BLACK MISSOURIANS

Table 2.1. Institutional Population by Gender and Race/ethnicity on June 30, 2017.

Race	Count			Percent		
	Female	Male	Total	Female	Male	Total
Asian	12	60	72	0.3%	0.2%	0.2%
Black	504	10,675	11,179	14.7%	36.4%	34.1%
Hispanic*	107	511	618	3.1%	1.7%	1.9%
Native American	28	77	105	0.8%	0.3%	0.3%
Unknown	1	22	23	0.0%	0.1%	0.1%
White	2,788	18,020	20,808	81.0%	61.4%	63.4%
Total	3,440	29,365	32,805	100.0%	100.0%	100.0%

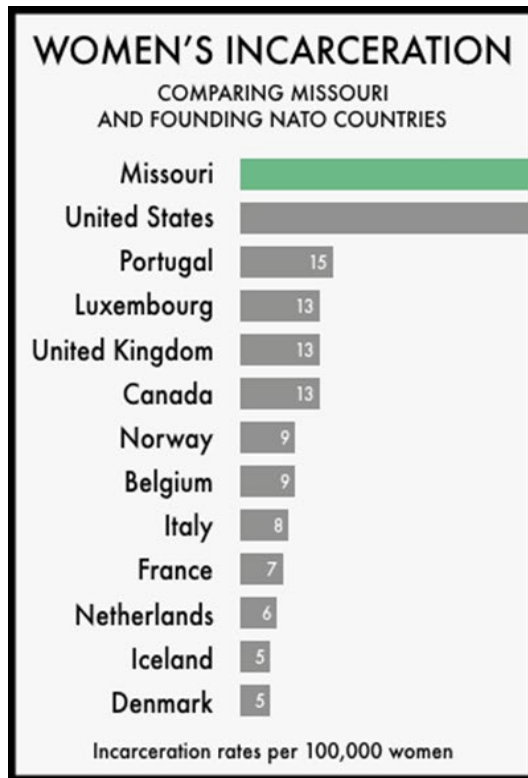
* Offenders identifying themselves as having a Hispanic ethnicity have been counted in the Hispanic race category

Table taken from MO DOC
Offender Profile FY 2019
REPORT

- ▶ In the United States, Black people are incarcerated in state prisons across the country at more than five times the rate of whites, and at least ten times the rate in five states.
- ▶ In Missouri, 1 in 21 Black men are in prison.
- ▶ In Missouri, Black people comprise 11.5% of the population but are 36.2% of the prison population.
 - ▶ Statistics taken from <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>

MISSOURI DISPROPORTIONATELY IMPRISONS WOMEN

This table is from PrisonPolicy.org and explains Missouri compared to the US and other NATO countries.



Source: <https://prisonpolicy.org/global/women/2018.html>

When a woman is incarcerated the state also takes her children into custody.

MISSOURI RANKS 5th out of 50 for incarceration rates for women according to the Missouri Department of Corrections Offender Profile report 2019

What does Cultural Humility look like when lawyering?

- ▶ Listen to the lived experiences of your clients and be humble in your approach
- ▶ Build a relationship of trust with them so that you can tell their story
 - ▶ Doing what you say you are going to do
 - ▶ Call them when you say you are going to call
- ▶ Research your jurisdiction if it is unfamiliar to you regarding the socioeconomic, racial and gender disparities that exist
- ▶ Double check your files and make sure that your representation is equitable

What does Cultural Humility look like when lawyering? Cont.

- ▶ Protected Classes, responsibility to raise these issues in criminal cases
 - ▶ Race, Gender (Including Pregnancy), Religion, Sexual Orientation, National Origin, Physical and Mental Disability, Age and Veterans Status
 - ▶ (ex) Judges keeping pregnant women in county jail because they are “protecting the baby” violates equal protection under the law

Resources

- ▶ <https://www.nacdl.org/Media/Practicing-Cultural-Humility>
- ▶ <https://implicit.harvard.edu/implicit/user/agg/blindspot/indexrk.htm>
- ▶ <https://www.americanbar.org/news/abanews/publications/youraba/2019/december-2019/how-to-confront-bias-in-the-criminal-justice-system/>