September 1992

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https://doi.org/10.15779/Z387K4J

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Questioning the Cultural and Gender-Based Assumptions of the Adversary System: 
Voices of Asian-American Law Students

Carolyn Jin-Myung Oh†

I. INTRODUCTION AND HYPOTHESIS

The political and legal institutions of a country inevitably reflect the ethos of its dominant culture. The legal system in the United States is no exception. It has been and continues to be shaped by the cultural values prevalent in America, especially the values held by those in power—educated white men.1 The entry of women in increasing numbers into the legal profession has exposed and challenged some of the underlying assumptions of the adversary system.2 Likewise, the advent of people of

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I would like to extend my appreciation to all the students who participated in this inquiry by sharing their time and their personal stories. I would also like to acknowledge Stephen Bundy who encouraged me to pursue this topic and affirmed my work with a professorial stamp of approval. Thanks also to Jennifer Johns, KT Albiston and members of the Berkeley Women's Law Journal for their hard work. Finally, I am most grateful to God and my parents, Kap Chool and Je Sun Oh, for supporting me through this endeavor as always and for teaching me to embrace my Korean-American female identity as a blessing and not a curse.

1 The legal system was created, shaped, and perpetuated by a specific elite group. See, for example, Catherine Weiss and Louise Melling's essay, The Legal Education of Twenty Women, which asserts from the outset, "Powerful men made American law and American law schools by and for themselves." 40 Stan L Rev 1299, 1299 (1988).

2 See, for example, Leslie Bender, A Lawyer's Primer on Feminist Theory and Tort, 38 J Legal Educ 3, 7 (1988):

Men have constructed an adversary system, with its competitive, sparring style, for the resolution of legal problems. . . . Much of legal practice is a win-lose performance, full of one-upmanship and bravado. If it were to turn out that competitive sparring is not the way a majority of women function most effectively, then within patriarchy's terms it could be concluded that women are not well suited for legal practice. But rather than regarding legal practice as fixed, we can question whether a competitive, win-lose approach is necessary and examine how it has been modelled by men in their own image.
color entering the legal field has raised additional questions about the premises and norms of the legal system. This article begins with the assumption that American cultural values are embedded in the adversary system, the cornerstone of American jurisprudence.

The legal system’s focus on the protection of individual rights and personal liberties reflects the essential and pervasive cultural value of individualism. The American values of free-market competition, decentralized and minimized government intervention, and laissez-faire economics are mirrored in the adversary process. Hence, it is not surprising that the American legal model, including the “rules of the game,” fosters competition between largely autonomous and self-interested, zealous advocates in a winner-take-all scheme. Insofar as the legal system reflects the particular characteristics of the dominant culture, tensions and value conflicts may arise for those of a minority cultural background. This article seeks to elicit the culture-specific values on which the adversary system is founded and to discuss Asian-American students’ perceptions of the adversary system and their prescribed roles within it.

Few articles have addressed the experiences of underrepresented groups in law school. In an early example, Legal Education as Training for Hierarchy, Duncan Kennedy discusses, from the institutional perspective, the pressures for conformity that women and students of color face in law school. He argues that these pressures serve to train students to assimilate to the white male legal world.

It is easy enough to see this situation of enforced cultural uniformity as oppressive, but somewhat more difficult to see it as training, especially if you are aware of it and hate it. But it is training nonetheless. . . . You will come to expect that as a lawyer you will live in a world in which essential parts of you are not represented, or are misrepresented.

See also Heather Ruth Wishik, To Question Everything: The Inquiries of Feminist Jurisprudence, 1 Berk Women’s L J 64 (1985), which indicates that feminist jurisprudence seeks to question accepted legal theories and broaden “analytic frames of patriarchal law.” Id at 77.

3 See, for example, Mari J. Matsuda, When the First Quail Calls: Multiple Consciousness as Jurisprudential Method, 11 Women’s Rts L Rptr 7 (Spring 1989); Patricia Williams, The Alchemy of Race and Rights (Harv U Press, 1991).

4 The authors of Habits of the Heart, a reflective study of American society, analyzed American culture in the context of four fundamental traditions in America: biblical, civic, utilitarian, and expressive. Despite the inconsistencies and conflicts among these various traditions, the authors allege that individualism is integral to each tradition. “Whatever the differences among the traditions and the consequent differences in their understandings of individualism, there are some things they all share, things that are basic to American identity. We believe in the dignity, indeed the sacredness, of the individual. Anything that would violate our right to think for ourselves, judge for ourselves, make our own decisions, live our lives as we see fit, is not only morally wrong, it is sacrilegious.” Robert N. Bellah, et al, Habits of the Heart at 142 (U Cal Press, 1985).

5 Asian-Americans are here defined to include Americans of Chinese, Korean, Japanese, Southeast Asian, Filipino, and Pacific Islands background.

6 A rare example is Suzanne Homer and Lois Schwartz, Admitted but Not Accepted: Outsiders Take an Inside Look at Law School, 5 Berk Women’s L J 1 (1989-90).

This article explores whether Asian-American students experience role conflict and pressures to conform in the adversary system or whether they have become so "well-trained" to adopt mainstream white male values that they experience little discomfort in the legal sphere.

Since the legal system embodies the cultural values of a specific group, people from different cultural and experiential backgrounds may have different perceptions of the legal system. People previously excluded from the legal arena may perceive the system somewhat differently than do members of the mainstream white male culture. In addition, those holding different values may experience role conflict and tension both as law students and as lawyers when seeking to adapt and conform to the preexisting legal structure with its normative elements. Asian culture, for example, is a culture whose values are largely inconsistent with the pluralist, individualist, self-oriented ethos that forms the foundation of the adversary system. Moreover, Asian cultural values of avoiding confrontation and maintaining harmonious relationships directly conflict with the overtly competitive and combative nature of the adversary system.

Historically, the people of East Asia have been maligned, stereotyped, and considered enigmatic by Westerners. In addition to differences in physical appearance and language, major differences between Eastern and Western cultures are marked by their philosophical approaches to life. Asian systems do not stress independence and autonomy of the individual, but rather view the individual as superseded by the family, which adheres to specific hierarchical roles. "In American society the individual breaks away from the family to go his own way. The ideals of individuality, independence, and self-sufficiency are stressed by society.... However, the tradition of most Asian and Pacific American cultures tends to place a great emphasis on the family as the central unit rather than the individual." Moreover, Asian cultures reflect Confucian principles, which emphasize specific roles and proper harmonious relationships among people in family and society. Because harmonious interpersonal relationships are so highly valued, direct confrontation is avoided whenever possible. Being indirect or talking around the point is a significant part of the communication style of Asian groups. Directness, which may lead to disagreement, confrontation, and loss of face for both people, is often avoided. The communicator relies on the sensitivity

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8 The term "Asian culture" is meant to encompass the characteristics that are largely shared by the majority of East Asian cultures. The author readily acknowledges the existence of many diverse cultures within and among the East Asian countries. However, for the purposes of this essay, broad similar characteristics will be the focus.
9 Steven P. Shon and Davis Y. Ja, Asian Families, in Monica McGoldrick, John K. Pearce, and Joseph Giordano, eds, Ethnicity and Family Therapy 208, 209 (Guilford, 1982).
11 Shon and Ja, Asian Families, in Ethnicity and Family Therapy at 211 (cited in note 9).
of the other person to discern the unspoken messages.\textsuperscript{12}

I hypothesize that, as a result of these cultural differences, Asian-American law students experience a tension between the two sets of values\textsuperscript{13} and consequently may feel less sympathetic or comfortable with the adversarial system than their Caucasian counterparts. The level of tension and role conflict will likely vary according to the students’ and their families’ levels of assimilation to American culture and their acceptance of American cultural values.\textsuperscript{14} I also hypothesize that Asian-American women are likely to experience greater conflict than Asian-American men because of the additional alienating barrier of sex.

To test these hypotheses, I informally interviewed twelve Asian-American law students at Boalt Hall School of Law, University of California at Berkeley. Since these students are bicultural, they hold a mixture of mainstream Caucasian and minority Asian values. Thus, their responses are apt to be affected by how long they have lived in the United States, how “traditional” their families were while they were growing up, how close they are to their parents, and how closely they identify with the Asian culture. The students who are more assimilated are more likely to reflect the general values of the majority culture and may perceive the litigation process in much the same way as members of the mainstream culture. Ten Caucasian students were also interviewed as a control group. To determine the influence of gender in their perceptions, each group contained an equal number of male and female students.

The findings partially support the hypotheses, but should be understood in the context of the small number of students interviewed. Most of the students could articulate the fundamental elements of the adversary system and agreed that it reflects the elite white male values of the past and probably the present. However, students disagreed on whether the system is effective. On the whole, women expressed greater dissatisfaction with the legal system and a greater skepticism toward its process than the men. In addition, women anticipated greater personal conflict in working within the adversary system than did men. Although some Caucasian male students expressed concern about the adversary system’s effectiveness in theory, they were not worried about having to “play a role” and, on the whole, felt competent and comfortable in the system.

The Asian-American students acknowledged that Asian cultural values tended to conflict with the adversary system’s values. However,

\textsuperscript{12} Id at 216.
\textsuperscript{13} A culture conflict creates stress when there is exposure to different cultural values and there are dual pressures to conform to both conflicting cultures. Stanley Sue and Robert Chin, \textit{The Mental Health of Chinese-American Children: Stressors and Resources} in Gloria Johnson Powell, et al, eds, \textit{The Psychosocial Development of Minority Group Children} 385, 389 (Brunner/Mazel, 1983) (“Minority Children”).
\textsuperscript{14} The degree of assimilation depends on many factors such as the length of stay in America, ethnic makeup of hometown, parental attitudes toward American culture, and the individual’s personality.
the majority of Asian-American men had not experienced and did not expect to experience personal or professional role tension as a result of these differences. In contrast, all but one of the Asian-American women were very concerned about the need to adjust and play a role that was contrary to their cultural values. Caucasian women felt the same way. They described tensions that they had already experienced as female law students and anticipated greater personal conflicts in the future. Both groups of women expressed significant reservations about gender and racial stereotypes that they would have to overcome in the legal sphere.

These results indicate that gender is a better predictor of role tension and conflict in the adversary system than race. This may be due to strong similarities between the Caucasian "female culture," into which Caucasian women are socialized, and the Asian-American culture. Likewise, elements of the Asian-American "male culture" may embody some aspects of Caucasian male culture which are not a part of the Asian-American female's socialization.

Before launching into a full discussion of the study and its results, I will briefly review the basic structure and characteristics of the American adversary system. I will include a brief examination of Asian culture and its values to frame and highlight the differences from American culture. In addition, I will discuss the feminist literature that has explored some of these issues of gender role conflict in the adversary system as a background model for this inquiry. The feminist critique indicating that female law students and lawyers have a different perspective about the law and the lawyer's role than male law students and lawyers is premised on gender differences between women and men. Similarly, my hypothesis is premised on another central difference found in the diverse law school student body—race. I will explore whether ethnic cultural values affect perceptions about several aspects of the legal world (for example, law school, choice of litigation or transactional work, beliefs about the adversary system, and role conflict) in a manner similar to gender. Given that we cannot separate our racial, cultural, or gender identities from our professional roles, we must discover how our personal backgrounds inform and affect our roles as law students and as lawyers.

II. THE ADVERSARY SYSTEM

The term "adversary system" refers to a "method of adjudication characterized by three things: an impartial tribunal of defined jurisdiction, formal procedural rules, and . . . assignment to the parties of the responsibility to present their own cases and challenge their opponents."15 In theory, advocates are partisan representatives who bring the

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issues and all relevant legal principles and arguments to the attention of
the fact-finder and decision-maker. The jury or judge, who is passive in
the investigation and presentation of the dispute, then determines which
arguments are more persuasive and declares its proponent the winner.
These features make the adversary system closely analogous to a battle or
sporting event where litigants' advocates are the players and the judge or
jury is the umpire.  

The key participants in the adversarial process are the advocates on
either side, whose primary obligation is to present their client's case in
the most favorable light. David Luban argues that the adversary system
requires the lawyer to present his side as forcefully as possible on the
justification that anything less would subvert the operation of the system.
Luban alleges that this justification is a presupposition accepted by all
parties before the arguments begin. The basis and rationale for this
underlying "presupposition" is the belief that the best outcome (the
truth) will emerge if two sides vigorously fight to win. Consequently, the
adversary's goal is not to help the court uncover the truth of the matter,
but rather to maximize his or her side's interests and thereby reach the
byproduct of truth. Monroe Freedman eloquently portrays this classic
justification of the adversary system:

Before we will permit the state to deprive any person of life, liberty, or
property as the state does even when it enforces a civil judgement against a
defendant, we require that certain processes be duly followed which ensure
regard for the dignity of the individual, irrespective of the impact of those
processes upon the determination of truth. By emphasizing that the adver-
sary process has its foundations in respect for human dignity, even at the
expense of the search for truth, I do not mean to deprecate the search for
truth or to suggest that the adversary system is not concerned with it....
Nevertheless, the point that I now emphasize is that in a society that hon-
ors the dignity of the individual, the high value that we assign to truth-
seeking is not an absolute, but may on occasion be subordinated to even
higher values. It is precisely these "higher values" in the American culture that account
for the distinctive characteristics of our adversary system and set our
system apart from those of other countries.

Some have argued that a connection exists between the political and
economic culture of the United States and the attributes of the adversary
system. Commentators have noted a correlation between the adversary
system and the theory of the free market. Judge Richard Posner extolls
the virtues of the adversary system because of its similarity to the free

17 Luban, The Adversary System Excuse, in The Good Lawyer at 90 (cited in note 15) (emphasis
omitted).
19 Feeley, 2 Encyclopedia of American Judicial Systems at 753 (cited in note 16) (citing Richard
market system, while Judge Jerome Frank criticizes the adversary system precisely because its laissez-faire approach hinders the discovery of truth and justice.\textsuperscript{20} The adversary system also closely parallels classic liberal political theory which exalts individual autonomy and allows for state intervention only insofar as it is necessary to ensure individual choice and opportunity. Malcolm Feeley, in \textit{The Adversary System}, comments:

The connection of the theory of the adversary system with liberal political theory should be apparent. Both the state and the court are reactive institutions, responding to claims brought to them. Voters (politics) and litigants (the adversary system) are expected to pursue their own personal interests rather than subsume them for some larger community good or sense of justice. And as in the market, both the political process and the adversary system celebrate the clash of interests. In politics, the public good is understood to be the resultant shaped by the various vectors of personal preferences or interests, and in the adversary system, justice is likely to emerge as a by-product of intense partisan struggle.\textsuperscript{21}

A central link between the adversary system and American liberal political theory is the system's distrust of state authority. This manifests itself in two significant ways. First, perhaps because of America's colonial experience and history, we have embraced a political theory that envisions a limited government with decentralized power. This is reflected in the adversary system where the crucial roles are given to individual litigants, via their advocates, and an essentially passive role is assigned to the judge and jury. This stands in contrast to countries with political histories and cultures giving rise to strong state-authority traditions. These countries are likely to have more active judges and more passive litigants. For example, in the European inquisitorial systems the judge has a dominant role through which she or he controls and supervises the formal proceedings:

If the judge in an adversarial system can be likened to a consumer assessing the positions of competitive salesmen, the judge in an inquisitorial system might be likened to a leader of a seminar, the collective goal of which is to get at the truth and each of whose members is expected to volunteer what they know. In the criminal process . . . this difference is underscored by the fact that in inquisitorial systems, there are fewer safeguards of a defendant's interests and the judge assumes a more active role in questioning witnesses.\textsuperscript{22}

Second, liberal theorists distrust public power because they believe that such power will have a corrupting influence on society. Hence, state power should be limited to intervention in a live case or controversy. Similarly, the adversary system distrusts non-interested parties' involve-

\begin{itemize}
  \item \textsuperscript{20} Id at 761.
  \item \textsuperscript{21} Id.
  \item \textsuperscript{22} Id at 754.
\end{itemize}
ment in the process. For example, the standing doctrine requires that litigants be self-interested in a suit and personally affected by its outcome. This doctrine flows from the belief that the pursuit of intense individual self-interest will not only promote the litigant's own interest but also benefit the public at large by fostering "just" outcomes. Again, Malcolm Feeley contrasts the United States' adversary system to the inquisitorial systems in Europe:

The dominant theoretical traditions in Europe do tend to place considerably more emphasis on the importance of community and relatively less on the interests and rights of individuals. . . . This concern with community informs traditions of European political theory, both liberal and conservative, and this concern stands in sharp contrast to the British and American traditions, which are preoccupied with the individual and individual rights.23

Feeley also comments that many socialist and so-called primitive cultures are likely to have legal processes that emphasize communal concerns. Hence, these cultures rely less heavily on the self-interest of the disputants to guide the proceeding and facilitate the outcome.24 In addition, since the advocate's self-interest is intimately connected with the litigant's self-interest, it is not surprising that the advocate's role requires undivided devotion and loyalty to the client. Again, this feature stems from American culture's strong emphasis on individual rights. Deborah Rhode, in Ethical Perspectives on Legal Practice, asserts, "the second premise of adversarial ideology is that lawyers' undivided client allegiance serves fundamental interests of individual dignity, privacy, and autonomy."25

The foregoing reveals how the adversary process, the foundation of the legal system, reflects the predominant political and cultural views of this country. Hence, those who are part of the dominant white male culture are most likely to experience comfort and success in this system. The relative discomfort of those who are not part of the dominant culture is borne out in feminist literature which has criticized the established legal norms and theories which serve, in part, to exclude women and to validate the established hierarchy. The following section briefly discusses the feminist literature which examines women's alienation and discomfort in the adversary system by questioning patriarchal norms and standards. This examination of the feminist literature provides a framework for exploring issues of discomfort and role conflict in the adversary system for another minority group, Asian-Americans.

23 Id at 762.
24 Id at 763.
III. The Feminist Critique

The entry of women into the legal profession has been "perhaps the single most radical transformation in the modern legal profession."26 Throughout the history of women in law, there has been a presumed difference in the sexes' capacity for legal work.27 Feminist jurisprudence challenges the accepted legal theories and underlying assumptions about legal roles.28

Carol Gilligan's work on gender difference in moral reasoning has been instrumental in the development of feminist legal theory.29 Gilligan asserts that there are considerable gender differences in the way women and men address moral problems. Gilligan argues that women use a "different voice": one that stresses concrete responsibilities and relationships rather than abstract principles of rights and justice. Moreover, women and girls primarily define conflict as a clash among needs, whereas men and boys define it as a clash of rights.30 These gender differences are applicable in the legal arena31 and are especially pertinent to the way women and men relate to the adversary system.

Perhaps the most commonly perceived difference between women and men in the legal field is that women are less comfortable with the hostility and combativeness that characterize the adversary system.32 "Women express dissatisfaction with the win or lose nature of litigation and the inability to effect solutions that take account of all the parties' needs. . . . [W]omen may seek solutions to moral problems without choosing abstract right and wrong answers and will try to keep the relationships of the parties in moral dilemmas constant."33 For example, Carol Gilligan asked boys and girls whether a man named Heinz should steal a drug he cannot afford to save the life of his wife. Girls, including

27 Deborah L. Rhode, The "Woman's Point of View," 38 J Legal Educ 39, 40 (1988) ("A prevailing assumption was that females were less adept at 'thinking like a lawyer,' whatever exactly that meant").
28 Naomi R. Cahn, A Preliminary Feminist Critique of Legal Ethics, 4 Georgetown J of Legal Ethics 23, 23-25 (1990) (Cahn suggests that feminism can transform legal ethics by requiring lawyers to analyze both the context of clients' and their own, situation).
29 Carol Gilligan, In a Different Voice (Harv U Press, 1982).
31 See Mary Field Belenky, et al, Women's Ways of Knowing (Basic Books, 1986), for an illuminating study about the difference in the ways that women and men learn information. The authors assert that most men learn in an impersonal, scientific, and adversarial manner that the authors call "separate knowing." However, most women use "connected knowing," which is a method of learning by connecting the ideas of others into their own experience in order to understand rather than to judge. This difference has special relevance in the law school classroom which is structured predominantly by the separate knowing method and tends to devalue and alienate connected knowers. Weiss and Melling, The Legal Education of Twenty Women at 1305 (cited in note 30).
33 Id.
a subject named Amy, focused on the desires of the parties and tried to keep the relationships constant ("the ethic of care"). Consequently, the girls wanted Heinz and the pharmacist to meet together and discuss their problems directly and agree to an alternative solution—installment payments for the drug. In contrast, the boys, including a subject named Jake, focused more readily on abstract moral principles and determined that, since life is more valuable than property, Heinz should steal the drug ("the logic of justice").

In *Portia in a Different Voice*, Carrie Menkel-Meadow contends that in conventional terms, Jake would make a good lawyer because he is able to focus on the "legal issues of excuse and justification, balance the rights," and reach a decision that can be applied prospectively in other cases. Menkel-Meadow argues, however, that Amy's style of moral reasoning and lawyering is both legitimate and effective:

Amy seeks to keep the people engaged; she holds the needs of the parties and their relationships constant and hopes to satisfy them all (as in a negotiation) rather than selecting a winner (as in a lawsuit). If one must be hurt, she attempts to find a resolution that will hurt least the one who can least bear the hurt. (Is she engaged in a 'deep pocket' policy analysis?) She looks beyond the 'immediate lawsuit' to see how the 'judgment' will affect the parties. . . . Furthermore, Amy is concerned with how the dilemma is resolved: the process by which the parties communicate may be crucial to the outcome.

Amy's analysis involves different processes and envisions a different role for the lawyer than Jake's. Thus, Menkel-Meadow contends that an alternative dispute resolution process, such as mediation, might be used if this "female form" of moral reasoning were applied in the legal sphere. Different substantive solutions with fewer binary winner-take-all results might also be reached. It is, however, important to note how Jake's orientation fits easily within the adversary model, whereas Amy's process directly conflicts with it.

The fundamental concepts and values of the adversary system are advocacy, persuasion, hierarchy, competition, and win/lose results. Menkel-Meadow asserts that the adversarial model affects the way in which lawyers act toward their clients. For example, "lawyers advise their clients ('get as much as you can'), negotiate disputes ('we can really get them on that') and plan transactions ('let's be sure to draft this to your advantage'). All of these activities assume competition over the

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36 Id at 46-47 (emphasis in original).

37 Id at 52-53.
same limited and equally valued items (usually money) and assume that
success is measured by maximizing individual gain.”

Hilary, a woman lawyer in Gilligan’s study, reacts to a classic moral
dilemma of the adversary system when she sees that her opponent has
failed to make use of a document that would be helpful to his case and
harmful to hers. She decides not to tell him because of her “professional
vulnerability” in the male adversary system, and she concludes that “the adversary system of justice impedes not only the supposed
search for truth (the conventional criticism), but also the expression of
concern for the person on the other side.” Menkel-Meadow notes that
“Gilligan describes Hilary’s tension between her concept of rights
(learned through legal training) and her female ethic of care as a sign of
her socialization in the male world of lawyering.”

A noted weakness in Gilligan’s studies is her inattention to differ-
ces in women’s experiences across culture, class, race, and ethnicity. This weakness is also reflected in much of the feminist and critical legal
studies literature. These alternative theories of jurisprudence have been
crucial in questioning established patriarchal norms and in setting forth a
descriptive message that “legal ideals are manipulable and that law
serves to legitimate existing maldistributions of wealth and power.” However, legal scholars of color have criticized the lack of attention to
race, class, and other distinctive characteristics exhibited by many alter-
native theories of jurisprudence.

Feminist jurisprudence purports to speak for a universal women’s
experience when, in fact, it speaks primarily of elite white women’s real-
ity. Angela Harris, in Race and Essentialism in Feminist Legal Theory,
argues that “gender essentialism” must be discarded in order for other
minority voices to be heard. “Just as law itself, in trying to speak for all
persons, ends up silencing those without power, feminist legal theory is in
danger of silencing those who have traditionally been kept from speaking,
or who have been ignored when they spoke, including black women.” We must distinguish the experiences of racial minorities by
acknowledging the unique feelings and intangible modes of perception of those who historically have been socially, structurally, and intellectually

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38 Id at 51.
39 Id at 52.
40 Id (quoting Gilligan, In A Different Voice at 135-36 (cited in note 29)).
41 Id.
44 Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 Stan L Rev 581, 588 (1990).
45 Id at 585 (gender essentialism is defined as “the notion that a unitary, essential women’s ex-
perience can be isolated and described independently of race, class, sexual orientation, and other
realities of experience”).
46 Id.
marginalized in the United States. To do so involves a "recognition of
the manner in which racial discrimination intersects with other differen-
tiating characteristics—such as gender, class, and sexual orientation—as a basis of oppression."47

Similarly, the Critical Legal Studies movement has been criticized as
elitist and exclusionary.48 For example, Mari Matsuda, in Looking to the
Bottom: Critical Legal Studies and Reparations, suggests that those who
have experienced discrimination speak with a special voice that should be
heard: "Looking to the bottom—adopting the perspective of those who
have seen and felt the falsity of the liberal promise—can assist critical
scholars in the task of fathoming the phenomenology of law and defining
the elements of justice."49 Hence, Matsuda urges critical legal scholars
and others to incorporate the authentic historical and current experi-
ences of minority communities into legal scholarship because of their
unique viewpoints which are now absent from mainstream legal litera-
ture.50 This article contains the voices of a small group of Asian-Ameri-
can students describing their perceptions of and experiences in the legal
system. The next section, which discusses Asian-American culture, sets
forth significant differences between Asian-American and American cul-
ture in order to establish a context for exploring these issues.

IV. ASIAN-AMERICAN CULTURE

There are significant differences among the various Asian cultures
which can not be overlooked. However, for the purposes of this article,
given the small number of students in each Asian subgroup, it is helpful
to discuss the similarities that exist between these various countries of
origin. In this inquiry, we must be careful not to overgeneralize, and to
recognize that there will be individuals within each culture who may or
may not fit any pattern we might identify.

Perhaps the most striking difference between Asian culture and
American culture is the view of the self, not as an autonomous,
independent being, but rather as an interrelated part of the family and
community who is expected to fulfill a pre-established set of responsibili-
ties and obligations. In the traditional Asian family, parents and other
elders are viewed with great respect. The primary family unit is strong
and exerts substantial influence over its members. The emphasis is
placed on obtaining a good education, being obedient to parents, and

47 Robin D. Barnes, Race Consciousness: The Thematic Content of Racial Distinctiveness in Criti-
48 See generally 22 Harv CR-CL L Rev (Spring, 1987) (symposium issue on Minority Critiques
of the Critical Legal Studies Movement).
50 Mari J. Matsuda, Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-up
giving the family a good name. A family member who acts negatively, by exhibiting antisocial behavior, being disobedient, or failing to achieve, would bring shame on the whole family. Asians are also more likely than Caucasians to blame themselves for failure, rather than blaming external sources. Thus, people learn to cultivate strong self-control and a sense of responsibility.

Asians are socialized to appreciate and maintain harmonious social relationships rather than to act according to individual needs and desires. To this end, the family structure is arranged to minimize conflicts within the family by having each member play a specific pre-established role. These family roles are well defined along patriarchal lines: the father is the authority figure, the decision-maker; the mother is the complacent wife who exercises most of her power from behind the scenes through the father. The son is expected honorably to carry on the family name and to give his primary allegiance to the family. The daughter is expected to help her mother with the domestic chores and, ultimately, to marry a "good husband."

Asian parents in America probably vary in the number of traditional values they implement in the household. The level of traditional roles in the family is probably related to the length of the parents' residence in the United States, their personal preferences and character, their English language skills, and their level of assimilation. In most cases, however, Asian-American children are taught the essential traditional values. The parents socialize their children to value the continuity of their family, to respect elders, and to forego individual gratification when it comes at the expense of the family or the community. Asian cultural values also emphasize reserve, restraint, inhibition of strong feelings, obedience to authority, dependence upon the family, and formality in interpersonal relations. These values contrast sharply with American cultural emphasis on spontaneity, individualism, assertiveness, and informality.

One characteristic that is not strongly emphasized in Asian or female culture, but that most of the interviewees focused on as being necessary for lawyering, is assertiveness. Many view assertiveness—the ability to express one's thoughts and feelings, especially in light of opposition—as a positive American value and as a crucial tool for lawyering.

51 This tendency to place greater blame on oneself for failure was borne out in the Asian-American women's responses concerning law school satisfaction. They were more likely to point to internal reasons for lack of satisfaction and success in law school rather than external reasons as the Caucasian women did. See Appendix A for students' responses and further discussion concerning satisfaction in law school.
52 Stanley Sue and Robert Chin, The Mental Health of Chinese-American Children: Stressors and Resources in Minority Children at 385, 393 (cited in note 13).
However, Asian cultural values dictate against self-assertion and open expression of thoughts and feelings to outsiders.\textsuperscript{54} A study of Asian-American college students revealed that Asian-American and Caucasian-American students are not equally assertive. The differences in assertiveness may be linked to cultural behavioral norms common to Asian-Americans which conflict with American value systems. "Many Asian-Americans have cultural values that differ from the Caucasian norms of spontaneity, confrontation, and openness of expression. In addition, self-consciousness about their minority status may impel these students toward greater restraint because they fear being singled out or stereotyped."\textsuperscript{55} For example, Asian-Americans may be less likely than Caucasians to "express feelings and to make difficult requests," due to the value they place on reserve and harmony in relationships.\textsuperscript{56} Likewise, Asian-Americans may avoid confrontational assertions in public due to their awareness of the discomfort involved for both persons. "Restraint of potentially disruptive emotions is strongly emphasized in the development of Asian character."\textsuperscript{57} Asian culture places a high value on getting one's point across in an indirect manner in order to prevent embarrassment to either party and to avoid disrupting the relationship between the two parties.

The degree to which an Asian-American holds these or other traditional Asian values varies depending on his or her level of assimilation to American culture. A look at one conceptual model of assimilation and character development helps to explain some of the differences in the responses of the Asian-American students who participated in this study. This model, which centers on Chinese-Americans, focuses on three types of characters: the Traditionalist, the Marginal Man, and the Asian-American.\textsuperscript{58}

The Traditionalist possesses strongly internalized Asian values and attempts to be a "good" son or daughter by conforming to parental values.\textsuperscript{59} This may take the form of high educational achievement, occupational status, obedience to family elders, or other means of bringing honor to the family.\textsuperscript{60} In contrast, the Marginal Man seeks to assimilate into mainstream America and defines himself primarily in terms of acceptance by Caucasians.\textsuperscript{61} Hence, he rejects traditional values

\textsuperscript{55} Id at 431.
\textsuperscript{56} Id.
\textsuperscript{57} Sue, \textit{Ethnic Identity: The Impact of Two Cultures on the Psychological Development of Asians in America}, in \textit{Psychological Perspectives} at 141 (cited in note 13).
\textsuperscript{59} Id at 73.
\textsuperscript{60} Id at 73-74.
\textsuperscript{61} Id at 75.
espoused by his family and adopts Western values as his own. The bicultural Asian-American, in contrast, tries to formulate a new identity altogether by integrating aspects of both Asian and American culture that she believes are necessary to her self-esteem and identity. Hence, the bicultural Asian-American cannot unquestioningly accept parental values but does not view full assimilation to Caucasian culture as her goal. The bicultural Asian-American considers herself acculturated but chooses to retain positive values from both cultures and strives to participate actively in the American mainstream. In doing so, she may experience tensions with parents who focus on her “Americanness,” as well as with mainstream Caucasian culture which may reject her “Asian- ness.” Despite this possibility, according to one study focusing on mental health, Asian-Americans who relate to both cultural systems and learn bicultural skills will have an enhanced self-awareness, understanding, and flexibility.

Although this framework simplifies the wide range of characters into three general categories, it can generate predictions about how people of Asian ancestry will react to particular events. For example, there are sharp differences in the way each group relates to institutional racism. If Asians do not attain high executive positions, the Traditionalist would be likely to blame himself; the Marginal Man would be likely to blame Asians for perpetuating Asian values such as being too reserved, and not adopting Caucasian values; and the Asian-American would be likely to blame society for racial intolerance and discrimination.

This conceptual framework suggests that the students in my study will respond differently to the adversary system depending on their modes of assimilation. For example, a “traditionalist” student, if she were to participate in the adversary system at all, would likely experience the greatest tension due to her high level of identification with traditional Asian values. In contrast, the “marginal” student would have the least trouble accepting the norms of the system due to his active assimilation of American values. The “Asian-American” student would probably have mixed views about the system because she would have accepted some American cultural values and some Asian ones. As a result, if the particular bicultural values she has incorporated into her character conflict in a given situation, the Asian-American may be likely to experience greater inner tension and cognitive dissonance than either of the other

62 Id.
63 Id at 77.
65 Fukuyama and Greenfield, 30 J of Counseling Psych 429, 431 (cited in note 54).
two character types. Since she has not wholeheartedly rejected or accepted either American or Asian values, she might feel compelled to reconcile the conflicting norms to maintain consistency in her value structure.

In addition to the Asian-Americans' challenge of confronting and reconciling two cultures, Asian-Americans must also cope with the American stereotype of Asian-Americans as the "model minority." This characterization is often intended as a compliment to Asian-Americans in reference to their group's general educational achievement, economic success, and seemingly effortless assimilation to American culture. However, this label refers more accurately to the way Asians in this country have assimilated and adhered to American society's "prescribed mode of behavior for minority assimilation; through hard work, education, quietly remaining in the background, inaction in the face of injustice, and blind faith to the American dream of equality and opportunity for all." 

Despite the positive image of the "model minority," Ronald Takaki, in Strangers from a Different Shore, traces how Asians throughout American history have struggled to be accepted in America. Takaki breaks down the myth of the "model minority" and asserts that, while this image has led many teachers and employers to view Asians as intelligent and hardworking, it also has harmful effects. Asian-Americans find their diversity as individuals denied. They complain that they are often stereotyped as passive and are told that they lack the aggressiveness required in managerial positions. Asian-Americans argue that the issue is not whether their culture encourages a reserved manner, but whether they have opportunities for social activities, which lead to career options that have traditionally been granted only to white men.

For Asian-American women, an additional barrier interferes with their acceptance in mainstream career fields. They bear the double burden of being both Asian-American and female. Thus, they are caught between two restricting stereotypes. The image of the passive, feminine, reserved, humble, and demure Asian woman is pervasive in and perpetuated by both Asian and American culture.

Within the Asian community, the family may support the develop-

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67 Amy Tachiki, Introduction, in Roots: An Asian American Reader at 1 (cited in note 58). The introduction cites many mainstream media sources, dating back to the 1960s, which have perpetuated the model minority stereotype. See also Steven A. Chin, U.S. Study Finds Wide Anti-Asian Prejudice, SF Examiner A1 (Feb 16, 1991).

68 Tachiki, Introduction, in Roots: An Asian American Reader at 1 (cited in note 58); see also Stanley Sue, Derald W. Sue, and David W. Sue, Asian Americans as a Minority Group, 30 American Psychologist 906 (Sept 1975) discussing both the success and the oppressed images of Asian-Americans. They advocate that blanket stereotypes be eliminated in order that Asian-Americans' experiences and needs will be accurately assessed.

69 Ronald Takaki, Strangers from a Different Shore (Little, Brown, 1989).

70 Id at 476-77.
ment of the son's personality and aspirations, but may discourage the
daughter's development of individuality and ambition. The Asian
woman's self-worth is largely measured by the status of her husband.
Traditionally, sons are highly preferred over daughters, so from birth,
the Asian woman is already deemed inferior. The patrilineal, patrilocal,
and patriarchal principles upheld in Asian society have traditionally
meant that a son was a blessing whereas a daughter, who could not carry
on the family name, was a liability.\textsuperscript{71}

The traditional Asian culture's views of women and their roles may
affect Asian-American women, even those who are pursuing ambitious
careers.\textsuperscript{72} For example, if an Asian-American woman were to pursue a
leadership role, the Asian community might oppose her struggle because
"to be effective, she must be aggressive and assertive, but this is contrary
to Asian values of passivity and submission."\textsuperscript{73} To be effective, she must
also become highly visible and public, which is contrary to traditional
Asian values of modesty and moderation.\textsuperscript{74} As an American woman, she
encounters problems of gender discrimination similar to those faced by
her Caucasian sisters.

There is a danger that this article and its brief examination of differ-
ences between Asian-American and American culture might reinforce
and perpetuate misperceptions and stereotypes of Asians and Asian-
Americans. However, the issue here is not the superiority or the inferi-
ority of cultural characteristics or whether Asian-American voices in this
article fit the stereotypes. This examination of the differences between
Asian and American cultures focuses on whether the adversary system
favors characteristics of one culture over another, and if so, whether
Asian-Americans are required to engage in counter-cultural behavior in
order to succeed in their roles as lawyers.

\textbf{V. SCOPE OF THE INQUIRY}

The work of feminists, critical legal scholars, and critical race schol-
ars lays the foundation for this inquiry. In recent years, legal scholars
known as Critical Race Theorists have focused on the role of "voice" in
legal scholarship and alternative genres of legal writing.\textsuperscript{75} These scholars

\begin{itemize}
\item \textsuperscript{71} Irene Fujitomi and Diane Wong, \textit{The New Asian-American Woman in Psychological Perspec-
tives} at 252, 253 (cited in note 53).
\item \textsuperscript{72} See section discussing parental reactions to Asian-American women's choice to enter the legal
profession.
\item \textsuperscript{73} Fujitomi and Wong, \textit{The New Asian-American Woman}, in \textit{Psychological Perspectives} at 260
(cited in note 53).
\item \textsuperscript{74} Id.
\item \textsuperscript{75} Richard Delgado, \textit{When A Story is Just a Story: Does Voice Really Matter?}, 76 Va L Rev 95
(1990); Toni M. Massaro, \textit{Empathy, Legal Storytelling, and the Rule of Law: New Words, Old
defines this loose coalition in this manner:
[I]ts scholarship is characterized by the following themes: (1) an insistence on 'naming

have attempted to integrate their experiential knowledge within legal scholarship while contending with the complex intersection of race and other characteristics. To do so, they have utilized stories, allegories, chronicles, tales, fables, and autobiographical narratives powerfully and provocatively to "go at the curve of someone else's experience and convey at least something of it to those whose own bends quite differently."  

Storytelling involves the reader in the storyteller's own experiences and viewpoint by enabling the reader to enter into the storyteller's shoes. Stories cannot easily be divorced from their context and, as a result, are more poignant and comprehensive. Through this medium, minority perspectives, which inevitably reflect differences from the white male norms, can be recognized, acknowledged, and hopefully better understood.

I do not intend for this study to conform to scientific experimental requirements. Thus, I chose the medium of informal, broad-ranging interviews to encourage students to tell their stories. In examining the experiences of Asian-American students through personal interviews, I am "looking to the bottom" to set forth the special concerns encountered by this group within the adversary system framework. Extensive excerpts of these personal narratives are incorporated into this article because much can be learned not only from the content of the responses but also from the context and manner in which the stories were conveyed. I hope that, by presenting the experiences and perceptions of female and male Asian-American law students, I will be adding a "special voice" to the other previously unheard voices in legal discourse.

VI. METHODOLOGY

I interviewed a non-random sample of twenty-two students at Boalt Hall School of Law, University of California at Berkeley. Twenty of the subjects were second-year students and two were third-year students. There were six Asian-American men and six Asian-American women.

our own reality'; (2) the belief that knowledge and ideas are powerful; (3) a readiness to question basic premises of moderate/incremental civil rights law; (4) the borrowing of insights from social science on race and racism; (5) critical examination of the myths and stories powerful groups use to justify racial subordination; (6) a more contextualized treatment of doctrine; (7) criticism of liberal legalisms; and (8) an interest in structural determinism — the ways in which legal tools and thought-structures can impede law reform.  


76 Barnes, 103 Harv L Rev at 1867 (cited in note 47).


79 Id.
The women consisted of two first-generation\textsuperscript{80} Filipino-Americans, one fifth-generation half Chinese-Hawaiian and half Caucasian, two first-generation Korean-Americans, and one second-generation Korean-American. The men consisted of three second-generation Chinese-Americans, one first-generation Filipino-American, one first-generation Korean-American, and one second-generation half Filipino-American and half Chinese-American. Three of the Asian-American students also spent substantial time in Hawaii.\textsuperscript{81} I also interviewed ten Caucasian students (five women, five men) to form a control group. The students ranged in age from twenty-two to thirty-eight. The mean age was 25.7 and the median age was twenty-five. For the purposes of this study, the term “Asian-American” refers to many distinct and diverse Asian groups and cultures (among them, Chinese, Korean, Japanese, Filipino, Vietnamese, Pacific Islander). The small number of students in each subgroup makes it difficult to know how representative they are of their specific gender and ethnic groups.\textsuperscript{82} Moreover, the small sample sizes for Asian-Americans and Caucasians as a whole mean that my findings must be regarded as tentative.

I conducted the interviews, which lasted from twenty-five minutes to an hour, during three weeks in March, 1991. Students consented to be tape-recorded, but wished to remain anonymous. To gather anecdotally rich, personal, experiential information, I asked broad open-ended questions concerning a variety of interrelated issues relevant to the hypothesis. The students also contributed spontaneous comments. A prepared set of questions and other spontaneous questions stemming from the students’ responses were asked.\textsuperscript{83} In brief, the questions referred to the students’ backgrounds (for example, parents’ occupations, religious beliefs, racial composition of their neighborhoods); their perceptions of their cultural values and their cultural identification; their parents’ perceptions of the legal system; and the students’ perceptions of the adversary system (including their choice of work, opinions about the system’s

\textsuperscript{80} The generation notation refers to when the student or the student’s family immigrated to the United States. First generation refers to the initial immigrant generation and the second generation refers to the students born in the United States. It is important to note that although the first-generation subjects were born in foreign countries, most of them came to the United States in their pre-school years and hence have much more in common with the second-generation American-born students than their immigrant parents.

\textsuperscript{81} Asian-Americans in Hawaii have substantially different experiences than those in the mainland because Asian-Americans are the majority population in Hawaii and hence, are the dominant group.

\textsuperscript{82} I feel more confident about the range of personality and other personal differences within the Asian-American subgroups and the sample of Caucasian women than the sample of Caucasian men. In fact, when I told a few classmates which students were in the Caucasian male group, they commented that it was a non-representative sample because four of the five men are generally perceived by our classmates to be the most “sensitive” and “sensitized” men in our class. Two of these men professed that they felt themselves to be non-typical of the white male law students. Although I could have changed the subjects at that point, I chose not to do so because selecting additional “stereotypical” subjects retroactively would bias the study.

\textsuperscript{83} See Appendices B and C for the standard list of questions asked in the interview.
effectiveness, and potential role conflict). Students were asked to include any additional comments at the end of the interview. At the end of each interview, students were given a brief explanation of the hypothesis and their subsequent comments were noted. All students' quotations are direct excerpts from transcripts of the tape-recorded interviews.

VII. RESULTS AND DISCUSSION

The interviews consisted of many questions touching on a variety of issues. This article will focus on the questions and responses most pertinent to my hypothesis concerning the students' perceptions of the adversary system and their perceived role conflict. Because most of the questions asked were open-ended, it is impossible to quantify the responses. To capture the nuances of the responses, I have included extensive quotations from the interviews, adding my own emphasis by italicizing portions. The students' responses are presented in two ways. For the majority of issues, the different speakers are set off with numbers and the quotes are grouped by the speaker's race and gender. With other issues, the quotes of students from different subgroups are intermixed.

BACKGROUND

A. Students' Families

1. Parental Occupations

The students' parents hold a variety of occupations. The most significant finding is that none of the Asian-American students' parents were lawyers or employed in the legal field in any capacity. One Asian-American male student commented especially on this throughout the interview:

I think it's important that most of us didn't have lawyers as relatives and it seems foreign. . . . I never felt like Asians were part of the legal system.

84 See Appendices B and C.
85 Additional questions were asked which elicited responses that are not directly on point but which may be of interest. The most noteworthy of these are the responses to the question about the students' satisfaction with their law school experience. These and other responses have been included in Appendix A.
86 The numerical notations are not used consistently throughout the analysis to represent the same speaker.
87 (1) Asian-American females: fathers' occupations included engineer, pizza deliverer, professor, and two businessmen. Mothers' occupations included nurse, teacher, librarian, beauty salon owner, and other family business. (2) Asian-American males: fathers' occupations included doctor, scientist, postal officer, university controller, two businessmen, and aerospace consultant. Mothers' occupations included two professors and four housewives. (3) Caucasian females: fathers' occupations included two lawyers, a federal district court judge, state department administrator, and military officer. Mothers' occupations included nurse, teacher, dance therapist, state department manager, and housewife. (4) Caucasian males: fathers' occupations included a doctor, business manager, government service, professor, and real estate developer. Mothers' occupations included two teachers, secretary, social worker, and author.
We had taxes and other legal work done by lawyers, but there was never anyone in my family who even thought about being a lawyer until me, and probably even after me in the near future. I didn’t know any Asians that were lawyers. I knew a lot of Chinese people through my family and they had all sorts of jobs—doctors, engineers, professors, and others, but never any lawyers. . . . I thought it really didn’t strike me as being something that was really us. I think part of the reason I went into law was because of where I went to school. I went to an Ivy League school [on] the East Coast and there everybody was going to be a doctor, lawyer, or businessman, and I’m at law school because that culture convinced me that I could be a lawyer. . . . It was one of three major options. It seemed like a matter of course for a lot of people to do it so it didn’t seem so outrageous or exceptional.

This perception can be characterized as part of an “insider-outsider” dichotomy. This “insider-outsider” theme runs through many of the responses in various ways. The demographic reality that until recently very few Asian-Americans worked in the legal field may have an impact on the Asian-American students. Moreover, the fact that none of the students’ parents are lawyers may perpetuate a sense of separation from the legal system for Asian-Americans. The fact that none of the Asian-American students’ parents are lawyers probably plays a significant role in the parents’ perceptions of the legal system, which were transmitted to their children. The parents’ occupations also may be relevant to how they responded to their children’s choice of career.

Also interesting is the fact that, except for the four mothers of Asian-American men, most of the mothers in the study worked outside the home. This may be mere coincidence or it may be that these homes were more traditional than those of the Asian-American women, in which all the mothers worked. Having mothers who worked outside the home rather than conforming to the traditional Asian family model may have made it easier for these women to pursue a legal career.

2. Parents’ Perceptions of the Legal System

This section explores two factors which may have impacted students’ perceptions: the students’ parents’ perceptions of the legal profession and the families’ experiences with the legal system.

(a) *How did your parents feel about you becoming a lawyer?*

The initial parental responses to Asian-American male students’ decisions to become lawyers were not favorable. Four sets of parents initially disapproved of their sons’ law school aspirations because they wanted them to go into medicine, engineering, or other sciences. Three of these parents worked in the sciences themselves and hoped that their
sons would do likewise. Eventually, all the parents accepted and supported their sons’ choices primarily because of the social status and prestige associated with being a lawyer. In contrast, one student stated that his parents “pushed [becoming a lawyer] on me. . . . [T]hey were pretty happy when I decided to go to law school . . . probably because of the prestige and financial security.”

Two sets of parents supported their sons’ choices because their children would gain insiders’ access to the system:

(1) When I first started talking about being a lawyer, they didn’t know too much about it, but now they are getting a better idea and they are pretty supportive and very happy I’m doing it. Before they thought of it just like any job. When I told my mom that I’m making $1000 a week, she was in shock. They are amazed that there is so much money. Another thing is that they never had access to [and] never understood how things work. *When you are in law, you are an insider into how things work . . . ; this is important to them.*

(2) Being a lawyer was one of the better things I could have been, not having chosen to be a doctor, because it was still a profession and fit most of their qualifications. . . . The most positive comment they had when I decided to be a lawyer is that ‘now one of us will be a lawyer.’

Both of these comments reflect the “insider-outsider” perception on the part of the Asian-American parents. They approve of their sons’ choices to become lawyers partly because they want someone on the “inside” who can help them understand the system and use it for their benefit. The interesting aspect of these two comments is that one came from parents who are both well-educated professors, while the other comment was from a father in a blue-collar job and a housewife mother. Despite the disparity in education and socio-economic status of these two families, the Asian-American parents felt themselves to be on the outside of the legal system.

The responses of the Asian-American women’s parents were similar to those of the Asian-American males’ parents. The parents of two Asian-American women wanted their daughters to become doctors, but for different reasons than those given by the Asian-American males’ parents:

(1) They wanted me to be a doctor because they thought it was a more noble profession . . . and it was more lucrative. They thought being a lawyer was a little too sleazy because in the Philippines, lawyers are bribed right and left and it’s easy to be corrupted. And then, they found out how respected attorneys are in the United States and how much money they make. . . . They like the idea and they know I’ll be secure.

(2) My parents prefer that I become a doctor, but at least lawyer is some kind of a profession. My dad always talks about how your skin is yellow and you can’t survive here unless you have a skill. The reason he wants us to become doctors is that he went through the war and even then, doctors have some means of support. . . . [Y]ou always need doctors. . . . I think
they like it more and more now. My father has a business and so he realizes how important lawyers are. . . . In Koreatown they are taking a more active role. But it still bothers him that I'm a woman becoming a lawyer because it is still a business setting and he can't see a woman progressing much in that field. He really wants my brother to become a lawyer. He's a man so if he goes into law, he can do something worthwhile. For me and law, he thinks that it's some means that I can have money. For my brother, it's a means of gaining power.

Another parent wanted his daughter to follow in his footsteps and become a professor. The other three Asian-American women were supported in their choices and stated that their parents were proud of them. One student's parents were especially proud because she was the first in her family to get a professional degree.

Four of the Caucasian male students' parents liked the idea of their sons becoming lawyers for various reasons (for example, the profession was congenial to the student's temperament, socially useful, secure, or prestigious). One set of parents wanted their son to follow in his father's footsteps and become a doctor, but accepted their son's choice because they never really interfered in their children's decisions.

All of the five Caucasian female students' parents approved and supported their daughters' occupational choices. The three fathers who are lawyers were especially pleased with their daughters' choices. One student stated that her mother was very proud of her accomplishments and was especially supportive because her mother has a "feminist agenda and thinks it's great that women are doing this for self-fulfillment." None of the Caucasian female students' parents expressed the types of reservations about their daughter's gender and her professional choice that the Asian-American parents had.

(b) Has your family ever sued or been sued?

There were no substantial differences between the Asian-American families and the Caucasian families in the number of times they had sued someone or had been sued. However, the Caucasian families expressed greater knowledge of the law and more confidence in the system than their Asian-American counterparts.

For example, a Caucasian student described how his father initiated an affirmative suit:

My dad sued for fraud. He didn't feel confused by the law. He knew he'd been defrauded and understood the basic legal remedy. He proposed a lot of different solutions and when nothing worked, he resorted to suing, especially because there was bad faith involved.

Another Caucasian male student stated his parents' perspective in a telling way:

We [my family] sort of have this sense of fair play and working in the
system. *We always worked within the system and the system has essentially worked for us.* We haven’t been denied anything so our perception of the legal system is that it does work and it’s about fair play. I realize that it’s not one hundred percent perfect but I tend to support it and can sort of fit right into it.

This comment especially emphasizes the difference between the Caucasian parents who understood the legal system to some degree and even felt that the system was working for them, and the Asian-American parents who were less willing to get involved in the legal system.

One Asian-American male relayed an incident in which his mother had been burned on her neck while getting a facial and was scarred badly. He stated:

This was after I got to law school so I may have had something to do with it. I really had to push her [to sue]. . . . I had to push pretty hard. . . . We won very quickly, we let them off cheap. . . . She treated it like a windfall . . . . [S]he sees it as play money, a windfall and not an entitlement. I really had to argue with her to make her even do it. I had to say every day, ‘she spilt boiling water on you and you aren’t suing?’

Another Asian-American student describes his parents’ response to a litigation situation:

This guy was supposed to fix our roof but he didn’t do it right. My parents ended up not paying him and then he sued us, so we had to get a lawyer too. [Their] main perception was that it was a hassle, like, why can’t you handle this without a lawyer? Dad said he’d rather do it like, talk to the guy, try to work things out but then of course if he is inflexible about it and says he didn’t do anything wrong, then you might have to sue. The idea is that back in China, if this kind of thing were to happen, there would be community pressure put to bear, but here, it’s too big for that so I guess they kind of acquiesce and understand that this has to happen. They see it as a system beyond, sort of outside, everyone’s in it and they can’t affect it. So, they put their money in and see what comes out.

Likewise, other Asian-American families eventually adapted and acculturated to the legal system and even learned how to benefit from it. It is clear, however, that litigation was a foreign concept to the parents, a process which conflicted with their cultural modes of conflict resolution.

1) They liked [the suit] because it was painless for them since it settled and the insurance company handled it. If it had gone to court, it would have been too much of a hardship. No, my parents would never want to go to court. . . . They try to avoid it as much as possible because it’s too much of a hardship and too humiliating, . . . too much of interference in their privacy.

2) When we first came to the States, my father warned us not to bring any friends to the house because he had heard about everybody suing everybody else so he was afraid that a friend of ours would come and slip on the stairs or drown in the pool or something and get sued by their parents. *My parents aren’t as afraid of the system any more and they are learning to take advantage of it.* . . . I don’t know if they have done it themselves but
they see other [Koreans] taking advantage of it. You know, when they get into accidents and get extra money that way. They think of it as a normal process now and think of it as a flaw in the system and so why shouldn’t they take advantage of it if they can. [My parents] are very practical.

Although the Asian-American parents may have had greater reluctance initially to become involved in the legal process, some of those who have been sued or have had cause to sue eventually overcame their cultural reluctance and participated in the legal process. Maybe it is these Asian-American immigrant parents’ “practicality” that has enabled them to adjust to American legal culture and, consequently, to assimilate and to use “the system.” This is captured by one Asian-American parent who was involved in a car accident and told her daughter that she would sue because she was now living in the United States and this is how things are done here.

B. Students’ Perceptions of Cultural Values

In order to lay a foundation for the issue of role conflict arising from a conflict of cultural values, the following questions concerning students’ perceptions about prevalent cultural values were asked.88 Hence, these questions were not asked to define the objective cultural values of the Asian-American or the American culture, but rather to ascertain the students’ subjective perceptions about the values in their culture. In the next section, these values are applied in the context of the adversary system and the roles that students play in that sphere.

1. Asian-American Cultural Values

(a) What do you think are the prevalent values and characteristics of the Asian-American culture?

In response to this question, students mentioned most of the cultural values discussed in the earlier section on Asian-American culture. All twelve Asian-American students listed a strong and closely-knit family as the most important value in Asian culture. Other frequently stated responses along this line included taking care of elderly parents and taking care of kids; showing obedience, deference, and respect for authority, especially parental authority;89 and making sacrifices for the family. Many respondents also believed that community,90 achievement (espe-
cially in education), hard work,\textsuperscript{91} discipline, and future orientation were prevalent Asian-American values.

Although Asian-American men and women generally agreed on the above values as the pervasive ones in the Asian-American culture, all the women mentioned an additional non-confrontational characteristic (described as passivity, nonaggressiveness, "not making waves," and "saving face"):

1. The prevalent values are conciliatoriness, passivity, not wanting to make waves, hard working, not necessarily taking leadership role but working hard to reach consensus and cooperation.

2. [Asian-American] culture is definitely non-confrontational, you don't make waves. That's the main consensus among the people, especially in the United States. Whether it's within the family, relations with other relatives or getting actively involved in the student movement or things like that. . . . [If] you make waves, if you make trouble, you are considered immature or deluded or something. . . . [I]t's looked upon very negatively.

3. Filipinos tend to be, similarly to other Asians, not as assertive and there is a lot of importance given to innuendo, saving face, that value of not being straightforward or confronting someone. The value of letting someone save face,\textsuperscript{92} . . . there's value in euphemisms.

In contrast, only one of the male Asian-Americans felt that being "less aggressive" was an Asian trait:

I guess Asian people tend to be less aggressive. . . . I guess in growing up, [you] learn to be non-adversarial, which is an Asian trait. The respect you are supposed to show to your elders, [you] aren't supposed to talk back so you learn early on that it's not good to have debates with people even though you don't agree.

Two Asian-American men disagreed strongly with this characterization while others in this group did not mention this characteristic at all.

1. When I think of Korean-Americans, I think of very blunt people. One impression I got from Korea was that if you are in public, I think the Koreans are the rudest people you could ever run into but once you are invited into their house, they are the most friendly people you would run into. Like in the market place, when you are haggling, it's very confrontative and anything but passive, but in the home, there is a hospitality that may be mistaken for passivity.

\textsuperscript{91} For example, an Asian-American male states: "The prevalent values are education and achievement, the work ethic. You are supposed to work really hard and do the best you can. . . . [This] probably has to do with immigrants from China who didn't have much when they were young and made a life for themselves in the U.S. through hard work so I guess this value was passed on."

\textsuperscript{92} The East Asian concept of "loss of face" embodies the social concept of shame resulting from committing a socially unsuitable act. It entails not only the condemnation of society but also the loss of trust and integrity in one's own character. The concept of shame involves exposure of one's action for all to see, resulting in withdrawal of family and community support. Fear of losing face can be a powerful reason to conform to familial and societal expectations. See Shon and Ja, Asian Families, in Ethnicity and Family Therapy at 214 (cited in note 9).
(2) [There are] Confucian values like wide deference to authority [and] peaceful approach to the world. [I don't believe] that Asians are passive and not argumentative. To me, this seems so stupid. Anybody who's been in a Chinese grocery or restaurant knows that these people are hardly passive. Passive people don't stand in front of tanks and try to make them stop and stuff like that.

These two students focused on specific situations which elicited a confrontational response, whereas other students focused on the more general mode of conduct prevalent in familial and non-familial relationships. It is also possible that passivity may not be the same as "not making waves." Since one can be active and dynamic without being confrontational, it is possible that the Asian-American men focus on the activism while the women focus on the non-confrontational means by which conflicts are addressed. Alternatively, perhaps Confucian values are instilled more deeply in Asian-American women than in their male counterparts through gender socialization. In any case, whether the student believes the culture to be confrontational or not is likely to be relevant to his or her perception and experience of role conflict in the inherently confrontational adversary system.

(b) Do these values conform or conflict with the adversary system?

When asked this question, most of the Asian-American men did not feel that there was much conflict. In fact, one of these students felt that "trying hard and doing your best is implicit in the adversary process... so in that respect, it embodies [Chinese] values." Two male students perceived that there was a conflict in these two aspects:

(1) Growing up, learning to be non-adversarial, which is an Asian trait . . . you learn early on that it's not good to have debates with people. . . . I certainly feel that it's hard to go into a profession where you are supposed to be adversarial with the other party.

(2) In the legal culture, or in much of American culture in general, I think you need to assert who you are first before you conduct any conversation. So, you don't start just talking about an issue, you have to build your credibility right off the bat. So, in a political discussion, you say, 'as a Chinese American who worked as a public defender . . . I think . . . ' If you just say, 'I think . . . ,,' there isn't much influence. My [Chinese] value doesn't include as much 'me, me, me,' but I think the law, the culture of law, includes a lot of that.

Aside from these two comments, the Asian-American men did not sense that there were significant Asian-American value conflicts with the adversary system.

In sharp contrast, all six of the Asian-American women believed that the Asian-American culture and the adversary system conflicted on several points:

(1) In the American culture, it is important to be assertive and if you
aren't assertive, you end up getting lost along the way and falling by the wayside. . . . The adversarial process expects you to be aggressive and up front.

(2) I think being very adversarial is contrary to Korean culture, but being concerned just about your client and no one else, I don't think that is absent in Korean culture because you should be looking out for your family and your inside group. . . . Overall, the adversary system is definitely something that's missing in Korean society. Look at Korea, it's one of the least litigious societies. If someone does you wrong, you don't look to the system to get solutions . . . that's being weak in a way. You have to take care of it on your own or your family takes care of it for you. You deal with it one-on-one, you either let it slide or you have confrontations with them but not with a third party.

(3) The legal process is very, you know, you have to be more forceful, have to be more confident. I don't want to say selfish, but I guess that's the word. You want to win all the time. You can't think of the other side or other people, you have to just think about winning. To me, that's in conflict with the traditional Asian values because there is that value of self-sacrifice and the value of humility.

(4) As a minority, I don't feel like I'm completely within the system or integrated. The legal system is a very integral aspect of the American way, so in terms of that, I feel marginalized.

(5) In the Hawaiian culture, you don't sue generally. If you have a problem, you work it out. You don't need another person to help you. Hawaiians are adverse to going to a lawyer to get help because they don't need it. This is unfortunately why they've been overrun in Hawaii because they haven't used the system in the way Caucasians and other cultures have.

(6) I think Asian-American values do conflict but it's very tied to gender issues. I see the courtroom as a very masculine arena and I think fighting it out and having a winner and loser is a very male thing. . . . I see some parallels between Korean values and feminist values in that [they value] cooperation and community.

Given these responses, it is not surprising that the Asian-American female students indicated that they would face definite role conflicts as Asian-Americans and lawyers.93

2. American Cultural Values

(a) What do you think are the prevalent values and characteristics of the American culture?

In contrast with the Asian-American students' responses concerning Asian-American culture, the Caucasian students cited individualism as the predominant American cultural value. Other frequently stated val-

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93 See Section VI. C., Role Conflict, in this article.
ues included materialism, capitalism, democracy, success, competition, and work ethic.

The Caucasian female students focused on the value of individualism much more than their male counterparts:

1) We are a very individualistic society. . . . We are rights-minded and it goes along with this individualistic thing of, I have a right to something, as opposed to other societies with community-based ideas.

2) People find value in volunteering and contributing to causes. [The] fundamental value is the Protestant work ethic, working for what you get. . . . Independence and individualism with less government control and more individual control is an important value.

3) Individualism is the strongest value, materialism is a close second. Achievement is important but in a very material way.

4) Predominant values [are] acquisition of material things, easy life, global dominance, but mostly money. . . . People being able to do their own thing is really important and not having the government interfere and not having anyone else interfere is really important.

5) [The] main value in Caucasian society is to do well and get ahead and this may mean taking advantage of opportunities and may also mean taking advantage of people . . . survival of the fittest sort of thing. It somehow plays out in the inclination to think that if people aren't succeeding, it's because they individually aren't trying hard enough or aren't competent, as opposed to seeing more external reasons for it.

Although Caucasian male students also recognized individualism as a strong value, these students focused more on values of community, equality, liberty, and competition:

1) This country prizes equality. . . . At an idealistic level, the country believes that everyone has certain rights and protections. I think at heart, this country believes that you have to take care of people in need.

2) A basic value is capitalism, the idea that a market economy is worthwhile and people should not be dependent on the government for their well-being. A second vaguely defined value is that of community, it's a value if not a reality. I think it's a myth that leads to collective action, like environment or civil rights or other causes so it serves some good but for the most part we are split into narrow factions that are self-interested . . .

3) Prevalent values are instant gratification and individual freedom, a lot of times at the expense of social cohesiveness of the group. Materialism, greed, and freedom without responsibility. We also have values of individual freedoms and liberties in this country, but people forget that you have responsibility to the community, the greater social group.

4) My values are mainstream American values in the sense of being family-oriented and doing things, involvement in the community. . . . The main value of the elite is education. . . . American culture is more rights-based. People are taught that everyone gets or everyone should have a fair shake, that's an important value even if it's not true all the time.

5) Americans value money, education. . . . I don't think individualism is
up there. I think for the most part Americans like to go with the crowd and do whatever is popular. I think individualism is more of a myth. Competition is a high value, sports is enormously popular and most business people not only want to make profits but want to beat their competitor.

The gender differences in perceptions of American culture are contrary to what might be expected. Given women's emphasis on relationships and community, one might have expected the women to focus on these values more than the men. Perhaps the women have perceived individualism as a real and pervasive force in American culture, whereas the men have encountered it in a more theoretical sense. Although it is unclear whether individualism is a real or mythical facet of American culture, its influence can be found in the legal system.

(b) Does the legal system reflect these values?

Both Caucasian men and women agreed that some of the cultural values are reflected in the legal system. Most would agree with the following sample of responses:

(1) One problem I see with the adversary system relates to our value of community. After the problem is decided by an adjudicatory body, you have to go back into the community and live together and if you took the adversary role seriously and did your best to injure [the other party], relations will be strained.

(2) I think our legal system does reflect materialistic values because it is based on private property and the private ownership of capital . . . and the system is tilted toward those who have more money . . . . Instant gratification has a reflection in the legal system in that when something bad happens, people don't want to take responsibility for their actions and want to sue and blame someone else for it and the legal system certainly encourages that.

(3) Sometimes these values conflict because you are taught to communicate with people and work things out and not have it come to suing people, . . . but there's the flip side that people are taught to stand up for their rights and to get whatever they can and if you are hurt, others should pay.

(4) The legal system reflects deep-seated cultural values. I was in Japan and they were saying that in that culture, they concede more, it's no big deal. Here, it's so hard to get people to concede.

Even this cursory look at the students' perceived cultural values reflects substantial differences between the Asian-American and American culture in aspects relevant to the adversary system. For example, while Caucasian men tend to embrace the adversary system as reflecting positive values, Asian-American women perceive the conflict between cultural emphasis on saving face and nonconfrontation with the ideal of the zealous advocate. These differences are manifested by the students' expectations regarding their roles as lawyers.
C. Role Conflict

This section focuses on a series of questions concerning the student's personal sense of conflict or comfort with the adversary role. The questions asked were:

1. *Do you sense any conflict between your personal values and the legal system’s values?*

2. *Do you think that your identity as a Caucasian/Asian-American woman/man will have an impact on your role as a lawyer, both on how you act as a lawyer and how others may act toward you?*

3. *Do you have any concerns or reservations, or things that bother you about the lawyer’s role? Do you anticipate any role conflict?*

Asian-American students were also asked:

4. *Has your Asian-American identity (for example, values) affected your perception of the legal system in any way? In other words, do you sense any conflict between your Asian-American values and the legal system’s values?*

Predictably, Caucasian men expressed little role conflict. They were, on the whole, comfortable with the adversary system and relished the competitive nature of litigation. The only time they anticipated role conflict was if they had to represent unsympathetic clients, the "bad guys":

(1) *It doesn’t bother me to be a part of the adversary system. I like litigation because it’s more interesting and challenging because you know that there’s someone on the other side and one of you is going to win. . . . There would be personal conflicts when I feel like my client is on the wrong side.*

(2) *I wouldn’t think that there would be a conflict. I want to do trials because it is more exciting because there are winners and losers, it’s a kind of sport and it’s fun to win or lose. Performance is a lot of it but I also have strongly held beliefs about criminal law . . . so I want to win, I want to beat the public defender. . . . I’ve always liked winning and losing, it’s not such a different part of my character that I have to reserve it just for the courtroom and in my daily life do something else. I suppose it could make me more aggressive towards people. . . . I think there will be some sort of spillover from being in a competitive adversarial role. I can definitely see myself becoming worse."

(3) *I would have no problems doing criminal defense because I’m skeptical about criminal law to begin with. . . . In civil litigation, I wouldn’t have a role conflict if what’s at issue is something like intellectual property; where what’s at issue is a lot of money of two corporations that are equally competent and where the attorneys aren’t hurting anyone. . . . In a lot of law, I see what the attorney is doing is hurting someone. . . . I really have a hard time gouging the other side. With criminal law, the People aren’t really gouged because you are claiming Fourth Amendment protections.*

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94 Multiple questions rather than one question were asked in order to approach the issue of role conflict from different angles.
(4) I think if I went into transactional work, I'd have a reverse conflict similar to Asian women going into litigation in that I've been trained to be aggressive and want to win and I'd have to put that aside to succeed in transactional work because it is not as adversarial. I don't see any personal role conflict in litigation . . . personally there's definite appeal to being in an adversarial contest.

(5) I like the gamesmanship aspect of [litigation] but it depends. Some strategy is good, but if you let it govern the substance and get more interested in outsmarting the other party than the result, then it isn't good. . . . I may have some problems [role conflict] depending on who my clients were. I may have to adopt certain perspectives which I don't like. . . . I could act in a way that would make it good or where it would make it bad. I could also work in a place where it would be good, where clients weren't trying to avoid responsibility for oil spills.

Role conflict for Caucasian men centered around who their clients would be and whether they were sympathetic to the clients' goals. However, Caucasian women attributed role conflict mostly to their identity as women and focused on issues of confrontation and conflict:

(1) Law is much more confrontational than problem solving. It's hard to articulate but it seems like in law school, there is always a certain pushing and testing and intimidation involved. It's something I'm not comfortable with. It has to do with the way I deal with people as a woman and this is probably the way a lot of women deal with other women. It's not in a confrontational or argumentative way, not in the way that's testing the limits constantly but a more diplomatic, more of a negotiating type of approach.

(2) Being a woman and being a more quiet type of person, I'm not going to be a high-powered partner in a big firm. I'm more comfortable working on smaller cases.

(3) I get really tense when conflict is high. . . . The idea of going head to head with somebody in a heated way doesn't appeal to me at all . . . this probably has something to do with being a woman. I agree with pop psychology that says women are nurturers and try to smooth out conflicts and they address people's feelings rather than people's intellects. I think that's totally true even for intellectual women and even for assertive women. I think the main concern is making everyone feel good instead of declaring someone a winner and loser.

(4) I like the idea of, let's all sit down and see if we can work it out . . . for cost, time, and people's feelings. There isn't such a clear cut I win/you lose outcome but rather you both get a little of what you wanted.

This personal conflict stemming from a desire for compromise and negotiation rather than confrontation is also reflected in one Asian-American male's response:

I don't think it is as much in the nature of the Asians I know to be so outspoken, aggressive, and combative. I'd prefer not to operate on that level. That's one of the reasons why a lot of Asian people I know don't want to do litigation and only want to do transactional work. I don't think
it's that we couldn't do it well. I think we've been trained to do it, but it's just not that pleasant for most of us. . . . I'm not sure why that is, but part of it has to be that we are Asians. I don't think most of the Asian-Americans that grow up in the States are used to being that aggressive, especially the immigrant culture. They are taught to work hard, not to battle it out. However, none of the other Asian-American men attributed role conflict to cultural values. Instead, they viewed role conflict in a manner similar to the Caucasian men by expressing concern about aligning themselves with certain types of clients rather than reservations about the adversarial conflict:

1) There will definitely be a role conflict in being Asian-American and a lawyer. You are going to end up in a situation where the large firm you are working for will be up against the kind of people we are going to identify with more. . . . In San Francisco, there are a lot of poor Asians and their interests conflict with powered people's, like zoning for example. . . . We, as Asians, will be making ridiculous amounts of money compared to some other Chinese uneducated person. This is going to be a conflict for me because I'm going to identify with him even though I'm more on the other side, working for the other side.

2) Because of most things I'm interested in, intellectual property or corporate law, I'm going to be representing the bad guy. They have so much money and lawyers that they can drown the little guy in litigation. There's gonna be situations where the little guy will have a better case but for money, the big guy wins.

Unlike these Asian-American men, Asian-American women viewed role conflict as a much more personal matter. Four of the Asian-American women expressed concerns about the differences between their cultural values and the adversarial role. Even Asian-American women who planned to go into litigation were concerned about their effectiveness in the adversarial context and felt that they would be role-playing. The following quotes capture the degree of emotion and conviction in response to this issue:

1) I've always liked [litigation] because it's more exciting. I feel like there's definitely a conflict, though. Sometimes when I talk to people, I feel as if I should be more quiet, not as outspoken, more humble, more modest and retiring and you have to be more polite, that's the big word in my culture . . . be more polite and when I think of being a litigator you have to be more aggressive, more rude and more willing to put yourself out on a limb. . . . I think I'll have a dual role. When I have a family, I'll probably be more like the traditional Asian-American motherly figure, but when I'm at court, I'll be more Caucasian, more aggressive, assertive and outspoken. . . . I found myself playing that role when I was in debate. That's what the adversarial process does to you. You have to be that way, if you look at the adversarial process as a regular social transaction and you try to be polite and listen to the other side, you are not going to win. You have to change your roles, whatever will help you to win.

2) I have a hard time with the adversary system because it forces, well it
expects you to lie and it sanctions it and condones it. I think my Hawaiian upbringing teaches me not to lie and my Christian faith says not to lie and my Asian background teaches me to respect people and I don't believe we are being respectful when we are trying to scare them with high dollar figures or lying about something we don't intend to do. ... Unloading mounds of paper on the other side is unethical but others would say that that is allowed within the adversary system. I wouldn't do it if I knew it was going to prevent the other side from going forward because they couldn't afford to.

(3) Given that I've chosen to be a lawyer, it's important for me to hold my own and learn to be aggressive knowing that the other side will be that way.

(4) You really have to overcome the assumption, the presumption that you are going to be nice and passive and accommodating. That's really hard especially in a competitive world like the legal profession. On the other hand, I don't want to force myself to become something I'm not. I'm not confrontational by nature, I don't know if it's just me or my traditional Asian upbringing. So I guess that's why I'm choosing transactional work. There's less pressure to be aggressive and more room for compromises ... trying to come to an agreement rather than win something or lose something.

In contrast, two other Asian-American women felt that they could handle the adversarial process with little role conflict. However, they differed from the Caucasian men in that these women anticipated that they will have to make adjustments to fit into the system. To this end, one woman explicitly rejected the stereotype of a litigator, and the other implicitly incorporated her Asian-American identity into her role:

(1) I don't expect any role conflict. I don't think as a litigator or lawyer you necessarily have to play hardball. If you are that way certain advantages will accrue to you in the system but you don't have to be that way. You just have to be astute and aware of what's going on. I think it's a stereotype of what lawyers are like in general but it's not necessarily true.

(2) I don't think there will be a marked difference in how I am as a lawyer because I am Asian-American. In everything I do, I'm aware of my Asian-American identity and I'm always aware of people's perceptions of me ... this goes on internally in my head, I don't think it'll be reflected outwardly. ... I like the idea of going out into the courtroom and slugging it out with the other guy.

It is interesting to note that anticipated discomfort as a litigator was expressed along gender lines rather than racial lines. On the whole, the men were more concerned about representing the "bad guy" than about the adversarial process itself. The women, however, focused on the aggressive, confrontational nature of the process and believed they would have to play a role that diverged from their personalities. The concern expressed by women about role and value conflicts within the adversary system may be affected by their perceptions of existing stereotypes in the legal profession.
D. Perceived Racial and Gender Stereotypes

This section explores the students’ perceptions concerning actual or potential problems with race or gender stereotypes while working in the adversary system. Generally, Caucasian men did not feel that there would be any problems due to their race or gender, but recognized that it would probably be an issue both for women and minorities. All the Asian-American men acknowledged the existence of racial stereotypes, but most believed that they would not pose a personal problem for them in the workplace. In contrast, most of the Asian-American women expressed major reservations and concerns about the negative impact of both gender and racial stereotypes. Likewise, Caucasian female students expressed frustration and concern about the ramifications of persisting gender stereotypes in the legal world.

Asian-American men acknowledged the existence of certain stereotypes of Asian-Americans. However, these students were not too concerned about the personal impact that stereotypes of Asian-Americans may have on their careers. These students’ responses were largely theoretical rather than personal and focused on the demographics of the legal scene and general problems associated with being a racial minority:

(1) [My Asian-American identity] will impact in the same way that being an ethnic minority has an impact in every sphere of life. I hope not to experience discrimination, overt or implied, but it may exist. . . . It could be an advantage but then it could be a problem if the firm had a glass ceiling. . . . As an Asian-American in law, I would be helping to familiarize others with the notion that Asian-Americans can be lawyers and with the integration of minorities into what was predominantly Caucasian male pursuits in the past. I guess in that sense, it would be a contribution to a gradual process of social evolution.

(2) Since there aren’t a lot of us [Asian-Americans] out there, my first and limited goal is that I hope by me practicing and being forceful and things like that in my practice that we change some stereotypes and perceptions.

(3) The only problem I see [in being an Asian-American lawyer] is having to assimilate with a different ethnic group. Most lawyers are Caucasians and there may be a problem.

One student expressed considerable reluctance to be a minority in this field where his legitimacy and competency would be questioned:

I want to go back to Hawaii because I don’t want to be a minority. Firms in Hawaii will have a large percentage of Asian-Americans whereas here it’ll only be two or three. . . . Here, I’d be one of the Asian-Americans in the firm before it reached the critical mass. Before that period, you’d be a role model and feel responsible to get it to that critical mass as quickly as possible. Here, I’d have to be the flag bearer, the one on the cutting edge. I don’t want to be a crusader. For example, people question your competence and wonder if you are part of an affirmative action program. I don’t want to deal with it.
On the flip side, another student felt that little discomfort would arise due to his Asian-American ethnicity since there was no difference between him and Caucasians:

I haven’t experienced racism since elementary school. I consider myself more acclimated to the mainstream and I don’t think I’ll appear any different to them. So I don’t think I’d have any outward cultural differences and maybe that’s selling out. . . . I think it was inevitable because I came here when I was three [and] I had no choice but adopt my surroundings. I don’t think being an Asian-American male will hold me back in any way. If I wanted to exploit it and develop it, the Asian-American business is out there. But then you don’t want to be pigeon-holed.

In sharp contrast, all six Asian-American women were concerned about the impact that other people’s stereotypes of Asian-Americans and stereotypes of women would have on their effectiveness and perceived competency as lawyers. Moreover, some of the women felt that they had to play a different role in order to fit into the legal arena:

(1) Sometimes, I feel as if as an attorney, you have to be white and male to really achieve. . . . As an Asian-American you have to fight harder to be accepted as a competent attorney. Sometimes, you feel like you have to be more everything, be more aggressive, more competent or self-assured to be accepted as a capable attorney . . . go beyond what a normal male Caucasian person would be required to do. As an Asian-American, you find yourself going to extremes to get people to listen to you. When people look at you, they think you are going to be a certain way because you are Asian-American, they think you are going to be more polite and timid so you have to go overboard to change that impression, so you have to be more aggressive and assertive but then most people’s reactions are, ‘wait a minute, she’s too aggressive’. . . . [I]f it was coming from a white male, they’d think it was effective but coming from an Asian-American woman, it’s different.

(2) People tend to perceive Asian-American females as more passive, not aggressive, and they might say, ‘how could she be a litigator because she won’t play hardball,’ but I don’t think you have to be a certain way. . . . In the job interview process, seeing white male after white male was alienating. I’m not going to fit in because I’m not white, I’m not the proper gender; but thinking like this is self-defeating.

(3) I think it’s going to be inescapable that there are going to be people who are going to think of me in a more negative or positive light because I am Asian-American. [The] negative side might be that I’m less aggressive so if they want someone to just go out and do whatever is necessary, I’m sure I would do that, but their perception might be that she’s not quite strong enough to handle the case. I’m not sure that they’ll be confident in sending me out to do negotiations with white men.

Only one of the Asian-American women believed that Asian female stereotypes could have a positive effect on her career. This was the same student who felt that although she is different from others because of her Asian-American identity, there would not be a role conflict for her in
being a litigator. Here, she discusses how the Asian-American stereotype can be used for her benefit:

Other people's perceptions may be that we [Asian-American women] are going to be passive and non-aggressive in the courtroom and it can be used to our advantage. If the opposing counsel thinks, 'Oh, here is an Asian female lawyer who seems quiet, so I can steamroll her,' they are going to have lower expectations and when you come out fighting and screaming, they're going to be surprised. I think especially in being female and Asian-American, you can really use it in the courtroom. [Opposing counsel] will underestimate you and you aren't threatening to the jury and judge because of these stereotypes and overall they are going to expect less of you and they are going to be surprised when they see that you don't fit the stereotype. . . . You do have to work twice as hard to disprove the stereotype, but if you can show you are as aggressive and smart, you can surprise them. When they have lower expectations, it's easier to come up punching.

Similarly, Caucasian women were concerned about gender stereotypes in the profession, especially those related to assertive or aggressive behavior:

1. [Attorneys] might not discriminate against you, but there's an awareness that you are a woman. It could work for you in certain positions like child advocacy, but I don't think it helps you in the courtroom at all. It depends on the case, if it's a high-powered business case or a child custody case, but overall I don't think it'll help. The jury is very aware that there's a woman attorney.

2. I think aggressiveness and assertiveness are perceived differently if it's a woman or a man doing it. Women litigators have a little more latitude than other women because it's seen as part of the role.

3. I think clients will perceive you differently. You need to prove more to your clients, your colleagues, and to the court as a woman than would a man. . . . When you go into court, they don't think 'counsel,' they think 'woman' and I think it'll be harder. . . . [M]aybe in family law it's better to be a woman but in other fields, it's a definite struggle to prove, even in 1991, that you can be tough and do the job that needs to be done.

Two of the women expressed these concerns as a source of personal tension:

4. My approach to problem solving is different than a lot of Caucasian males to problem solving and is much more diplomatic, more eager to find compromise in situations than confrontation. . . . I'm anticipating that I'll probably encounter a number of problems in dealing with primarily male clients. I anticipate that they will perceive my being a woman with being less competent or less confrontational, as a negative. I see it as a positive thing. I'll probably face some stereotypes about women in business, women not being competent to handle economic matters.

5. People don't like to see women as aggressive, and when they do, they

95 See p 158, comment (2).
don’t know how to deal with it. Either they think women can’t be aggressive, or when they see an aggressive woman, they see it as bitchy and there’s a real resistance to treating assertive and aggressive women with respect and it’ll be a real struggle to know how to handle that and present yourself as assertive and not be perceived as bitchy.

Thus, Caucasian and Asian-American women both expressed similar concerns and reservations about battling gender stereotypes. Both groups believed that being a female would significantly affect how others perceive their demeanor, competence, and effectiveness as lawyers. Asian-American women were concerned about the additional barriers imposed as a result of racial stereotypes about Asian-Americans, which tend to be more exaggerated versions of stereotypes of women in general (for example, notions that Asian-American women are more conciliatory and relational, less aggressive and confrontational). It is possible that stereotypes of Asian-American women diverge from those of women in general such that the crucial issue is not just race, but rather how race intersects with gender. Thus, although Asian-American men agreed with Asian-American women in acknowledging the existence of stereotypes and misperceptions of Asians, most of the Asian-American men were not troubled by them and felt that stereotyping probably would not impede their careers.

E. Choice of Transactional or Litigation Work

*What kind of law are you planning to practice and why?*

Given the responses thus far, one would expect that most of the men would choose litigation while the women would choose transactional work due to the perception that litigation is more confrontational and adversarial. However, this was not the case.

Of the Caucasian men, four chose litigation definitely (two in criminal law) and one was undecided. In contrast, four Asian-American men chose transactional work and the other two were undecided. Of the women, four Caucasians chose litigation and the other chose legislative public interest work, while three Asian-American women chose litigation, two chose transactional work, and one chose administrative public interest.

The Caucasian male student who was undecided commented that he

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96 Although people’s choices of specialization may depend not only on their personal preferences but also on their firms’ needs, there are general gender patterns in choice of work. Corporate, tax, and other transactional areas are male-dominated. Janet Taber, et al, *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 Stan L Rev 1209, 1245 (1988). It is also possible that in litigation young female associates often work behind the scenes doing trial preparation without ever engaging in the confrontational trial process itself. The latter role is more likely to be dominated by men.
is personally more attracted to the litigation setting than the transactional setting:

If you look at what males are encouraged to excel in, like sports and war, litigation follows this much more than transactional work. . . . [M]ales are encouraged [toward] aggressiveness and to win, whereas in transactional work, you work toward a common goal, more like partners than opponents. Personally, there's definite appeal in being in an adversarial contest, but just because something is appealing doesn't mean you have to follow that path. . . . You can make your career goals based on what's efficient to the country and society at large rather than your inner drive.

However, the "inner drives" of the Caucasian male students appear to be different from those of the Asian-American male students, most of whom chose transactional work. The Asian-American men chose transactional work for several reasons: previous business background, better hours than litigation, Pacific Rim business, and stronger negotiation skills than litigation skills. The choice of transactional work may also fit the stereotype of Asian men as savvy business people. Note that while the Asian-American men generally supported the adversary system and did not anticipate a personal role conflict, members of this group chose, more than other groups, to work in the transactional area.

The Asian-American women who chose transactional work did so because of the stresses and pressures involved in litigation. Two of the women who did not choose litigation stated explicitly that they were not confrontational people and did not want to be in such an adversarial setting. Interestingly, the Asian-American women who chose litigation had the same concerns about the adversarial nature of litigation but felt that they could cope with it.

Similarly, although almost all the Caucasian women planned to become litigators, they expressed significant concerns about their roles. For example, one of the women who was planning to go into litigation stated specifically:

I want to do litigation but only in bringing cases and appellate work to administrative agencies. That's a conscious choice on my part to avoid the super-confrontational aspects of litigation and the stress.

Generally, their concerns about litigation were closely linked to their reservations about the stereotypes of a litigator and whether these stereotypes described their personalities.

Thus far, it has been clear that the women in both groups generally perceived and anticipated greater tension and role conflict in the adversary system than men. This greater discomfort with the adversary role may induce these women to be more likely to question the effectiveness of the adversary system. The following section will explore this hypothesis.
F. Perceptions of the Adversary System

Do you think that the adversary system is effective?

Although all the students were able to articulate the traditional justifications for the adversary system (that competitive zealous advocacy brings forth truth and justice), there was mixed support in all four groups for the adversarial process. However, each group's critiques centered on a different aspect of the adversary system.

The Caucasian men generally supported the adversary system and felt that it was effective overall. The most frequently voiced criticism of the adversary system involved the potential economic inequalities between the litigants:

(1) I see problems with [the adversary system] because it's staked in favor of the people who have the most assets, who can hire the best attorney. The average person that goes with someone on tv isn't going to have the quality of representation as someone in a top firm.

(2) The worst thing about the adversary system is that it gives all the advantages to the rich and powerful who can afford to wage a better battle. That's a fatal flaw in the system.

(3) Where the big party is against the little party, the big party has a lot of resources and can draw out the litigation and spend the other party's budget where they can't fight it any longer.

Two students also favored alternative dispute resolution for the sake of increased efficiency and reduced litigation:

(4) I've gotten a greater interest in resolving disputes outside the formal court system. Other countries have much more developed informal adjudication systems among labor unions and extended families. I'd like to see us develop more arbitration and mediation.

(5) I don't know if the litigation system works. Mediation and arbitration are great because it's ridiculous that people are suing each other all the time. Courts are the first place to turn to to solve our social problems. [The] first thing we do is sue any time our rights are trampled. It's not even our rights, sometimes it's just our feelings, just buckle up and take it. Geez, don't sue for everything.

The Asian-American men also expressed mixed feelings about the adversary system. However, the Asian-American fans of the system were more enthusiastic about its virtues than the Caucasian male supporters:

(1) I think that the adversary system is effective in the sense that there needs to be incentive for both sides to win. If it's in a cordial manner, then one side is disadvantaged because they are less aggressive and more willing to compromise. . . . For example, in a football game, if one side thinks they are better and so they'll go easy on the other side but the other side thinks that they are better and plays to win and run up the score, then it doesn't make for a very interesting game and the results won't be proper. When both football teams play their best, the team that deserves to win will win.
Despite all its flaws, for the most part, if you have two sides fighting as hard as they can, the result is definitely more accurate than if they weren't.

(2) The system may not be perfect. I see nothing wrong with delaying tactics. It just means that someone needs to change what's out there. If the system is set up so you can do these things, you should take full advantage of it.

(3) I see the adversary system as one way to implement justice. Fundamentally, I don’t have a problem with it. . . . Theoretically it's well-grounded. That is, if you have able lawyers for both sides and a judicial process that [is] objective, the adversary system is well-suited.

However, two Asian-American men advocated alternative dispute resolution, not so much for the sake of efficiency, as a few Caucasian men had recommended, but rather for the purpose of upholding community interests:

(4) A lot of times, it may be more effective to compromise more peacefully. . . . If I could, I would like to have a reasoned solution between people who get together and reason about it instead of really fighting it out. It seems like you get better results. One thing is that you won't end up hating each other afterwards. It's important because it keeps the community together. You may still need each other in the future and it's important to retain relationships. . . . In the adversary system, there is the sense that you don't get to the merits. The best lawyer wins. Instead of wasting your time doing all these tricks to get more, why not have both sides lay out everything on the table and get a range that’s fair and throw darts to determine the exact amount.

(5) Whether the adversary system is effective or not depends on what your goals are. . . . If your goals are efficiency, this isn't the way to do it. If your goals are the protection of individuals, then it does it. If you are protecting private interests and private property, then it's very effective. It's well suited for that goal. . . . But, I don’t think that's the best goal to have. I think there should be a lot more arbitration, mediation, and a lot more settlement. It's stupid, it's a waste of time and a lot of money. But I think that because our goals—our goal is to win for ourselves—and so we, as a people, are willing to sacrifice societal aims for personal individual aims. . . . I think the focus on the individual is more American than Chinese. . . . There, people don't view the world as clearly as, 'me, me, me, my interests,' they think in larger scale, 'my family's interests, my village's interest.'

Asian-American women echoed this community sentiment in a different way. Asian-American women, like Asian-American men, expressed mixed support for the adversary system. Three women felt that it was effective in ferreting out truth and resulted in overall justice. However, the other women advocated alternative dispute resolution not for efficiency, as the Caucasian men had, or community preservation, as the Asian-American men had, but largely for the sake of alleviating the competitive nature of litigation:

(1) I don’t think the system works to the extent that people view each
other as enemies. Even lawyers seem to get so worked up about it and resort to trickery. I always thought of solving cases as [determining] what the facts are. If you are going to fight on paper that's fine but little procedural matters that you hide from others and the things that people resort to because they get so competitive about litigating . . . the results that come out of it [are] that the lawyers get the best results by using these tactics . . . this isn't the right outcome. People who have a better case on paper might not win because the lawyer isn't as vindictive.

(2) The adversary system has its benefits and faults. One of the faults is that people get too caught up in the competition and not really the issues. Attorneys play tactical games which isn't productive but is built into the process since it's supposed to be competitive. Also, I guess it discourages certain kinds of people from litigating, like rape cases.

(3) I think [the adversary system] is what has led to lawyers having such a bad name. It has made our society too litigious. I don't think it is necessary that we be this way. There are alternative dispute resolution systems that we really haven't looked at and in law school they are never presented to us . . . [The adversary system] is basically making our society really confrontative; it's making people more materialistic and greedy and I don't like seeing people in lawsuits. I don't think there are winners, even if one party wins because the process is demoralizing . . . [Y]our attorneys are doing everything for you even if you have some input into the decision making, their expertise dictates what happens in the suit.

All of the Caucasian women's responses strongly expressed this concern about whether people really are getting the best overall results and are being empowered in the adversary process:

(1) There are situations when I think the adversary system is effective, especially in the criminal system. I believe in the truth-finding functions and two zealous advocates process. But there are other situations where I don't think it's the best way of getting the best result for people . . . It's better if they settle because parties are better able to judge what's best rather than the judge.

(2) I don't like the adversary system in law because I'm not sure it comes to the right end. I don't think this 'win, win, win,' without stepping back and saying here's the big picture, works. Maybe it requires being less devoted to your client. We should be looking at the bigger picture and its impact.

(3) I think there should be more settlements and private arbitration because, in so many cases, both sides have good claims or are both at fault so one side shouldn't have to lose.

(4) I tend to think that mediation would be a lot better to have in situations where the stake isn't as high as someone's life. For example, in family law, I think mediation is far better because for the most part, nobody is wrong so you don't need to have winners and losers in the way you seem to need in criminal and some civil cases. And since emotions are already so high, an adversarial system just jacks up the temperature and makes people more aggressive and results in more extreme behavior that can be very damaging to the family.
I like the idea of let's all sit down and see if we can work it out... for cost and time and people's feelings; there isn't such a clear cut 'I win/you lose' outcome but rather you both get a little of what you wanted. Sometimes in some cases the 'I win/you lose' outcome is appropriate, but so much of law is when both sides have some good points and bad points and both sides feel like they deserve to win. It'd be nice if we could work out a system where both sides get to win.

Both Asian-American women, and, to a stronger degree, Caucasian women, responded in ways that reflect and support the feminist literature's description of gender difference. These women seek to maintain relationships and find cooperative solutions which benefit all the parties involved, rather than engage in a competitive conflict which results in only one winner. It is worth noting that, although all four groups expressed mixed feelings about the effectiveness of the adversary system, the critics in each group focused on a different weakness of the system. The Caucasian men were primarily concerned with efficiency and creating an economically level playing field in the court, while Asian-American men were concerned about maintaining relationships in the community. Asian-American women wanted to see fewer "tactical litigation tricks" and more justice on the merits, while Caucasian women primarily wanted to change the competitive contest to have more compromise and to allow both sides to "win."

VIII. CONCLUSION

This article started with the premise that the adversary system inherently reflects and perpetuates American cultural values, especially values held by white men in power. The Asian culture is an example of a culture whose predominant values of community, relational harmony, and consensus clash with American values of individualism, competition, and self-orientation. This article sought to explore whether these cultural differences would affect perceptions of the adversary system by Asian-American law students, who are confronted with both sets of cultural values. I hypothesized that, as a result of this biculturalism, Asian-American law students would experience greater tension and role conflict in the adversary system than their Caucasian counterparts. Moreover, I anticipated that Asian-American women would experience greater dissonance than Asian-American men because of the dual effect of Asian and American gender socialization.

The personal narratives gathered from the interviews of twenty-two law students partially supported the hypotheses. Both Asian-American men and women articulated similar perceptions of Asian cultural values and noted Asian culture's divergence from American values. However,

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97 See Feminist Critique of the Adversary System, Section III of this article.
Asian-American men did not express or anticipate tension or role conflict as the women did. In fact, most of the Asian-American men felt that they would confront little personal dissonance in working within the adversary system. In spite of this positive perception of the system, most of the Asian-American men chose transactional work rather than litigation.

In contrast, Asian-American women were quite concerned about the ways in which the adversary system contradicted their Asian values. For example, the adversary system requires one to focus solely on the client’s needs while Asian culture advocates a focus on the needs of others in the community (for example, one’s family). The Asian-American women perceived that Asian cultural emphasis on showing respect for others, sacrificing oneself, and maintaining harmonious relationships conflicted with the aggressive, self-oriented, and confrontational mode embodied in the adversary system.

Surprisingly, the responses of Asian-American women were more similar to the responses of Caucasian women than to the responses of Asian-American men. Feminist literature indicates that women are less sympathetic to the hostile and combative nature of the adversary system and prefer to find solutions that maintain the relationship between the parties and enable both parties to win.\(^9\) This was borne out in the comments by both groups of women, who expressed dissatisfaction with the competitiveness in the process and the limitations of the win/lose result. Hence, the women tended to prefer mediation because they felt that it promoted more compromises and yielded more satisfying results for both parties involved. The majority of the women did not particularly admire or value aggressiveness and confrontativeness as personality traits. Nevertheless, both groups of women were very concerned that the gender and racial stereotypes of being less assertive and combative would limit their effectiveness and advancement in the profession.

Likewise, Asian-American men seemed to have more in common with Caucasian men than with Asian-American women. They tended to be more supportive of the adversary system as an effective method of conflict resolution, and were more favorably inclined toward the competitive adversarial process. These results indicate that gender may be a more determinative characteristic of role tension in the legal profession than is race.

This preliminary finding appears to be at odds with Harris’ and Crenshaw’s claims that the combination of race- and gender-based discrimination is not merely additive, but is qualitatively different from either race- or gender-based discrimination alone.\(^9\)\(^9\) However, there are

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\(^9\) Id.

\(^9\) Harris, 42 Stan L Rev at 588 (cited in note 43); Kimberle Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Femi-
tantalizing hints that there may be fundamental differences in the students' perceptions of the adversary system that grow out of the intersection of race and gender. For example, while Asian-American and Caucasian men express similar support for the adversary system, this surface similarity may be misleading. After all, unlike their Caucasian counterparts, Asian-American men consistently choose legal roles that are relatively non-adversarial. It is possible that the demands of gender may prompt Asian-American men to adopt the rhetoric of adversarialism while the demands of race and culture prompt them to make alternative career choices. Therefore, it would be inappropriate to rule out too quickly the possible importance of the intersection of race and gender in constructing a legal professional identity.

Even assuming that the preliminary finding that gender is more significant than race is accurate, however, many factors may explain this gender distinction. Asian-American men may have assimilated more American values and fewer Asian values than Asian-American women and hence, may have responded similarly to Caucasian men. Asian-American men may have also been less expressive, and may not have articulated their concerns as well as the students in other groups. Moreover, it is possible that Asian-American men are less aware of issues surrounding race and gender than their female counterparts, and are therefore less conscious of the impact of these issues on their lives. One Asian-American male student indicated that another likely reason for this result is the need to protect the male ego. He commented that most men would not feel comfortable about admitting that they are not aggressive, since aggressiveness is such a highly valued masculine trait. Asian-American men may also have had trouble admitting that they would experience problems in the adversary system because this admission would indicate that they were not strong and in control, contrary to masculine cultural values.

In addition, men in Asian cultures have historically been in a superior position and have been granted greater power, deference, and value than women. To a large extent, Asian-American families have continued

\[\text{nist Theory and Antiracist Politics, 1989 U of Chi Legal Forum 139 (1989). Crenshaw discusses the problematic consequence of treating race and gender as mutually exclusive categories and argues for a consideration of the intersection of the two sets of experiences. This focus on the most privileged group members marginalizes those who are multiply-burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination. . . . Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated. Id at 140.}\]

\[\text{An analogous finding suggesting a possible difference between Asian-American and Caucasian women appears in their explanation of dissatisfaction with law school. While Caucasian women tend to blame the law school environment for their discontent, Asian-American women tend to blame themselves (see Appendix C of this article). Again, the potential effect of the intersection of race and gender needs to be explored further.}\]
to treat males differently than females, according them higher status. The hierarchy in most Asian-American families still reflects the traditional picture of the father as the head and the sons as the preferred children. Perhaps this practice has empowered Asian-American men and given them greater self-confidence in their abilities to succeed in other arenas of life, including the legal sphere. While Asian-American men feel empowered, at least in Asian society, through sexist cultural norms, Asian-American women are disempowered and devalued in both Asian and American cultures.

The significant overlap between the Asian culture and the female culture in America accounts, in part, for the similarity between the responses of Asian-American women and Caucasian women. Both cultures focus on maintaining relationships, being sensitive to the needs of others, and being diplomatic rather than confrontational. Given the similarity in the stereotypes of Asians and women in America, Asian-American women are doubly alienated from the values and processes of the adversary system. As a result, perceptions by others and by selves reinforce these stereotypes in two spheres—race and gender—and produce greater tension in playing the adversarial role. One Asian-American woman captures this tension by stating that at home she will be the traditional Asian motherly type whereas at work she will be “more Caucasian—more aggressive, assertive, and outspoken.” Asian-American women already play multiple roles as Asians, as Americans, as women, and now as Asian-American women lawyers. Every time the situational context changes, the roles shift and the Asian-American woman has to adjust to the different norms and rules of a particular sphere, which may cause personal dissonance and tension.

This inquiry indicates that there are issues related to the intersection of race and gender which remain to be explored in future studies. The following are suggestions of ways that these theories could be tested and explored further. Future studies should be conducted with a large, random, and diverse group which has been separated by specific countries of origin. Since there are significant cultural differences among the Asian countries, a diverse cross-section of students of different nationalities

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101 See the second comment (1) on p 157 of this article.
102 See Amy Tan, The Joy Luck Club (Ballantine Books, 1989). The tales of Asian-American women and their immigrant mothers illustrate the ways in which Asian-American women adjust and respond to different roles. Her stories also poignantly reflect the pain and the difficulties involved in the process.
103 Responses from law students in a variety of different law schools should be gathered. The fact that the students in this study were admitted to Boalt already indicates a high level of assimilation and adaptation to the American social and educational system. In a way, acceptance into a top law school is a reward for having learned the rules of the game and having played it well. Students from different schools may have different perspectives on both their own culture and the legal culture.
should be interviewed. This would make it possible to study the similarities and differences among the various Asian groups.

The Asian-American students should also be categorized by levels of assimilation to determine whether there is significant correlation between the level of assimilation to American culture and students' perceptions. This study did not control for the students' levels of acculturation or the differences in how long the students had been living in the United States. Half of the students were American-born and of varying generational status, while the other half were first generation immigrants. Future studies should seek to control for various factors involved in acculturation and assimilation.

To do this, future researchers should administer preliminary evaluations concerning factors related to assimilation. The students' responses concerning the legal issues should then be analyzed with their assimilation level in mind. For a more general approach, one could separate the students into categories based solely on their immigrant generational status and analyze their responses to see if there are significant variances between different generations. One might generally expect that first generation students would be less assimilated than later generations. Other factors, such as the ethnic makeup of the local community where the students were raised and the students' Asian language ability, might also play significant roles. Hence, future researchers should focus on developing a method for considering and weighing the various factors affecting assimilation.

Further studies could examine the impact, if any, that the interviewer's gender and race may play in the responses from the different groups. In this study, the fact that an Asian-American female asked the questions in personal interviews may have skewed the students' responses—the students may have given answers that they believed someone of that gender and race might wish to hear. In fact, one of the Caucasian male students commented that his subgroup may be influenced by the fact that I, an Asian-American female, asked these questions, rather than a Caucasian male. He stated that people may feel compelled to give more “politically correct” responses given my gender and ethnicity. Thus, a further study should utilize interviewers of different genders and races.

In addition, since I had a personal relationship of varying degrees with each student, the students may have been more influenced by their perception of the answer that I might want and may have responded in kind. On the other hand, students may have given more candid responses as a result of their friendships with me. To minimize the

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104 See Section VI, Methodology, for information about students' ethnic origins.
impact of interviewer bias, however, students should be interviewed by researchers with whom they are not acquainted.

Other research ideas include gathering data from other ethnic groups and examining whether their ethos conforms to or conflicts with the American values embodied in the adversary system. The experiences of students from other ethnic groups can also be compared and contrasted with the experiences of Asian-Americans.

Another possible study could examine the perceptions of Asian-American lawyers in a wide range of types and sizes of practices. These lawyers could then be subdivided into groups from different law schools and different geographical locations. One would also need to control for number of years in practice to look at whether a mid-level associate would respond differently to these issues than a partner or a high-level associate. It would also be fascinating to conduct a follow-up study on the set of students interviewed for this study to see how the actual experience of practicing law has affected their perceptions in a few years or more. It would be especially illuminating to find out whether people's anticipation of role tension or the lack thereof manifested itself in the manner they expected. These types of studies would not only help the legal community to understand the experiences of Asian-Americans but could also be instrumental in shaping the legal system of our racially diverse nation.

The adversary structure which forms the cornerstone of the American legal system is neither culture-neutral nor gender-blind. We need to recognize that the adversary system embodies and perpetuates the values of a narrow group of people. Hence, it needs to be modified to better reflect the values present in an increasingly dual-gender and multicultural community of lawyers and clients. As a start, law schools should encourage students to question the cultural and gender-based assumptions of the legal system and affirm the students' diverse views and experiences. This inquiry revealed that personal tension and role conflict exists for Asian-American and Caucasian women and to a lesser extent for Asian-American men. To become thoughtful and progressive agents of institutional change, we need to listen to the voices of these groups, acknowledge the existence of inequalities within the profession, and seek to remove the barriers that they face. In doing so, both the legal community and the greater public will be better served.
APPENDIX A: ADDITIONAL QUESTIONS AND RESPONSES

1. Are you satisfied with your law school experience and performance?

Four out of five Caucasian men stated that they were satisfied with both their law school experience and performance. In contrast, four out of five Caucasian women stated that although they were somewhat satisfied with their law school performance, they were dissatisfied with certain aspects of their law school experience. All of these students indicated that their dissatisfaction was related to their disappointment with the faculty:

(1) Law school has been a real disappointment for me in my relationship with faculty members and a lot of that has to do with my not being comfortable here as a woman. . . . I've never felt as intimidated in an academic situation as I do in law school.

(2) The professors aren't good teachers. I haven't had any teacher that I've felt like I could approach.

(3) Some of the professors can't teach, especially first-year classes, so many of them can't. When I first came, I was overwhelmed and wasn't very critical, but now I've become more critical of how bad they are. . . . I have a horrible professor for a class that I'm really interested in and it's the pits. It's so frustrating because the students are so interesting but the [professors] make it awful.

(4) I'm satisfied with my performance, but there is still some desire within me that says I could do better and I could figure out the system and do well in a system that I don't find so appealing. . . . I find it totally frustrating that there aren't more women professors. I find it a problem because I find female professors generally more accessible than male professors. I find it keenly frustrating that the professors don't have the attitude that they are supposed to be educating us.

The only Caucasian female student who stated that she was satisfied with her law school experience commented that she chose her classes carefully and was taking all of her classes this semester from female professors. None of the Caucasian male students commented on the faculty in answering this question. It is worth noting that the only Caucasian male student who was critical of law school stated that he was dissatisfied with the experience because three years wasn't long enough to intellectually understand the law.

There were similar gender differences in the Asian-American groups. Four of the Asian-American males stated that they were satisfied with both their performance and experience and did not mention the faculty at all. One of them went as far as to say, "I'm having a really good time. . . . I've gotten everything I've wanted from Boalt. I got exactly the kind of job I wanted." Only one of the Asian-American men asserted that he was not satisfied with relationships between professors and students and felt that these relationships are not encouraged. The
other dissatisfied student stated that he found law “intellectually limiting and limited.”

Among the Asian-American women, only two women said they were satisfied with the law school experience. Unlike the Asian-American men and the Caucasian men who expressed almost unreserved satisfaction with their law school experience, these women stated that they were satisfied but qualified their statements. For example, one woman stated, “I’m satisfied with law school, but sometimes I feel really alienated in the classroom.” Another commented, “I’m pretty satisfied with law school and I like the classes but I don’t like the Socratic method. I don’t like being on the spot and I don’t think it’s constructive to have fear of being called on as the motivating force behind being prepared for class.” Of the four remaining women who were not pleased with the law school experience, none of them commented on the faculty's role in their dissatisfaction as the Caucasian women had. Instead, five out of six women indicated that they were disappointed and dissatisfied with their experiences largely because of their own performances. One commented:

I wanted to learn more concrete things. I didn’t get the feeling that law school was a trade school. As a result, academically I was on the fringes a little bit, too passive, and that was my own doing. If I had a different attitude or I felt differently, I could have placed myself more in the center.

Another student who had immigrated to the United States when she was twenty years old commented:

I’m not satisfied with my performance. Maybe it’s the nature of the beast. A lot of times, people in class would take things for granted and go on from there. But I would get distracted by the fundamental assumptions, like assuming that the Constitution is important when where I come from, it’s just a piece of paper that changes all the time. I question the underpinnings that people are not articulating.

It appears that these Asian-American women put greater weight on performance and were more likely to internalize their dissatisfaction with the law school experience by attaching it to their own performance. On the other hand, the Caucasian women attributed their dissatisfaction to external sources, namely lack of faculty support. Perhaps the most telling of responses comes from the fact that most of the Caucasian and the Asian-American men, on the whole, were content both with law school and their performance.105

2. Is religion a significant influence in your life?

The students who stated that religion was a significant influence in their lives were: two Asian-American females (one Protestant and one

105 See Homer and Schwartz, 5 Berk Women’s L J 1 (cited in note 6) (survey and analysis of the experiences of women students at Boalt Hall School of Law).
Catholic); one Asian-American male (Catholic); and two Caucasian males (both Catholic). Most of the other students had some religious training in their childhood, but had either abandoned it or felt that it was a part of their cultural upbringing but not a significant influence in their lives.

I asked whether religion was a significant part of the students’ lives in order to ascertain whether their responses, especially in reference to the adversary system, would be influenced by their religious beliefs more than their ethnic backgrounds. The two Caucasian male students who stated that their Catholic beliefs were a significant influence in their lives plan to be litigators and yet expressed more reservation about the adversary system than others in their subgroup of Caucasian males. One student explained in frustration:

I plan to practice litigation but I don’t like the word. I think of huge documents, wasting time and money, getting all these meaningless interrogatories and stuff. . . . I don’t know if the adversary system works. It’s like the U.S. government. Yes, it works but it could be so much better. The system is filled with abuses and things to change. . . . I think it’s accurate of the system today that it’s competitive, adversarial, [and] focused on the client’s needs to the exclusion of the other party or society. I don’t think it has to be this way. . . . I’d like it better if lawyers were less of these bulldog type of people . . . if it were more, I hate to use this word, but ‘gentlemanly’ where you do the best you can and the other side does the best it can and you are both very constrained by ethical things. . . . It would work better.

The Protestant Asian-American woman also felt that the adversary system is ineffective:

I think [the adversary system] is what has led to lawyers having such a bad name. It has made our society too litigious. I don’t think it is necessary that we be this way. There are alternative dispute resolution systems that we really haven’t looked at and in law school they are never presented to us. . . . [The adversary system] is basically making our society really confrontative; it’s making people more materialistic and greedy and I don’t like seeing people in lawsuits. I don’t think there are winners, even if one party wins because the process is demoralizing. . . . [Y]our attorneys are doing everything for you even if you have some input into the decision making, their expertise dictates what happens in the suit. . . . I think they should teach ethics in every class and teach alternative dispute resolutions.

The other two Catholic students were not as critical of the adversary system. Obviously, from this small sample, generalizations cannot be made about the correlation between religion and opinions about the adversary system. Deeply held religious beliefs, however, by their very nature, are bound to affect people’s perceptions and opinions. Hence, it

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106 For example, strong believers of the Christian faith may subscribe to the teaching that one should turn the other cheek and hence may believe that initiating suits and adversary proceedings are in conflict with their religious beliefs.
would be useful to discover if there is any correlation between belief in a religion, especially religions which speak to the issue of adversarial relationships, and perceptions of the adversary system.
APPENDIX B: INTERVIEW QUESTIONS FOR ASIAN-AMERICAN STUDENTS

Name:
Age:
Ethnic group:
Year in law school:
Parental occupations:

Background
1. How long have you lived in the U.S.?

2. What immigrant generation are you?

3. What was the racial composition of the place you predominantly grew up in?

4. Do you belong to a religious group? What group? Is this a significant influence in your life?

Asian Culture
5. On a scale of 1-10, 10 being the most traditional, how traditionally Asian would you say your family was? Why?

6. How closely do you identify with your parents? (politically, psychologically—share similar values?)

7. How did your parents feel about your becoming a lawyer?

8. How closely do you identify with the Asian culture? (on a scale of 1-10)

9. What do you think are the prevalent values and characteristics of the Asian culture?

10. What, if any, Asian values would you like to retain?

11. Do these values affect your perception of the legal system? In other words, does the legal system reflect these values? Do these values conform or conflict with the values in the legal adversarial process?

12. What is your parents' perception of the legal system in America? (for example, fair, too litigious, effective)

13. Has your family (relatives included) ever sued anyone in court? What happened?

14. Has your family ever been sued? What happened?
15. How did your family respond to the litigation situation? (for example, puzzled, angry, confused, annoyed)

**Law-related questions**

16. Are you satisfied with your law school experience and performance? (grades, jobs, classroom experience, other personal criteria)

17. What attracted you to the legal field? Why did you decide to become a lawyer?

18. Have your perceptions about law or the lawyer's role changed since law school? How so?

19. Has your Asian-American identity (your values) affected your perception of the legal system in any way? In other words, do you sense any conflict between your Asian-American values and the legal system's values?

20. Do you think that your identity as an Asian-American man (or woman) will have an impact on your role as a lawyer—both how you act as a lawyer and how others may act toward you?

21. Do you have any concerns or reservations, or things that bother you about the lawyer's role? Do you anticipate any role conflict?

22. What kind of law are you planning to practice? (litigation/transactional)

23. Why did you choose this area?

24. Do you think that the adversarial nature of the legal system is effective? (By "adversarial," I want you to focus specifically on the model of the two zealous advocates whose primary loyalty is to the client, competing in the courtroom, which results in one party winning and the other losing).

25. Do you think that the adversarial system is desirable? Why or why not? Do you see any problems with this adversarial system?

26. Other comments:
APPENDIX C: INTERVIEW QUESTIONS FOR CAUCASIAN STUDENTS

(Note that these questions are essentially the same as the questions in Appendix B with some exceptions and changes adapted for Caucasian students.)

Name:
Age:
Ethnic group:
Year in law school:
Parental occupations:

Background
1. Have you lived in the U.S. all your life?
2. What was the racial composition of the place you predominantly grew up in?
3. Do you belong to a religious group? What group? Is this a significant influence in your life?
4. How closely do you identify with your parents? (politically, psychologically—share similar values?)
5. How did your parents feel about your becoming a lawyer?
6. What do you think are the prevalent values and characteristics of the American culture?
7. Which of these values would you like to retain? Which do you dislike? Why?
8. Do these values affect your perception of the legal system? In other words, does the legal system reflect these values? Do these values conform or conflict with the values in the legal adversarial process?
9. What are your parents' perceptions of the legal system in America? (for example, fair, too litigious, effective)
10. Has your family (relatives included) ever sued anyone in court? What happened?
11. Has your family ever been sued? What happened?
12. How did your family respond to the litigation situation? (for example, puzzled, angry, confused, annoyed)
Law-related questions

13. Are you satisfied with your law school experience and performance? (grades, jobs, classroom experience, other personal criteria)

14. What attracted you to the legal field? Why did you decide to become a lawyer?

15. Have your perceptions about law or the lawyer's role changed since law school? How so?

16. Do you sense any conflict between your personal values and the legal system's values?

17. Do you think that your identity as a Caucasian woman (or man) will have an impact on your role as a lawyer—both how you act as a lawyer and how others may act toward you?

18. Do you have any concerns or reservations, or things that bother you about the lawyer's role? Do you anticipate any role conflict?

19. What kind of law are you planning to practice? (litigation/transactional)

20. Why did you choose this area?

21. Do you think that the adversarial nature of the legal system is effective? (By “adversarial,” I want you to focus specifically on the model of the two zealous advocates whose primary loyalty is to the client, competing in the courtroom, which results in one party winning and the other losing).

22. Do you think that the adversarial system is desirable? Why or why not? Do you see any problems with this adversarial system?

23. Other comments: