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# Liars, Traitors, and Spies: Wen Ho Lee and the Racial Construction of Disloyalty

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## Liars, Traitors, and Spies: Wen Ho Lee and the Racial Construction of Disloyalty

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On 6 March 1999, the *New York Times* front page headline read, "China Stole Nuclear Secrets From Los Alamos." The *Times* reported that China was developing weapons based on stolen information from U.S. nuclear labs, but that the government was doing nothing about it, even though they had identified a suspect. The suspect was Wen Ho Lee, a scientist at Los Alamos who immigrated as a young student from Taiwan thirty-five years ago, earning his doctorate from Texas A & M in 1970. Dr. Lee had been an American citizen for twenty-five years. On the day after the story broke, a Sunday, the FBI called him in for questioning. On Monday, 8 March, Wen Ho Lee was fired.

Two and a half months later, a Congressional committee chaired by Representative Christopher Cox (R-CA) issued a report that has come to be known as the Cox Report.<sup>1</sup> The report describes a vast thirty-year conspiracy, through which the Chinese government has carefully collected, catalogued, and analyzed tiny bits of information from thousands of sources in America and around the world, to piece together a picture of America's nuclear secrets.<sup>2</sup>

Among the conclusions in the Cox Report: that there are 3,000 PRC (People's Republic of China) front companies in the United States that *might* be surreptitiously collecting national security data. One of the report's definitions of a front company: "Corporations set up outside the PRC by a PRC individual to hide, accumulate, or raise money for personal use."<sup>3</sup> One of their examples was a restaurant owner.<sup>4</sup> This explains the *New Yorker* cartoon of a Chinese take-out counter with a

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sign on the wall that reads: "Today's Special—Nuclear Secrets With Snow Peas \$7.95."<sup>5</sup>

The Cox Report cites an estimate that more than 80,000 PRC nationals visited the United States on professional scientific visits in 1996 alone. The report claims that "[a]lmost every PRC citizen allowed to go to the United States as part of these delegations *likely* receives some type of collection requirement, according to official sources."<sup>6</sup> The report further estimates that at any given time, there are more than 100,000 PRC students or former students in the United States; these individuals are deemed "a ready target for PRC intelligence officers."<sup>7</sup> Even with regard to those identified as pro-Western dissidents from China, the Cox Report says: "This (PRC intelligence) structure includes 'sleeper' agents, who can be used at any time but may not be tasked for a decade or more."<sup>8</sup>

A political cartoon typical of the media response shows hordes of tiny, identical-looking Chinese men with glasses and buckteeth gleefully scampering out of Los Alamos past a sleeping watchdog, each one clutching documents or boxes of files that presumably contain nuclear secrets.<sup>9</sup> Paul Redmond, a former head of counterintelligence for the CIA, noted: "Culturally, in my view, they operate in a totally different environment and a different time frame. . . . Chinese do not think in terms of hours, days, or weeks but in terms of decades. They are an ancient civilization. They are able to deal with the intricacies of long-term planning." This allows for "seeding operations" in which agents can be planted and then spend many years maneuvering themselves into sensitive positions before ever being called to deliver.<sup>10</sup> Senator Richard Shelby, chair of the Senate Select Committee on Intelligence, summed it all up when he was reported to have said on "Meet The Press" that the Chinese are "very crafty people."<sup>11</sup>

The clear implication from all of these sources is that any Chinese person in the United States, regardless of the length of time they have spent in the United States or how innocuous they seem, is a potential source of information to the Chinese government or a potential spy. The American public was easily led to believe that China has, by these means, ransacked our most dangerous nuclear secrets. In light of all of this, I feel compelled to disclose to the reader that I am an American of Chinese descent, and to reassure you that I am not a spy.<sup>12</sup> But if you were inclined to wonder about my loyalty to begin with, my personal reassurances would not likely persuade you otherwise. If I were a spy, you might think, I would not be telling you. All I can do in response is ask you to believe me. And that is all Wen Ho Lee could do.

Wen Ho Lee was arrested and put in solitary confinement in December of 1999, two weeks before Christmas. He was indicted not for spying — not for passing along any information to a foreign entity — but for downloading classified material about nuclear weapons. Still, the Justice Department made it clear that the reason they prosecuted Lee, for what might otherwise be considered a technical violation, was their suspicion that Lee copied files with the intent to harm the United States and aid a foreign power. They thought that he was really a spy after all. But they

never found any direct evidence. At the bail hearing the government successfully argued that the risk of classified information falling into the wrong hands was too great. In February 2000, the appellate court upheld the trial court's denial of bail. So a 60-year-old man, with a spouse and children, strong and long-standing community ties, and a record of solid citizenship — not exactly a classic flight risk — was being held without bail pending a trial scheduled for nine months later, in November of 2000.

I am not an expert on national security. I do not doubt that the Chinese government has an intelligence operation in the United States. It may be a very good one. I cannot write with great confidence that some vast conspiracy does not, in fact, exist. I cannot promise that Wen Ho Lee is not, after all, a spy.

But this incident is not the first time that an Asian American has been targeted because he or she is presumed to have loyalties to a foreign, mysterious country far, far away. And it will not be the last. Rather, the 150 years of American law regarding Asians in America ought to have produced skepticism of the charges against Wen Ho Lee.

### THREE QUESTIONS FOR SHANG-CHI

Shang-chi was a Marvel Comics character introduced in 1973, when martial arts were a big craze.<sup>13</sup> He was the Master of Kung-Fu, trained from birth to be the perfect thinking and fighting machine. But upon reaching adulthood he discovers that his father is none other than the actual Fu Manchu, and his mother is a tall, blonde, white American woman chosen for her genetic and physical characteristics. The internal conflict is that Shang-Chi has to choose between loyalty to his Chinese side, with his father's secret maniacal quest for worldwide domination, and his white American, Western side, which represents freedom. Early on, in the first issue, Shang-chi chooses to defy his father. For the next ten years and 125 issues, the running story line is that Shang-Chi is fighting both his father and Western authorities because no one will believe that the son of Fu Manchu is actually fighting rather than defending his father. They believe it is a trick, and he is unable to convince them otherwise.

The suspicion described in the Marvel Comics often similarly unfolds in our daily lives as Asian Americans. Asian Americans tell a stock story about well-meaning people continually asking us the same question: "Where are you from?" And if one says California, or New Jersey, or Ohio, they say, "No, where are you *really* from?" This question, "Where are you from?," presumes that we are obviously not from America. Such a presumption is a racial one. It can be positive, reflecting openness and curiosity about other cultures, but there is also a darker side, which appears when the questioner is somehow disappointed to learn that the subject of the question is "just" an American. It is now a well-developed theme in Asian American legal scholarship that Asians in America are legally and socially constructed as racially foreign.<sup>14</sup> Foreignness is itself a construction developed in conjunction with nationalism. Being designated foreign means that as foreigners,

we do not belong, that our allegiance lies elsewhere, and that we are not members of the same team. Foreignness suggests that when push comes to shove, in war, or politics, or economic or military competition, we are presumed to be disloyal. Thus, the necessity arises in times of national distress for Asian Americans to continually prove our loyalty.

In this essay, I would like to focus on the historical recurrence of interrogations of Asian Americans. "Where are you from?" is only the most benign form of questions that have been asked of Asian Americans from the beginning. I have organized this essay into three sections — Liars, Traitors, and Spies — in order to explore three sets of questions that are asked of Asian Americans in order for them to prove their trustworthiness or loyalty. The focus on interrogations and questions is intended to demonstrate the inherent suspicion that cultural and legal presumptions about Asian Americans contain.

It is not my goal merely to present Asian Americans as victims of racist acts by individual judges, a government, or a society. The search for innocent victims highlights the purity and innocence of the victims who do everything right, who become more trustworthy and more patriotic than everyone else, and thus, by their victim-hood, earn the right to be considered fully American. That is the wrong lesson. American heroes ought to be the ones who fight injustice, and fighting, by default, makes you an opponent of the system you are fighting. The accusation therefore becomes self-fulfilling and self-reinforcing: Asian Americans who fight injustice become opponents of the American system.

## ***I. Liars***

In 1854, the California Supreme Court was faced with a white defendant who had been convicted of murder based on the testimony of Chinese witnesses.<sup>15</sup> There was a statute that said, "No black, or mulatto person, or Indian shall be allowed to give evidence in favor of, or against a white man." The court first argued that Chinese were Indians because Columbus thought he landed in India. Moreover, scientists thought Native Americans had crossed over at some time from Asia, so Indian must be a generic term for all Asians. Then the court argued that black could be a generic term for anybody who was not white. Finally the court just threw up its hands and said that as a matter of public policy, if we admitted their testimony, we would have to "admit them to all the equal rights of citizenship, and we might soon see them at the polls, in the jury box, upon the bench, in our legislative halls. This is not a speculation . . . but it is an actual and present danger." Why is this scary?

Later in the opinion, the court continued to emphasize the inherent untrustworthiness of the Chinese people:

The anomalous spectacle of a distinct people, living in our community . . . ; whose mendacity is proverbial; a race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point

... is now presented, and for them is claimed, not only the right to swear away the life of a citizen, but the further privilege of participating with us in administering the affairs of our government.<sup>16</sup>

My point is not simply to dredge up old offensive racist language. That is easy to do, and anti-Chinese rhetoric was widespread in the mid to late 19th century. Rather, I focus on one word in particular: "Mendacity," or deception, falsehood, a propensity to lie. "A people whose mendacity is proverbial."

My great-great-grandfather immigrated from China in 1855, one year after the decision in *People v. Hall*, when he was twelve years old. My family has only one picture of him, and the only reason we have this picture is because of the 1882 Chinese Exclusion Act passed by Congress to bar the immigration of Chinese laborers. Because Chinese merchants and students, and any Chinese laborers who had immigrated prior to the Exclusion Act, were allowed to enter, however, the resulting scenario was that some Chinese residents were legal and some were not. Arguing that all Chinese names and faces were alike, Congress passed the Geary Act in 1892, which imposed a registration requirement on Chinese residents in order to distinguish them from illegal immigrants. My great-great-grandfather was therefore required to have in his possession a certificate of residence, complete with photo, dated 1894, in order to prove his identity and corresponding legal status.<sup>17</sup> This is perhaps the ultimate statement of official distrust: That my great-great-grandfather had to carry a document to prove he belonged in this country.

Furthermore, there was a practice of interviewing each would-be immigrant<sup>18</sup> when the Chinese arrived at the Angel Island immigration detention center in the San Francisco Bay. Here is an excerpt from an interview of a sixteen-year-old would-be immigrant in 1910.<sup>19</sup> The interrogators are asking him about the village he is from:

Q: Who lives in the second house in the third row?

A: There is no house there.

Q: Isn't the second house in the third row opposite one of your doors?

A: The house opposite my door is in the second row.

Q: Didn't you say your house was second house, second row?

A: I have been counting from the front of the village, the house opposite my door is the third row, second house.

Q: Who lives in that house?

A: Leong Doo Gui.

Q: According to your testimony today there are only five houses in the village and yesterday you said there were nine.

A: There are nine houses.

Q: Where are the other four?

A: There is Doo Chin's house, first house, sixth row.

Q: What is the occupation of Leong Doo Chin?

Q: Describe his wife.

Q: What is the name and age of the son?

A: Leong Yick Gai; his house is first house, fourth row.

Q: You have already put Leong Doo Sin in the fourth row, first house.



A: His house is first house, third row.

Q: You have already put Leong Yick Gai first house, third row.

A: I am mixed up.

Q: Who is the oldest man in that village?

Q: What market does your mother patronize?

Q: Do you cross any bridges or streams of water in going to that market?

Q: Who was your last teacher?

Q: Why are you so excessively nervous during this examination?

A: I am not at all nervous.

In a way, I am grateful for the depth of the interrogations. When my great-great grandmother returned to the United States in 1911, after a visit to China, she was interrogated upon reentry. I have a copy of the four-page, single-spaced transcript of her interview. From this document, my family has learned that my great-great-grandfather worked at a shrimp camp, the specific addresses of the places where each of her five children were born, their occupations in 1911, and whether her daughters and daughters-in-law had natural or bound feet. Because many interviews were much longer than this, I surmise that her interrogation was not too rigorous; perhaps this was because a sixty-five-year-old woman, accompanied by what her file calls her “alleged adult children,” was probably not a prime suspect for immigration fraud.

The presumption that Asian immigrants are liars is not purely an artifact of history. The 1997 case of *Olsen v. Albright*<sup>20</sup> involved a member of the U.S. Foreign Service who was stationed at the U.S. Consulate General in Brazil and who was fired, not because he was Asian, but because he refused to follow the consulate’s visa adjudication policies. Robert Olsen, the plaintiff, was a visa adjudicator. His job was to review nonimmigrant visa applications. If he suspected fraud based on the application, he called the applicant in for an interview. The policy that Olsen refused to follow was printed in the consulate manual:

#### KOREAN/CHINESE FRAUD

Major fraud; hard to check. In general, they are almost always called in for an interview. Visas are rarely issued to these groups unless they have had previous visas and are older.

In addition to the manual, a 1993 memorandum distributed to consulates in Brazil states:

Arab and Chinese last names set off bells and whistles regardless of the passport/nationality they may have. . . . It is very easy to assume a false identity in Brazil and obtain a genuine passport and nationality and other documents. Most Brazilians have no interest in doing so, but Arabs and Chinese are two groups to worry about.

The story is always more complicated than mere racial victimization. In response to restrictive immigration policies, Chinese immigrants developed a lucrative market for false papers. The interrogation recited above was required by federal immigration regulations. Inspectors thought they could catch the illegal immigrants by confusing them with questions about their villages, or by requiring documentation of every part of the applicant's story. Of course, the irony is that the honest immigrants could not answer all the questions, whereas the illegal immigrants studied to pass the questioning and were thus well prepared for the interrogation.

My great-grandfather on my father's side was named Lim Dick Young. He immigrated to California around 1910. It is not clear what his immigration status was; perhaps he came as a merchant or scholar and was therefore exempted from the Chinese Exclusion Act. He apparently could not obtain legal immigration status for his oldest son, my grandfather, Lim Guey Him. Again, it is an immigration document that gives us a picture of him, although we have others. The name on the document is not Lim Guey Him, however; my grandfather came into the country on the papers of someone named Lee Hoo. His forged signature is at the bottom of each document. All the official documents show my grandfather's name as Lee Hoo. His children's official birth certificates all show the family name not as Lim, but as Lee. And so does mine.

Am I "really" a Lim? I have gone by the name Lee all my life. So I consider my name to be Brant Lee, just like it says on the byline.

But the point is that my grandfather was in fact a liar.

One might argue that in the face of discriminatory exclusion laws, would-be immigrants should just get in line and wait for the laws to change. When you make lying the price of entry, however, anyone who wants to enter badly enough will pay that price and become a liar. And then what the law often does, as it did with the Angel Island interrogations, is focus on catching the lie, rather than on changing the price of entry. But it is not the lie that matters. It is whether we care about the lie.

You may not be familiar with the story of Charlie Two Shoes. Here is an editorial from my hometown Akron Beacon-Journal:<sup>21</sup>

Charlie: Two Shoes or Two-Faced?

President Clinton has his Chinese problem. We have ours: after all these years, the myth of Charlie Two Shoes continues to grow apace, and now the little guy is finally on the verge of becoming an American citizen. Is this the country of warm-hearted gullibility or what? Clinton has ordered a counterintelligence analysis to determine, in part, whether Wen Ho Lee suckered us out of nuclear weapons secrets.

The rest of the story is about Charlie Two Shoes, a Chinese boy who was befriended by Marines during World War II and who pretended thirty-five years later to come for a visit. The editor writes that Charlie Two Shoes took advantage of American gullibility, when in fact what Charlie wanted all along was to immigrate and become an American citizen. There is nothing to link Charlie Two Shoes to Wen

Ho Lee except that they're both ethnic Chinese and that they are accused of lying. Charlie Two Shoes may well be a liar. But it is not clear to me why this story makes the editor so angry. Why isn't Charlie a loveable scalawag instead of an evil villain? My Irish father-in-law is always telling stories about smooth characters who sweet-talk their way into and out of trouble. Whether you are sympathetic or not depends on whether you can see the story from Charlie's point of view, or whether you feel the Chinese have deceived you.

## II. *Traitors*

In the 1910s and 1920s, several Western states passed Alien Land Laws restricting land ownership to those who were eligible for citizenship. These laws were targeted at Asian immigrants, because under the federal naturalization law, Asians were racially ineligible for naturalization until around World War II. The Supreme Court upheld the statutes by speculating about the security implications: "The quality and allegiance of those who own, occupy, and use the farm lands within its borders are matters of highest importance and affect the safety and power of the state itself."<sup>22</sup> Even with regard to a cropping contract with a white landowner, the court ruled: "Conceivably by the use of such contracts, the population living on and cultivating the farm lands might come to be made up largely of ineligible aliens. The *allegiance* of the farmers to the state directly affects its strength and security."<sup>23</sup> They might be nice people, but in the end, they are not our people. Their allegiance is elsewhere.

The same rationale is the foundation for a whole series of statutes restricting aliens from certain occupations. Here are some of the occupations from which aliens have been legally excluded: police officers, public school teachers, probation officers, taxicab drivers, civil engineers, pool hall operators, lawyers, bilingual program counselors, transit operators, notaries public, garbage collectors, dentists, commercial fishermen, barbers, laundry operators, and massage operators.<sup>24</sup>

Similarly, Asian Americans were recently forced to answer questions regarding campaign contributions. For example, Democratic National Committee (DNC) representatives contacted Suzanne Ahn, a prominent doctor in Texas. They asked what her reported income was on her income tax statements. They asked what her assets were. They asked her if she was an American citizen. They asked if the donation that she made really came from her. They said that if she was not cooperative, they would return her money and her name would be released to the press as someone who would not cooperate.<sup>25</sup>

What was happening? In the wake of the furor over improper foreign campaign contributions, the DNC was conducting an audit. One of the categories of contributions they reviewed was the following: All contributions made "in connection with any event involving the Asian Pacific American community."<sup>26</sup> The interviewers reportedly had a list composed entirely of donors with Asian surnames. Of course Asian Americans responded to this inquiry, and one might imagine that many of them will not be participating in the political process again any time soon.

Perhaps the best example of how these presumptions of disloyalty can turn on themselves and become self-fulfilling is the story of Tsien Hsue-shen.<sup>27</sup> Tsien was a young student when he came to the United States from Taiwan in 1935, thirty years before Wen Ho Lee did. He was literally a rocket scientist, and a successful one, on our side. He decided to try to become a U.S. citizen in 1949. In 1950, he was named the Robert Goddard Professor of Rocket Science at Caltech. Then the FBI came calling. They had heard a rumor that Tsien was a Communist. Based on what eventually turned out to be nothing, they got his security clearance revoked. Tsien was a proud man and then decided to leave the country. But the FBI decided that Tsien knew too much, and they prohibited him from leaving the country.

When Tsien was finally deported in 1955, he went to China. There he was reported still alive as of 1997, and is fondly regarded as the father of Chinese Rocketry.<sup>28</sup>

I am not suggesting that Wen Ho Lee is a spy after all. What I do suggest is that witch-hunts always have a price in the form of the disenchantment and low morale of all of those affected. The Department of Energy, which runs the national labs, recently issued a report documenting widespread fear, anger, and anxiety among the many Asian American scientists employed there.<sup>29</sup> And the national labs are scrambling because the highly qualified Asian scientists that they depend on are leaving or are no longer applying to work there. Other scientists are leaving, too, in response to the heightened security measures that the scandal has produced, such as mandatory polygraph tests. One proposal, now being rethought, would have required visiting scientists to wear color-coded badges identifying the country from which they came, presumably so that others would know to be more careful in their presence. We are destroying our own research capacity by pointing fingers at our own workforce.

### *III. Spies*

The most familiar example of the racial presumption of disloyalty, of course, is the internment of Japanese Americans during World War II. One of the things that happened during the internment was that some of the internees wanted a chance to prove their loyalty. All young Japanese men had been classified IV-C: enemy aliens. The military, therefore, developed a questionnaire for all draft-age males, which included the following questions:

Question 27: Are you willing to serve in the armed forces of the United States on combat duty, wherever ordered?

Question 28: Will you swear unqualified allegiance to the United States of America and faithfully defend the United States from any or all attack by foreign or domestic forces, and forswear any form of allegiance or obedience to the Japanese emperor, or any other foreign government, power, or entity?<sup>30</sup>

The questions created great internal havoc within the Japanese American communities at the camps. For immigrant Japanese who were not allowed to be-

come citizens, the questions asked them to renounce allegiance to the only country with which they were left. American-born Japanese, rightfully suspicious by now of the federal government, wondered whether the words “forswear any form of allegiance . . . to the Japanese emperor” were intended to be a trap to get them to admit to an allegiance they never had.

But by far the greatest conflict was between those who wanted to prove Japanese American patriotism by answering “yes” and those who did not want to be docile. What is a good red-blooded American supposed to do? The ones who answered “no” to both questions became known as the “No-No Boys.” They were sent to a separate higher security camp so they could be kept under higher surveillance.<sup>31</sup>

In February 1989, Bruce Yamashita,<sup>32</sup> a native of Hawaii with a law degree from Georgetown University, entered Marine Officers Candidates School. He expected the training to be rough, and it was. On the first day of training, he was singled out in training camp by a sergeant who spoke to him in broken Japanese and continued to do so throughout the ten-week course. That same first day, another sergeant said to Yamashita, in front of the entire company, “We don’t want your kind here. Go back to your country.” Still another sergeant told him, “Your name is ‘Kawasaki Yamaha.’ Don’t forget that.” The sergeant continued to refer to him by Japanese brand names throughout the course, at one point telling him, “During World War II, we whipped your Japanese ass.” The irony is that during World War II Bruce Yamashita’s uncle had fought for the United States in the all-Japanese American 442nd Combat Regiment.

Still, you do not expect training camp to be gentle. Nevertheless, Yamashita endured the abuse. Out of 150 who entered training camp, eighty finished; Yamashita was one of them. Then, two days before graduation, five candidates were disenrolled, or dismissed. Four of these five candidates were minorities, including Yamashita. He had passed the academic test and the physical test, each worth 25 percent of his final grade; He and the other dismissed candidates were failed because of “unsatisfactory leadership,” which made up 50 percent of the final grade and was entirely at the subjective discretion of the same sergeant instructors who had singled him out for abuse.

Bruce Yamashita eventually filed a lawsuit, and after five years of litigation, the Marines settled. He is now Captain Bruce Yamashita. But it is not a simple story, because it cannot be shown that Bruce Yamashita would in fact have been a good leader in the Marines. If it is important to your performance that people be willing to follow you, whether it is in the Marines or in any form of employment, then there is some extent to which their biases, regardless of how improper they may be, do not matter. If they will not follow you, they will not follow you.

Here, it seems likely to me that after watching their supervisors and instructors routinely hold Yamashita up for humiliation and belittlement, they would very likely not be inclined to see him as a leader. They might even have been inclined to see him as the enemy. One of Yamashita’s fellow candidates, after witnessing the abuse

he was subjected to, leaned over and asked him, "Why didn't you just join the Japanese army?"

It is not just that Yamashita was humiliated and racially taunted. My understanding is that you are supposed to be humiliated in Marine training camp. But this particular form of humiliation — connecting Yamashita's Asian features with foreignness in the midst of an ultra-patriotic institution — prevented him from succeeding on what might otherwise be considered a valid criterion: the ability to lead.

White Americans sometimes wonder why various minorities insist on hyphenated labels. The polls show that minorities are considered less patriotic. Why don't we all just call ourselves Americans? It is in part experiences like that of Bruce Yamashita that teach racial identity. "Before this," he has said, "I was just an American. Now I'm an Asian American."<sup>33</sup>

Miyo Senzaki, a former internee whose family was torn apart by the internment experience, once said: "I want to be proud of [the American flag], when it's flowing in the sky, to be proud to salute it, because you know it's telling you something. But you have to live what you're taught to know the meaning of it."<sup>34</sup>

Wen Ho Lee's daughter, Alberta Lee, said: "You grow up, and every day you say the Pledge of Allegiance, and the last line is 'With liberty and justice for all.' You think, 'Yeah, that's how this country works.' You know it's not a perfect world. But you never think it's going to happen to your family."<sup>35</sup>

## LOOKING FOR ENEMIES

There are distinctions to make among liars, traitors, and spies. A liar is somebody who does not tell the truth, but a lie does not necessarily rise to the level of a national security risk. Truth-telling is valuable only in the context of a community in which members of the community must be able to rely on the information they receive from others in the community. You have to trust someone before your trust can be violated. To violate the trust of your family or loved ones is perhaps the worst sin. To lie to your community is a crime. To lie to the Internal Revenue Service might be considered by many to be a justified crime. To lie to the enemy is not even immoral.

So if we are faced with someone who we think is aligned with a foreign country, or who we think regards us as foreign, we assume they might be lying to us. It is not an accusation that they are violating our trust, because they are not part of the community. It is that they are not trustworthy to begin with.

A traitor is a citizen who commits treason: a citizen who betrays her or his country on behalf of another country. This is much more morally reprehensible. You might think that Wen Ho Lee would be accused of being a traitor. But he is not. Wen Ho Lee has been referred to as an accused spy. A spy is not a citizen. A spy is someone with foreign loyalties, collecting information on behalf of his or her own



country that is NOT the United States. Sure, Wen Ho Lee might have technically become a citizen, but that is assumed to be just deep cover.

Such a charge is in some ways a more dangerous charge, because you do not have to be convinced that someone is evil to think that he is a spy. In fact, he is a patriot, just for the wrong country. It is not wrong to gather intelligence. Rather, it is just part of the intelligence game, and we win when we catch their spies. Sometimes we do not even punish the spies, we just deport them to the country for which they spied. Consider the contrast if, rather than painting Wen Ho Lee as a Chinese spy, the government had called this American citizen a traitor. My argument is that a judge or jury would hold the government to a higher standard of proof in that case, because a greater moral wrong is being alleged. At Wen Ho Lee's bail hearing, the government opposed granting bail even if Lee were confined to his home, all phone communications were monitored, Lee was instructed to speak only English, and Lee's children were always accompanied by an FBI agent in his presence. FBI agent Robert Messemer speculated that even an apparently innocuous statement to one of his children like, "Say 'Uncle Wen says hello'" might take on a less than innocuous meaning. Agent Messemer claimed that that simple phrase might be a prearranged signal to a prearranged third party to follow prearranged instructions to do something nefarious with the missing but possibly previously hidden tapes.<sup>36</sup> So now Wen Ho Lee's two American-born children were presumed to be potential parts of the conspiracy.

During the summer of 2000, however, the government's case slowly began to fall apart. The information he copied turned out not to have been classified top secret until after he copied it. Expert scientists testified that the information he copied, even in the wrong hands, posed little or no threat to national security. The only theory the government could come up with regarding an intent on the part of Lee to transfer nuclear secrets to another country was that Lee was job-hunting at institutes in such countries as Switzerland, Australia, and France, not exactly devoted enemies of America. Finally, Agent Messemer admitted that at Lee's bail hearing, Messemer had "inadvertently" misled the court into believing that Lee had behaved deceptively in order to gain access to the labs.

On 13 September 2000, the U.S. government entered into a plea agreement in which the government agreed to drop all the charges except one. Dr. Lee agreed to plead guilty to one charge of improperly transferring restricted information, with the sentence being reduced to time already served. Dr. Lee agreed to cooperate by answering questions about any information he may have copied or stored.

In accepting the agreement, the judge in the case issued an extraordinary apology, essentially interpreting the government's sudden capitulation as an admission that there was simply not going to be any evidence to support the successful prosecution of Wen Ho Lee. This, despite their previously insisting that he be held in solitary confinement for nine months. The government was suddenly willing to let Wen Ho Lee walk free. The denial of bail itself, and the severe conditions of Dr. Lee's confinement, now simply looked like a blatant effort to extort a confession from an innocent person.

Moreover, the agreement came days before the government was to have handed over documents, requested by the defense attorneys, which would have established whether there had been any pattern or practice of racially selective prosecution. Now it appears as though that information will remain secret.

Wen Ho Lee's supporters have been accused of playing "the race card." Opponents claim that the cry of racism is insincere and manipulative. They are *playing*, as if this were merely a litigation or public opinion game, and everyone knows the moves. My hope is that the history of Asians in America would be enough, even absent any direct evidence, to demonstrate the racial presumptions that underlie the prosecution of Wen Ho Lee.

Serendipitously, in this case there was more. The case against Lee was based primarily on contacts he has had with Chinese scientists. The former director of counterintelligence at Los Alamos, Robert Vrooman, has noted that several other LANL scientists visited China and had the same kind of contacts as Lee. Vrooman claims that Wen Ho Lee was targeted only because of his Chinese ethnic background. He notes that the FBI has never offered a motive, other than that "it was standard PRC intelligence tradecraft to focus particularly upon targeting and recruitment of ethnic Chinese."<sup>37</sup> That is a motive for China, not a motive for Wen Ho Lee. Mr. Vrooman says that the investigator who focused in on Wen Ho Lee explicitly targeted him because he was Chinese, and even expressed more general concerns about the number of Chinese restaurants in the Albuquerque area.

Non-Asian Americans do not always distinguish so well among Asian countries, but it is not obvious that a native of Taiwan would be a good candidate to be a spy for the People's Republic of China. They are just not good buddies. It is as if a Protestant from Northern Ireland were accused of spying for the Irish Republican Army and the newspapers simply reported, "Irish Spy Accused." It could be true, but if it is, there is a really interesting story about which we have heard nothing.

Has Wen Ho Lee been exonerated? Administration officials continue to insist that the prosecution of Wen Ho Lee was justified, and that no racial discrimination occurred. They have promised to investigate any hint of racial profiling. They will find nothing, for they are looking for the wrong enemy. The administration officials are looking for some individual with explicit conscious racist bias against Chinese or Asians. But the problem is not an individual racist.

Even if a particular investigator were biased, one wonders why the lawyers and supervisors and political appointees at every level approved the aggressive indictment and denial of bail absent any evidence of motive. The problem is a cultural environment replete with images of inscrutable waiters, insular, hard-working foreign students, and clever engineers, together with historical images of diabolical Oriental villains, relentless Jap armies, and Mongol hordes. These images are available to the consciousness of any American investigator in the same way that images of black criminality are available to a highway patrolman when selecting a motorist to pull over for a traffic stop.

What else has been happening? Hoyt Zia, a former Marine with a top-level security clearance at the Commerce Department, had been nominated for a post as



a Navy undersecretary. In his position at Commerce, he reviewed exports of technology to China, and rumors surfaced that he was connected to the spy scandal. His name was withdrawn, with no explanation. Ted Lieu, an Air Force captain, was asked whether he was a captain in the Chinese Air Force. Chi Ming Hu reports being investigated by the FBI and having his security clearance revoked, destroying his career in the military industrial complex. One scientist who had had his security clearance revoked and his career prospects with a military contractor destroyed by the FBI two years ago, who had since moved on to other employment, recently found the FBI knocking on his door again. Other reports are percolating about subtle changes in whose names are proposed for which projects, and who gets pulled off of sensitive contracts, just to be safe. Hate crimes against Asian Americans continue to rise.

The foreigner is an outsider. When the next recession comes, or when we are at war, or when national security is considered to be at stake, the outsider becomes the enemy, and the positive “model minority” image — disciplined, hard working, efficient, strong traditional family ties — easily transforms itself into the characteristics of a diabolical threat — Disciplined! Tireless! Efficient! And racially devoted to an insular ethnic identity that mere American citizenship will never weaken.

It remains to be seen whether the prosecution of Wen Ho Lee was a precursor to a broader assault on the loyalties of Asian Americans or not. One of the most provocative political commercials of the recent presidential election season featured a mushroom cloud and ominous references to the influence of “Red China.” Al Gore’s campaign for president was vulnerable to charges that he raised foreign money from Asians, and the public continues not to make great distinctions between Asian Americans and foreigners. Somehow, the words “Buddhist temple” became code words for dishonesty and deception. Attorney General Janet Reno and the editors of the *New York Times* continue to insist that Dr. Lee was guilty of serious security violations, implicitly justifying his treatment in this case. As an economic slowdown finally looms, the search for an enemy will inevitably follow, and Asian Americans should expect that the scapegoat will have an Asian face.

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## Endnotes

<sup>1</sup> U.S. House. 1999. Select Committee on U.S. National Security and Military/Commercial Concerns with the People’s Republic of China. *U.S. National Security and Military/Commercial Concerns With the People’s Republic of China*. 105th Cong., 2d sess. H. Doc. 851. (Hereinafter, “Cox Report.”)

<sup>2</sup> The substantive conclusions of the Cox Report regarding whether China has in fact obtained any secret information, and whether any such information has in fact advanced their weapons program have been criticized and rebutted elsewhere. See Prather, J. G. 1999. *A Technical Reassessment of the Conclusions and Implications of the Cox Committee Report*. 8 July. (Prepared for Jack Kemp.) (Concludes that there is no evidence that the PRC has stolen any classified material from U.S. weapons labs, or incorporated any stolen information into their nuclear weapons program.) See also Johnston, A. I., W. K. H. Panofsky, M. DiCapua, and L. R.

Franklin. 1999. *The Cox Committee Report: An Assessment. December.* (Finds the Cox Report allegations generally exaggerated, uninformed, and unsubstantiated.)

<sup>3</sup> Cox Report, 33.

<sup>4</sup> Cox Report, 38-39.

<sup>5</sup> Chast, Roz. 1999. *The New Yorker*. 17 May.

<sup>6</sup> Cox Report, 39 (emphasis added).

<sup>7</sup> Cox Report, 41.

<sup>8</sup> Cox Report, 36.

<sup>9</sup> Oliphant. 1999. *Washington Post*. 30 April.

<sup>10</sup> *Akron Beacon-Journal*. 1999. 10 March.

<sup>11</sup> *Washington Times*. 1999. 29 March, A6.

<sup>12</sup> Other Asian American commentators, notably journalists Helen Zia and Emil Guillermo, have used the "I am not a spy" formulation.

<sup>13</sup> See generally, Marvel Comics Group. 1973. *The Hands of Shang-Chi, Master of Kung Fu*. Special Marvel Edition 1(15).

<sup>14</sup> See, e.g., Gotanda, Neil. 1985. "Other Non-Whites" in American Legal History: A Review of Justice at War. *Columbia Law Review* 85:1186; Saito, Natsu Taylor. 1997. Alien and Non-Alien Alike: Citizenship, "Foreignness," and Racial Hierarchy in American Law. *Oregon Law Review* 76:261; and Aoki, Keith. 1996. "Foreign-ness" & Asian American Identities: Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes. *UCLA Asian Pacific American Law Journal* 4:1.

<sup>15</sup> *People v. Hall*. 1854. 4 Cal. 399.

<sup>16</sup> *Ibid.*, 404-05.

<sup>17</sup> One scholar has traced this identification certificate requirement as being the origin of the American passport. Torpey, J. 1999. *The Invention of the Passport: Surveillance, Citizenship and the State*, 96-101.

<sup>18</sup> For a general discussion of administrative practices regarding Chinese immigration, see Salyer, Lucy. 1995. *Laws Harsh as Tigers*.

<sup>19</sup> Excerpted in Wu, Cheng-Tsu, ed. 1972. "Chink!": A Documentary History of Anti-Chinese Prejudice in America, 99.

<sup>20</sup> 990 F. Supp 31 (D.C. Dist. 1997).

<sup>21</sup> *Akron Beacon-Journal*. 1999. 10 March.

<sup>22</sup> *Terrace v. Thompson*. 1923. 263 U.S. 197.

<sup>23</sup> *Webb v. O'Brien*. 1923. 263 U.S. 313 (emphasis added).

<sup>24</sup> See Knapp, Kiyoko Kamio. The Rhetoric of Exclusion: The Art of Drawing A Line Between Aliens and Citizens. *Geo. Immigration Law Journal* 10:401, 409.

<sup>25</sup> U.S. Commission on Civil Rights. 1998. *Briefing on Civil Rights Implications in the Treatment of Asian Pacific Americans During the Campaign Finance Controversy, A Summary Report, Background Paper, and Transcript*, 17-18.

<sup>26</sup> *Ibid.*, 31.

<sup>27</sup> See generally, Chang, Iris. 1995. *Thread of the Silkworm*.

<sup>28</sup> The Cox Report asserts that Tsien is presumed to have been spying for the PRC. Cox Report, 179. There does not appear to be any evidence to support this assertion. See Johnston et al., *supra* note 2, 84-85. The Cox Report appeared to rely primarily on the biography of Tsien by Iris Chang, *supra* note 27, to support its allegations regarding Tsien. However, Chang herself has stated that "in the end [the U.S.] found no convincing evidence that he was either a Communist or a spy." *Asian Week*. 1999. 3 June, 8.

<sup>29</sup> Department of Energy Task Force Against Racial Profiling. 2000. *Final Report*, January.

<sup>30</sup> The entire episode surrounding the loyalty questionnaire is discussed in Weglyn, Michi. 1979. *Years of Infamy: The Untold Story of America's Concentration Camps*, 134-155.

<sup>31</sup> John Okada's *No-No Boy* (1976) is regarded as a landmark in Asian American fiction. Its protagonist is a no-no boy who returns after the war to a devastated community in Seattle.

<sup>32</sup> The account here is gathered from a variety of news sources, including *Washington Post*. 1994. 18 March, A3; *International Examiner*. 1996. 20 February, p. 1; *All Things Considered*. 1994. 21 March; and *San Francisco Chronicle*. 1994. 5 February, p. A17.

<sup>33</sup> *San Francisco Chronicle*. 1994. 5 Feb, A17.

<sup>34</sup> Tateishi, John. 1984. *And Justice For All: An Oral History of the Japanese American Detention Camps*, 107.

<sup>35</sup> Cho, Jim. 2000. After the Fire. *A Magazine*, Feb./Mar., 42, 69.

<sup>36</sup> *U.S. v. Wen Ho Lee*. 1999. Transcript of Proceedings, Motion Hearing, at 402-403, No. 99-1417-JC.

<sup>37</sup> Vrooman, Robert. 2000. What Went Wrong? Remarks presented at the New Mexico Chapter of the Association of Chinese-American Engineers and Scientists, 19 February.