

GOAL IX

To promote full and equal participation in the legal profession by minorities

AMERICAN BAR ASSOCIATION COMMISSION ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION Volume 12, Number 3



Culture As Justification, Not Excuse

By Elaine M. Chiu.

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[I]f respect for an individual also requires respect for the culture in which his identity has been formed, and if that respect is demanded in the uncompromising and non-negotiable way in which respect for rights is demanded, then the task may become very difficult indeed, particularly in circumstances where different individuals in the same society have formed their identities in different cultures. - Jeremy Waldron¹

Jeremy Waldron is exactly correct. It is exceedingly difficult to achieve respect for all individuals, for their cultures and for their rights in a multicultural society. An even more complex task is creating laws that ensure due process, justice and fairness for individuals of different cultures in the same society. Yet the challenge of such tasks should not discourage us; rather, it should encourage us to try. We must rise to the challenge, particularly in the criminal law, where individual liberties, social boundaries and justice are at stake.

The wide discussion of cultural defenses over the last twenty years has produced very little actual change in the criminal law. Currently, the criminal law deals with the harmful acts of minority defendants through discretion and through excuse. When a defendant is motivated by his minority culture to commit a harmful act, the criminal justice system first relies on the discretion of judges, prosecutors and law enforcement officials to achieve a just result.

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Adelante! (Onward!)

Hon. Maria P. Rivera

First District Court of Appeals, San Francisco, CA.

This was the theme of the Hispanic National Bar Association's 21st Annual Convention, held on Labor Day weekend in America's favorite city (San Francisco). During the four-day conference, the HNBA members attended dozens of MCLE courses, honored numerous individuals for their accomplishments, and heard a variety of inspirational speeches. And the ABA was a solid presence.

Speakers and Honorees

Each day presented new highlights. Justice Carlos Moreno of the California Supreme Court inspired those who gathered at the Opening reception in "Victor's Palace" on the top floor of the Westin St. Francis Hotel, with breathtaking views over The City. He urged everyone to become mentors to young lawyers just joining the profession.

On Thursday, Los Angeles City Attorney Rocky Delgadillo recounted his own journey from the Barrio in L.A. through Harvard and Columbia and back to L.A., where he has strived to restore the economic vitality of the poorest neighborhoods and to increase diversity at every level of the City Attorney's office. Honored at that luncheon were John Trasviña, President and General Counsel of the Mexican American Legal Defense and Education Fund, and

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Chair's Message

Make a Difference Be a Mentor

Kay H. Hodge

Chair, ABA Commission on Racial and Ethnic Diversity in the Profession

There have been lots of articles and speeches about the importance of mentoring. Rarely, however, are there concrete examples about what you can do to help another lawyer succeed in this profession. We will honor seven outstanding lawyers at the Commission's Spirit of Excellence Award lunch, held during the Midyear Meeting in Miami. The Spirit of Excellence awards celebrate the efforts and accomplishments of lawyers who work to promote a more racially and ethnically diverse legal profession.

The lawyers who we honor not only exemplify the best of our profession, but they demonstrate a continuing commitment to mentoring, opening doors for others and helping minorities become successful lawyers. Although it is impossible to describe fully the work and accomplishments of our distinguished honorees in this column, I would like, nevertheless, to introduce you to them in the hope that you will want to learn more about them and be inspired to follow their lead.

National prominence and international recognition have not diminished Paulette Brown's enthusiasm and/or commitment in mentoring young lawyers, particularly lawyers of color, to succeed in this profession. Most recently, Ms. Brown co-chaired the ABA Commission on Women's "Visible Invisibility: Women of Color in Law Firms" project, which found that 80% of women of color leave practice in large law firms within five years. This ground breaking study would not have been completed without Ms. Brown's leadership and hours of volunteer work. Throughout her varied career as corporate counsel in a large corporation, a municipal court judge, a named and founding partner in her own firm and a

partner in two large majority law firms, mentoring and counseling have been an integral part of Ms. Brown's approach to her work. She has also initiated programs that help lawyers of color succeed such as Project Pass, which helped many pass the New Jersey bar exam. At her firm, Edwards Angell Palmer & Dodge LLP, Paulette continues to provide advice and guidance to younger lawyers of color and to younger women partners at the firm. As nominator Harold Pope wrote, "Scores of attorneys of color have directly benefited from Paulette's efforts and thousands more will benefit indirectly, from the work she recently has done for the ABA."

Paul Lee has served as a role model and has helped to create opportunities for countless Asian American lawyers. Upon graduating *cum laude* from Cornell Law School in 1976, Mr. Lee applied for a job in Boston but received 50 rejection letters from Boston law firms, including Goodwin Procter. After several years of practice at a New York law firm, Mr. Lee was hired by Goodwin Procter in 1980, and became a partner in 1985. To help make "it easier for other Asian Americans to enter the legal profession," Mr. Lee helped to found the Asian American Lawyers Association of Massachusetts (AALM) in 1983, and became its first President. Later he became President of the National Asian Pacific American Bar Association (NAPABA). One of Mr. Lee's initiatives was the creation of the NAPABA Community Law Fellowship, which enables committed attorneys to pursue careers serving Asian American populations. To ensure the continuation of the Fellowship and to set an example for other successful and established Asian lawyers, Mr. Lee personally endowed the fellowship with an initial

gift of \$100,000, and as he had hoped, inspired others to follow his lead.

The Honorable Joseph W. Hatchett has been a trailblazer in the judiciary. He was the first African American since Reconstruction to be appointed, and then elected, to the highest court of a state (Florida Supreme Court) and the first African American to serve on a federal appellate court in the South (U.S. Circuit Court of Appeals for the Eleventh Circuit). Of 62 total law clerks, Judge Hatchett hired and trained approximately 29 minority law clerks (including 11 minority women). Five of Judge Hatchett's former law clerks are currently members of the federal and state judiciary, including Charles Wilson, who now sits on the Eleventh Circuit Court of Appeals. Upon leaving the bench, Judge Hatchett became a shareholder in the law firm of Akerman Senterfitt and continues to mentor minority lawyers as Chair of the firm's Diversity Committee.

For years, Arturo Jaramillo had worked to diversify the New Mexico bar and to make it more inclusive and accepting through his work on the State Bar of New Mexico Task Force on Diversity, which later became the Diversity Committee. When Mr. Jaramillo became the first Hispanic President of the State Bar of New Mexico in 1993, he created the Summer Law Clerk Program, which offers law students from racially and ethnically diverse backgrounds the opportunity to clerk in legal settings in which the students traditionally had not previously participated, such as larger firms and some government entities. This program, in the words of the New Mexico State Bar's Executive Director Joe Conte, "pro-

vides greater opportunity for students of color than ever before in New Mexico's legal history." By the fall of 2006, after 14 years of existence, more than 130 law students had participated in this program.

In 1995, President Clinton awarded William T. Coleman, Jr. the Presidential Medal of Freedom, the nation's highest civilian honor, for his distinguished career and extraordinary contributions to the nation as a lawyer in both the private and public sectors playing important roles in many pivotal civil rights cases including *Brown v. Board of Education*, as Chair of the NAACP Legal Defense and Education Fund for 20 years, as Secretary of Transportation (the first African American in that position), and his countless other professional accomplishments. Throughout his career, Mr. Coleman has taken the time to mentor countless individual lawyers of color in government and the private sector. He is described by Roger Fairfax, Associate Professor at George Washington University School of Law, as a "fantastic mentor." Beginning when Mr. Fairfax was in his second year at Harvard Law School and continuing when he joined O'Melveny & Myers, Mr. Coleman regularly ensured that Mr. Fairfax was given the opportunity to work on high-quality assignments, and he introduced Mr. Fairfax to, and provided him the opportunity to develop relationships with, elite corporate executives, jurists and other power brokers.....Mr. Coleman continues to offer advice and counsel to lawyers of color as exemplified by his participation in the Commission's National Conference for the Minority Lawyer held last year in Philadelphia. Along with two of his children, who are attorneys, William Coleman educated, advised and inspired the nearly 400 attendees.

As Senior Vice President and General Counsel of Wal-Mart Stores, Inc. and the head of Wal-Mart's Legal Department, Thomas A. Mars has demonstrated a commitment and understanding of the role corporations can play in providing opportunities for minority lawyers to succeed in the legal profession, particularly law firms. In the 5 years since Mr. Mars became General Counsel, the Wal-Mart legal department has grown from 56 lawyers, with only 6 attorneys of

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New and Noteworthy

Goal IX Report

Each year, the ABA Commission on Racial and Ethnic Diversity in the Profession, along with our sister Goal IX Commissions, the Commission on Mental and Physical Disability Law and the Commission on Women in the Profession, and with the ABA Center for Continuing Legal Education, collects, compiles and analyzes diversity data, statistics and information from throughout the ABA. Using this data, each Commission and the Center for Continuing Legal Education reports upon the status of diversity as it pertains to their particular area of emphasis.

For its Goal IX Report, the Commission on Racial and Ethnic Diversity in the Profession reports upon diversity within the ABA House of Delegates, the Board of Governors, Presidential Appointments and the leadership and participation of Sections, Divisions and Forums. We examine the diversity of speakers at ABA continuing legal education programs and among publication authors and report upon budgets dedicated to diversity endeavors. The Goal IX Report also lists those ABA entities whose diversity activities and efforts the Commission feels merit inclusion on the annual Goal IX Honor Roll.

The 2006-2007 Goal IX Report is available for downloading from the Commission's website at www.abanet.org/minorities.

Joint Exhibit

If you attended one of the national minority bar association conventions, you had the opportunity to see the Commission's Joint Exhibit Booth and pick up materials from ABA entities that are particularly interested in membership and participation by minority lawyers. The ABA Joint Exhibit Booth was presented at the Hispanic National Bar Association and the National Asian Pacific American Bar Association conventions this fall. In the spring, the Joint Exhibit will be presented at the National Native American Bar Association and this summer at the National Bar

Association. If you are at one of these conventions, stop by and see what various ABA Sections and Divisions are offering that may be of particular interest. This year, the following ABA Sections, Divisions and other entities are participating in the Joint Exhibit:

- Antitrust
- Bar Services
- Business Law
- Criminal Justice
- Environment Energy and Resources
- General Practice Solo and Small Firms
- Health Law
- Individual Rights & Responsibilities
- Intellectual Property Law
- Judicial Division
- Labor and Employment Law
- Litigation
- State and Local Government Law
- Taxation
- Tort Trial and Insurance Practice
- Commission on Women
- Young Lawyers Division

We encourage you to visit each entity's webpage to learn more about opportunities for minority lawyers to join and get involved.

Minority Counsel Program

The spring Minority Counsel Program meeting will be held on April 12-13, 2007 at the Stamford Marriott in Stamford, CT. Watch the Commission website at www.abanet.org/minorities for more details as they become available.

National Conference for the Minority Lawyer

The National Conference for the Minority Lawyer will be held June 27-29, 2007 at the Seaport Hotel in Boston. If you've attended the National Conference in the past, you know you won't want to miss this. And if you've never attended, this is your chance to hear prominent speakers, attend cutting edge CLE programs, and meet other minority lawyers from across the country. Watch the Commission website at

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Diversity in Law and Corporate America

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Miriam Rivera, Vice President and Deputy General Counsel at Google, Inc. Both spoke of the importance of hard work, of perseverance even in the face of uncertainty, of maintaining balance in one's life, and of being true to yourself and to your community.

State Treasurer and Gubernatorial Candidate Phil Angelides was the keynote speaker for Friday's Leadership Luncheon, at which Marlon Quintanilla Paz (Region V President) and the District of Columbia HNBA Affiliate received special recognition. Mr. Angelides spoke of his immigrant roots and the importance of protecting immigrants' rights. He expressed particular concern about the current California state administration's cuts in the budgets of social services programs and educational subsidies for economically disadvantaged students.

Saturday's midday event honored the Latino and Latina Judges of the Year: Judge Carlos F. Lucero, of the Tenth Circuit Court of Appeals, who founded The Lucero Project, through which at-risk elementary school students receive mentoring from college students; and Judge Carmen Beauchamp Ciparick, of the New York Court of Appeals, who began her career as a staff attorney with the

Legal Aid Society of New York City, served as an officer in the Puerto Rican Bar Association, and became the first Hispanic appointed to New York's highest court. Congresswoman Linda Sánchez spoke to the crowd about growing up in an immigrant family and becoming part of the first "sister duo" in the House of Representatives (Linda's sister is Rep. Loretta Sánchez).

The conference concluded with a gala dinner, emceed by Verónica Villafaña, TV Anchor and Producer from San José, at which Lifetime Achievement Awards were presented to Mario Obledo (founder of MALDEF and first president of the HNBA) and Vilma Martínez (former MALDEF president and general counsel and former NAACP staff attorney). At this glittering finale, Tom Mars, General Counsel of Wal-Mart Stores and a powerful advocate for diversity, made special remarks and presented an award to Seyfarth Shaw, LLP as the "HNBA Law Firm of the Year." The HNBA also recognized the exceptional work of California Rural Legal Assistance, which "has earned a national reputation for its cutting-edge advocacy on behalf of California's poorest communities."

The ABA was out in force!

On the opening day of the conference, Kay Hodge, Chair of the ABA Commission on Racial and Ethnic Diversity in the Profession spoke to

Commission 20th Anniversary Commemorative Tile



To mark the occasion of its 20th anniversary, the ABA Commission on Racial and Ethnic Diversity in the Profession has produced a ceramic tile to commemorate 20 years of promoting the full and equal participation in the legal profession by minorities. Only a limited number of these tiles are available. They are suitable for hanging, framing or use as a paperweight or trivet. Each tile is \$20.00. Order yours today! Order forms are available at www.abanet.org/minorities.

the attendees at the Latino and Latina Attorney of the Year Ceremony. She described some of the programs sponsored by the Commission, including the Minority Counsel Program and the National Conference for the Minority Lawyer, noting that five prominent Hispanic attorneys had been speakers at the most recent Minority Counsel Program. Ms. Hodge encouraged all present to attend next year's programs, which provide not only high quality educational sessions but also networking opportunities between and among corporate counsel and law firm attorneys. "This provides an excellent venue to showcase the tremendous ability and talent offered by minority lawyers from all racial and ethnic groups," said Hodge.

Ms. Hodge also unveiled two of the Commission's new initiatives. The first is the Renaissance Project, a conference scheduled for June of 2007 to encourage lawyers of color to run for public office, and to teach them what they need to know to win an election. The second is the Oral History Project, undertaken for the purpose of capturing the stories of the minority trailblazers in our profession. Specifically, she noted, plans have been made to videotape interviews of Mario Obledo (a co-founder of the state and national Hispanic Bar Associations) and Cruz Reynoso (first Hispanic Supreme Court Justice in California and former director of CRLA) so that their stories can be documented and preserved for future generations, and also serve to inspire minority youth to enter the profession.

The following day, ABA President Karen Mathis addressed those gathered for the Leadership Luncheon. Seeking to strengthen the relationship between the ABA and the HNBA, Ms. Mathis emphasized the various points of common interest, particularly the shared commitment to youth. Praising the HNBA's Law Camp and the addition of a Student Track to its MCLE courses at the conference, Ms. Mathis spoke of the ABA's efforts to increase diversity through its pipeline diversity initiative and the formation of the Youth at Risk Initiative, designed to address problems that arise when young people interact with the legal system. One aspect of the

initiative is to form Community Roundtable Forums across the country that would bring together leaders of the bench and bar and local youth services organizations. She encouraged those in attendance to return to his/her community and form a Community Roundtable Forum. The Youth at Risk Commission, she announced, stands ready to assist (www.abanet.org/initiatives/youthat-risk).

President Mathis also invited HNBA members to attend the "Rule of Law Symposium" in September, where the relationship of the Rule of Law to an independent judiciary, to economic development, to anti-corruption efforts, to trafficking and to the role of the legal profession would be discussed in depth. In closing, Ms. Mathis repeated the ABA's "Call to Action" for diversity and urged a collaborative spirit between minority bars and the ABA. She graciously extended her best wishes for a successful convention.

On Saturday Judge Leslie Miller, Chair of the ABA's Judicial Division served as a panel member discussing "The Path to Becoming a Judge." Decrying the lack of diversity on the bench across the country, Judge Miller described some of the Judicial Division's work in response, including: publication of the 4th edition of the Directory of Minority Judges and of an on-line State Judicial Diversity database;

ongoing sponsorship of the Judicial Clerkship Program, a collaborative effort among several ABA entities which takes place at the mid-year meetings, to encourage minority students to apply for judicial clerkships and to provide special training in research and legal analysis; and the Judicial Intern Opportunity Program, which (together with the Litigation Section) places financially disadvantaged minority law students in internships with federal and state judges for a six-week period in the summer, and provides a \$1,500 stipend to help defray expenses.

"Most importantly," Judge Miller reported, "the Judicial Division will be holding a program here in San Francisco at its annual meeting next August at which a panel of minority judges will speak to issues faced by minority lawyers when seeking a judi-

cial position." This program will kick off the Judicial Division Mentor Program that will pair minority lawyers with minority judges to create ongoing relationships. Judge Miller emphasized that the program will not be limited to ABA members, so all interested attorneys from across the country will be welcomed.

Judge Miller enthusiastically encouraged the participation of all present in the Judicial Division's programs and activities.

Last—but *hardly least*—was the presence of the ABA Commission on Racial and Ethnic Diversity in the Profession, which coordinated an exhibit booth during the entire HNBA conference at which participating ABA entities displayed and distributed materials about their work and about programs and activities of particular interest to minority lawyers. HNBA members have always been extremely receptive to this information. At this year's convention the Commission was also pleased to distribute its new ABA pedometers as a gift for HNBA members who stopped by the booth.

The pedometers, imprinted with the ABA logo, served as a reminder that when it comes to diversity, the ABA is "*walking the walk*."

Sign up for Commission List Serves!

Interested in receiving regular updates about Commission activities? Want to learn about current job postings seeking diverse candidates? Are you a minority bar leader who wants to be in contact with other minority bar leaders? Would you like to receive periodic postings of news blurbs about diversity issues? Sign up for one of the Commission's list serves such as "KeepUp" to stay current with Commission activities, or "MICJob" to receive notice of job postings sent to the Commission, or "DiversityNews" to get newsblurbs about diversity issues at Minorities@abanet.org.

Culture As Justification

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When discretion fails, the system then resorts to troubling legal fictions based on existing excuse defenses to approximate a just result.

Consider the following true story. Fumiko Kimura lived with her husband and two young children in the Los Angeles area.² In November 1984, her husband confessed to an affair with another woman.³ Extremely upset by the news, Fumiko Kimura tried, along with her husband and the mistress, to find a resolution for their sticky love triangle. They failed. On January 29, 1985, a despondent Fumiko walked into the Pacific Ocean while holding both her children in an attempt to commit parent-child suicide.⁴ Onlookers at the beach managed to pull Fumiko and her two children from the water.⁵ Only Fumiko survived.⁶

Fumiko Kimura was charged with two counts of first degree murder. The prosecutor said she had little choice but to criminally charge Fumiko Kimura, given the deaths of two young children.⁷ More than twenty-five thousand supportive Japanese and Japanese Americans signed a protest petition identifying her conduct as a Japanese phenomenon.⁸ It evolves from three features particular to Japanese culture: the merging of a child's identity into their parent,⁹ the greater acceptance of suicide¹⁰ and the stigma placed on motherless children.¹¹

Even though parent-child suicide is a known understandable practice amongst the Japanese in response to adultery, there was no defense available to express this fact. Instead, her attorney reasoned that "[t]he only plausible defense had to be one that proved the defendant mentally incapable of the rational planning of such actions."¹² On behalf of the defendant, six psychiatrists examined Fumiko Kimura and testified at a pre-trial hearing¹³ that she suffered from temporary insanity¹⁴ at the time of the drownings.¹⁵ After the hearing, Fumiko Kimura pled guilty to the reduced charge of voluntary manslaughter and received a split probation sentence.¹⁶

In order to achieve this rough justice, Fumiko Kimura had to agree to a defense strategy that portrayed her as insane. Insanity involves either cogni-

tive and/or volitional impairment. Despite the testimony of the psychiatrists, Fumiko Kimura suffered from neither of these impairments at the time of her homicidal act. There is woefully little evidence that she lacked a moral compass or control over her actions at the time of the drownings. Instead, it is abundantly clear that Fumiko Kimura believed strongly in the moral rightfulness of her actions. To get out of jail, though, she had to pretend that she was crazy due to her Japanese culture.

The case of Fumiko Kimura is demonstrative of the unacceptable implications of the current approach towards culturally-motivated defendants. The immediate result of the use of ill-fitting excuse defenses in such cases is the manipulation of legal doctrine into legal fiction. A second concern is the systematic avoidance of the deeper moral questions presented by these cases. Given the Japanese beliefs on motherhood, the status of children in general and motherless children in particular, and suicide, can it be that the act of drowning her two children was a justified, acceptable act? The current approach ignores such questions.

Finally, the current approach denigrates minority cultures. The theory of excuse in the criminal law is to cast blame away from an individual and onto their defects or disabilities. Treating minority cultures as disabilities that warrant excusing defendants denigrates these cultures and their values. The loathsome message of the current approach is that minority defendants commit wrongful acts but are not blameworthy because they suffer from the defect or disability of their culture.

I propose a fundamental reorientation of our understanding of the cultural defenses in order to move the languishing discussion and the criminal law to a more productive place. The reorientation is a shift from a excuse paradigm to a justification paradigm. The theory of justification is that a harm was committed to avoid an even worse harm. Instead of entrusting their fate to the discretion of individual law enforcement officers or straining the truth into ill-fitting excuse defenses, such defendants should be able to advocate that their acts were justified

acts. There should be a place in the criminal law for minority defendants to contend that given their cultures, their communities, their beliefs and values, they committed acts of lesser harm to avoid even greater harm. These conceptions of harm may be new to the criminal law because they reflect the norms and priorities of minority cultures but should nonetheless be heard. Possible doctrinal vehicles that can achieve this radical reorientation include existing defenses such as the general necessity defense or the Model Penal Code's *de minimis* defense.¹⁷

Upon hearing these cultural claims of justification, juries and other decision makers in the criminal justice system may reject them. In other words, the proposal is to allow for such arguments but not to guarantee acquittals or dismissals in every case. At times there may be countervailing interests such as the human rights of female and child victims or the desire to limit justification defenses in cases of homicide.

However, the proposed shift to justification still achieves distinct systemic advantages. Indeed, these advantages are the very inverse of the flaws of the current excuse approach. They are the elimination of legal fiction, the confrontation of the hard moral questions posed by the different values of other cultures and the advancement of cultural pluralism by the criminal law. With the increasing cultural diversity of our population, the United States is at an important juncture in its history. Today is our opportunity to rise to a challenge. We must reject our woefully lacking current response to multicultural defendants and find a more honest and effective way of achieving justice for all individuals, regardless of their culture

Endnotes

* The author is an Associate Professor of Law at St. John's University School of Law in New York City. She teaches both Criminal Law and Family Law. Prior to academia, Professor Chiu was an assistant district attorney in the Manhattan District Attorney's Office. Her recent scholarship focuses on the challenge of creating more just laws in our increasingly diverse country. The full version of this article appears in the October 2006 issue of the *American Criminal Law Review*. Currently, she is writing another article entitled *The Culture Differential in Parental Autonomy*. She can be reached at chiue1@stjohns.edu.

1. JEREMY WALDRON, *Cultural Identity and Civic Responsibility*, in CITIZENSHIP IN DIVERSE SOCIETIES 160 (Will Kymlicka & Wayne Norman eds., Oxford University Press 2000).

2. Deborah Woo, *The People v. Fumiko Kimura: But Which People?*, 17 INT'L J. SOC. L. 403, 404 (1989).

3. *Id.*

4. *Id.* at 403-04. The term, *parent-child suicide*, is a translation of a Japanese phrase, *oya-ko shinju*. "In *oya-ko shinju*, the death of the child and the parent is conceptualized as one act – one death, in which the parent and the child are one and the same victim. Unlike infanticide, the child in *oya-ko shinju* is not considered to be victimized by the parents." Michele Wen Chen Wu, *Culture is No Defense for Infanticide*, 11 AM. U.J. GENDER SOC. POL'Y & L. 975, 981 (2003).

5. Spencer Sherman, *Legal Clash of Cultures*, NAT'L L.J., Aug. 5, 1985, at 1.

6. *Id.*

7. Woo, *supra* note 2, at 405.

8. *Id.* at 404.

9. See *supra* note 4.

10. See Rashmi Goel, *Can I Call Kimura Crazy? Ethical Tensions in the Cultural Defense*, 3 SEATTLE J. FOR SOC. JUST. 443, 446-48 (2004).

11. Woo, *supra* note 2, at 411.

12. *Id.* at 405.

13. *Id.* at 406. Her diagnosis was "brief reactive psychosis" including major depression. *Id.*

14. *Id.* There is no formal legal definition of temporary insanity. However, some authors have outlined a working definition based on existing case law. See ABRAHAM S. GOLDSTEIN, *THE INSANITY DEFENSE* 48, 117 (1967) (suggesting a definition of temporary insanity as a state of mind where the defendant suffered from mental disease of a fixed, prolonged or chronic nature marked by lucid intervals such that he lacked the requisite mental state at the time of the crime).

15. See Woo, *supra* note 2, at 406.

16. *Id.* She had already spent the requisite amount of time in jail by the time the plea bargain was struck. *Id.*

17. MODEL PENAL CODE § 2.12 (2002). There are five jurisdictions that have the *de minimis* defense: Guam, Hawaii, Maine, New Jersey and Pennsylvania. Nancy A. Wanderer & Catherine R. Connors, *Culture and Crime: Kargar and the Existing Framework for a Cultural Defense*, 47 BUFF. L. REV. 829, 837 n.23 (1999).

Chair's Message

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color and 20 women, to a total of 138 attorneys, with 42 or 30.4% of the attorneys from racial and ethnically diverse backgrounds and 56 or 40.4% of the attorneys women. Racially and ethnically diverse lawyers hold leadership positions within the Wal-Mart legal department. In addition to diversifying his own department, Mr. Mars has made diversity a priority for the law firms providing representation to Wal-Mart by making diversity results a key component in the retention decision and by selecting diverse lawyers at firms to manage the firm's relationship with Wal-Mart. After a review of its top 100 firms, who collectively received \$142 million of the Company's business, Wal-Mart selected new racially or ethnically diverse and/or women lawyers as relationship partners in 40 of those firms which represented a shift of \$60 million of the company's outside counsel spend. Wal-Mart also terminated relationships with two law firms that failed to meet its diversity requirements. By his actions, Mr. Mars has moved the focus on diversity from efforts to results.

William S. Richardson has spent a lifetime mentoring and expanding opportunities for Native Hawaiians and other racial and ethnic minorities in Hawai'i. As the first Chief Justice of the Hawai'i Supreme Court, Judge Richardson helped to incorporate Native Hawaiian traditional and customary practices into state law. He also made law a profession accessible to Native Hawaiians and other disenfranchised immigrant groups who could not afford to travel to study law on the mainland by spearheading the successful effort to establish a law school in Hawai'i, which now bears William S. Richardson's name. Today, at 86 years of age, Judge Richardson still maintains an office at the law school and takes a personal interest in the academic progress of Native Hawaiian and other minority students at the school and continues to encourage minority students to pursue law as a career and to use their legal degrees for the betterment of society. Nominator Aviam Soifer, Dean of the William S. Richardson Law School related "[l]iterally thousands of men and women — many from underrepresented, minority, and indigenous Hawaiian communities—are now practicing law,

holding elected office, teaching law, leading community services organizations, and serving in the judiciary in Hawai'i and around the world because of the work of CJ Richardson."

The examples set by our 2007 Spirit of Excellence Award recipients provide role models for all of us. We should honor them by taking the time to be mentors and to use positions we obtain to enhance our communities and our profession.

New and Noteworthy

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www.abanet.org/minorities for more details as they become available.

ABA Annual Meeting

The ABA Annual Meeting will be August 9-15, 2007 in San Francisco. And you can expect that the Commission on Racial and Ethnic Diversity will have plenty of programs and activities planned in which minority lawyers from around the world will enjoy taking part. Details will be posted on the Commission website at www.abanet.org/minorities as they become available.

Minority Bar Association Leaders!

Diversity-Local Bars is a list serve for minority lawyers serving on diversity committees or as officers or board members of state or local bar associations. This list allows its members to communicate as a group, share ideas and information, and keep apprised of Commission programs and events targeted toward them and the particular needs and interests of their bars and members.

If you are a member of your state or local bar association's diversity committee or an officer or board member and you'd like to join **Diversity-Local Bars**, send an e-mail to Sandra Yamate at yamates@staff.abanet.org with your name, the name of your bar association, your bar's city/state, and the office or position you hold in your bar association.

Upcoming Events

FEBRUARY 10, 2007

Spirit of Excellence Awards
Miami

Commission Midyear Business Meeting
Miami

MARCH 29-31, 2007

Commission Spring Business Meeting
Las Vegas

APRIL 12-13, 2007

Spring Minority Counsel Program
Stamford

JUNE 14-16, 2007

Running for Office
Cambridge

JUNE 27-29, 2007

National Conference for the Minority Lawyer
Boston

AUGUST 9-15, 2007

ABA Annual Meeting
San Francisco

For more and updated information about upcoming events, please visit our online calendar at www.abanet.org/minorities/events/home.html.

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