## Stranger in a Strange Land: Achieving Cross-Cultural Justice

Professor Jonathan Turley
George Washington University School of Law
Frequent TV Commentator and Contributor, USA Today
Washington, D.C.
jturley@law.gwu.edu
202.994.0537

Karen T. Grisez, Esq.
Fried, Frank, Harris, Shriver & Jacobson LLP
Chair, ABA Commission on Immigration
Washington, D.C.
karen.grisez@friedfrank.com
202.639.7043

Professor Alison Dundes Renteln University of Southern California Author, *The Cultural Defense* Los Angeles, California arenteln@usc.edu 213.740.3248

Rene L. Valladares, Esq.
Office of the Federal Public Defender
Editor/Contributor, *Cultural Issues in Criminal Defense*Las Vegas, Nevada
rene\_valladares@fd.org
702.388.6577

Hon. Delissa A. Ridgway
U.S. Court of International Trade
Chair, National Conference of Federal Trial Judges
of the ABA Judicial Division
New York, New York
delissa\_ridgway@cit.uscourts.gov
212.264.5480

## **Brief Description:**

There is a desperate – and growing – need for cultural competence throughout the justice system.

In more and more cases in state and federal courts all across the country, immigrants are pleading "the cultural defense" – invoking the customs and traditions of their homelands to explain their actions. Even when it is not raised *per se*, culture plays a role in many cases – both civil and criminal.

In this engaging and highly-interactive presentation, audience members will use hand-held technology to "vote" on the outcome of vignettes drawn from fascinating and controversial real-life cases "ripped from the headlines" and presented by an inter-disciplinary panel of some of the nation's leading cross-cultural experts.

Following the plenary presentation, break-out sessions will focus on civil, criminal, and administrative hearings.

Do the adages that "all men are presumed to know the law" and that "ignorance of the law is no defense" apply even to recent immigrants? Should immigrants be held to the same standards as everyone else, on the theory of "When in Rome . . . "?

You be the judge!

## **Select Cases Raising Cross-Cultural Justice Issues:**

- I. <u>Minnesota v. Her</u>, 1992 WL 3652 (Minn. Ct. App. Jan. 14, 1992) (unpublished), on appeal following remand by state supreme court, 510 N.W.2d 218 (Minn. Ct. App. 1994) (challenging Hmong man's conviction for rape of 18-year-old Hmong woman, based on, *inter alia*, disputed English-Hmong language interpretation of trial testimony).
- II. <u>Ohio v. Ramirez</u>, 732 N.E.2d 1065 (Ohio Ct. App. 1999) (challenging murder conviction based on, *inter alia*, interpretation errors in Miranda warnings).
- III. <u>Dolal v. Metropolitan Airports Commission</u>, 2008 WL 4133517 (Minn. App. 2008) (petition to enjoin enforcement of municipal ordinance imposing penalties for a taxi driver's refusal to transport a passenger, filed by Muslim taxi drivers refusing to transport passengers carrying alcohol).
- IV. New York v. Singh, 516 N.Y.S.2d 412 (N.Y. Civ. Ct. 1987), discussed in Renteln, *infra*, at 152-53, 200, 293 (prosecution of Sikh man wearing *kirpan* for violation of city ordinance prohibiting wearing of knife in open view in a public place).
- V. <u>Cheema v. Thompson</u>, 36 F.3d 1102 (Table) (unpublished), 1994 WL 477725 (9<sup>th</sup> Cir. 1994), following remand, 67 F.3d 883 (9<sup>th</sup> Cir. 1995), discussed in

- Renteln, *infra*, at 154, 204, 294 (civil rights challenge to application of school district's "no weapons" policy to prevent Sikh students from wearing *kirpans* to school).
- VI. Sorensen v. City of New York, 2003 WL 169775 (S.D.N.Y. 2003), following further proceedings, 413 F.3d 292 (2d Cir. 2005), discussed in Renteln, infra, at 245 n.56 (prosecution of Danish national for reckless endangerment of her 14-month-old daughter left in stroller on sidewalk outside restaurant while mother was inside dining with baby's father).
- VII. <u>In re Kou Xiong</u>, (Fresno Co., Cal. Super. Ct. 1989-90), *discussed in* Renteln, *infra*, at 61-63, 202-03, 246; *see also id.* at 164-65 (child welfare case concerning six-year-old Hmong boy born with club feet).
- VIII. Franklin Kue (Ohio 1984), discussed in Renteln, infra, at 63-64, 186, 246; see also id. at 164-65 (child welfare case concerning four-month-old Hmong infant boy diagnosed with cancer in both eyes).
- IX. <u>In re Jertrude O.</u>, 466 A.2d 885 (Md. Ct. Spec. App. 1983), *cert. denied*, 469 A.2d 863 (Md. 1984), *discussed in* Renteln, *infra*, at 58, 243 (child welfare case concerning Central African Republic immigrant parents' child-rearing practices, including extent of supervision of, and use of traditional folk remedy "cupping" on, their three children).
- X. Nevada v. Chao, No. 07-C-230742-C (Las Vegas Justice Ct. 2006), discussed in "Cambodian Woman Faces Sexual Assault Charge," Las Vegas Review-Journal 1B (Oct. 14, 2006); "Mother Pleads Guilty," Las Vegas Review-Journal 1B (Jan. 4, 2008) (prosecution of Cambodian immigrant for kissing genitals of her son, then four or five years old).
- XI. [Unidentified case], (Pa. Sixth Judicial District Court of Common Pleas, Family/Orphans' Court Division [date uncertain *circa* 2000-2005 (?)]), (child welfare proceeding based on immigrant Iraqi father's fondling of infant son's genitals).
- XII. [Unidentified case], (Dekalb Co., Ga. Super. Ct. 1990), *discussed in* LeCayo, *infra* (prosecution of South America immigrant mother for sexual abuse/molestation, for stroking genitals of young son).
- XIII. <u>Krasniqi v. Dallas Co. Child Protective Services</u>, 809 S.W.2d 927 (Tex. App. 1991), *discussed in* Renteln, *infra*, at 58-59, 186, 203, 244-45 (prosecution of Albanian Kosovar immigrant father for alleged sexual abuse of young daughter, and related child welfare case).
- XIV. Maine v. Kargar, 679 A.2d 81 (Me. 1996), discussed in Renteln, infra, at 59-61, 186, 203, 244-45 (prosecution of Afghani immigrant father for alleged sexual abuse of infant son).

- XV. <u>Maine v. Ramirez</u>, 2005 WL 3678032 (Me. Super. Ct. 2005) (prosecution of Dominican immigrant mother for alleged sexual abuse of toddler son).
- XVI. <u>Dumpson v. Daniel M.</u>, reported in New York Law Journal 17 (Oct. 16, 1974), discussed in Renteln, infra, at 55-56, 242 (child welfare proceeding based on immigrant Nigerian father's "excessive corporal punishment" of seven-year-old son).
- XVII. Massachusetts v. Timmareddy and Meenaksh, (Middlesex Co. Super. Ct. 1999), discussed in, inter alia, "Couple Plead Guilty in Child's Injury," Boston Globe B2 (Dec. 12, 2000); Corwin, infra (prosecution of Hindu Indian immigrant couple for "female circumcision"/genital mutilation of his three-year-old daughter by prior marriage); see also Adoption of Peggy, 436 Mass. 690 (2002) (appeal of juvenile court decree concerning need for notice to father of, and consent of father to, daughter's adoption), cert. denied sub nom. S.T. v. Massachusetts Dep't of Social Services, 537 U.S. 1020 (2002).
- XVIII. <u>Georgia v. Adem</u>, Nos. 03W-12220 & 03W-12221 (Gwinnett Co. Super. Ct. 2006), *discussed in, inter alia*, "Jury Convicts Father in Genital Mutilation of Girl," Associated Press (Nov. 1, 2006) (prosecution of Ethiopian immigrant father for aggravated battery and cruelty to child).
- XIX. Nebraska v. Al-Hussaini, 579 N.W.2d 561 (Neb. Ct. App. 1998), discussed in Margaret Talbot, "Baghdad on the Plains," New Republic 18 (Aug. 11, 1997) (Iraqi immigrant parents, who arranged traditional marriages of 13- and 14-year-old daughters to Iraqi immigrant men, charged with child abuse and delinquency of minor, while two men (ages 28 and 34) charged with first degree child sexual assault).
- XX. New York v. Ezeonu, 588 N.Y.S.2d 116 (Bronx Co. Sup. Ct. 1992), reported in New York Law Journal 23 (Aug. 11, 1992), discussed in Renteln, infra, at 130, 283 (prosecution of immigrant Nigerian physician for rape of 13-year-old Nigerian immigrant girl whom he claimed to be his "second" or "junior" wife).
- XXI. Yang v. U.S. Attorney General, 494 F.3d 1311 (11<sup>th</sup> Cir. 2007) (per curiam), cert. denied sub nom. Yang v. Mukasey, \_\_\_\_\_ U.S. \_\_\_\_, 2008 WL 2002046 (May 12, 2008); Lin v. U.S. Dep't of Justice, 416 F.3d 184, 188-89 et seq. (2d Cir. 2005), following remand, 494 F.3d 296, 299 et seq. (2d Cir. 2007) (en banc), cert. denied sub nom. Dong v. U.S. Dep't of Justice, \_\_\_\_ U.S. \_\_\_\_, 2008 WL 2078200 (May 19, 2008); see also "In Asylum Case, A Question of Marriage: Chinese National Wants High Court to Grant Asylum, Even Though His 'Traditional' Marriage Lacks A License," Legal Times of Washington 8 (May 5, 2008) (discussing cases in context of pending cert. petitions and possible change of Department of Justice policy) (right to asylum, based on forced abortion or forced sterilization, of spouse in Chinese "traditional marriage").

- XXII. <u>California v. Moua</u>, No. 315972-0 (Fresno Co. Super. Ct. 1985), *discussed in* Renteln, *infra*, at 126-28, 185, 282 (prosecution of immigrant Hmong man for kidnapping and rape of immigrant Hmong woman, in case of claimed *zij poj niam* ("marriage by capture")).
- XXIII. <u>California v. Martinez</u> (Monterey Co. Super. Ct. 2009), *discussed in, inter alia*, "Man Accused of Selling Daughter for Cash, Beer," MSNBC.com (Jan. 13, 2009); "Police: Man Sold Teen Daughter Into Marriage for Cash, Beer, Meat," CNN.com (Jan. 13, 2009); "Culture Clash Leads to Arrest; A Father Who Allegedly Tried to Arrange His 14-Year-Old Daughter's Marriage Was Following Custom, Police Say," <u>Los Angeles Times</u> B1 (Jan. 15, 2009); "Dad Pleads Not Guilty in Sale of Daughter Case" (Associated Press Feb. 12, 2009); "Father Pleads No Contest in Daughter Selling" (Associated Press April 7, 2009) (prosecution of Trique man from Oaxacan state of Mexico for felony child endangerment for dowry contract/negotiated marriage of 14-year-old daughter to 18-year-old Trique man).
- XXIV. <u>Wisconsin v. Lor</u>, 2009 WL 529907 (Wis. App. 2009) (assertion of "cultural marriage" as defense to charge of sexual assault of 14-year-old Hmong girl by 26-year-old Hmong man).
- XXV. <u>United States v. Ortiz-Graulau</u>, 397 F. Supp. 2d 345 (D. Puerto Rico 2005), *aff'd*, 526 F.3d 16 (1<sup>st</sup> Cir. 2008) (prosecution of 38-year-old man for child pornography and exploitation of 14-year-old girl for purposes of making photos, where the sexual relationship was consensual and the couple was living together in a "marital-like" relationship, the photos were made solely for purposes of the couple's own use, and at the time of the events the age of consent was 14).
- XXVI. Nischal v. Nischal, 879 A.2d 813 (Pa. Super. Ct. 2005) (determination of child support to be paid by immigrant Indian father where payment pursuant to U.S. guidelines would render mother and child who reside in India "virtual millionaires").
- XXVII. <u>Cavel Int'l Inc. v. Madigan</u>, 500 F.3d 551 (7<sup>th</sup> Cir. 2007) (Posner, J.) (constitutional challenge to Illinois ban on slaughtering horses for human consumption); *see also* Renteln, *infra*, at 270 n.46 ("Horsemeat is considered a delicacy in Europe. The U.S. Humane Society conducted an undercover investigation and reported that 250,000 horses are slaughtered in the United States for human consumption in France, Italy, and Japan (for horse sushi).").
- XXVIII. <u>Marks v. Clarke</u>, 102 F.3d 1012 (9<sup>th</sup> Cir. 1996), *discussed in* Renteln, *infra*, at 120-21, 202, 277-79 (civil rights action against city, police department, and individual officers arising out of search of Rom (gypsy) homes and related search of people on premises, including unmarried girls, rendering them *marime* ("polluted") and unmarriageable).

- XXIX. Singh v. Air Illinois, Inc., 520 N.E.2d 852 (Ill. App. Ct. 1988), discussed in Renteln, infra, at 174, 306 (measure of damages awarded to estate of Sikh man killed in plane crash).
- XXX. In re Air Crash Near Nantucket Island, Massachusetts, on October 31, 1999 (Makary v. EgyptAir, 462 F. Supp. 2d 360 (E.D.N.Y. 2006) (measure of damages awarded to estate of Egyptian man killed in plane crash); see also "Air Crash Victim's Kin Win \$3.6M Award," New York Daily News (Dec. 8, 2006).
- XXXI. Onyeanusi v. Pan Am, 767 F. Supp. 654 (E.D. Pa. 1990), *aff'd*, 952 F.2d 788 (3d Cir. 1992), *discussed in* Renteln, *infra*, at 173-74, 305-06 (civil action by Nigerian Ibo man for airline's mishandling of mother's corpse while transporting it from U.S. to Nigeria).
- XXXII. <u>Rai v. Taco Bell</u>, No. CIV-178430 (Ventura Co. Super. Ct. 1999), *discussed in* Renteln, *infra*, at 107, 273 (civil action by Hindu man who was served beef burrito, rather than vegetarian burrito).
- XXXIII. You Vang Yang v. Sturner, 728 F. Supp. 845 (D.R.I. 1990), withdrawn on reconsideration, 750 F. Supp. 558 (D.R.I. 1990), discussed in Renteln, infra, at 164-66, 300-01 (action for declaratory judgment and damages for emotional distress brought against state Medical Examiner by Hmong immigrant parents, challenging unauthorized autopsy performed on their 23-year-old son).
- XXXIV. <u>United States v. Caseer</u>, 399 F.3d 828 (6<sup>th</sup> Cir. 2005) (prosecution of man raised in Somalia and Kenya for importation of khat).
- XXXV. <u>United States v. Hussein</u>, 351 F.3d 9 (1<sup>st</sup> Cir. 2003) (prosecution of immigrant for possession and intent to distribute khat).
- XXXVI. <u>United States v. Hassan</u>, 2005 WL 6222864 (E.D.N.Y. 2005), *vacated in part and rev'd in part*, 542 F.3d 968 (2d Cir. 2008) (prosecution of Somalian immigrant for importation, distribution, and possession with intent to distribute khat).
- XXXVII. <u>Samatar v. Clarridge</u>, 225 Fed. Appx. 366, 2007 WL 1482109 (6<sup>th</sup> Cir. 2007) (prosecution of Somalian immigrant for possession of khat); *see also* Karl Huus, "Making a Federal Case of An Obscure Leaf: Courts To Decide If Khat Is An Illicit Drug or More Like a Double Espresso," MSNBC.com (May 22, 2007).
- XXXVIII. <u>United States v. Chau Hai Do (a/k/a Do Hai Chau)</u>, 37 F.3d 1507 (Table) (unpublished), 1994 WL 546203 (9<sup>th</sup> Cir. 1994), *cert. denied*, 513 U.S. 1168 (1995), *discussed in* Renteln, *infra*, at 86-87, 259 (prosecution of Vietnamese immigrant man for importation of and possession with intent to distribute opium).

- XXXIX. <u>Illinois v. Galicia</u>, 659 N.E.2d 398, 1994 Ill. App. LEXIS 1374 (Ill. App. 2d Dist. 1994), *withdrawn and republished at* 684 N.E.2d 1123 (Table) (Ill. App. 2d Dist. 1994), *discussed in* Renteln, *infra*, at 39, 235-36 (murder prosecution of Mexican immigrant man an adherent of *cuanderismo* for stabbing his ex-girlfriend, whom he claimed was witch, 44 times).
- XL. <u>Douangpangna v. Knowles</u>, 2007 WL 1040967 (E.D. Cal. 2007), *adopted*, 2007 WL 1521069 (E.D. Cal. 2007) (right of Laotian immigrant who shot and killed ex-wife to jury instruction correlating his mental state with his cultural beliefs in "black magic spells").
- XLI. [Unidentified case], (Riverside Co., Cal. Super. Ct. 2008) (domestic violence and torture prosecution of Mexican immigrant man for six-hour beating of wife, allegedly to (literally) attempt to "beat the devil out of her").
- XLII. <u>California v. Poddar</u>, 103 Cal. Rptr. 84 (Cal. Ct. App. 1972), *vacated*, 518 P.2d 342 (Cal. 1974), *discussed in* Renteln, *infra*, at 31, 200, 209, 231-32 (prosecution of immigrant Indian man from "untouchable" caste for murder of 19-year-old woman who was university classmate).
- XLIII. California v. Siripongs, 754 P.2d 1306 (Cal. 1988), cert. denied, 488 U.S. 1019 (1989), dismissal of habeas corpus aff'd in part and vacated in part, 35 F.3d 1308 (9<sup>th</sup> Cir. 1994) (remanding for hearing on claims of ineffective assistance of counsel), cert. denied sub nom. Calderon v. Siripongs, 513 U.S. 1183 (1995), appeal following remand, 133 F.3d 732 (9<sup>th</sup> Cir. 1998), cert. denied, 525 U.S. 839 (1998); see also Wilson v. U.S. Dist. Court for N.D. of California, 161 F.3d 1185 (9<sup>th</sup> Cir. 1998); Siripongs v. Calderon, 167 F.3d 1225 (9<sup>th</sup> Cir. 1999), cert. denied, 525 U.S. 1131 (1999), discussed in Renteln, infra, at 42-45, 185, 237-38 (capital murder prosecution of Thai immigrant man for shooting deaths of convenience store clerks).
- XLIV. <u>Trujillo-Garcia v. Rowland</u>, 1992 U.S. Dist. LEXIS 6199 (N.D. Cal. April 28, 1992), *aff'd*, 9 F.3d 1553 (Table), 1993 WL 460961 (9<sup>th</sup> Cir. 1993), *cert. denied*, 511 U.S. 1132 (1994), *discussed in* Renteln, *infra*, at 34-35, 185, 232-33 (prosecution of Mexican immigrant man for shooting death of another Mexican immigrant man, who cursed him).
- XLV. <u>California v. Kimura</u>, No. A 091133 (L.A. Co. Super. Ct. 1985), *discussed in* Renteln, *infra*, at 25, 228; Polman, *infra* (murder prosecution of Japanese immigrant mother, in case of attempted *oyako-shinju* (parent-child suicide)).
- XLVI. New York v. Chen, No. 87-7774 (N.Y. Sup. Ct. 1988), discussed in Renteln, infra, at 34-35, 47, 232; Polman, infra (murder prosecution of Chinese immigrant man in bludgeoning of his Chinese immigrant wife).
- XLVII. Michigan v. Patel, No. 00-1321 (Bay Co. Cir. Ct. 2000) (prosecution of Indian immigrant man for death by immolation of his Indian immigrant wife, raising, *inter alia*, issues of interpretation of courtroom proceedings).

- XLVIII. Ohio v. Ahmed, 813 N.E.2d 637, 663 (Ohio 2004), *following further proceedings*, 2006 WL 3849862 \* 12-13 (Ohio App. 2006) (prosecutor characterized as "honor killings" the murders by Pakistani immigrant of his estranged wife, her father, her sister, and her niece).
- XLIX. <u>United States v. Gaviria</u>, 804 F. Supp. 476 (E.D.N.Y. 1992), *discussed in* Renteln, *infra*, at 260 (sentencing of subservient Colombian immigrant woman convicted of possessing cocaine with intent to distribute).
- L. <u>United States v. Gaviria</u>, 775 F. Supp. 495 (D.R.I. 1991) (motion to suppress kilo of cocaine in shopping bag seized from Colombian immigrant man, asserting lack of voluntary consent to search).
- LI. <u>United States v. Mahmood</u>, 415 F. Supp. 2d 13 (D. Mass. 2006) (motion to suppress, as involuntary, statements made to Immigration & Customs Enforcement agents by Pakistani immigrant man charged with marriage fraud).
- LII. <u>United States v. Robles-Ramirez</u>, 93 F. Supp. 2d 762 (W.D. Tex. 2000) (motion to suppress evidence in prosecution for marijuana possession with intent to distribute, based on defendant Mexican man's alleged failure to make knowing and intelligent waiver of Miranda rights).
- LIII. <u>United States v. Short</u>, 790 F.2d 464 (6<sup>th</sup> Cir. 1986) (appeal of admissibility, on <u>Miranda</u> grounds, of statements/confession of German immigrant woman convicted of aiding and abetting husband's sexual abuse of her three-year-old daughter).
- LIV. <u>United States v. Tomono</u>, 143 F.3d 1401 (11<sup>th</sup> Cir. 1998), *discussed in* Renteln, *infra*, at 109-12, 222, 275-76 (sentencing of Japanese national who imported exotic turtles and snakes in his luggage, for failure to declare reptiles on Customs forms and for violation of federal statute prohibiting, *inter alia*, importation, possession, and sale of certain wildlife).
- LV. <u>Hawaii v. Ganal</u>, 917 P.2d 370 (Haw. 1996), *discussed in* Renteln, *infra*, at 29-30, 230 (appeal of first degree murder conviction of Filipino immigrant who asserted defense of "extreme mental or emotional disturbance," based on "running amok" syndrome a "culture-bound syndrome" recognized in DSM-IV).

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