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Foreword: Making Us Possible

Alfred C. Yen†

In many ways, I feel supremely unqualified to write the foreword for a symposium honoring Neil Gotanda. I have known Neil well for only the last three or four years of his long and distinguished career. I have never written anything in the Critical Legal Studies or Critical Race Theory fields that Neil has done so much to advance, and I have written only twice about Asian Americans.¹ Nevertheless, I am writing about Neil because I am one of many Asian American law professors who owe Neil a debt of gratitude for helping to make our careers possible.²

All Asian American law professors must make choices about the extent to which their experiences as people of color inform their lives and careers. I suspect that practically all Asian American law professors have suffered some form of racial discrimination, and many of them would like to commit all or part of their professional lives to ending such evil. However, these good intentions are not always so easy to carry out.

Obstacles arise as early as the hiring process. It is no secret that critical race theory has attracted a lot of opposition. Detractors of critical race theory question its scholarly value,³ hint that it is anti-semitic,⁴ and link it to the downfall of western civilization.⁵ Critical race theorists have even been called purveyors of “the most horrible form of tyranny imaginable.”⁶

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1. Alfred C. Yen, *A Statistical Analysis of Asian Americans and the Affirmative Action Hiring of Law School Faculty*, 3 *ASIAN L. J.* 39 (1996) (hereinafter *Statistical Analysis*); Alfred C. Yen, *Unhelpful*, 81 *IOWA L. REV.* 1573 (1996).

2. It goes without saying that Neil has advanced the careers of many professors who are not Asian American.

3. Randall Kennedy, *Racial Critiques of Legal Academia*, 102 *HARV. L. REV.* 1745 (1989) (questioning the intellectual premises of critical race theory scholarship and arguing that such scholarship is deficient in failing to confront difficult issues squarely).

4. Daniel A. Farber and Suzanna Sherry, *Is the Radical Critique of Merit Anti-Semitic?*, 83 *CAL. L. REV.* 853 (1995) (arguing that attacks on traditional concepts of merit have the “wholly unintended consequence of being anti-Semitic and possibly racist.”)

5. ROBERT J. BORK, *SLOUCHING TOWARDS GOMMORRAH*, 4-5 (1996) (linking intellectual movements associated with critical race theory to threats against Western civilization).

6. Jim Chen, *Unloving*, 80 *IOWA L. REV.* 145, 172 (1994). For a series of responses to Profes-

The vehemence of some attacks against critical race theory exerts considerable pressure on many Asian Americans who want to be law professors. If a candidate for appointment expresses a strong interest in pursuing research in critical race theory, people may vote against her simply because they consider the entire field inappropriate.⁷ If a young law professor writes in the area, he runs the real risk of being denied tenure because others marginalize his work. Those who simply want to talk about race from more traditional perspectives must then wonder if their work will simply be lumped in with "that gibberish about race." This sort of climate sometimes renders matters of conscience (such as faculty votes about curriculum, appointment and promotion) threatening to a new professor's career. I have even spoken to a young professor who believes it necessary to shy away from racially or ethnically related community service for fear of disapproval by senior colleagues. The most obvious strategy for coping with these pressures is obvious: efface your racial identity and stick to conventional, noncontroversial areas of work. Perhaps after tenure, things will improve.

Fortunately, the pressures described above have not silenced all of the young Asian American law professors who are interested in race issues. Indeed, the academy is lucky to have a growing body of Asian American legal scholarship⁸ and Asian American law professors - many of whom act as mentors, role models and community activists.⁹ As the list of cites

see Chen's arguments, see *Colloquy*, 81 IOWA L. REV. 1467-1628 (1996).

7. Cf. Paul Carrington, *Of Law and the River*, ___ J. OF LEG. ED. ___ (contending that the attitudes and beliefs of those associated with critical legal studies are not appropriate for law school professors, and calling on "crits" to leave the legal academy).

8. A partial list (with apologies to scholarship overlooked) Keith Aoki, "Foreign-ness" and Asian American Identities: *Yellowface, World War II Propaganda and Bifurcated Racial Stereotypes*, 4 UCLA AS. PAC. AM. L.J. (forthcoming 1997); Robert S. Chang, *Reverse Racism! Affirmative Action, the Family and the Dream That is America*, 23 HASTINGS CONST. L. Q. 1115 (1996); Chang *Towards an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 Cal. L. Rev. 1241 (1993); Pat K. Chew, *Asian Americans in the Legal Academy: An Empirical and Narrative Profile*, 3 ASIAN L.J. 7 (1996); Gabriel J. Chin, *The Plessy Myth: Justice Harlan and the Chinese Cases*, 82 IOWA L. REV. 151 (1996); Cho, *Model Minority Mythology and Affirmative Action: Supreme Stereotypes of Asian Americans* (Feb. 12, 1996) (unpublished manuscript draft); Margaret Chon, *On the Need for Asian American Narratives in Law: Ethnic Specimens, Native Informants, Silences and Storytelling*, 3 UCLA AS. PAC. AM. L.J. (forthcoming 1996); Frank Wu, *Neither Black nor White: Asian Americans and Affirmative Action*, 15 B.C. THIRD WORLD L.J. 225 (1995); Pat K. Chew, *Asian Americans: The "Reticent" Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1 (1994); Lisa C. 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 (1993); Dean Hashimoto, *The Reverberating Narrative of Korematsu*, 4 UCLA AS. PAC. AM. L.J. ___ (forthcoming 1997); BILL ONG HING, *MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY 1850-1990* (Gordon H. Chang, ed., 1993); Jerry Kang, *Negative Action Against Asian Americans: The Internal Instability of Dworkin's Defense of Affirmative Action*, 31 HARV. C.R.-C.L. L. REV. 1 (1996); Cynthia Lee, *Race and the O.J. Simpson Trial, An Asian American Perspective*, ___ HASTINGS WOMEN'S L.J. ___ (forthcoming); Eric K. Yamamoto, *Korematsu Revisited: Correcting the Injustice of Extraordinary Government Excess and Lax Judicial Review*, 26 SANTA CLARA L. REV. 1 (1986); *Statistical Analysis*, *supra* note 1. See also *Iowa Colloquy*, *supra* note 6.

9. 85 total, 38 tenured. A rough idea of the present numbers of Asian American law faculty

shows, a huge percentage of this scholarship has been written in the last 5 years or so, and many of these professors are relatively new to the legal academy. Neil, however, has been a law professor since 1980, and I believe there is a connection between his work, the presence of Asian American professors in the legal academy, and the blossoming of Asian American legal scholarship.

First and foremost, Neil's work provides intellectual support for the hiring of Asian American law professors and the importance of race conscious scholarship. The hostility that discourages young professors from pursuing issues of race stems in part from an intellectual disagreement about whether it is appropriate for legal decisionmakers to be conscious of race. Those hostile to race consciousness believe that racism can be eliminated by insisting on color-blindness, especially in law. For them, the law should be completely oblivious to the race of those under its power. Race consciousness is evil because a legal decisionmaker who is conscious of race can use that information only to make a decision based on race. By extension, race consciousness in hiring (i.e. affirmative action) or legal scholarship has equally pernicious consequences. The legal academy should therefore take no steps to seek racial diversity in its members, nor should race based scholarship be pursued.¹⁰

Neil's work occupies a prominent place among writings that criticize color-blindness as an overly simplistic solution to racism. His article *A Critique of "Our Constitution is Color-Blind"*¹¹ is one of the most widely known and perceptive demonstrations of how color-blindness hides a whole host of attitudes that amount to the privileging of white interests over those of others. This observation is important because, as noted earlier, color-blindness forms the foundation for arguments that the legal academy need not affirmatively seek racial diversity in its members. However, if color-blindness actually privileges whites over others, then it makes sense for the academy to consciously diversify its ranks. This implies efforts to hire more faculty of color, including Asian American faculty.¹² More importantly, *A Critique of "Our Constitution is Color-Blind"* creates important intellectual space from which new scholarship can be launched. Without articles such as this, color-blind legal orthodoxy might

can be gleaned from the Directory of Asian American Law School Faculty and Professionals (2nd ed.). 85 professionals (including librarians, deans and other administrators) are listed. Sixty-three of those listed have been in the academy ten or fewer years.

10. For articles debating the merits and implications of color-blindness, see Duncan Kennedy, *A Cultural Pluralist Case for Affirmative Action in Legal Academia*, 1990 DUKE L.J. 705 (1990); Richard A. Posner, *Duncan Kennedy on Affirmative Action*, 1990 DUKE L.J. 1157 (1990); Jerome M. Culp, Jr., *Posner on Duncan Kennedy and Racial Difference: White Authority in the Legal Academy*, 41 DUKE L.J. 1095, 1097 (1992); Farber and Sherry, *supra* note 4.

11. 44 STAN. L. REV. 1 (1991).

12. Statistics about law faculty hiring support the conclusion that the legal academy does practice affirmative action hiring. However, those statistics also suggest that affirmative action hiring is not applied to Asian Americans. See *Statistical Analysis*, *supra* note 1.

disregard and suppress many interesting new pieces that proceed from race-conscious premises.

Second, Neil has been in the forefront of those articulating a distinct Asian American perspective on legal issues. In *Other Non-Whites in American Legal History*,¹³ Neil perceptively notes that discussions about race in America generally focus on the experiences and condition of African Americans. He then persuasively demonstrates that examining the legal treatment of "Other non-Whites" sheds light upon the nature of racism in America.¹⁴ The importance of this insight cannot be underestimated, for it is the foundation for an enormous amount of Asian American legal scholarship.¹⁵ Indeed, the insight is responsible for the founding of the now annual Conference of Asian Pacific American Law Professors.¹⁶

Third, Neil's work shows how race conscious scholarship can and ought to transcend immediate self interest. In *Re-producing the Model Minority Stereotype: Judge Joyce Karlin's Sentencing Colloquy in "People v. Soon Ja Du"*¹⁷ and *Tales of Two Judges: Joyce Karlin in People v. Soon Da Ju; Lance Ito in People v. O.J. Simpson*,¹⁸ Neil does not argue for legal relief on behalf of Asian Americans. Instead, he uses his consciousness of Asian American identity to suggest that Asian Americans have become the beneficiaries of racialized class privileges which place Asian Americans (and also Latino/as) above African Americans in America's racial hierarchy. By doing this, Neil inspires us all to remember that the purpose of race conscious scholarship is to work towards justice for all, even if it means giving up benefits or privileges that one's racial group already enjoys.

Finally, no foreword to this symposium would be complete without some mentioning of Neil's human presence in the academy. I am sure that many of the contributors to this symposium will mention Neil's interest in younger scholars and his valuable mentoring. Indeed, I am tempted to say that it is Neil's personal contact with so many of us who are interested in

13. 85 COLUM. L. REV. 1186 (1985). See also Neil Gotanda, *Asian American Rights And the Miss Saigon Syndrome*, in *ASIAN AMERICANS AND THE SUPREME COURT 1087* (Hyung-Chan Kim ed., 1996).

14. *Id.* at 1188-1192.

15. See Chang, *supra* note 8; Cho, *supra* note 8; Wu, *supra* note 8; Chew, *supra* note 8; Ikemoto, *supra* note 8; *Statistical Analysis*, *supra* note 1 (all working with the theme that Asian Americans are neither black nor white).

16. Although credit for the Conference of Asian Pacific American Law Professors belongs to many people, I did place the first phone calls in which the conference was planned. The other organizers (Pat Chew, Karl Okamoto, and Margaret Woo) and I constantly discussed the need for a perspective outside of the dominant black/white paradigm and how a conference of Asian American professors might help articulate that perspective.

17. Neil Gotanda, *Re-Producing the Model Minority Stereotype: Judge Joyce Karlin's Sentencing Colloquy in "People v. Soon Ja Du"* in *RE-VISIONING ASIAN AMERICA: LOCATING DIVERSITY*, (Soo-Young Chin, et al. eds., 1995).

18. Neil Gotanda, *Tales of Two Judges: Joyce Karlin in People v. Soon Da Ju; Lance Ito in People v. O.J. Simpson*, in *THE HOUSE THAT RACE BUILT* (Wahneema Lubiano ed., forthcoming).

legal condition of Asian Americans that constitutes his greatest legacy. All of us who have had the privilege of Neil's acquaintance believe that we would be less effective professors if we did not know him. Thank you Neil, for making us possible.

