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Beyond Black and White: Racializing Asian Americans in a Society Obsessed with O.J.

*Cynthia Kwei Yung Lee*

I. Introduction

The O.J. Simpson double murder trial has been called the "Trial of the Century" and has captured the attention of millions. The trial has raised interesting questions about the convergence of issues regarding race, class, and gender. Rather than extensively discussing these global issues,

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1. Former football star O.J. Simpson was charged with two counts of first degree murder for the deaths of his ex-wife Nicole Brown Simpson and her friend Ronald Goldman. The widely publicized trial was dubbed the "Trial of the Century." Marc Eliot, Kato Kaelin: The Whole Truth 16 (Harper Paperbacks 1995) (referring to the Simpson trial as "the so-called trial of the century"); Bill Boyarsky, Ito's Attempt to Control Brings Chaos to Trial, L.A. TIMES, Apr. 22, 1995, at A24 ("Let history judge when the 'trial of the century' went wrong"); Bill Boyarsky, Ito Succumbs to the Strensof Celebrity, L.A. TIMES, Nov. 15, 1994, at A25 (referring to the Simpson trial as the "trial of the century").


3. Bill Boyarsky, How Celebrity, Race Eclipse Spousal Abuse in Simpson Case, L.A. TIMES, Aug. 17, 1994, at B5 (opining that Simpson's celebrity and the race issue have obscured the spousal abuse issue); Lynell George, Focus on Simpson Troubling for Blacks, L.A. TIMES, July 10, 1994, at A1 (noting "[t]he discussion of race also obscures another issue central to the debate—domestic abuse"). Additionally, the Simpson trial was unique
this essay will focus on one aspect of the race issue that has largely been ignored: racial representations of Asian Americans that occurred in connection with the Simpson case. The implications of such representations are important not because they occurred in connection with the Simpson case, but because they reflect and highlight the fact that racial stereotyping of Asians and Asian Americans is so commonplace in today's society that it occurs even under the most unlikely circumstances and even by the most well meaning persons. This essay explains that it is important to be conscious of the socially constructed nature of race and the harmful consequences of racial representations.

In the context of the Simpson case, the race issue has been couched in terms of whether Simpson was tried because he is a black man, whether in that several of the major lawyers, as well as the majority of the jury, were African American, the lead prosecutor was a woman, and the judge was Asian American. Mitchell J. Chang, *Ito and Fung: Will They Ever Speak Perfect English*, ASIAN WEEK, June 16, 1995, at 2, 4 [hereinafter *Ito and Fung*].

4. In using the term "racial representations of Asian Americans," I refer to the production of racial images about Asians and Asian Americans that position Asian Americans in opposition to other Americans. See, e.g., Chang, *Ito and Fung*, supra note 3, at 2 (describing the term "racial representation" as "the production of racial images that position people of color in relation to white America"). See also Keith Aoki, "Foreignness" & Asian American Identities: Yellowface, World War II Propaganda and Bifurcated Racial Stereotypes,—UCLA ASIAN PACIFIC AMERICAN L.J.,—at 3 (forthcoming) (manuscript at 8 on file with author) (hereinafter *Foreign-ness & Asian American Identities*) (discussing the domestic racial hierarchy which "focuses on a bipolar racial model, dependent on defining whites in opposition to 'non-white' others"). Additionally, I do not claim to describe all of the racially insensitive portrayals of Asian Americans that have occurred in connection with the Simpson case. I understand there have been additional incidents that did not receive press coverage.

5. Because the Simpson case was unlike most criminal cases, it offers the American public a distorted view of the criminal justice system. Most criminal cases do not last for months, but are tried and concluded in a matter of days. Most criminal cases do not have twenty-five lawyers on each side. Dan Lee, *Levenson Shares Simpson Insights*, L.A. DAILY J., July 14, 1995, at 2. Most criminal defendants are not wealthy and famous, and most criminal cases are not broadcast live on several television stations. Terry Lunsford, *The One and Only: Don't Judge System by Excesses of the Simpson Trial*, L.A. DAILY J., Oct. 4, 1995, at 6.

6. This case involved an African-American defendant accused of killing his white ex-wife and her white friend. The attorneys on the case were predominantly African American and white. The jury was predominantly African American. The only connection Asian Americans had with the Simpson trial is in the fact that the presiding judge was Asian American and three of the witnesses were Asian American. The fact that so much racial stereotyping of Asian Americans could occur in connection with the Simpson case, a case in which the Asian American connection was relatively minor, is quite astounding.

7. Neil Gotanda, *Why "The Beat" is Wrong*, RAUFU SHIMPO, July 17, 1995 (noting that "racism has always included 'good people' who were unwitting participants in racist ideas, racist impulses, and racist culture").

8. See, e.g., *Racial Issues Cloud Supposedly Neutral Trial*, SAN JOSE MERCURY NEWS, Oct. 24, 1994, at 1F (noting that many blacks have accused prosecutors of "railroading Simpson because of his race"); Bill Boyarksy, *Predicting Black Jurors' Votes on Simpson*
racist police officers framed Simpson,9 and whether African-American juror were dismissed from jury duty because of their race.10 Additionally, surveys indicate that opinions regarding Simpson’s guilt or innocence are divided along racial lines, with blacks generally perceived as being more sympathetic toward Simpson than whites.11 The class issue has

9. See, e.g., Bill Boyarsky, Dealing With the Race Issue Gets No Easier, L.A. TIMES, July 11, 1995, at A16 (noting that “the Simpson defense team will concentrate on a theme that resonates with race—that the Los Angeles Police Department, long accused of hostility toward African Americans, conspired to frame the black sports hero”); Laurence A. Elder, Bottom line in the Simpson defense: ‘Blame racist cops’, S.D. UNION TRIB., Jan. 19, 1995, at B9 (suggesting that Simpson will walk because at least one of the black jurors will buy the defense argument that the evidence linking Simpson to the killings was planted by racist cops); Jeffrey Toobin, An Incendiary Defense, THE NEW YORKER, July 25, 1994, at 38 (reporting Simpson defense allegation that Los Angeles police detective Mark Fuhrman planted the bloody glove at Simpson’s Rockingham estate because of Furhman’s racist attitudes towards blacks). See also Norma Meyer and Matt Krasnowski, Judge allows racism testimony in O.J. trial, S.D. UNION TRIB., Jan. 21, 1995, at A3 (noting incident in the mid-1980s when police officer Mark Fuhrman allegedly expressed his contempt of interracial couples).


11. After the verdict of not guilty was rendered, the nation appeared to be divided along racial lines with blacks largely agreeing with the verdict and whites largely disagreeing with the verdict. The Verdict Is In: A City Divided, L.A. TIMES, Oct. 4, 1995, at B8. Even before the trial was over, one Harris poll revealed that sixty percent of whites believed Simpson was guilty compared to only twelve percent of African Americans. Jeffrey Toobin, Putting It in Black and White, THE NEW YORKER, July 17, 1995, at 31 (discussing differences in perception between white journalists and African-American journalist Dennis Schatzman, reporter for the Los Angeles Sentinel, a weekly newspaper devoted to the Los Angeles African-American community. Professor Robert Post has remarked upon this seeming difference of opinion: “Judging from the vastly different views about Mr. Simpson’s guilt among blacks and whites, many people have reluctantly concluded that the United States is really two nations divided by biases that warp perception. ‘The divisions are so deep and so seemingly irreconcilable... It’s one thing to differ about policy questions. But facts are supposed to be things upon which we agree.’” David Margolick, For Good or Ill, the Simpson Case Has Permeated the Nation’s Psyche, N.Y. TIMES, June 12, 1995, at C11. See also Donn Esmonde, Sad Truth: Simpson Trial Can’t Have Happy Ending, BUFFALO NEWS, Mar. 13, 1995, at B1 (“Surveys done early in the trial showed opinions on Simpson’s guilt were divided along racial lines, with blacks more likely to believe him innocent.”); Andrea Ford, D.A. Meets With Black Leaders on Fairness Issue,
been reflected in public opinion that wealthy criminal defendants like Simpson can hire expensive criminal defense attorneys to beat the system.\textsuperscript{12} Gender issues have surfaced in several different contexts. First, Simpson's history of domestic violence against his former wife, Nicole Brown Simpson, has put the spotlight on issues relating to spousal abuse and the battering of women.\textsuperscript{13} Second, criticisms of Marcia Clark,

\textit{L.A. TIMES}, July 20, 1994, at A12 ("A Field Poll released Tuesday shows that 62\% of the whites questioned, compared to 38\% of the blacks, said Simpson is 'very likely or somewhat likely' to be guilty of murder."); Richard Lee Colvin, \textit{Half Say They Are Sympathetic Toward Simpson}, \textit{L.A. TIMES}, June 28, 1994, at A16 ("Opinions are also split by race, with African Americans almost twice as likely as whites to sympathize with the black sports star. Seventy-four percent of the African-American respondents said they were either 'very' or 'somewhat' sympathetic toward Simpson, compared to 38\% of whites and 50\% of Latinos.").

Initially, there was speculation over whether black women jurors would be less sympathetic toward Simpson either because he had married a white woman (Nicole Brown Simpson) and had a white girlfriend (Paula Barbieri) or because of his history of domestic violence with Nicole Brown Simpson. Ellis Cose, \textit{Caught Between Two Worlds: Why Simpson couldn't overcome the barriers of race}, \textit{NEWSWEEK}, July 11, 1994, at 28 (noting that Simpson's marriage to a white woman has infuriated some black women); Larry Reibstein et al., \textit{Disorder in the Court}, \textit{NEWSWEEK}, Apr. 17, 1995, at 26 (noting that "Marcia Clark insisted during jury selection that black women would relate to spousal abuse and be sympathetic to the prosecution's case").

12. Elizabeth Gleick, \textit{Rich justice, poor justice}, \textit{TIME}, June 19, 1995, at 40 ("[T]he Simpson case has demonstrated perhaps more starkly than ever before that in the American justice system, as in so much else in this country, money changes everything—and huge amounts of money change things almost beyond recognition."). See also Barbara Babcock, \textit{Equal Justice-and a Defendant With the Money to Exercise Every Right}, \textit{L.A. TIMES}, July 10, 1994, at A26 ("We provide extensive rights to criminal defendants in theory, but do so in a system that usually allows only the affluent to employ those rights in practice."); Linn Washington, Jr., \textit{Simpson and Abu-Jamal: A Tale of Two Defendants}, \textit{L.A. DAILY J.}, June 28, 1995, at 6 (opining that wealth provides "a better chance that the courtroom experience will be closer to the constitutionally mandated fair trial").

In addition to his wealth, Simpson's celebrity status made the prosecution's job more difficult because the Simpson jurors, unlike jurors in most other cases, actually presumed that Simpson was innocent (which is what all jurors should do). R. Richard Banks, \textit{It's His Celebrity, Not His Race}, \textit{L.A. TIMES}, July 11, 1994, at B7; Michael D. Harris, \textit{Experts Grade Prosecution's Simpson Case}, \textit{L.A. DAILY J.}, July 3, 1995, at 1 ("From the start, analysts said the prosecution's greatest obstacle in obtaining a conviction was Simpson's celebrity status as a beloved former football great").

the lead prosecutor on the case, have sometimes reflected patronizing and biased attitudes against women lawyers. Additionally, Simpson’s defense team has been criticized for the absence of female attorneys as


14. Clark has been negatively described as “hysterical,” a term rarely used to describe male attorneys who make impassioned arguments in court. In May of 1995, after Clark gave a particularly impassioned argument against the admission of Simpson’s tape-recorded statement to police, defense attorney Johnnie Cochran accused her of being “hysterical.” Andrea Ford and Henry Weinstein, Witness May Have Opened Door for Simpson Interview, L.A. TIMES, May 25, 1995, at A1, A26. Clark retorted that Cochran’s characterization of her remark was sexist. Id. See also Gail Harper, Negating Women with Words, L.A. DAILY J., June 2, 1995, at 6 (noting that when a man raises his voice during an argument, he is considered “masterful” and a good advocate, but when a woman raises her voice, she is considered “hysterical”). The word “hysteric” is derived from the Greek word “hystericos” which means “of the womb.” Hysteria is a disorder stemming from a “suffering in the womb.” Id. (quoting the Random House Dictionary).

She has also been described as “aggressive,” even though aggressiveness is usually thought of as a plus when the competence of a male attorney is at issue. As J. Cindy Eson notes, “Our society values men and masculine characteristics more highly than women and feminine characteristics. Nurturance, accommodating warmth, and eagerness to soothe hurt feelings are thought of as feminine, while assertiveness, competitiveness, dominance, and standing up well under pressure are considered masculine. However, women who display these highly valued masculine traits are not held in the same high regard as men who display them. Instead, they are labeled as deviants because they do not conform to the perception of the ideal woman: less aggressive, less independent, less dominant, less active, more emotional, and more indecisive.” J. Cindy Eson, Note, In Praise of Macho Women: Price Waterhouse v. Hopkins, 46 U. MIAMI L. REV. 835, 845 (1992) (also noting that “aggression, like other characteristics attributed to males, is negatively evaluated when displayed by women”). At least some members of a Simpson case focus group conducted by a prosecution consultant in Phoenix, Arizona in August 1994 described Clark as “pushy,” “aggressive,” and even a “bitch.” Michael D. Harris and Thom Mrazek, What Prospective Jurors Think of Clark, L.A. DAILY J., Oct. 21, 1994, at 2. Prospective jurors, however, seemed to have a good impression of Clark at the start of the trial, describing her as “competent,” “professional,” and “intelligent.” Id. See also Marcia Clark: A Warm and Fuzzy Makeover?, L.A. DAILY J., Oct. 4, 1994 at 2 (noting that Marcia Clark has been working on her image, trying to counter reports that she appeared grim, humorless, and even angry). Not all of the commentary on Marcia Clark has been negative. Jeffrey Toobin, True Grit, THE NEW YORKER, Jan. 9, 1995, at 28-35 (portraying Clark as a hard-working, intelligent, and ethical prosecutor).

In yet another example of the way women are treated differently than men, the media paid an inordinate amount of attention to Marcia Clark’s change of hairstyle when she went from curls to straight hair. Tina Daunt, A Good Hair Day Prosecutor Marcia Clark Sheds Curls for a New Look, L.A. TIMES, April 12, 1995, at A17 (noting that Clark’s hairdresser received more than thirty requests for interviews from the media within one day of Clark’s new hairdo). One wonders whether the media would have paid as much attention had Christopher Darden, Robert Shapiro, or F. Lee Bailey gotten their hair cut.
visible members of the Dream Team, particularly because the issue of domestic violence has played such a key role in this case.

While the foregoing issues relating to race, class, and gender have received a great deal of attention, one dimension of the race issue has largely been ignored. In legal scholarship, race is often analyzed and discussed as if it were solely a black and white issue. The Simpson case, not surprisingly, has been no exception. To be complete, however, a discussion of race and the Simpson trial should include consideration of how Asian Americans have been portrayed and affected

15. Simpson’s core defense team has earned the nickname “Dream Team” because it is composed of several famous criminal defense attorneys (Johnnie Cochran, Robert Shapiro, F. Lee Bailey, Alan Dershowitz, Gerald Uelmen, Barry Scheck, and Peter Neufeld, to name a few).

16. Les Payne, O.J.’s Subplot: Gender and Race, NEWSDAY, Feb. 5, 1995, at A36 (asking “What about the defense, can it be a Dream Team, in a case so gender specific, without a single woman attorney?”). In fairness to Simpson’s defense team, at least two women attorneys worked behind the scenes on his case. Orenthal J. Simpson, I WANT TO TELL YOU (1995) (responding to more than 300,000 pieces of mail by discussing allegations of spousal abuse and his assertion of innocence). At least one woman attorney appeared regularly in the courtroom as part of the Simpson defense team during the preliminary hearing. Alan Abrahamson, Simpson Legal Fees Could Run Into Millions, L.A. TIMES, July 9, 1994, at A1, A21 (noting that Shapiro associate Sara L. Caplan appeared regularly in court during the preliminary hearing). Additionally, Shawn Chapman, an African-American woman, handled a short cross-examination of a witness early in the trial.


18. Bill Boyarsky, Ito’s Attempt to Control Brings Chaos to Trial, L.A. TIMES, Apr. 22, 1995, at A24 (noting that most legal analysts have been looking at the Simpson jury in “simple black-white racial terms”).

19. The term “Asian American” originated in the 1960s when members of the various Asian immigrant groups began to “act politically together as Asian Americans.” Keith Aoki, Foreign-ness & Asian American Identities, supra note 4, at 8 n.18, citing WILLIAM WEI, THE ASIAN AMERICAN MOVEMENT 1 (1993). Professor Robert Chang defines the term “Asian American” as follows:

There is tremendous diversity within the category “Asian American,” in which I include persons of Asian descent who live in the United States regardless of citizenship status. I hesitate to define ‘Asian American’ further because this term is malleable and is often used by the dominant
by the trial. To enhance the discussion of race, class, gender, and the Simpson trial, this essay focuses on racial representations of Asian Americans, one aspect of the race issue that is too often overlooked.

II. Racial Representations of Asian Americans

Many people believe that racism and discrimination against Asian Americans is not a major social problem today. This essay attempts to encourage a reconsideration of this popular, but misguided, belief.

20. "To focus on the black-white racial paradigm is to misunderstand the complicated racial situation in the United States. . . . It ignores the complexity of a racial hierarchy that has more than just a top and a bottom." Chang, Toward an Asian American Legal Scholarship, supra note 17, at 1267.


22. One with such a belief might consider the following facts. In 1982, Vincent Chin, a Chinese American, was brutally beaten by two white autoworkers in Detroit who thought he was Japanese and responsible for the loss of jobs in the automobile industry. See United States v. Ebens, 800 F.2d 1422 (6th Cir. 1986) and United States v. Ebens, 654 F. Supp. 144 (E.D. Mich. 1987). See also Chang, Toward an Asian American Legal Scholarship, supra note 17, at 1252. The two men pleaded guilty to manslaughter and were sentenced to only three years of probation and fines of $3,780. Id. When discussing the sentence that he imposed on the two men, the judge explained, "[h]ad it been a brutal murder, those fellows would be in jail now." The Murderer Next Door, MOTHER JONES, July/August 1989, at 54. Asian Americans are regularly the targets of anti-Asian bigotry, ranging from ignorant and insensitive remarks to stereotypical portrayals of Asians to name-calling. Pat K. Chew, Asian Americans: The "Reticent" Minority and Their Paradoxes, 36 WM & MARY L. REV. 1, 19 (1994) [hereinafter Asian Americans: The "Reticent" Minority]. Asian Americans are also the frequent victims of hate crimes, including vandalism, assault, and sometimes even murder. U.S. Commission on Civil Rights, CIVIL RIGHTS ISSUES FACING ASIAN AMERICANS IN THE 1990S 22 (1992); see also Jerry Kang, Note, Racial Violence Against Asian Americans, 106 HARV. L. REV. 1926 (1993). Typically, such incidents are met with "little public attention and unresponsive official reactions." Chew, Asian Americans: The "Reticent" Minority and Their Paradoxes, supra note 22, at 19. As part of the backlash against images of Asian Americans as hard working, innately intelligent, unfair competition, in 1984, the University of California at Berkeley adopted an admissions policy which raised the requisite verbal score on the SAT to 400, to limit
Throughout the course of the Simpson trial, Asian Americans associated with the case have been the subjects and targets of racial jokes and stereotypes. These racial representations of Asian Americans, which range from ignorant and insensitive remarks to stereotypical portrayals of Asians, have the deleterious effect of lumping all Asians together as a group of people with similar characteristics, which in turn de-individualizes both Asians and Asian Americans. Representing Asian Americans racially ignores the reality of diversity within the Asian American community and promotes the social construction of images of Asian Americans.

the number of Asians being admitted to the school. Grace W. Tsuang, Note, Assuring Equal Access of Asian Americans to Highly Selective Universities, 98 YALE L.J. 659, 674 (1989). Despite the widespread belief that Asian Americans are “making it” in American society today, in 1990, Asian Americans comprised only 1.4% of the total number of lawyers and 1.02% of the total number of judges in America. Chew, Asian Americans: The “Reticent” Minority, supra note 22, at 47-48. The ease with which Asian Americans connected with the Simpson case have been racially represented should encourage those not already convinced to rethink their belief that Asian Americans are not discriminated against today.

23. The joking has been racial in nature because the “Asian-ness” of Asian Americans has been the focus.

24. See infra notes 93-111 (discussing Shapiro and Cochran remarks about Fung).

25. See infra notes 27-63 (discussing D’Amato’s use of a distorted Japanese accent to criticize Ito); 116-142 (discussing KKBT-FM portrayals of Asian Americans); and 64-92 (discussing OJ. ’s Legal Pad).

26. In using the term “Asian American,” I do not make the claim that there is an “essential,” unitary, Asian American experience. In so doing, I follow the lead of Professor Robert Chang who explains:

I do not make the claim that there is an unitary, essential Asian American experience. Such a claim would be foolhardy given the diversity encompassed in the category ‘Asian American’ and in its intersection with gender, class, sexual orientation, and disability. However, acknowledging the limitations behind the category ‘Asian American’ does not render the term ‘Asian American’ meaningless. For example, ‘Asian American’ can be used as a ‘strategic identity.’ Or being Asian American can be used as part of one’s ‘multiple consciousness.’ Even though the category ‘Asian American’ can (and perhaps should) be subverted, one can still ‘tak[e] advantage of a civil rights heritage that is grounded on identity politics.’

Chang, Toward an Asian American Legal Scholarship, supra note 17, at 1247 n.13 (citations omitted). For an excellent discussion of problems involving gender essentialism, see Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 STAN. L. REV. 581 (1990) (discussing problems with gender essentialism).

Americans that fit preconceived stereotypical notions of what it means to be Asian. Such construction of "Asian-ness" ignores the fact that Asian Americans are made up of immigrants from countries as diverse as Vietnam, Korea, Singapore, Laos, Cambodia, Indonesia, and Malaysia. Asian Americans also include Americans of Japanese, Chinese, and Filipino descent who may have generations of family ties in the United States. Asian Americans are men, women, and children, both heterosexual and homosexual. Notwithstanding the diversity within the category of "Asian American," it is useful to speak of Asian Americans as a group in addressing the fact that others have not been willing or able to respect the differences amongst Asian Americans or our individuality as human beings beyond this racial category.28 In this essay, I will describe three different

group whose very social construction inclines members of the majority race to fear us, to regard us as potential troublemakers, to cross the street when we approach them on the sidewalk at night . . . We [blacks] come to be seen as absent fathers, welfare mothers, lazy office worker 'quota queens,' and so on."). Omi and Winant explain:

Our ability to interpret racial meanings depends on preconceived notions of a racialized social structure. Comments such as, "Funny, you don't look black," betray an underlying image of what black should be. We expect people to act out their apparent racial identities; indeed we become disoriented when they do not. The black banker harassed by police while walking in casual clothes through his own well-off neighborhood, the Latino or white kid rapping in perfect Afro patois, the unending faux pas committed by whites who assume the non-whites they encounter are servants or tradespeople, the belief that non-whites they encounter are qualified persons hired to fulfill affirmative action guidelines, indeed the whole gamut of racial stereotypes—that "white men can't jump," that Asians can't dance, etc., etc.—all testify to the way a racialized social structure shapes racial experience and conditions meaning.

Omi and Winant, RACIAL FORMATION, supra note 27, at 59.

28. I do not claim to represent the voice of all Asian Americans. Asian Americans have different views on many different issues. Some Asian Americans support affirmative action. Wu, Neither Black Nor White, supra note 17. Other Asian Americans are against affirmative action. Amy Wallace and Dave Lesher, UC Regents, in Historic Vote, Wipe Out Affirmative Action, L.A. TIMES, July 21, 1995, at A1, A20 (the two Asian Americans on the University of California's Board of Regents voted in favor of proposals that abolished consideration of race in admissions, hiring, and contracting). See also Selena Dong, "Too Many Asians": The Challenge of Fighting Discrimination Against Asian-Americans and Preserving Affirmative Action, 47 STAN. L. REV. 1027, 1033 (1995) (pointing out that Henry Der, executive director of Chinese for Affirmative Action, and Leland Lee, a member of the San Francisco School Board, support racial caps imposed by Lowell High School in San Francisco to limit the number of Chinese students as necessary to achieve desegregation while the Chinese American Democratic Club charges that the caps unlawfully discriminate against Chinese students). Some Asian Americans were not offended by Robert Shapiro's "Hang Fung" fortune cookie remarks, while other Asian Americans were terribly offended. See infra notes 104-105. To speak as though Asian Americans were a single, monolithic, group would be to claim an essential Asian American-ness which does not exist. Nonetheless, the term "Asian American" can serve as a unifying identity based on the common experience of Asian Americans because of the inability of most non-Asian Americans to distinguish between different Asian groups."
ways in which Asian Americans connected with the Simpson case have been racially represented.  

A. **ASIAN AMERICAN AS "FOREIGNER"**

Chang, *Toward An Asian American Legal Scholarship*, supra note 17, at 1245-46 n.7.

This tension between wanting to be treated equally (as full-blooded Americans) and wanting our differences to be respected (the differences between and among Asian Americans as well as the differences between Asian Americans and non-Asian Americans) is a classic dilemma which has been called “the classic dialectic of reason to prejudice.” This dilemma is not new. Professor Anthony Appiah captures the essence of this “classic dialectic of reason to prejudice”:

The thesis in this dialectic . . . is the denial of difference . . . I call this pattern the class dialectic for a simple reason: we find it in feminism also—on the one hand, a simple claim to equality, a denial of substantial difference; on the other, a claim to a special message, revaluing the feminine Other not as the helpmeet of sexism, but as the New Woman.  


29. Initially, I thought I would describe these incidents in chronological order. I found, however, that there were so many racial representations of Judge Ito and Dennis Fung that ordering the incidents chronologically was too cumbersome. I then looked for commonalities in the racial representations and found that Senator D’Amato’s use of a distorted Japanese accent to mock Judge Ito as well as the depictions of Judge Ito in O. J. ’s *Legal Pad* both discursively constructed Ito, a third generation Japanese American, as a “foreigner.” “Asian American as ‘Foreigner’” seemed to capture this idea.

The second section is called “‘Name’ Calling” because one way to racially represent Asian Americans is to draw attention to our Asian heritage by making fun of our Asian names. Many Asian Americans use their English first name rather than their Asian first name to avoid this problem. The Dennis Fung remarks by Robert Shapiro (“These [fortune cookies] are from the Hang Fung Restaurant”) and Johnnie Cochran (“We’re having Fung”) both played on Fung’s Chinese last name. Another way to racialize Asian Americans is to call us derogatory names, such as “Nip,” “Chink,” “Gook,” “Chinaman,” Howard Stern’s use of the word “Nip” to describe Judge Ito is an example of this type of name calling.

The third section is called “Asian American as ‘Different’” because it highlights the various other images that have been constructed about Asian Americans, in addition to the image of Asian American as “foreigner.” For example, many people assume that all Asian people are smart and hard-working. This has caused backlash against Asian Americans who are seen as threatening competition for scarce jobs and spots in higher education. Many people assume that most Asians are recent immigrants and speak with a heavy accent. This assumption becomes apparent when a well-meaning individual asks an Asian, “How did you learn to speak English so well?” or tells an Asian, “You speak such good English,” as if surprised by that fact. Some people even assume that all or most Asian people know martial arts. This can lead to violent acts against Asian Americans.  

*See, e.g.*, State v. Simon, 646 P.2d 1119, 1121 (Kan. 1982) (describing acquittal of a defendant who shot his Asian next-door neighbor, claiming that he thought his neighbor knew martial arts because he was Asian).

30. Professor Neil Gotanda discusses the notion of “foreignness” as one of the critical features of legal treatment of non-whites, such as Japanese Americans and Chinese Americans. Gotanda, *Other Non-whites* in *American Legal History*, supra note 17.
1. Senator D'Amato's Use of a Distorted "Japanese" Accent

On April 4, 1995, Senator Alfonse M. D'Amato, a New York Republican who chairs the Senate Banking Committee, used an exaggerated and distorted Japanese accent during an appearance on a radio talk show to criticize Judge Lance Ito's handling of the Simpson trial. Replacing his "R"s with "L"s, D'Amato quipped:

Judge Ito will never let it [the Simpson trial] end. Judge Ito loves the limelight. He is making a disgrace of the judicial system. Little Judge Ito. For God's sake, get them in there for 12 hours; get this thing over. I mean, this is a disgrace. Judge Ito with the wet nose. And then he's going to have a hung jury. Judge Ito will keep us [the U.S. Senate] from getting televised for the next year.

D'Amato's remarks set off a firestorm of criticism. Denny Yasuhara, the National President of the Japanese Americans Citizens League, said the Senator's remarks were an insult to all Japanese Americans and a "shameful display of ethnic stereotyping." Congresswoman Patsy Mink, a Democrat from Hawaii, expressed shock and disappointment at the Senator's remarks, stating, "[t]o mock a distinguished judge because of his ethnic background is the lowest form of racial discrimination." Representative Norm Mineta, a Democrat from San Jose, California, angrily asked, "[w]hat [do] we, as Americans of Japanese ancestry, have to do to be able to prove that we are Americans[?]" Kazu Ijima, representing the Committee Against Anti-Asian Violence, commented, "[i]t's inexcusable for a U.S. Senator to talk like that. It shows the depth of his bigotry."

34. Van Gelder, D'Amato Mocks Ito and Sets Off Furor, supra note 33.
35. Politicians Demand D'Amato Apologize to Judge Lance Ito, Japanese American Community, RAFL SHIMPO, Apr. 6, 1995.
36. Editorial, D'Amato's Insult, supra note 33.
37. Fulwood, N.Y. Sen. D'Amato Apologizes for Using Japanese Accent in Parody of Judge Ito, supra note 31. Additionally, Hazel N. Dukes, President of the New York branches of the National Association for the Advancement of Colored People, called D'Amato's remarks uncouth and said they showed "he's not the Senator for all the people of New York." Van Gelder, D'Amato Mocks Ito and Sets Off Furor, supra note 33.
After receiving more than one hundred calls about his comments, D'Amato issued a terse two sentence apology on April 5 that was almost worse than his original attempt at ethnic humor: “If I offended anyone, I'm sorry. I was making fun of the pomposity of the judge and the manner in which he's dragging the trial out.”

On April 6, D'Amato issued a fuller apology, delivered on the floor of the U.S. Senate, to Judge Ito and all Asian Americans. This time, D'Amato's apology actually sounded like an apology: “As an Italian American, I have a special responsibility to be sensitive to ethnic stereotyping. I fully recognize the insensitivity of my remarks about Judge Ito. My remarks were totally wrong and inappropriate.” D'Amato added that he was “deeply sorry for the pain” he had caused Judge Ito and others.

What is disturbing about D'Amato's remarks is not so much what he said, but how he said it. In using an exaggerated Japanese accent, D'Amato drew attention to what he must have considered to be Judge Ito's most distinctive trait—his Japanese heritage. Disregarding the fact that Judge Ito's English is articulate and accent-free, D'Amato poked fun at

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Kenneth Jacobson, Assistant National Director of the Anti-Defamation League of B'nai Brith, stated, “It's the kind of thing, whether done in jest or not, that is painful to people.” Id. The Gardena City Council and the Carson City Council passed resolutions officially condemning D'Amato for his Judge Ito remarks. Alan Janson, Resolution Denounces D'Amato for Ito Imitation, DAILY BREEZE, May 21, 1995, at A2.

Not everyone criticized D'Amato for his remarks. Joseph Sciame, President of the Grand Lodge of New York's Order Sons of Italy in America, defended D'Amato's statements, stating that his remarks sounded like Mr. D'Amato “in one of his lighter moments.” Van Gelder, supra note 33. Mayor Rudolph Giuliani also defended D'Amato, explaining, “I think he sincerely feels sorry for it and understands it was not what he intended.” Id.

38. Van Gelder, D'Amato Mocks Ito and Sets Off Furor, supra note 33 (“Harvey Valentine, a spokesman for Mr. D'Amato, said the Senator's offices in Washington and New York received more than 100 calls today about the comments.”). Apparently, D'Amato's staff did not consider this fact very significant. D'Amato spokesperson Harvey Valentine stated that the number of telephone calls received about D'Amato's comments was “not a lot” when compared with the number of telephone calls received by the Senator about other issues. Letter from Julie Su, Member of the Board of Directors, Southern California Chinese Lawyers Association, to Senator Alfonse D'Amato (Apr. 12, 1995) (on file with author).


42. Wackerman, Senator Alfonse M. D'Amato's Japanese slur against Judge Lance Ito, supra note 40.

43. Id. (“One cannot be sure why the Senator used an accent, since Judge Ito does not himself speak with one.”). In stating that Judge Ito's English is accent-free, I succumb to the “norm of non-accent” when, in reality, we all have an accent. See Mari J. Matsuda, Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last
Ito's nonexistent Japanese accent, suggesting that Ito's English is inarticulate and unsophisticated because of his Japanese ancestry. Even if the judge did have an accent, D'Amato's use of a distorted Asian accent would still be problematic since it would suggest that people with accents may be made fun of for being different. D'Amato's poor imitation of a Japanese accent reinforces the popular belief that Asian Americans are "foreigners," people with heavy accents who come from far off lands. This deeply ingrained notion of the Asian American as "foreigner" is reflected every time a well meaning individual asks an Asian American what country she is from. Many Asian Americans not only are born in the United States but also often have longstanding roots in America. Judge Ito, for example, is a third generation Japanese American. This means that not only Judge Ito, but also his parents were born in the United States.

D'Amato's apology is also revealing. The terseness of his initial apology suggests that D'Amato did not realize just how offensive his

Reconstruction, 100 YALE L.J. 1329, 1361 (1991) [hereinafter Voices of America] ("Everyone has an accent, but when an employer refuses to hire a person 'with an accent,' [that employer is] referring to a hidden norm of non-accent—a linguistic impossibility, but a socially constructed reality.").

It is also interesting that D'Amato referred to Judge Ito as "little Judge Ito," reinforcing the stereotypical image of the Asian male as a physically small person. How to Tell Your Friends From the Jerks, TIME, Dec. 22, 1941, at 33 ("Virtually all Japanese are short. Japanese are more likely to be stockier and broader-hipped than short Chinese.") (emphasis added).

44. Gotanda, Why "The Beat" is Wrong, supra note 7 (noting the double harm in using caricatures of Asian Americans with thick Asian accents: (1) such caricatures suggest that it is fine to make fun of anyone who looks Asian, and (2) such caricatures suggest that people with accents are below real Americans who can speak good English).

45. Professor Pat Chew, a law professor at the University of Pittsburgh, recounts the following incident:

When people first meet me, it is not unusual for them to comment, "You speak so well, you don't have an accent," intending their observation to be a compliment. "Where are you from?" they continue, expecting my response to be a more foreign and exotic place than Texas or Pennsylvania.

A tall red-haired, casually dressed gentleman that I didn't know recently knocked on my office door. "Yes?" I greeted. "Sorry to interrupt you," he stammered, "I was visiting the law school and I saw the name on your door, and old family friends are named 'Chew,' and I thought you might be related, but," he paused, "I can see I'm wrong. They're American."

Chew, Asian Americans: The "Reticent" Minority and Their Paradoxes, supra note 22, at 33 (emphasis added). See also Gotanda, The "Miss Saigon Syndrome," supra note 21, at 1096 (discussing the presumption that whites and African Americans are American citizens and that non-black minorities are foreigners).


47. Bill Boyarsky, Ito Succumbs to the Sirens of Celebrity, supra note 1 (noting that Judge Ito is a third generation Californian).
comments were. 48 D’Amato initially defended his statement as a legitimate criticism of Judge Ito’s “pomposity” and handling of the trial, failing to comprehend that it was his mocking use of a distorted Japanese accent that was offensive. 49 Moreover, by using the conditional phrase, “if I offended anyone,” D’Amato indicated that he believed his remarks were not truly offensive or that the offensiveness of his remarks was contingent upon the listener’s level of sensitivity. 50

Perhaps D’Amato, like others who racialized Asian Americans involved in the Simpson trial, was disturbed by the dissonance between his own stereotypical notions of what an Asian male should look like (short person with a heavy accent who is good at math and science, not law) and the reality of Judge Ito, an intelligent, articulate judge presiding over perhaps the most famous trial of the century. 51 To appease this discomfort, to relegate Judge Ito back to the realm of comfortable stereotype, D’Amato resorted to criticizing the judge through racial mockery.

It is noteworthy that Dr. Henry Lee, one of the defense witnesses, was not similarly mocked even though Dr. Lee, unlike Judge Ito, has a heavy accent. Perhaps Dr. Lee, who was one of the last witnesses to appear in the trial, escaped racialization because of the loud protest from the Asian American community over earlier incidents in which Asian Americans associated with the Simpson trial were racially represented. Or perhaps

48. The fact that D’Amato issued a much more elaborate apology the next day indicates that either D’Amato had a change of heart or that his staff realized the inadequacies of his first apology and wrote a better apology to please D’Amato’s constituency. Indeed, D’Amato received a great deal of flack for his remarks. Syracuse University law students voted 106 to 94 to withdraw their invitation to D’Amato, an alumnus of the school, to speak at their May 21, 1995 commencement even though D’Amato’s son was one of the students in the graduating class. Susan Benkelman, Nation/World Briefs, Newsday, Apr. 20, 1995, at A9.

49. Stanley Mark, the Program Director for the Asian-American Legal Defense and Education Fund, remarked that he was dissatisfied with D’Amato’s apology because it did not mention the accent used in parodying Judge Ito. “We expect[ed] an apology from Senator D’Amato, but the apology doesn’t cover the manner in which he made these statements, which was very offensive. If anyone has any doubt there is continuing discrimination against Asian-Americans, his statements have laid that to rest.” Van Gelder, D’Amato Mocks Ito And Sets Off Furor, supra note 33. See also supra notes 23-26 (detailing criticisms of D’Amato).

50. As Michael Finucane, Executive Director of the Asian Pacific American Labor Alliance, remarked, “The senator’s statement, that ‘if I offended anyone, I’m sorry,’ fails to acknowledge that his remarks were inherently offensive, not just to Japanese Americans, but to all Americans who believe in a civil society.” May Lam, Sen. D’Amato Offers 2 Apologies for ‘Humor’, Asian Week, Apr. 14, 1995, at 1, 11 (emphasis added). Representative Norm Mineta, a Democrat from California, also noted the non-apologetic nature of D’Amato’s first apology: “For him to say, ‘if I offended anybody,’ . . . if he doesn’t recognize and comprehend the nature of what he did then I feel very, very sorry for him.” Politicians Demand D’Amato Apologize to Judge Lance Ito, Japanese American Community, supra note 35 (emphasis added).

51. Chang, Ito and Fung, supra note 3 at 2.
Dr. Lee so nicely fit the stereotypical Asian male figure—heavy accent, good at science, intelligent, and mild-mannered—that it was not necessary to reconcile the stereotype with the reality through racial representation.

Similar racialization of Asian Americans (equating Americans of Japanese descent with Japanese nationals) occurred during World War II when the United States was at war with Japan. After Japan bombed Pearl Harbor on December 7, 1941, hostility towards Japan was extended to all persons of Japanese ancestry, including Japanese Americans who were born in the United States. Japanese Americans were mistrusted because they were believed to be “a large, unassimilated, tightly knit racial group, bound to an enemy nation by strong ties of race, culture, custom and religion.” Beginning in 1942, all persons of Japanese ancestry on the West Coast, including Japanese-American citizens, were dispossessed of their property and sent out of state to be incarcerated in internment camps solely because their race made them a distrusted class. The internment was approved by the government even though there was no evidence that Americans of Japanese descent were disloyal to the United States. Those interned were not allowed to leave the internment camps until 1945. Even though the United States was at war with Germany and Italy, as well as Japan, persons of German and Italian ancestry were not similarly incarcerated.

In Korematsu v. United States, the United States Supreme Court upheld the constitutionality of the incarceration of American citizens of Japanese descent during World War II. Even though only persons of Japanese descent were interned, Justice Black, writing for the majority, denied that

52. Lorraine K. Bannai and Dale Minami, Internment During World War II and Litigations, in ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY, 41 STAN. L. REV. 61, 70 n.38 (1988) ("Whereas immigrants from Germany and Italy remained at liberty during the war, American citizens as well as resident aliens of Japanese descent living on the West Coast were excluded from this area and interned in camps in remote areas of the West.") See also Yamamoto, Korematsu Revisited, supra note 55, at 14.
the internment had anything to do with race, explaining, "Korematsu was not excluded . . . because of hostility to him or his race. He was excluded because we [were] at war with the Japanese Empire . . . ."59

The Korematsu opinion reflected popular sentiment at the time. Japanese Americans were considered suspect because of presumed loyalty to Japan rather than America. In support of the internment of Japanese Americans, the mayor of Los Angeles remarked, "[o]f course they [the Japanese Americans] would try to fool us. They did so in Honolulu and in Manila, and we may expect it in California."60 A newspaper columnist echoed the mayor's sentiments, stating that the lack of sabotage "is a sign that the blow is well-organized and that it is held back until it can be struck with maximum effect."61 Lieutenant General John L. DeWitt summed up the prevailing American view with the following:

The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become 'Americanized,' the racial strains are undiluted . . . . It, therefore, follows that along the vital Pacific Coast over 112,000 potential enemies, of Japanese extraction, are at large today.62

Although the case has been heavily criticized, Korematsu is still good law.63

The attitudes and beliefs that led many Americans to distrust their fellow Americans of Japanese descent in the 1940s are still alive and well today in some circles. During the 1988 debates over whether Japanese Americans should receive reparations for their World War II internment,64 Senator Jesse Helms argued that reparation should not take place unless the Japanese government compensated the families of Americans

59. Id. at 223 (emphasis added).
60. Wu, Neither Black Nor White, supra note 17, at 234 (citing Roger Daniels, Concentration Camps USA: Japanese Americans and World War II 61 (1972)).
61. Id. at 235 (citing Peter H. Irons, Justice at War 60 (1983)).
62. Id. (citing Ronald Takaki, Strangers From a Different Shore: A History of Asian Americans 391 (1989)).
killed during the attack on Pearl Harbor. In making this argument, Senator Helms, like his predecessors, made no distinction between Japanese Americans (American citizens of Japanese descent) and Japanese nationals (foreigners). Another troubling comment in the 1980s came from the largest newspaper in Indiana which editorialized its support of the internment during World War II, arguing that Japanese Americans posed a genuine threat and that Americans should not feel ashamed of the incident.

While Senator D'Amato may not harbor the same sentiments held by many during World War II, his use of a distorted Japanese accent is troubling because it reinforces the socially constructed image of the Asian American as "foreigner" and encourages the belief that Asian Americans are, first and foremost, Asian, rather than full-fledged Americans. It is disappointing that Judge Ito, a distinguished judge whose family has been in the United States for three generations, can today be the target of the same type of racial stigmatization that his parents, who met in an internment camp, suffered more than fifty years ago.

2. O.J.'s Legal Pad

In May 1995, Villard Books published O.J.'s Legal Pad, a satire on the legal pad that Simpson wrote in throughout the course of the trial.

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66. Wu, Neither Black Nor White, supra note 17, at 236 (citing Voices From the Press, BRIDGE: Asian American Perspectives, Winter 1981-82, at 18 ("The 1941 hysteria against the Japanese—genuine fear of national destruction—was sufficient to induce mass deportation . . . . But the Japanese Americans were lucky. They stayed in clean, safe camps . . . few Americans will, or should, feel ashamed about it.") (quoting Indianapolis News, July 21, 1981).

67. Stewart Kwoh and Julie Su, Individuals Lose When a Group is Demeaned—Racism: Lance Ito was Ridiculed by a Senator not as a Judge, but as a Japanese, L.A. TIMES, Apr. 25, 1995 at B7 [hereinafter Individuals Lose When a Group is Demeaned]. As Guy Aoki, Executive Director of Media Action Network for Asian Americans, explained, "Some people just can't accept the fact that Americans can have Asian faces." Telephone Interview with Guy Aoki, Executive Director, Media Action Network for Asian Americans (July 6, 1995).

68. Ito graduated from the University of California at Berkeley's Boalt Hall School of Law in 1975. After two years as an associate at a private law firm, Ito practiced for ten years as a Deputy District Attorney in Los Angeles before becoming a judge. In 1992, Ito was named Trial Judge of the Year by the Los Angeles County Bar Association. Judicial Profiles, Vol. II (Daily Journal Corp. 1992).

69. Gail Diane Cox, Minimalist Judge: Low-key Lance A. Ito presides over the Keating Criminal Trial, NATIONAL L.J., Nov. 25, 1991, at 1, 30 (noting that Ito's parents, Southern California schoolteachers, met in a World War II relocation camp for Japanese Americans).

70. HENRY BEARD & JOHN BOSWELL, O.J.'S LEGAL PAD (Villard Books 1995). O.J.'s Legal Pad does not merely racially represent Asian Americans through its depictions of
O.J.’s Legal Pad purportedly contains the doodles that Simpson made while in court and includes several cartoon drawings depicting Judge Ito as a slant-eyed, grinning, Oriental. In an attempt to disclaim responsibility for any offensive material in the pamphlet, the authors warn readers on the cover of the pamphlet that O.J.’s Legal Pad is “[a] spoof, a whole spoof, and nothing but a spoof.”

The first picture of Judge Ito in O.J.’s Legal Pad is of a smiling, slant-eyed Ito, wearing a military-like helmet and wielding a gavel attached to a bayonet, conjuring up images of a samurai warrior. The second picture of Judge Ito depicts an airplane marked “U.S.” dropping what looks like an A-bomb on a smiling, slant-eyed, Judge Ito. The caption underneath this picture reads:

ITO, ITO, NOT SO NEATO [this line is crossed out]

Judge Ito. It also contains several captions discursively constructing African Americans through Simpson as unintelligent, criminal, and sex-craved. For example, the second page of the pamphlet contains the following note: “Johnnie C.—Possib. Angle: DNA test like SAT test—UNFAIR TO BLACKS!” This is a transparent attempt to undermine the argument that ostensibly neutral tests like the SAT may be biased against African Americans because of the questions asked. This “joke” reinforces the stereotype that African Americans claim unfairness without justification whenever objective tests indicate incompetence or guilt or other failings. Other references in the pamphlet suggest that Simpson is guilty, including the following notes to Johnnie Cochran: “JOHNNIE: EMERGENCY!!! WHAT LEG DID I LIMP ON IN FRONT OF JURY? LEFT? RIGHT?” with “RIGHT?” circled; “JOHNNIE: POSSIB. REAL KILLER: THIRD MENENDEZ BROTHER!!! (LANCE MENENDEZ—HA HA);” and “JOHNNIE: POSSIB.DEFENSE: NOT GUILTY BY REASON OF CELEBRITY.” Several cartoons suggest Simpson is sex-starved and draws pictures of sexy women to pass the time. One cartoon depicts a woman wearing a short skirt and heels and crossing her legs. Another depicts cheerleaders with short skirts uplifted to emphasize their crotches and buttocks. Finally, the pamphlet contains a poem suggesting a desire on O.J.’s part to be intimate with one of the jurors: “ROSES ARE RED, VIOLETS ARE BLUE, JUROR #66, I WANT TO BE SEQUESTERED WITH YOU!”

71. See Appendix I (copies of Judge Ito cartoons from O.J.’s Legal Pad). It is not necessary to use slant eyes to make clear that one is referring to Judge Ito. Newsweek, for example, has run a number of cartoons clearly depicting Judge Ito without slant eyes. Perspectives, NEWSWEEK, June 12, 1995, at 15; Perspectives, NEWSWEEK, Apr. 3, 1995, at 19; Perspectives, NEWSWEEK, Mar. 20, 1995, at 19; Perspectives, NEWSWEEK, Feb. 27, 1995, at 21; Perspectives, NEWSWEEK, Feb. 13, 1995, at 21; Perspectives, NEWSWEEK, Oct. 31, 1994, at 21. Moreover, if one looks closely at Judge Ito’s eyes, they appear almost round, not slanted.

72. See O.J.’S LEGAL PAD, supra note 70 (cover). Professors Richard Delgado and Jean Stefancic note that portraying minorities in exaggerated, stereotypical ways, and then claiming artistic license, is quite common, “Our system of ethnic depiction constructs reality so that the images seem true, or at most, are perceived as humorous exaggerations well within the bounds of artistic license.” Richard Delgado and Jean Stefancic, Hateful Speech, Loving Communities: Why Our Notion of “A Just Balance” Changes So Slowly, 82 CAL. L. REV. 851, 860 (1994) [hereinafter Hateful Speech, Loving Communities].

73. See O.J.’S LEGAL PAD, supra note 70, at 1.

74. Id. at 5.
ITO, ITO, BAG OF FRITOS
HIROSHIMA, NUKE JUDGE ITO
BANZAI, BANZAI, NAGASAKI,
USE HIS HEAD FOR BACKYARD HOCKEY!

The third picture of Judge Ito depicts a slant-eyed, snarling (or frowning) Judge Ito, glaring down at the attorneys with his teeth bared.76 The fourth picture of Judge Ito depicts a slant-eyed, smiling Ito with what looks like a mushroom cloud over his head.77 The caption next to this picture reads “HIRO-ITO!”78

The fifth picture of Judge Ito depicts a slant-eyed, frowning Judge Ito on the telephone, yelling “AI-YEEE!” after receiving a bomb threat.79 The caller, speaking pigeon English, tells Judge Ito, “HEY YOU JUDGE, YOU NOT SET O.J. FREE I MAKE COURTROOM PLACE GO BOOM-BOOM!”80 The last picture of Judge Ito has him flying a small plane with the word “KAMIKAZE” on the side of the plane headed straight at a battleship named “U.S.S. SIMPSON.”81 The pamphlet also contains the following notation: “Judge thinks guys who screw up should commit HARI KARI.”82

Immediately after O.J.’s Legal Pad hit the bookstores, The Media Action Network for Asian Americans (MANAA) called upon bookstores to pull the pamphlet from their shelves because of its “outrageously offensive caricatures” of Judge Ito.83 Daniel Mayeda, a spokesperson for MANAA, was careful to explain that MANAA had no problem with nonracial jokes about Asian Americans, such as the Dancing Itos on Jay Leno’s Tonight Show, but MANAA was concerned that humor not be based solely on race or ethnicity: “We are not saying that Asians cannot
be made fun of. We have no problem with the Dancing Itos on ‘The Tonight Show’ or with Mike Myers’ sketches on ‘Saturday Night Live.’ But humor should not be based on ethnicity.”84 Mayeda also noted that Villard Books probably would not have published the book had it portrayed Simpson defense attorney Johnnie Cochran, an African American, with “a bone through his nose, holding a spear.”85

The depictions of Judge Ito in O.J.’s Legal Pad are problematic because they reinforce the racial stereotype of Asian Americans as slant-eyed, militaristic foreigners who smile deviously while plotting to do evil.86 The book’s not-so-subtle references to Japan and World War II—the dropping of atomic bombs over Hiroshima and Nagasaki (converted to dropping the A-bomb on Judge Ito), the Japanese kamikaze fighter pilots who bombed Pearl Harbor (converted to Judge Ito, kamikaze pilot, attempting to sabotage the Simpson defense), the reference to Emperor Hirohito, the Emperor of Japan during World War II (converted to Judge “Hiro-Ito”)—all conjure up negative images of Asians from the past and play on fears that Japanese Americans, like all Japanese people, are dangerous people who cannot be trusted because they are more Japanese than American (and therefore more loyal to Japan than to the United States).87 It is worth noting that these negative images of Asian Ameri-

84. Braxton, Asian Group Denounces Book and Radio Show as Insensitive, supra note 83. This is not to suggest that we should subscribe to a blanket color-blind approach to race. It is important to be conscious and respectful of racial differences. See Neil Gotanda, A Critique of “Our Constitution is Color-blind,” 44 STAN. L. REV. 1, 2-3 (1991) (arguing that a color-blind interpretation of the Constitution legitimates and maintains the social, economic, and political advantages that whites hold over other Americans); OMI AND WINANT, RACIAL FORMATION, supra note 27, at 56-57 (discussing the neo-conservative’s color-blind conception of race).
85. Martha Nakagawa, We Will Be Silent No Longer, RAFU SHIMPO, May 6, 1995. Additionally, the City of Torrance passed a resolution denouncing O.J.’s LEGAL PAD. Torrance Condemns ‘O.J.’s Legal Pad,’ RAFU SHIMPO, May 17, 1995.
86. The cartoons and their captions reflect the idea that Judge Ito, being Japanese, smiles even when he is against Simpson. See Chang, Toward an Asian American Legal Scholarship, supra note 17, at 1258 (noting that the model minority image of Asian Americans “represents a sharp break from past stereotypes of Asians as ‘sneaky, obsequious, or inscrutable’”). In the past, during periods of high anti-Japanese sentiment, American films have portrayed Asians and Asian Americans as foul and tricky. Richard Delgado and Jean Stefancic, Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills, 77 CORNELL L. REV. 1258, 1272 (1992) [hereinafter Images of the Outsider].
87. Historically, Americans have viewed Japanese immigrants as militaristic and aggressive. Chew, Asian Americans: The “Reticent” Minority, supra note 22, at 14. In Korematsu, the U.S. Supreme Court found constitutional the internment of Japanese-American citizens during World War II, relying on “the judgment of the military authorities and of Congress that there were disloyal members of that [Japanese-American] population, whose number and strength could not be precisely and quickly ascertained.” 323 U.S. at 218 (1944). After the war, it became apparent that much of the “evidence” of Japanese-American disloyalty had been fabricated. Delgado and Stefancic, Images of
cans as militaristic, disloyal, untrustworthy foreigners are being resurrected in 1995, during a period in American social and economic history when jobs are scarce, Japan-bashing (along with affirmative action-bashing and illegal immigrant-bashing) is fashionable, and the Clinton administration is willing to go to the brink of a trade war with Japan. When such racialized images are often enough repeated, they can have the effect of subtly fueling racial antagonism against all Asian Americans.

the Outsider, supra note 86 at 1272 n.113 (citing B. Hosokawa, Nisei: The Quiet Americans 292-301 (1969) and Peter Irons, Justice at War (1983)). Id. at 1271 (noting that during the 1800s, "U.S. writers and politicians depicted all Asians as inferior, unassimilable (sic), willing to work inhuman hours at low wages, and loyal to foreign despots").

88. On November 30, 1994, J. Paul Emerson, a San Francisco radio station KFRC disc jockey, screamed at a Japanese American caller, calling the Japanese "sneaky and cowardly" with regard to the attack on Pearl Harbor and remarking that the Japanese were taking over U.S. property, especially in Hawaii. Julie Ha, Radio Station Suspends D.J. For Racist Comments, RAfu SHIMPO, Dec. 6, 1994. Emerson also referred to the Japanese as "assholes" and stated, "Until the day I die, I will hate the Japanese for what they did in Pearl Harbor." Disc jockey Gary Bryan defended his colleague's remarks, stating that he did not believe Emerson's remarks showed "hatred toward Japanese Americans . . . (nor) even the Japanese in Japan today." Id. Emerson was ultimately fired because of his remarks. Julie Ha, Deejay Fired for Offensive Comments, RAfu SHIMPO, Dec. 7, 1994.

"A day after it was publicized that the Mitsubishi Corporation was negotiating for a business development in Seattle, someone identifying himself as a Pearl Harbor survivor called the Japanese consulate in Seattle and threatened to send all Japanese nationals away from Seattle 'bloody, and hopefully dead.'" Barbara A. Serrano, Statistics Show Apparent Rise in Hate Crimes: Many Incidents Go Unreported, Says Civil-Rights Advocates, The Seattle Times, Jan. 10, 1991, at A1.

The unspoken message of Japan-bashing is that "unscrupulous Asians [are] stealing United States business opportunities." Yamamoto, Friend, or Foe, or Something Else, supra note 63, at 236. As Professor Eric Yamamoto explains, "Asian Americans have become a scapegoat for a mainstream America frustrated by a depressed economy, corporate corruption, housing shortages, and inadequate public education. Society's ills are blamed on inordinate privileges for minorities. Asian Americans are high enough in profile yet small enough in numbers to make accessible and indefensible targets."

89. "Once again, the United States and Japan have gone to the brink in a trade dispute and, at the last gasping moment, tiptoed back from it." Jim Mann, Repeated Trade Crises Test Ties, L.A. Times, June 29, 1995, at A1.

90. During times of economic strife, racial hostility towards all Asian Americans increases because of the misperception that Asian Americans "steal" valuable employment opportunities from other, more deserving, Americans. Kang, Racial Violence Against Asian Americans, supra note 22, at 1935. At other times, stereotyping of different Asian American groups fluctuates from the positive to the negative depending on whether the particular country (e.g. China, Japan, Korea, Philippines) is seen as an enemy or friend of the United States at the time. Delgado and Stefancic, Images of the Outsider, supra note 86. During World War II, for example, when the United States was at war with Japan, Time magazine published the following guide for its readers:

HOW TO TELL YOUR FRIENDS FROM THE JAPS: Virtually all Japanese are short . . . . Japanese are likely to be stockier and broader-hipped than short Chinese. Japanese . . . are seldom fat; they often dry up and grow lean as they age . . . . Although both have the typical epicanthic fold of the upper eyelid . . . . Japanese eyes are usually set closer together
Even though the internment of Japanese Americans occurred more than fifty years ago, the refusal to see the "American" in Japanese American still occurs today. In 1989, Marine officer candidate Bruce Yamashita, a third generation American of Japanese descent, was subjected to racial harassment by Marine training officers who attacked him with racial slurs, threw garbage cans at him, and lifted him up and threw him to the ground. On the first day of Officer Candidate School, one staff sergeant told him, "[w]e don't want your kind around here—go back to your country!" Another asked Yamashita why he had not joined the Japanese army. Another sergeant reminded Yamashita that the United States in World War II had "whipped your Japanese ass." Yamashita was routinely called "Toyota" and "Honda," trade names of Japanese cars. The Marines then dismissed Yamashita and several other minority candidates under the pretext of lack of leadership. Initially, the Marines explained away the racial remarks as an appropriate test of Yamashita's toughness. Only after an investigation confirmed incidents of racial harassment did the Marines issue a formal apology, admitting that racial harassment played a role in his dismissal from the Officer Candidate School.

. . . . [T]he Chinese expression is likely to be more placid, kindly, open; the Japanese are more positive, dogmatic, arrogant . . . . Japanese are hesitant, nervous in conversation, laugh loudly at the wrong time. Japanese walk stiffly erect, hard heeled. Chinese, more relaxed, have an easy gait, sometimes shuffle.

TIME, Dec. 22, 1941, at 33.
91. This danger is not limited to Americans of Japanese descent. In 1991, during the Gulf War with Iraq, Iraqi Americans were aggressively interrogated by FBI agents who presumed Iraqi Americans were disloyal because of their race. Yamamoto, Friend, Foe, or Something Else, supra note 63, at 233-34.
94. Landing on a Beach of Prejudice; Marines Admit Errors in the Outrageous Case of Bruce Yamashita, Jan. 7, 1994, at B6.
95. Id.
96. Id.
97. Marines Make Lawyer a Captain, Admit Racism in His '89 Dismissal, supra note 92; Yamamoto, Friend, or Foe, or Something Else, supra note 63, at 234.
98. Landing on a Beach of Prejudice Marines Admit Errors in the Outrageous Case of Bruce Yamashita, supra note 93.
99. Marines Make Lawyer a Captain, Admit Racism in His '89 Dismissal, supra note 92. In 1994, almost five years after Yamashita was dismissed, the Marines made Yamashita a captain in the Marine Corps Reserve. Id.
B. “NAME” CALLING

1. Robert Shapiro’s “Hang Fung Restaurant” and Johnnie Cochran’s “We’re Having Fung” Remarks

On April 13, 1995, only nine days after Senator D’Amato’s attempt at racial humor, Simpson defense attorney Robert Shapiro handed out fortune cookies to writers at the courthouse, telling them, “[t]hese are from the Hang Fung restaurant.”100 Shapiro’s remarks alluded to the testimony of criminalist Dennis Fung, a Chinese American who, during a scathing cross-examination by defense attorney Barry Scheck, was forced to admit that mistakes were made during the collection of evidence.101 On or about the same day, defense attorney Johnnie Cochran joked, “[w]e’re having Fung. We’re having Fung.”102

Shapiro’s and Cochran’s jokes at Fung’s expense set off a chain of criticism. Los Angeles Police Chief Willie Williams expressed outrage at these remarks, stating “[t]o have members of the defense team who are defending a minority and some of them are minorities themselves, to [sic] make any statement that infers a racial slur is outrageous.”103 Sue Yee, Event Coordinator for the Chinese Chamber of Commerce in Los Angeles, remarked that it was “unfortunate that they [the Simpson defense team] stoop to such racist activities.”104 Curtis C. Jung, President of the

101. Michael D. Harris, Experts Grade Prosecution’s Simpson Case, L.A. DAILY J., July 3, 1995, at 1. “Dennis Fung . . . was made to look like the epitome of incompetence.” Id. at 4. Discussing Barry Scheck’s cross-examination of Fung, author Jeffrey Toobin remarked, “We have seen the best piece of lawyering in the case. . . . the extremely effective cross-examination of Dennis Fung, the criminalist, is going to be ringing in these jurors’ ears for a very long weekend.” Transcript #1401-2, Larry King Live, News From the O.J. Case, Apr. 5, 1995 (Guests: Andrea Ford, L.A. Times, and Jeffrey Toobin, The New Yorker). See also Reibstein, Disorder in the Court, supra note 11 (noting that “Barry Scheck, one of two defense lawyers in charge of blood evidence, skeweder criminalist Dennis Fung in a devastating cross-examination.”).
103. Krasnowski & Morgan, Simpson Attorney Criticized over Joke, supra note 100.
104. Id. Omi and Winant state that a racial project is “racist” if and only if “it creates or reproduces structures of domination based on essentialist categories of race.” OMI AND WINANT, RACIAL FORMATION, supra note 27, at 71. Under this definition, I would not characterize Shapiro’s and Cochran’s remarks as racist, but rather as racially insensitive.
Southern California Chinese Lawyers Association (SCCLA), issued a
denunciation of Shapiro's remarks and called for an apology.\textsuperscript{105}

Initially, Shapiro, like D'Amato, brushed off criticism, responding to
media questions with, "[w]hy is an issue being made of this?"\textsuperscript{106} Later, Shapiro changed his tone; three days after making the "Hang Fung
restaurant" remarks, Shapiro publicly apologized to Fung and the Asian
American community in open court, claiming that he spent the weekend
with a heavy heart.\textsuperscript{107} In his apology, Shapiro claimed sole responsibili-
ty for his remarks and, like D'Amato, used the conditional "if," stating,
"I was the only one responsible. If any person or persons were offended,
[I extend] my sincere and most humble apologies."\textsuperscript{108} Cochran never
publicly apologized for his remarks, and the fact that Cochran too had
made a racial joke at Fung's expense was quickly forgotten by the
media.\textsuperscript{109}

It is particularly interesting to note that Cochran, who is an African
American, was able to escape criticism, while Shapiro, who is white (a
Jewish American), was not. In American society, whiteness is generally
regarded as the norm.\textsuperscript{110} To be raced is to be black, brown, or yellow,

\textsuperscript{105} Dan Lee, Apology Accepted: Shapiro Well Received at Chinese Lawyers Event, L.A.
DAILY J., June 26, 1995, at 10. Telephone Interview with Curtis C. Jung, President,
Southern California Chinese Lawyers Association (SCCLA), July 7, 1995 (confirming that
he, on behalf of SCCLA, asked Shapiro for a written apology).
\textsuperscript{106} Shapiro Remark Called Ill-Timed, supra note 100.
\textsuperscript{107} Newton & Ford, supra note 102. On April 19, 1995, Shapiro sent a written apology
to the Chinese American community on behalf of the Simpson defense team, stating, "It
was never our intention to convey racial slurs, or to display racial insensitivity." Letter
dated Apr. 19, 1995 from Robert L. Shapiro to "Our Friends in the Chinese-American
Community." (on file with author).
\textsuperscript{108} It is interesting that Shapiro, like D'Amato, used the conditional, "[i]f any person
or persons were offended," to apologize, suggesting perhaps a belief that no one was really
offended or that only certain people might have been offended. Newton & Ford, supra
note 102, at A1.
\textsuperscript{109} It is unclear why Cochran's comments were not widely reported and why Cochran
did not apologize for his comments. Perhaps Shapiro's oral in court apology was
interpreted as an apology for both Shapiro's and Cochran's remarks. See supra note 107.
Perhaps Cochran and others did not perceive his comments to be problematic. Or perhaps
the reaction to Cochran's comments is yet another example of public inattention paid to
incidents of racially insensitive remarks directed at Asians and Asian Americans. See
Chew, Asian Americans: The "Reticent" Minority, supra note 22, at 19.
\textsuperscript{110} Professor Barbara Flagg explains, "Whites tend to regard whiteness as racelessness
. . . [and] frequently interpret norms adopted by a dominantly white culture as racially
neutral, and so fail to recognize the ways in which those norms may be in fact covertly
race-specific." Barbara Flagg, Fashioning a Title VII Remedy for Transparently White
White] (discussing the "transparency phenomenon" as "the invisibility of whiteness to
whites").
while whiteness is generally invisible. In the Simpson case, however, the roles were reversed. Cochran made white racism against African Americans a central issue. In doing so, Cochran shifted the spotlight to whites and white racism. Perhaps, as an inadvertent outgrowth of this shift, Shapiro’s comments were held up to intense scrutiny while Cochran’s comments were largely ignored.

Shapiro realized relatively quickly that his “Hang Fung” remarks were in poor taste. After expressing misgivings over his remarks, Shapiro became a member of SCCLA and made a generous donation to its law student scholarship fund. Some members of SCCLA felt that Shapiro’s apology and monetary contributions were sufficient to forgive and forget the incident, and persuaded the board of directors of SCCLA to invite Shapiro to speak at their Annual Spring Reception. Others felt that Shapiro’s comments should not have been so quickly forgiven.

111. Professor Flagg explains, “White people externalize race. For most whites, most of the time, to think or speak about race is to think or speak about people of color, or perhaps, at times, to reflect on oneself (or other whites) in relation to people of color . . . Whites’ ‘consciousness’ of whiteness is predominantly unconscious of whiteness. We perceive and interact with other whites as individuals who have no significant racial characteristics . . . Whiteness is a transparent quality when whites interact with whites in the absence of people of color. Whiteness obtains opacity, becomes apparent to the white mind, only in relation to, contrast[ed] with, the ‘color’ of nonwhites.” Id.

112. One might argue that this is an outgrowth of the view that blacks, as a subordinated group, cannot be racist. See OMI AND WINANT, RACIAL FORMATION, supra note 27, at 70 (noting the argument raised by non-whites that “blacks . . . cannot be racist because they lack power”). I seriously doubt that this view prompted the predominantly white mainstream press to ignore Cochran’s comments. Moreover, I agree with Omi and Winant that this view is misguided. Id. at 73 (“We have little patience with the argument that racism is solely a white problem, or even a ‘white disease.’ The idea that non-whites cannot act in a racist manner, since they do not possess ‘power,’ is another variant of this formulation.”).

113. Telephone Interview with Curtis C. Jung, supra note 105 (noting that SCCLA invited Shapiro to become a member of SCCLA and Shapiro did). Lee, Apology Accepted, supra note 105 (noting that Shapiro made a generous donation to SCCLA’s law student scholarship fund).

114. Telephone Interview with Curtis C. Jung, supra note 105. After Shapiro became a member of SCCLA, SCCLA decided to invite Shapiro to its Annual Spring Reception. Shapiro was well received by attendees at the event who were mostly members of the Southern California Chinese Lawyers Association and the Organization of Chinese Americans. Many guests wanted to shake hands with Shapiro and be photographed with him. Lee, Apology Accepted, supra note 105.

115. Telephone Interview with Julie Su, Member of the Board of Directors, Southern California Chinese Lawyers Association, and Staff Attorney for the Asian Pacific American Legal Center of Southern California, (July 10, 1995). Some members of SCCLA chose to boycott the reception. Perhaps Shapiro’s monetary donation to SCCLA was viewed as an attempt to buy forgiveness in a society in which many believe “money discharges moral obligation.” Yamamoto, Friend, or Foe, or Something Else, supra note 63, at 228 (noting, with respect to reparations paid to Japanese Americans who were interned during World War II, that some might say there is “a certain commodifying vulgarity in throwing money at injured people . . . Reparations, one could argue, promotes the idea that every wound
Just as supporters of D'Amato were quick to defend D'Amato's comments,\(^{116}\) supporters of Shapiro and Cochran also argued that the defense attorneys did not mean any harm in joking about Fung.\(^{117}\) It is probably true that Shapiro and Cochran did not intend any harm from their "Fung" jokes, and when compared to the other incidents in which Asian Americans have been the targets of racial jokes in connection with the Simpson case, Shapiro's and Cochran's remarks, while racially insensitive,\(^ {118}\) do not seem quite as egregious as other racial characterizations that have occurred. Shapiro's remarks might be interpreted as harmless banter, but they also reflect the feeling that the defense team, at least metaphorically, had succeeded in "hanging" Fung.\(^ {119}\) What better way to highlight Fung's incompetence than to joke about hanging Fung and then pass out fortune cookies from a non-existent Chinese restaurant, linking Fung's race to his incompetence.\(^ {120}\) Cochran's remarks also

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\(^{116}\) See supra note 37.

\(^{117}\) Dominick Dunne, one of the writers who was present when Shapiro was handing out fortune cookies, stated, "I am just heartsick over this because there was nothing malicious in what he did. I realize it was ill-timed coming so soon after D'Amato, but it was a little joke. In hindsight, I think [Shapiro] wishes he hadn't said it, but there was no malice." Shapiro Remark Called Ill-Timed, supra note 100, at A16. At SCCLA's Annual Spring Reception, U.S. District Court Judge Ronald Lew, a Chinese American judge, told a crowd of Chinese Americans, "I've known Bob since 1972 as a fledgling lawyer. I knew this man didn't have anything within his heart to say there's ill intent other than the jest that occurred." Martha Nakagawa, Fortune Cookie Fallout: O.J. Lawyer Addresses Chinese American Legal Group, ASIAN WEEK, June 30, 1995, at 1.

\(^{118}\) In characterizing Shapiro's and Cochran's remarks about Fung as "racially insensitive," I do not intend to suggest that anyone was offended by their remarks was being overly sensitive or thin-skinned. Rather, Shapiro and Cochran were the ones being insensitive. See Gotanda, Why "The Beat" is Wrong, supra note 7 (stating that the problem with calling a portrayal of Asians with accents an "insensitive stereotype" is that it implies "WE are the ones who are being thin-skinned and overly sensitive").

\(^{119}\) While I do not believe Shapiro intended his remarks to suggest a hanging or lynching of Fung, use of the word "hang" is a bit troubling in light of the history of racially motivated violence against Chinese immigrants in the United States. Over three hundred Chinese immigrants were killed in racially motivated assaults in the West between 1860 and 1887. Chang, Toward an Asian American Legal Scholarship, supra note 17, at 1255 n.55, (citing ANTI-CHINESE VIOLENCE IN NORTH AMERICA (Roger Daniels ed., 1978)). "Although it is not widely known, Asian Americans have been the victims of lynchings, race riots, and slavery." Chew, Asian Americans: The "Reticent" Minority, supra note 22, at 9. For example, the first documented instance of a spontaneous outbreak against a Chinese community occurred in Los Angeles in 1871 when fifteen Chinese people were lynched, four shot, and two wounded. SUCHENG CHAN, ASIAN AMERICANS: AN INTERPRETIVE HISTORY (1991).

\(^{120}\) Just as one common set of racial images portrays the typical Asian American as someone with a heavy accent, who works in a laundry or as a gardener, practices karate, and studies fastidiously, (see Chang, Ito and Fung, supra note 3, at 2), another common set of racial images links Asians and Asian Americans to good Chinese, Japanese, Korean, or Thai food. If Asians and Asian Americans are thought of only in such limited ways,
reflect the idea that the defense team succeeded in making Fung look like an incompetent fool. Some members of the Asian American community found Cochran's and Shapiro's comments particularly offensive because they felt that making fun of Fung's name was an attack on Fung's racial heritage.

2. Howard Stern's "Here a Nip, There a Nip" Song

During October of 1994, Howard Stern aired the following song several times on his syndicated morning talk show:

Ol' black O.J. had a white wife. Lookee, lookee here.
Ol' black O.J. had a big ol' knife. Lookee, lookee here.
With a stab wound here, and a dead Jew there,
Ol' black O.J. went to the court. Lookee, lookee here.
He went to the court and the judge was a Nip;

people may find it difficult to view Asians as people who can also be good criminalists, attorneys, or judges since we construct our social world largely through such images. Delgado & Stefancic, Hateful Speech, Loving Communities, supra note 72, at 854-55 (noting that racial insults can harm directly, by encouraging others to take hostile action against the subject of the racial insult, and indirectly, by constructing an image of the subject as less than human).

One writer compared Shapiro's fortune cookie joke to Senator D'Amato's mocking of Judge Ito, and felt that both incidents manifested an attempt by Shapiro and D'Amato to reconcile their stereotypical notions of Asian males (as people with heavy accents) with the reality of Asian American males, speaking perfectly articulate English, as key figures of authority in mainstream America. Shapiro and D'Amato reinforced their reality of Asian males (a socially constructed stereotype) by alienizing Ito and Fung through stereotyping and ridicule. Chang, Ito and Fung, supra note 3, at 2.

It is interesting to note that racial jokes were not made about two white witnesses who, like Fung, were forced to admit errors upon cross-examination. Prosecution witness Bruce Weir, a statistician, was forced to admit on cross-examination that he had miscalculated figures in a way that favored the prosecution's theory of the case. See Jim Newton & Henry Weinstein, Expert Admits Miscalculation on DNA Statistics, L.A. TIMES, June 24, 1995, at A1; see also Stephanie Simon & Tim Rutten, Defense Cities Faulty DNA Calculations, L.A. TIMES, June 27, 1995, at B1 (noting that Weir admitted his mistakes were "worse than I thought"). Additionally, during the preliminary hearing, prosecution witness Dr. Irwin Golden, the assistant coroner who performed the autopsies on Nicole Brown Simpson and Ronald Goldman, was forced to admit on cross-examination that he made several mistakes in his analysis of their bodies. Henry Weinstein, Determining Time of Death Is Improvisible Science at Best, L.A. TIMES, Mar. 19, 1995, at A1, A31 (noting that at the July 1994 preliminary hearing, Golden "conceded that he discarded Nicole Simpson's stomach contents," and that numerous experts said he should have saved the contents which would have aided him in determining the time of death). This supports Professor Barbara Flagg's assertion that whites tend to regard whiteness as racelessness. See Flagg, Transparently White, supra note 110, at 2013.

Telephone interview with Julie Su, supra note 115. Julie Su, a staff attorney with the Asian Pacific American Legal Center and a board member of SCCLA, explains, "When you make fun of someone's last name, when you make fun of their culture, you make fun of their heritage." Takeshi Nakayama, Shapiro Gives Personal Apology to Chinese Group, RAFU SHIMPO, Apr. 19, 1995.
here a Nip, there a Nip, everywhere a Nip, Nip . . .
Ol' black O.J. got the chair. Lookee, lookee here.\textsuperscript{123}

Howard Stern's use of the word “Nip” received little or no attention from the mainstream press.\textsuperscript{124} This is striking in light of the public uproar over Los Angeles Police Detective Mark Fuhrman's use of the “N-word” (nigger) to refer to African Americans. Los Angeles Mayor Richard Riordan was told of Fuhrman's comments and said what he had heard “made me sick.”\textsuperscript{125} Los Angeles Police Chief Willie Williams publicly denounced Fuhrman's comments as a disgrace.\textsuperscript{126} Los Angeles District Attorney Gil Garcetti said he was “embarrassed for the city and for the Los Angeles Police Department.”\textsuperscript{127} Fuhrman's private investigator Anthony Pellicano called his client's comments reprehensible.\textsuperscript{128} Joel Wachs, President Pro Tem of the Los Angeles City Council, wrote a letter of apology to the people of Los Angeles and published it in the Los Angeles Times.\textsuperscript{129} Even Fuhrman's attorney, Robert Tourtelot, quit after hearing Fuhrman's comments.\textsuperscript{130}

Even though the spotlight in the Simpson case has been focused on racism (against African Americans), racial incidents involving other non-whites, such as Japanese Americans, have largely been ignored. The word “Nip,” derived from the word “Nippon” which means “Japan” in Japanese, is a derogatory word used in America to refer to people of Japanese ancestry.\textsuperscript{131} It was used extensively to refer to the Japanese enemy during World War II, similar to the way in which the word “gook” was used during the Vietnam War to refer to the Vietnamese enemy.\textsuperscript{132}

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124. The L.A. SENTINEL is a weekly newspaper that is devoted to issues concerning the African American community in Los Angeles.
126. \textsl{Id}.
127. \textsl{Id}.
128. \textsl{Id}.
129. \textsl{Id}.
130. Notably, Fuhrman's comments included not just racial epithets, but also claims of fabricating evidence and police brutality which contributed to the public outrage. Additionally, Fuhrman's use of the “N-word” made clear his deep-seated animosity and contemptuous feeling towards African Americans. Howard Stern's comments, in contrast, seem innocuous on the surface because they are part of a song poking fun at many different people. Stern's comments, however innocuous they might appear, are even more dangerous than Fuhrman's because they mask the same sort of animosity and contempt expressed by Fuhrman under a facade of humor.
132. Ironically, the reason America fought in Vietnam was to protect the Vietnamese people from the Communists (who were also Vietnamese). Somehow, all Vietnamese people came to be seen as the enemy by many American soldiers. Today, many Vietnam
\end{footnotes}{\footnotesize
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Just as use of the "N-word" conveys hatred and contempt for African Americans, use of the word "nip" denigrates and demeans Japanese Americans, emphasizing the Japanese in Japanese American and reinforcing the image of Asian American as "foreigner." Rather than encouraging respect for cultural differences, words like "nip," "nigger," "chink," "jap," and "gook," perpetuate racial prejudice. Too often, difference in American society is thought of as bad and sameness is perceived to be good when difference is something that should, at a minimum, be tolerated and respected.

C. ASIAN AMERICAN AS "DIFFERENT": THE KUNG FU KICKING, SUSHI EATING, ASIAN AMERICAN WITH THE HEAVY ACCENT

1. KKBT-FM's "John London's House Party"

On April 14 and April 19, 1995, "John London's House Party" on KKBT-FM (92.3), a Los Angeles radio station, aired a skit about criminalist Dennis Fung having dreams about his testimony in the Simpson trial. In KKBT-FM's skit, Fung "spoke with a thick, foreign accent and performed kung fu kicks." This was the fourth time in a little over a year that KKBT-FM portrayed Asian Americans as people with heavy accents, and the second time that KKBT-FM's portrayal of Asian Americans was linked to the Simpson case.

In November of 1994, following KCBS Channel 2 (Los Angeles) anchor and reporter Tritia Toyota's televised interview with Judge Ito, veterans have trouble dealing with Asian Americans, associating all Asian people with the "gooks" they fought in Vietnam. As UCLA Professor Eugene Grigsby notes, "If you look at post-slavery, African-American males particularly were never called by their proper surnames. It was either 'boy' or 'nigger.' So the use of labels to depict African Americans was something other than a way to portray them as proper persons." 'N-Word' the Focus of a Constant Debate, L.A. TIMES, Aug. 31, 1995, at A1, A22. Professor Grigsby notes further, "It's the ultimate way to remind someone you were once property, once chattel." Id.


Id. at 567.

Lisa Ikemoto, Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed "Los Angeles," 66 S. CAL. L. REV. 1581, 1582 (1993) (noting the assumption that similarities are good and differences are bad makes racial difference a source of inevitable conflict).

Braxton, Asian Group Denounces Book and Radio Show as Insensitive, supra note 83.

Id.

Nakagawa, We Will Be Silent No Longer, supra note 85.

During the interview, "Ito told a moving and inspirational story of his Japanese American family's journey from a World War II internment camp in Wyoming to the middle-class comfort and security of life in Los Angeles' Silver Lake district. Ito's heritage [has been] a powerful force in his life. He told reporter Toyota that 'I recall my
John London’s morning show mimicked Toyota and Ito, using heavy foreign accents.141 During this excerpt, Toyota was portrayed asking Ito trivial questions, such as “[w]hat kind of rice do you like to eat?”142

In June 1994, London’s morning show imitated then Los Angeles mayoral candidate Michael Woo, a Chinese American, using a heavy foreign accent.143 Additionally, in February 1994, London’s morning show invited Asian Americans to call in so that the radio station could count the show’s Asian American listeners.144 Asian Americans who did call were greeted with the sound of a gong and were spoken to in exaggerated fake Asian accents by the radio talk show hosts.145

Following the Dennis Fung skit, the Media Action Network for Asian Americans demanded a written and on-the-air apology from KKBT’s John London and a promise that he would stop using foreign accents to imitate parents wanted me to go to Japanese school. . . as you probably had your parents pressure you to spend four hours in Japanese school. As a third generation Californian, I rebelled against that . . . no one else in elementary school had to do that . . . . That ended after a long, intense battle of personalities with my parents and that’s one of my bigger regrets, that I didn’t follow through with that.’ He said his parents ‘never openly discussed’ their years in the internment camp, where they, along with other American citizens of Japanese descent, were held prisoner through the war. ‘It was something they were very ashamed of and they have tried ever since to be good Americans in every sense of the word,’ he said. Toyota asked, ‘Don’t you think it’s very sad that they had to feel ashamed they had to go through that terrible injustice when it wasn’t even their fault? How does that affect you?’ ‘I think it affects me in just about everything I do,’ Ito said . . . ‘I have been to Germany on two occasions and have gone to some of the concentration camps,’ he said. He recalled the conditions of those camps and how he was reminded of the Japanese internment. ‘To see the barracks in Heart Mountain, Wyoming, and to see the same types of initial carvings and the types of human beings who lived there, the comparison is inescapable.’” Boyarsky, *Ito Succumbs to the Sirens of Celebrity*, supra note 1.

Even though he did not discuss the Simpson case and did not violate any ethical rules by agreeing to the interview, Ito received a significant amount of criticism for his televised interview with Tritia Toyota. Michael D. Harris, *Ito Criticized for Granting Interview to Local Station*, L.A. DAILY J., Nov. 15, 1994, at 4 (noting that although Judge Ito has often criticized the media circus surrounding the Simpson case, by granting an extended interview with KCBS Channel 2, Judge Ito had “upped and joined the circus”); Boyarsky, *Ito Succumbs to the Sirens of Celebrity*, supra note 1 (noting that many reporters were angry about Judge Ito’s hypocrisy and were starting to call him “Judge Ego”); Patrick Beary, *Lance Ito’s Bad Judgment*, NEWSDAY, Nov. 22, 1994, at A33 (opining that Judge Ito should disqualify himself from presiding over the Simpson trial because of his “shocking and outrageous TV brouhaha”). *But compare* Erwin Chemerinsky, *Is It the Siren’s Call?: Judges and Free Speech While Cases Are Pending*, 28 Loy. L.A. L. REV. 831 (1995) (opining that it is both legal and desirable for judges to speak to the press).


142. Nakagawa, *We Will Be Silent No Longer*, supra note 85.


144. Nakagawa, *We Will Be Silent No Longer*, supra note 85.

145. *Id.*
Asian Americans. 146 Instead of furnishing an apology, KKBT's General Manager Craig Wilbraham defended the skit, stating:

The truth of the matter is, our morning show is satirical. None of the humor is malicious, and the jokes are done with such exaggeration that no one would characterize it as racist or hate-motivated. Our audience seems to understand, but this group missed the whole scope of the show. 147

Fung speaks English without any noticeable accent. Nothing in Fung's testimony indicates that Fung is a kung fu expert. Yet, solely because of his Chinese ancestry, Fung was depicted in the skit as someone with a thick foreign accent who knows martial arts. The use of a thick foreign accent and kung fu kicks to characterize Fung reflects and reinforces misguided assumptions that people often have about Asian Americans. Despite the fact that many Asian Americans speak perfectly articulate, accent-free, English, Asian Americans are often asked, "[h]ow did you learn to speak such good English?" 148 Additionally, while many Asian


147. Braxton, Asian Group Denounces Book and Radio Show as Insensitive, supra note 83. KKBT's claim that they were merely exaggerating Fung's accent is misleading. Fung doesn't have an accent, so there is no accent to exaggerate. See Neil Gotanda, House Party's Orientalist Express, RAfu SHIMPO, July 18, 1995 ("If we look closely at the mangled accent it becomes clear that it is NOT an ethnic image. The depictions of Lance Ito, Tritia Toyota or Dennis Fung are NOT ethnic - because no one ever spoke like that") (emphasis in original).

148. The usually unspoken answer to the question is, "The same way you did. I grew up here." Kwoh & Su, Individuals Lose When a Group is Demeaned, supra note 67 (noting that "[c]ountless Asian Americans, including those born in the U.S., have heard the refrain, 'Go back to where you came from,' or the softer but still misguided question, 'Where did you learn to speak English so well?'"). Professor Neil Gotanda explains why he resents the innocent "you speak without an accent" comment and the "where are you from?" question:

For most Japanese Americans born and educated in the English language, any accent in our spoken language exists in the listener's mind. We speak good California English. With my parents support, my own language was crafted at some of the best California schools. So I should have the confidence that any comment about the absence of an accent is simple ignorance of my history—that my family has been here longer than many Eastern elites who arrived after World War I.

But when Judge Lance Ito, one of our best and brightest, has an accent caricature imposed upon him, it is for me more than an offensive joke. I find that caricature subversive in a complex way which I'm not sure I can fully explain. Part of this feeling is my own snobbery—I'm educated, a lawyer, and a professor. And for that, I deserve any jokes sent my way.

But I suspect that there is more. I think that much of my unease is shared by all of us raised in Nisei families in which the Camp experience
Americans are interested in the martial arts, just as many, if not more, non-Asians are equally interested in learning karate, kung fu, and other Asian martial arts.\textsuperscript{149} KKB\textsuperscript{T}-FM's Dennis Fung skit reinforces false stereotypical notions about Asian Americans—they can't speak English, but they all know martial arts.\textsuperscript{150} The station's repeated use of pseudo-Asian accents perpetuates the social construction of Asian Americans as foreigners.\textsuperscript{151} The ease with which Asian Americans are portrayed with foreign accents is evidenced by the lack of public attention paid to these incidents.\textsuperscript{152}

was a background presence, never really expressed or discussed. The accent question somehow exposes a hidden insecurity. And I'm not sure that there's really anything to be done about it.

The 'where are you from' question raises different difficulties. That's the one where the question has an edge of accusation and is accompanied by a slight stare as if if the fold of eyelid will answer the question. My standard answer—I was born and raised in Stockton—is not enough. The questioner, whether White, Black, or Asian, wants to hear an answer like Japan, Korea, or China.

Gotanda, \textit{supra} note 147.

149. In the course of my lifetime, I have visited a number of martial arts studios in the United States, including dojos in Honolulu, San Francisco, and Los Angeles, cities with large Asian American populations. I have never seen a martial arts studio in which the Asian American students comprised more than a minority of the class.

150. As Mitchell Chang notes, "Hollywood images of Asian males [are] as people with heavy accents (if they even speak English), working in laundry rooms or as gardeners, [or] practicing Karate . . . ." Chang, \textit{Ito and Fung, supra} note 3, at 2 (alteration in original) (emphasis added).

151. Professor Gotanda discusses why the use of a distorted ("mangled") Asian accent is not the same as other ethnic jokes:

\begin{quote}
What was the problem? Why aren't the John London and Senator D'Amato sketches the same as Margaret Cho poking fun at her Korean grandmother; or the same as the joke contained in Rafu Shimpo's Lance Ito Look-Alike Contest—that White folks think we all look alike. Isn't the accent caricature simply an over-the-top version of ethnicity? I don't think so. If we look closely at the mangled accent it becomes clear that it is NOT an ethnic image. The depictions of Lance Ito, Tritia Toyota or Dennis Fung are NOT ethnic-because no one ever spoke like that. No Chinese American ever spoke like Charlie Chan. . . . In short, only yellow-face folks in movies, bad stand up comics like D'Amato, and wayward DJ's like John London talk with the mangled accent.

The accent stereotype is not about real foreignness. It is not about being an immigrant from Vietnam or a tourist from Korea. It's about a particular imposed racist image which has never really existed anywhere.

Gotanda, \textit{House Party's Orientalist Express, supra} note 147.
\end{quote}

152. I found only one article on KKB\textsuperscript{T}-FM's Dennis Fung skit in the mainstream press. Braxton, \textit{Asian Group Denounces Book and Radio Show as Insensitive, supra} note 83. While some of the other incidents described in this essay received widespread media attention when they occurred (e.g. D'Amato's use of a distorted Japanese accent to criticize and mock Judge Ito and Shapiro's "Hang Fung restaurant" fortune cookie comments), once apologies were given, the incidents were quickly forgotten.
Although such socially constructed images may appear benign on the surface, they can lead to harmful consequences.

The problem with the use of racial imagery has been described as the problem of iterability or "the capacity to be repeated in new contexts."\textsuperscript{153} For example, the image of the Asian male as kung fu or karate expert may encourage some people to act violently against Asian Americans.\textsuperscript{154} Most people would agree that it is not rational to assume that just because a person is Asian American, he must know martial arts. Nonetheless, given the stereotypical portrayal of Asian Americans as martial arts experts, a defense attorney in a criminal case might be able to convince a jury that his client's use of deadly force against an Asian American victim was justified because he reasonably thought that all Asians know martial arts.\textsuperscript{155}

A second example involves the common characterization of Asian Americans as people who, if they speak any English at all, speak English with a heavy accent. The assumption that all Asians speak with a heavy foreign accent goes beyond the harm of seeing Asian Americans as foreigners; it also carries with it assumptions about competence and intelligence. Mari Matsuda gives the following example of how someone with a heavy accent can be perceived of as incompetent:

\textit{Tran is a lecturer in computer science. Approximately one-fourth of her time is spent in communication with students, either in class or in conference. The rest of her time is spent reviewing and grading papers, engaging in research and writing, and administering the computer lab. She excels at these tasks by all accounts. She has a heavy Vietnamese accent. Most of her students are white. There is evidence of strong prejudice in the community against Vietnamese, including acts of hate violence. Tran gets poor teaching evaluations in which students claim she 'can't speak English' and that 'we aren't learning a thing in class.' Asian}

\textsuperscript{153} Anthony V. Alfieri, \textit{Defending Racial Violence}, 95 COLUM. L. REV. 1301, 1323 (1995) (arguing that in using the "mob made me do it" defense or group contagion theory of mob violence, the attorneys for Damian Monroe Williams and Henry Keith Watson in the Reginald Denny beating case perpetuated deviance and defiance narratives about young black men which, while perhaps helpful to Williams and Watson's immediate defense, are harmful to the African-American community as a whole), (citing J.M. Balkin, \textit{Transcendental Deconstruction, Transcendent Justice}, 92 MICH. L. REV. 1131 (1994)).


\textsuperscript{155} See, \textit{e.g.}, \textit{State v. Simon}, 646 P.2d 1119, 1121 (Kan. 1982). In \textit{Simon}, a jury acquitted a defendant who shot his Asian-American next door neighbor as the neighbor was entering his own duplex on the ground of self defense. The jury apparently believed the defendant's claim that he was afraid of his Asian neighbor and that he assumed that his neighbor knew martial arts because of his racial heritage. \textit{Id.}
American students report no difficulty in understanding Tran. Some of the evaluations also contain racist and sexist slurs and obscenities. 'Why can’t we get real American teachers,' one student complains.156

It is interesting that Americans who speak English with British or French accents, in contrast to Americans who speak English with Asian accents, generally do not suffer from the same presumption of being unable to speak English.157

In opposition to the above stated position, one might object and argue that Asian Americans are lucky because, unlike other minorities, Asian Americans are generally regarded in a positive light, as the model minority.158 Asian Americans are seen as intelligent, hard working, family-oriented, and law-abiding.159 First, although it might be nice if it were true, not all Asian Americans are intelligent, hard-working, family-oriented, and law-abiding.160 Second, these “positive” attributes are accompanied by their “negative” counterparts. As Professor Frank Wu notes:

In the stereotype, every positive element is matched to a negative counterpart. To be intelligent is to lack personality. To be hard-working is to be unfairly competitive. To be family-oriented is to be clannish, ‘too ethnic,’ and unwilling to assimilate. To be law-abiding is to be rigidly rule-bound, tied to traditions in the homeland, unappreciative of democracy and free expression.161

Finally, the image of Asian Americans as the hard-working intelligent minority has led to resentment against Asian Americans by other minorities and whites. On college campuses, non-Asian students joke that M.I.T. means “Made in Taiwan” and that U.C.L.A. means “United Caucasians Lost Among Asians.”162 The student body president at the University of California at Berkeley once remarked, “some students say if they see too many Asians in a class, they are not going to take it because the curve will be too high.”163 When asked why he performed poorly on an exam,

157. Gotanda, Why “The Beat” is Wrong, supra note 7 (noting that “it is accent discrimination against Asians and Latinos, not Europeans, that presents a social issue”).
158. Professor Frank Wu points out that use of the term “model” minority is a double entendre, referring first to Asians copying whites, and second to other minorities copying Asians. Wu, Neither Black Nor White, supra note 17, at 239-40.
159. Id. at 240-41.
160. Id. at 245 (noting that the model minority myth “blurs and glosses over markedly different patterns among Asian ethnic groups”).
161. Id. at 240-41.
162. Id. at 239.
163. Id.
a Stanford University student replied, "[w]hat do you think I am, Chi­
nese?"164

Resentment against Asian Americans for their "innate" intellectual
ability and hard working "nature" has manifested itself in tangible adverse
action against Asian Americans in public education. At Lowell High
School in San Francisco, for example, "Chinese American applicants must
score 62 out of 69 to get in; whites and other Asians, 58; blacks and
Hispanics, 53."165 In 1984, the University of California at Berkeley
adopted an admissions policy which raised the requisite verbal score on the
SAT to 400 to limit the number of Asian Americans admitted to the
school.166

2. KFRC's Lance Ito Song

During the last week of September and the first week of October in
1994, San Francisco radio station KFRC aired a song parody about Judge
Ito.167 In a two-minute song entitled "Ito, Ito," a take-off on the 1965
song "Iko, Iko," KFRC disc jockey Gary Bryan portrayed Judge Ito as
someone with a Japanese accent who mixed up his Rs and Ls while
boasting about his toughness in handling the Simpson case: "Ito he don't
budge. That's right, I no budge."168 The song continues: "[I] eat
sushi back in chambers, never once got sick."169 Finally, the singing Ito
suggests the following actors to play the role of Judge Ito when a movie
is made about the Simpson case: Pat Morita from the "Karate Kid;" Hop
Sing from "Bonanza;" or "Robert Redford with tape over eyes."170

164. Id. Another way in which the model minority myth can have negative consequences
is reflected in the stereotypical image of the Asian American as a person who is nice, but
"too nice" to be an intellectually demanding and rigorous professor and scholar. Chew,
supra note 22, at 41. If people perceive of Asian Americans in this way, they may not be
able to fully recognize the capabilities and achievements of Asian-American professionals.
Id. The stereotypical image of Asian Americans as people who are good at math, science,
and engineering (but not so good at other things) can impose similar barriers to success.
165. Selena Dong, "Too Many Asians": The Challenge of Fighting Discrimination Against
Asian Americans and Preserving Affirmative Action, supra note 28 (discussing Lowell High
School's use of racial caps to limit the number of enrollees from any given racial or ethnic
group); Lawrence J. Siskind, A Year Later in San Francisco, the Schools Are Still Segregat­
ed, WALL ST. J., July 12, 1995, at A15; Rockwell J. Chin and Brian Cheu, National Asian
Pacific American Bar Association, in PERSPECTIVES ON AFFIRMATIVE ACTION AND ITS
IMPACT ON ASIAN PACIFIC AMERICANS 8, 9 (LEAP Asian Pacific American Public Policy
166. Tsuang, Assuring Equal Access of Asian Americans to Highly Selective Universities,
supra note 22, at 674.
167. Barbara Koh, D.J. Apologizes for Mocking Simpson Judge, S.J. MERCURY NEWS,
Oct. 18, 1994, at 3B.
168. Id.
169. Id.
170. Id.
KFRC's Ito song was met with strong criticism. Jon Funabiki, Director of the Center for Integration and Improvement of Journalism, a watchdog group at San Francisco State University, commented, "[i]t's an attempt to say Asian Americans still can't speak English, still are strange and weird, and don't belong in the courtroom as . . . judge[s]." Guy Aoki, Executive Director of Media Action Network for Asian Americans, stated, "[n]o matter how American you are, how mainstream you are, they'll always make you out to be a foreigner."

Bryan responded with the following apology: "It wasn't intended to be racist and if anybody's feelings were hurt, I do regret that." Bryan then laughed and added, "I'm trying to work up something that's even more offensive. My position is that I'm a bitter, angry, middle-aged white man and I just want to be left alone to do whatever I want to do." Bryan explained that he had received several requests for the song: "It was on the air because we had a lot of requests for it. I played it a half-dozen times . . . . It wasn't meant to be racist."

It is important to consider the "it wasn't intended to be racist" excuse because that excuse is used almost every time that racially insensitive remarks are made. The lack of an intent to harm may be significant in terms of legal liability, and may make the speaker seem less culpable than a speaker who does intend harm from his remarks, but the absence of an intent to harm does not diminish the harmful consequences.

172. Id.
173. Id.
174. Id.
175. Id.
176. Id. The fact that Bryan received several requests for the song is disturbing in itself.
177. Mayor Rudolph Giuliani defended Senator D'Amato's remarks, explaining, "I think he sincerely feels sorry for it and understands it was not what he intended." Van Gelder, Lamooning by D'Amato Sets Off Strong Criticism, supra note 33. Writer Dominick Dunne defended Robert Shapiro's Hang Fung fortune cookie remarks with similar reference to Shapiro's lack of harmful intent. "I am just heartsick over this because there was nothing malicious in what he did . . . I think [Shapiro] wishes he hadn't said it, but there was no malice." Shapiro Remark Called Ill-Timed, supra note 100. Similarly, KKB's General Manager Craig Wilbraham defended the radio station's Dennis Fung skit by claiming, "None of the humor is malicious." Braxton, Asian Group Denounces Book and Radio Show as Insensitive, supra note 83.
178. For example, as a general rule, one must act with the requisite criminal intent or mens rea in order to be liable for a criminal offense. JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 95 (1987). Additionally, in order to prove a violation of the Equal Protection Clause, a plaintiff usually must show discriminatory intent. Washington v. Davis, 426 U.S. 229 (1976). See also Charles Lawrence, III, The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism, 39 STAN. L. REV. 317 (1980).
that may flow from racial representations.\textsuperscript{179} As discussed above, racialization of Asian Americans, even if not ill-intentioned, can lead to harmful consequences.\textsuperscript{180}

Racialization of any minority group is problematic. In 1989, Carol Stuart, who was seven months pregnant at the time, and her husband, Charles, were shot in an inner city neighborhood of Boston, Massachusetts.\textsuperscript{181} Charles Stuart told police that a black man had abducted them at gunpoint, robbed the couple, and then shot Carol in the head and Charles in the abdomen.\textsuperscript{182} More than one hundred police officers went to the inner city neighborhood where the shooting had occurred and randomly searched young black men, looking for the gun used to shoot the Stuarts.\textsuperscript{183} Police officers found a suspect, William Bennett, a thirty-nine year old black man who had spent most of his life in trouble with the law and had served two terms in prison for shooting police officers.\textsuperscript{184} Three neighborhood teen-agers told police that they had heard Bennett make incriminating statements.\textsuperscript{185} Another "witness" said she saw Bennett make

\begin{footnotesize}

Much racial prejudice is the result of unconscious bias. Matsuda, \textit{Voices of America, supra} note 43, at 1383. \textit{See also} Lawrence, \textit{The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism, supra} note 178. If one is not aware of one's own biases, then of course one will not intend to act in a racially harmful fashion. As shown above, however, lack of an intent to harm does not necessarily mean one's actions are indeed harmless.

\textsuperscript{180} In the 1940s, an inability to recognize that Japanese Americans were full-fledged American citizens led to the incarceration of thousands of Japanese American citizens during World War II. \textit{See} text accompanying notes 52-63. In the 1980s, an inability to recognize the difference between Chinese Americans and Japanese nationals (and an inability to recognize that Asians, whether Asian American or Asian nationals, living in the United States probably have nothing to do with the decisions of the Japanese auto companies) contributed to the brutal beating of Vincent Chin. \textit{See supra} note 22; \textit{see also} Gotanda, \textit{The "Miss Saigon Syndrome," supra} note 21, at 1089 (discussing the difficulty people have in recognizing that the Korean grocery store owner in South Central Los Angeles has little or no connection to large Japanese automobile manufacturers).


\textsuperscript{184} \textit{Id.}

\textsuperscript{185} \textit{Id.}
\end{footnotesize}
the night of the murder holding a gun and wailing, "[i]t wasn't meant for
the woman; it was meant for the man." 186

It was not until police pulled a gun from the river with registration
numbers matching a pistol reportedly stolen from the shop where Charles
Stuart worked that Stuart's brother came forward and confessed that he
met his brother at the scene, took the gun and some of Carol Stuart's
belongings from Charles, and threw them into the river. 187 After
learning that he had become the chief suspect in his wife's murder, Charles
Stuart committed suicide. 188

The Stuart case illustrates the deep rooted nature of prejudice against
African Americans. The police and the public were quick to believe
Charles Stuart's claim that a black man shot his wife. Had the police been
a bit more skeptical of Stuart's story, they might have discovered earlier
that he had taken out several large life insurance policies on his wife,
previouly plotted with his brother to kill his wife, and was romantically
involved with another woman. 189

A similar event occurred last year when the socially constructed image
of the African-American male as criminal 190 encouraged many people to
believe Susan Smith's false claim that a black man kidnaped her two
young children. 191 Smith later confessed to pushing her car into a lake
and watching it sink with her two children strapped inside. 192 The
socially constructed image of the Middle Eastern man as terrorist led to
initial reports that Muslim terrorists bombed the Oklahoma federal
building. 193 Substantial evidence, however, soon pointed to white
supremacist Timothy McVeigh as the principal person behind the bombing.

186. Id.
187. Id.
188. Id.
189. Id.
190. Richard Delgado, Rodrigo's Eighth Chronicle: Black Crime, White Fears—On the
Social Construction of Threat, 80 VA. L. REV. 503 (1994) (suggesting that the image of
the black man as criminal is socially constructed).
191. See Chang, Ito and Fung, supra note 3, at 2. Many African Americans were upset
because law enforcement officials were so quick to believe Susan Smith's initial allegations
that a black man had kidnaped her children. Eric Harrison, Accused Child Killer's Family
Apologizes to Blacks, L.A. TIMES, Nov. 9, 1994, at A9 (noting that the family of defendant
Susan Smith apologized to African Americans for her false claim that a black man had
kidnaped her two sons).
192. Eric Harrison, Accused Child Killer's Family Apologizes to Blacks, L.A. Times,
Nov. 9, 1994, at A9.
193. See Chang, Ito and Fung, supra note 3, at 2; Larry B. Stammer and Carla Hall,
Terror in Oklahoma City: U.S. Muslims Feel Sting of Accusations, L.A. TIMES, Apr. 22,
1995, at A22 (noting that shortly after the morning explosion of the Oklahoma federal
building, news reports stated that two men of "Middle Eastern" appearance were being
sought for questioning).
III. Conclusion

As the Simpson trial has revealed, the most difficult issue facing America in the 1990s is that of race. The question of race is not merely a black and white issue, but must include the perspectives of Asian Americans and other minorities. The fact that so much racial stereotyping of Asian Americans has occurred in connection with the Simpson case is perhaps a reflection of the fact that racial stereotyping of Asian Americans is so commonplace in our society that it shows up even in the most unlikely places. Significantly, this kind of racialization is taking place at a time when anti-immigrant, anti-affirmative action, and anti-minority sentiment seems to be the rage.

Three lessons can be gleaned from this essay's examination of race and the Simpson case from an Asian American perspective. First, the recurring racialization of Asian Americans associated with the Simpson case serves as a sobering reminder of the ease with which Asian Americans are portrayed as "foreign." This portrayal suggests that Asian Americans are the enemy, or that we are "different," which can be good or bad, depending on the context.\(^{194}\) The fact that Asian Americans are seen as "different" would not be problematic if the differences between Asian Americans and other Americans (as well as the differences between and amongst Asians and Asian Americans) were respected. The problem is that racial stereotyping does the opposite; racial stereotyping emphasizes differences in adverse ways. On the one hand, it flattens differences by reducing Asian Americans to a group with the same characteristics, characteristics which might be quite inconsistent. On the other hand, it emphasizes both real and imagined differences between Asian Americans and other Americans, viewing Asian Americans oppositionally to all other Americans.

Second, the harmful consequences of such racial representations are often overlooked. For example, the image of the Asian American as a person with a heavy accent encourages the presumption that Americans of Asian descent are not truly American. During World War II, this presumption resulted in the unjust incarceration of thousands of Americans of Japanese descent. This presumption persists today as evidenced by Bruce Yamashita's treatment in Marine Officer Candidate School. The image of the Asian American as studious, hard working, and efficient may lead to resentment and jealousy. Such jealousy can manifest itself in attempts to limit the number of Asian American students admitted to

\(^{194}\) There is a "continuing and encompassing societal perception of Asian Americans as 'different,' a popular consciousness that is simultaneously perversely dark and unrealistically bright." Yamamoto, *Friend, or Foe, or Something Else*, supra note 63, at 236-37.
selective educational institutions. It can also affect hiring and promotion decisions.

Third, people who use racial stereotypes to mock, criticize, or describe Asian Americans often try to excuse their actions by claiming they did not intend to be racist. The absence of an intent to be racist, however, does not necessarily eliminate the harmful consequences that may flow from racial representations of Asian Americans and other people of color.195

It is important to be conscious of racial representation when it occurs and to make others conscious of the dangers of racial representation. Even though it might be most comfortable to look the other way and pretend that racialization has not occurred, in the end such silence will not help to change the images which have been constructed about Asian Americans. In this essay, I have discussed the dilemma facing Asian Americans today. On the one hand, we have the desire to be treated equally (as full-blooded Americans), which includes a desire not to be racially represented in ways that can harm us. On the other hand, we want our differences to be respected. It is simplistic to view these desires as inconsistent and irreconcilable. The challenge to attain equality from others while preserving our differences lies before us.

Appendix I

JOHNNIE- GET THIS TO DERSHOWITZ -
DEFINITE GROUNDS-FOR-APPEAL
1) Jury keeps staring at me
2) Cops all over the place sends negative message
3) My lawyers look like a bunch of sleaze balls
4) Judge thinks guys who screw up should
   commit HARI-KARI

196. Cartoons reprinted from O.J.'s Legal Pad by Henry Beard and John Boswell. See supra note 70 and accompanying text.
JOHNNIE—NEAT IDEA!
LET'S THROW PROSECUTION OFF TRACK
WITH FAKE PHONE-IN BOMB THREAT!

HIRO-ITO!

AI-YEEE!
HERE COME DE JUDGE
HERE COME DE JUDGE!

ITO, ITO, NOT SO NEATO
ITO, ITO, BAG OF FRITOS
HIROSHIMA, NUKE JUDGE (ITO,
BANZAI, BANZAI, NAGASAKI),
USE HIS HEAD FOR BACKYARD
HOCKEY!