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Margaret Chon, *Supercolleague*, 45 U.C. DAVIS L. REV. 1901 (2012).

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Supercolleague

Margaret Chon*



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* Copyright © 2012 Margaret Chon. This work is licensed under a Creative Commons Attribution License available at: <http://creativecommons.org/licenses/by/3.0>. Donald and Lynda Horowitz Professor for the Pursuit of Justice, Seattle University School of Law. I am grateful to Kerry Fitz-Gerald, Jenny Ling (Seattle University School of Law, class of 2013), and Professor K. Scott Wong for their advice and support.

¹ KEITH AOKI, JAMES BOYLE & JENNIFER JENKINS, *Theft! A History of Music* (forthcoming 2012) [hereinafter *Theft*].

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INTRODUCTION

Professor Keith Aoki left us with an audacious, brilliant corpus permeated with recurrent and shape-shifting images, metaphors, themes and tropes. He was a legal artist² whose work was extraordinarily syncretic,³ pioneering, for example, the graphic law review article.⁴ Indeed, syncretism on steroids would be one way to describe the sheer number of references that he could cram into a single cartoon frame⁵ or a law review article. The boundaries among his projects, or between his work and play, were always highly permeable. He often seemed happiest when he felt he was subverting arbitrary convention.

Threading together his disparate and highly varied projects were three major personae: the artist, the warrior, and the mentor. These elements combined to form Keith into a larger than life "Supercolleague." Indeed, he resembled his own creation: Akiko, the vaguely punky documentary film-maker protagonist of *Bound by Law*,⁶ with a misleading air of befuddled inquisitiveness, who suddenly busts out in form-fitting super-hero gear to defend copyright fair use. Similarly, Keith was a humble law professor who just happened to do his legal scholarship through graphic art, an intensely time-consuming and artisanal method. In this guise, he advocated fiercely as an intellectual warrior for human rights and social justice. He simultaneously extended enormous personal generosity and collegiality towards countless people, helping to create and nurture multiple scholarly communities and networks. Given his diverse interests, it was unclear which was the day job and which one

² See Margaret Chon, *Law Professor As Artist: Themes and Variations in Keith Aoki's Intellectual Property Scholarship*, 90 OR. L. REV. (forthcoming 2012).

³ Keith Aoki, *Distributive and Syncretic Moves in Intellectual Property Law (With Special Reference to Coercion, Agency, and Development)*, 40 UC DAVIS L. REV. 717, 719-20 (2007) [hereinafter *Distributive*]. At the path-breaking UC Davis Conference on Intellectual Property and Social Justice, organized by Anupam Chander and Madhavi Sunder, Keith explained one of his favorite concepts — syncretism — to uninitiated participants. His talk was recorded and is a classic Keith Aoki performance. See DVD: UC Davis Conference on Intellectual Property and Social Justice (UC Davis School of Law 2006) (on file with author).

⁴ Keith Aoki & Garrett Epps, *Dead Lines, Break Downs, & Troubling the Legal Subject or "Anything You Can Do, I Can Do Meta,"* 73 OR. L. REV. 551 (1994).

⁵ AOKI, BOYLE & JENKINS, *Theft*, *supra* note 1; see also KEITH AOKI, JAMES BOYLE & JENNIFER JENKINS, *Bound by Law? Tales from the Public Domain* 21 (2006) [hereinafter *BOUND BY LAW*] (characterizing Larry Lessig as the Statue of Liberty, holding aloft a video camera with a Creative Commons logo, with an inscription on the base "GIVE ME YOUR WIRED, RE-MIXING MASSES YEARNING TO BE FREE").

⁶ AOKI, BOYLE & JENKINS, *Bound by Law*, *supra* note 5, at 5, 28.

represented his true calling. This memorial essay traces the impact of Keith's overlapping activities as an artist, warrior, and mentor, particularly in the area of Asian-American jurisprudence.

I. ARTIST⁷

Keith was fascinated with aporias⁸ and seemed attracted towards them as a matter of principle in multiple areas of law, as well as domains outside of law — including music and visual art. Channeling various types of complex legal concepts and text through his artistic sensibilities, he pushed legal scholarship to be much more accessible and humorous. Clearly delighted by playful aesthetics, his favorite ingredients of bricolage included semi-ironic military metaphors (“harden the silos”⁹), concepts drawn from physics (the particle-wave paradox¹⁰), fragments of noir-ish sci-fi (“moo-ha-ha”¹¹), and, of course, characters drawn from and within comic books (the Crypt Keeper¹²).

Through these and other stylistic elements, Keith made significant substantive contributions to the disparate areas of intellectual property, critical theory, immigration, and local government law. In each of these legal spaces, he dedicated himself to searching for truth and justice. Somewhat less of a straight arrow than Superman, he was also intent on challenging the dominant American way, including prevailing concepts of color-blindness and meritocracy, as well as the casual acceptance of rampant inequality. His ways of fighting untruth and injustice merged with his distinctively modest Japanese-Michigan-American style. Faster than a speeding bullet and more powerful than

⁷ I describe this aspect of Keith's corpus at greater length in Chon, *supra* note 2.

⁸ Aporia was another one of his favorite words. See e.g., Keith Aoki, *The Yellow Pacific: Transnational Identities, Diasporic Racialization, and Myth(s) of the “Asian Century,”* 44 UC DAVIS L. REV. 897, 932 (2011) [hereinafter *Yellow Pacific*] (discussing aporia within the Supreme Court's opinions on the constitutionality of internment).

⁹ This cold war remnant refers to the ill-fated Strategic Defense Initiative proposed by President Reagan, soon nicknamed “Star Wars” after the popular George Lucas films. See FRED KAPLAN, CATO INST., REAGAN'S NUCLEAR DEFENSE STRATEGY: MYTH AND REALITY 5 (1982), available at <http://www.cato.org/pubs/pas/pa006.pdf> (“[1]f the plan to harden the silos to 5000-psi is unworkable, . . . then the question must be posed: Why build the MX missile at all?”).

¹⁰ See Keith Aoki, *Considering Multiple and Overlapping Sovereignties: Liberalism, Libertarianism, National Sovereignty, “Global” Intellectual Property, and the Internet,* 5 IND. J. GLOBAL LEGAL STUD. 443, 447 (1998).

¹¹ See *Moohaha*, URBAN DICTIONARY, <http://www.urbandictionary.com/define.php?term=moohaha> (last visited Feb. 24, 2012). See generally Aoki & Epps, *supra* note 4 (referencing Keith Aoki's play on citing “real” source authorities).

¹² See e.g., AOKI, BOYLE & JENKINS, *Bound by Law*, *supra* note 5, at 1-3, 68 (opening the comic book with images of the Crypt Keeper).

a locomotive, he often made us smile in recognition of some buried pop cultural reference, which he unearthed and deployed, often with his big, quick grin, to make a point about power dynamics within law and society.

II. WARRIOR

Keith's contribution to legal scholarship is an important part of what is sometimes called outsider jurisprudence.¹³ About a year ago, he sent me an early peek at an article ultimately published as *The Yellow Pacific: Transnational Identities, Diasporic Racialization, and the Myth of the "Asian Century."*¹⁴ This posthumously published piece on racial politics focuses on the hard-won lessons of Asian-Pacific-American identity and their implications for global social justice. Connecting the American Orientalist¹⁵ concept of "Asian" to the recent construct of the "Asian Century"¹⁶ via transnational information flows, he reviewed the history of racialized representations of Japanese Americans through the prism of diaspora. In this article, he pointed out that the construct of the Asian Pacific region as a geopolitical threat inevitably reinforces and in turn is reinforced by stereotypes of Asians in America. As he inimitably asked in one of his section headings: "Have We Met the 'Others' and Are 'We' They (or Are 'They' Us)?"¹⁷

Keith buttressed this diasporic model of racial identity and racial framing with historical evidence such as the interplay of local, national, and international politics underlying the Gentlemen's Agreement of 1907.¹⁸ What emerges in his account is how the

¹³ See generally Richard Delgado, *On Telling Stories in School: A Reply to Farber and Sherry*, 46 VAND. L. REV. 665 (1993) (responding to a critique of "outsider" storytelling techniques); Richard Delgado, "The Imperial Scholar" Revisited: How to Marginalize Outsider Writing, Ten Years Later, 140 U. PA. L. REV. 1349 (1992) (criticizing the dominance of "top-down" accounts of civil rights struggles written by elite liberal legalists).

¹⁴ Aoki, *Yellow Pacific*, *supra* note 8.

¹⁵ See Keith Aoki, "Foreign-ness" & Asian American Identities: *Yellowface*, *World War II Propaganda*, and *Bifurcated Racial Stereotypes*, 4 ASIAN PAC. AM. L.J. 1, 5-7 (1996) [hereinafter *Foreign-ness*].

¹⁶ See Peter K. Yu, *Intellectual Property and Asian Values*, 16 MARQ. INTELL. PROP. L. REV. (forthcoming 2012) (citing literature, including UC Davis symposium).

¹⁷ Aoki, *Yellow Pacific*, *supra* note 8, at 935.

¹⁸ The Gentleman's Agreement essentially was the settlement of a dispute between the San Francisco School Board and Japan stemming from the segregation of students of Asian ancestry (including Japanese students, for the first time) in the "Oriental Primary School" after the San Francisco earthquake destroyed much of the city's educational infrastructure. See Aoki, *Yellow Pacific*, *supra* note 8, at 917-27.

Japanese diaspora in the U.S. was profoundly impacted by not only nativist xenophobia and racism, but also by its attempt to leverage forces outside of the United States to impact public opinion inside the United States. This largely backfired against the diaspora community, which had relatively little power vis-à-vis dominant geopolitical forces of the day — whether American or Japanese. One can discern in his early race scholarship this analysis of pervasive media tropes and their relation to political power,¹⁹ but it is more fully developed as a transnational phenomenon in this most recent effort.

Offered as “a mediation between ‘statism’ and ‘cosmopolitanism,’” Keith’s diaspora approach to understanding the term “Asian” emphasizes the asymmetry of informational and power flows between and among nations within an ever-shifting yet constraining geopolitical structure.²⁰ An implicit corollary model of individual agency within this structure is what I might call critical cosmopolitanism: it incorporates this partially constrained post-national or transnational view of diasporic identity within an increasingly global yet far from frictionless²¹ movement of capital, concepts, and culture. He bestowed the name “Yellow Pacific” upon this most recent set of insights about the metamorphosing and yet enduring quality of racial constructs across state boundaries. This term is a direct homage to “The Black Atlantic.”²² In his typical penchant for wordplay, “Yellow Pacific” is also intended as a pun on the nineteenth- and early twentieth-century tropes of the yellow peril.²³ Keith generally eschewed “happily ever after” endings or neat prescriptions. Nonetheless the story he gave us is useful in framing a twenty-first century that could be somewhat loosened but not entirely from the racial binds implicit in the term “Asian Century.”

¹⁹ See Aoki, *Foreign-ness*, *supra* note 15, at 12-13.

²⁰ See CHINESE WOMEN TRAVERSING DIASPORA: MEMOIRS, ESSAYS, AND POETRY 31-51 (Sharon K. Hom ed., 1999); see generally Anupam Chander, *Diaspora Bonds*, 76 N.Y.U. L. REV. 1005, 1069, n.330 (2001) (citing Aoki’s diaspora approach in discussion regarding value of issuing Diaspora Bonds)

²¹ Seyla Benhabib, *The Return of Political Theology: The Scarf Affair in Comparative Constitutional Perspective in France, Germany and Turkey*, in *Dignity in Adversity: Human Rights in Troubled Times* 166, 183 (2011) (“[W]e are traversing such a moment in history when *jurisgenerative* and *jurispathic* politics face each other around the controversies over religio-cultural differences.”).

²² Cf. PAUL GILROY, *The Black Atlantic: Modernity and Double Consciousness* (Harvard Univ. Press 1993) (discussing the transnational identity of the Black Nation).

²³ See Aoki, *Foreign-ness*, *supra* note 15, at 33-35.

Perhaps Keith's normative commitments were driven in part by the trauma his family experienced during the internment of Japanese Americans during World War II. If the right to a hearing and an opportunity to defend oneself against accusations of guilt are fundamental attributes of due process and the rule of law,²⁴ the Japanese-American community in the 1940s experienced the terror instilled by arbitrary government action in violation of these core aspects of our democratic state. This group trauma manifested itself mostly in silence until the civil rights movement opened up a window of reparations beginning in the 1980s.²⁵ Yet, he rarely spoke directly about the impact of forced detention, migration or assimilation of west coast Japanese Americans on himself or his family. Nor did he refer to it as a source of motivation for his concern on behalf of those who are structurally disadvantaged, discriminated against, or disenfranchised.²⁶ Instead, he would sometimes allude to himself as a ninja — a typical type of playful yet utterly serious wink to his family and community history. In this guise, he was a warrior often operating behind the scenes to help others succeed, often against the odds.

Keith himself was raised in the Midwest, where his parents moved after the internment.²⁷ His family seemed to deliberately erase the experiences of “Krypton” — their pre-Detroit life.²⁸ But their attempt to rewrite family and group history could not conceal an indelible mark, which he would come to see, trace, and excavate. Coming of age in the 1960s, in the heart of what would be eventually the industrial rust belt, he probably experienced strong American Orientalism. The Civil Rights Movement and the loosening of cultural constraints

²⁴ Jeremy Waldron, *How Law Protects Dignity* 19-23 (N.Y. Univ. Sch. of Law, Pub. Law & Legal Theory Working Papers, Paper No. 317, 2011), available at http://lsr.nellco.org/cgi/viewcontent.cgi?article=1318&context=nyu_plltwp. See generally YAMAMOTO ET AL., *Race, Rights and Reparation: Law and the Japanese American Internment* 330-40 (2001) [hereinafter YAMAMOTO] (excerpting *Hirabayashi v. United States*, 828 F.2d, 591 (9th Cir. 1987), which upheld successful challenge to the internment era decision).

²⁵ See generally YAMAMOTO, *supra* note 24, at 269-71 (discussing the impact of the civil rights movement on the efforts of Japanese Americans in the 1980s to seek redress for their internment in the 1940s).

²⁶ See generally Keith Aoki, *Critical Legal Studies, Asian Americans in U.S. Law & Culture, Neil Gotanda, and Me*, 4 *ASIAN L.J.* 19 (1997) [hereinafter *Critical Legal Studies*] (expounding on his background as a Japanese American in tribute to Neil Gotanda).

²⁷ See Aoki, *Critical Legal Studies*, *supra* note 26, at 22.

²⁸ This includes Japanese-American cultural identity. As a result of this displacement, he was late coming to grips with his ethnic and racial identities, but then explored these identities with the gusto of the late bloomer. See *id.* at 24-32.

represented by the Summer of Love undoubtedly were formative factors to his rock-and-roll persona, resulting politically in a critical left alignment. But a pervasive, albeit partly hidden, story of displacement through internment and ensuing cultural isolation gave his rebel/rocker biography a distinctive twist. It also may have given him an ability to understand the arbitrary cruelty of borders in the same way that most recent immigrants experience. Possibly it gave him his characteristic of deep empathy with anyone who felt dimensions of outsidership. And, it may have motivated him to encourage others to articulate the experiences left out of the prevailing narratives in law and society.²⁹

In addition to Keith's self-characterization as a ninja, he created a culturally significant symbol in the form of Akiko, the hapa³⁰ heroine of *Bound by Law*. With delight, Keith and I occasionally discussed his featuring the most passive of racial stereotypes — the young Asian-Pacific-American woman — as the central character of much of his graphic art. His casting call was a deliberate and subversive decision to highlight and empower what is usually regarded as a problematic intersectionality.³¹ As a visual artist, he was supremely aware of the immediacy of images, and deployed visual and textual imagery with great discernment. Perhaps, because of this artistic sensibility, his scholarship often addressed the (re)circulation of harmful stereotype imagery as a barrier to racial progress. His scholarship also tried to

²⁹ For example, Peggy Nagae, former assistant dean of the University of Oregon, is one of many people who recalls how he encouraged her to publish her first law review article. See generally Peggy Nagae, *Justice and Equity for Whom? A Personal Journey and Local Perspective on Community Justice and Struggles for Dignity*, 81 OR. L. REV. 1133, 1151-52 (2002) ("What would stop *Yasui v. United States* from happening again? Ordinary people who are willing to take extraordinary steps and who dare to fight for the democratic principles and constitution that once made this country stand out among the world's nations — people like Minoru Yasui, who fought for more than forty years to right wrongs. He was an ordinary person who took extraordinary action. His was a struggle for dignity and respect, as well as for the legal protection afforded by the U.S. Constitution. When we first started the case, he said, 'I don't know if we're going to win, but we're going to give 'em hell!'").

³⁰ See Angela S. Taniguchi & Linda Heidenreich, *Re-Mix: Rethinking the Use of "Hapa" in Mixed Race Asian/Pacific Islander American Community Organizing*, WASH. ST. U. MCNAIR J., Fall 2005, at 135, available at <http://hdl.handle.net/2376/12>.

³¹ See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242-44 (1991) (explaining the problem of intersectionality); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 586-88 (1990). His decision is analogous to the late Professor Derrick Bell's decision to leave Harvard and University of Oregon law schools on the grounds of those institutions' failures to hire women of color.

talk back to the dominant motifs through graphic super-heroines such as Akiko.

III. MENTOR

Keith contributed some of his best energy towards nurturing communities of legal scholars of color. I first met Keith in 1994 at the inaugural Conference of Asian Pacific American Law Faculty.³² At the time, narrative methodology was still under attack by those who believed that the singular of data was not an anecdote.³³ As a result, there was some tension floating around in that meeting, and as an untenured person, I felt the insecurity of being the only person in the room interested in both intellectual property and race — or so I thought. Fortunately for me, Keith and I shared interests in these two distinct areas that we both managed to connect somewhat over time with what he would sometimes call “Frankensteinian”³⁴ stitches. At that conference, he walked up to me, introduced himself, and then began to bolster my shaky self-confidence in what has come to be recognized by many as his trademark self-effacing and highly effusive style of engagement.

Keith and I later managed to co-author an epistolary introduction to a set of papers from a Western Law Teachers of Color conference that we co-organized soon after I moved to the Pacific Northwest.³⁵ In this brief collaboration, Keith contributed about twice as much content as I did. Wryly I observed that he simultaneously critiqued the “model

³² See generally Alfred C. Yen, *Introduction and Thanks*, 3 ASIAN PAC. AM. L.J. 1 (1995) (recounting the organizer’s thanks for those who assisted in producing the Asian Pacific American Law Professors Conference at Boston College Law School and Northeastern Law School on October 13–15, 1994).

³³ Edith Greene, *A Love-Hate Relationship*, 18 JUST. SYS. J. 99, 100 (1995) (reviewing STEPHEN J. ADLER, *THE JURY: TRIAL AND ERROR IN THE AMERICAN COURTROOM* (1994)) (“The plural of *anecdote* is not *data*.”).

³⁴ Cf. Aoki, *Distributive*, *supra* note 3 (“Do we control our institutions and inventions or do they, like Frankenstein’s monster, control us?”).

³⁵ Keith Aoki & Margaret Chon, *Nanook of the Nomos: A Symposium on Critical Race Praxis Introduction*, 5 MICH. J. RACE & L. 35, 45-47 (1999) (applying Professor Eric Yamamoto’s framework of racial relationships to the relation of Asian Pacific Americans to other racial groups within the context of higher education. We called our introduction “Nanook of the Nomos,” as a play on the theme of “generations” symbolized by then–University of Oregon Dean Rennard Strickland’s choice of conference logo from the quasi-documentary film *NANOOK OF THE NORTH* (Les Frères Revillon & Pathé Exchange 1922). Our scholarly collaboration was published in the same journal that published the amicus briefs in *Grutter v. Bollinger*, and resulted from our collaboration on the first Western Law Teachers of Color Conference, held in Oregon and jointly sponsored by University of Oregon and Seattle University).

minority”³⁶ construct on a theoretical level while taking it seriously on a personal level.³⁷ He embraced this paradox with his typical sense of ironic glee, not just because of his obvious love of the particle-wave paradox, but also because he chose to stand with the disempowered by working overtime to bring their voices into the legal conversation. Keith could have been construed as careerist — writing in multiple areas, endlessly reviewing other scholars’ work for promotion and tenure, giving generous advice and praise to other scholars, and often trying to buttress and consolidate the careers of others. But, he worked hard not for reasons of self-aggrandizement or quid pro quo promotion. Rather, he believed profoundly in community advancement and the welfare of others.

Thus, even though Keith was an American original, he was not cut wholly from the individualist mold in which the original model minority term was cast within liberal political theory.³⁸ Instead, he seemed strongly influenced, if not driven, by a collaborative sensibility. This informed an intellectual enterprise loosely held together by a deep visceral sense held by him and others that law and the legal profession could do better at aspiring towards and perhaps even achieving social justice. He was the ultimate colleague, even though technically most law professors never had the privilege of being on the same faculty with him. We were part of his invisible college of those who believed in and worked for greater equality (in addition to efficiency and freedom), whether in economic, racial, or other realms.

As so many people noted upon news of his untimely passing, Keith endlessly encouraged others, especially those who were just beginning their journey towards finding a scholarly voice. He repeatedly chose to dwell in the realm of constructive critique, tirelessly engaging with other law professors in a highly positive, encouraging manner. One of his major and lasting legacies is the constant and implacable

³⁶ William Petersen, *Success Story, Japanese American Style*, N.Y. TIMES MAGAZINE, Jan. 9, 1966, at 21 (“By any criterion of good citizenship that we choose, the Japanese Americans are better than any other group in our society including native-born whites.”); see also *Success Story of One Minority Group in U.S.*, U.S. NEWS & WORLD REPORT, Dec. 26, 1966, at 73-76. The exact origin of the term “model minority” is unclear. It is usually ascribed to one of these two popular news articles from the mid-1960s, although traces of the social construction of Asian immigrants as model minorities can be found in earlier historical periods. See E-mail from K. Scott Wong to author (Feb. 18, 2012, 6:29 pm) (on file with author).

³⁷ See Aoki & Chon, *supra* note 35, at 46.

³⁸ Petersen, *supra* note 36, at 34.

reassurance and support that he gave to innumerable other scholars, who in turn shaped multiple epistemic networks.

CONCLUSION

Supercolleague was joyfully creative. As a legal artist, he always had a warrior's discipline, despite the madcap energy in his work. As a mentor, he was able to encourage the special creative madness of each one of us, in turn. These were his signal attributes. And through his play and work as artist, warrior, and mentor, Professor Keith Aoki left us with an enormous and exemplary legacy of community-building for justice.
