The Murder of Henry Liu: A Tale of Espionage, Dissidence, and the American Torts System

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INTRODUCTION

In October 1984, two Taiwanese hit men quietly stole into the Daly City garage of Henry Liu, a Chinese American journalist and historian, and fired three fatal bullets into Liu's head and body.[1] The hit men's rudimentary choice of getaway vehicles—namely, bicycles—aside, the assailants were no ordinary aggressors. Members of the notorious Bamboo Gang, Tung Kuei-sen and Wu Tun had been ordered to murder Liu by Admiral Wang His-ling, a Taiwanese intelligence director. Wang was discontent not only with Liu's dissent writing on President Chiang Ching-kuo but with rumors of Liu's dissatisfaction with Wang's own work.[2] Although the incident itself failed to incite significant attention in the United States, the murder of Henry Liu and the resulting United States lawsuits had serious repercussions for the broader Chinese American community. The Liu estate's private tort actions against Taiwan became the dominant public method by which the United States recognized a serious violation of a Chinese American's rights to live and write without fear of retaliation or death.

I. PLACING LIU IN CONTEXT: FOREIGN INTELLIGENCE ACTIVITIES ON UNITED STATES SOIL

In 1985, at a meeting of the Committee on Foreign Affairs to study the murder of Liu, Congressman Stephen J. Solarz noted, "no one can dispute the fact that his right to write as he wished was protected by the American Constitution. Apparently his freedom of speech was not protected enough for Henry Liu was found shot to death."[3] It was precisely this restraint on

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1. David E. Kaplan, *Fires of the Dragon* 406 (Scribner 1992).

2. *See id.* at 331–43 (noting that although Liu had been scathingly critical of Chiang in the 1970s, his later work, namely his unofficial biography of Chiang, was toned down considerably following KMT pressures. He gave Chiang "an 'A+' in economics and [. . .] a 'B' in politics").

3. *The Murder of Henry Liu: Hearings and Markup Before the H. Committee on Foreign*

American civil liberties that deeply worried the Subcommittee. Yet in the 1980s, it was hardly atypical. States "friendly" to the United States, from Chile to Libya, also engaged in civil rights violations on US soil. Violations included targeting dissenters and critics as the United States condoned, and perhaps even facilitated, such behavior.[4] Whether these practices were permitted to continue in the name of diplomacy or to prevent retaliatory intelligence actions, they allowed Taiwanese interference on the lives of Chinese Americans to run unchecked.[5]

At the time, Taiwan, with a borderless conception of Chinese citizenship, maintained sprawling intelligence networks across the United States. Following the official recognition of the People's Republic of China (ROC) in 1979 and the United States' subsequent derecognition of Taiwan, alarmingly violent dissent activities by ethnic Taiwanese students living abroad contributed to the sentiment that Chinese Americans should be checked and leveraged for their influence in American politics.[6] In Chinatowns across the United States, the Kuomintang (KMT), the dominant Taiwanese political party, employed blacklists, boycotts, and threats as their tactics of choice, effectively suppressing critics of the current regime.[7] KMT agents also recruited students to watch and submit reports on other Taiwanese students in exchange for monetary compensation, prompting at least one US Congressman to call such infiltration onto American campuses a "serious problem."[8]

One such target, Chen Wen-chen, a permanent resident of the United States and an assistant professor at Carnegie-Mellon University, was found murdered during a May 1981 family trip to Taiwan, hours after being interrogated by the KMT "about his social and professional life in America" and a social visit "Chen could barely recall."[9] Although an FBI investigation unearthed evidence of a KMT "wiretap of Chen's telephone in Pittsburgh," the House Subcommittee on Asian and Pacific Affairs' calls for a crackdown on Taiwanese intelligence activities in the United States went unheeded by the Department of Justice (DOJ) and the Reagan

Affairs and H. Subcommittee on Asian and Pacific Affairs, 99th Cong. 2 (1985) (statement of Stephen J. Solarz, Chairman of the Subcommittee on Asian and Pacific Affairs).

4. Michael J. Glennon, *Liaison and the Law: Foreign Intelligence Agencies' Activities in the United States*, 25 HARV. INT'L L.J. 1, 2 (1984).

5. *See* Solarz, *supra* note 3, at 81 (statement of Michael J. Glennon, Professor of Law at the University of Cincinnati).

6. Chi-ming Wang, *Transpacific Articulations: Student Migrations and the Remaking of Asian America* 96 (2013).

7. Kaplan, *supra* note 1, at 157; *see also* Mark Dowie & Joel Millman, *The Killing of Henry Liu*, MOTHER JONES, May 1985, at 23 (noting journalists' trepidation over discussing politically sensitive topics).

8. Solarz, *supra* note 3, at 56 (written statement of L. Ling-chi Wang, Chair of the Committee to Obtain Justice for Henry Liu).

9. Kaplan, *supra* note 1, at 307.

Administration.[10]

Three years later, in addressing Liu's murder, the House Subcommittee again led the US government's public efforts to protect Chinese Americans' freedom of movement and freedom of expression without fear of KMT retaliation. Public leaders such as Congressman Norman Y. Mineta called on the DOJ for an investigation.[11] Others probed the State Department on a potential extradition treaty with Taiwan, in hopes that the gang members responsible for Liu's death could be extradited and tried in the United States.[12] Ultimately, no criminal case was pursued by the DOJ, and a resolution encouraging Taiwan to cooperate fully in the Liu case, despite passing the House of Representatives with 387 votes to 2, died in the Senate Committee on Foreign Relations.[13] Thus, although private US admonishments through diplomatic channels continued, publicly the United States seemed uninterested in Taiwan's violations of "the most basic rights of minority citizens."[14] Quoted in the liberal publication *Mother Jones*, Henry Der, executive director of Chinese for Affirmative Action in San Francisco, exclaimed, "the U.S. government has shown in this case that it doesn't give a damn about the rights of Chinese people—even when they are U.S. citizens."[15] In many ways then, the Liu estate's private tort action against Taiwan and the sporadic media attention it generated became the dominant public method by which the United States recognized a serious violation of Liu's rights.

II. *LIU V. REPUBLIC OF CHINA*: FACTUAL AND PROCEDURAL HISTORY

A. The Case in the Lower Courts

Unable to fully participate in Taiwan's own prosecution of Admiral Wang and Bamboo Gang operatives, Liu's wife sought recourse against the ROC in the United States District Court for the Northern District of California. She sought recovery for the wrongful death of Liu, injury to herself, and for the assault Liu suffered.[1617] The court denied, then later granted, the ROC's motion to dismiss on Act of State grounds.[18] The Act of State doctrine is a common law concept whereby "every sovereign State is bound to respect the independence of every other sovereign State, and the

10. *Id.* at 317.

11. Solarz, *supra* note 3, at 5 (statement of Jim Leach, Member of the Subcommittee on Asian and Pacific Affairs).

12. *Id.*

13. H.R. Res. 110, 99th Cong. (1986);.*see also* S. Res. 10, 99th Cong. (1986).

14. Solarz, *supra* note 3, at 9 (statement of Norman Y. Mineta, Representative in Congress from the State of California).

15. Mark Dowie & Joel Millman, *The Killing of Henry Liu*, MOTHER JONES, May 1985, at 49.

16. Kaplan, *supra* note 1, at 465.

17. *Liu v. Republic of China*, 642 F. Supp. 297, 299 (N.D. Cal. 1986).

18. *Id*.

courts of one country will not sit in judgment on the acts of the government of another done within its own territory."[19] Although judicial decisions, commonly between private litigants, are not "generally considered acts of state," the court here noted that the ROC's trial was a "fully investigated effort by the government to determine the facts and assess responsibility for a matter of grave concern to the people of the Republic of China."[20] Given the intrusiveness of proposed discovery, the court held that the case "would have required the court to become embroiled in exactly the type of sensitive inquiry that the act of state doctrine precludes."[21]

B. The Court of Appeals, 9th Circuit

The decision was reversed and remanded upon appeal.[22] In considering the district court's ruling on the applicability of the Act of State doctrine, the Ninth Circuit noted that the doctrine did not preclude the litigation of a wrongful death suit. The court stated, "We are asked to judge the legality and propriety of an act that occurred within the borders of the United States. Such an inquiry would hardly affront the sovereignty of a foreign nation."[23] The court also found that Taiwan's characterization of its own judicial proceedings as acts of state did not pose problems, because the court was not seeking to invalidate the findings of the proceedings. In fact, the court accepted the findings, stating, "[W]e need not decide whether or to what extent further inquires might be made of ROC officials."[24]

By applying the findings of the ROC proceedings to California's law of *respondeat superior*, the court found the ROC "vicariously liable for the torts of employees committed within the scope of their employment."[25] The ROC's own trial established that Wang, in ordering Liu's murder, had "acted in part to benefit the ROC."[26] Wang was concerned about rumors that Liu possessed unflattering information on Wang's performance as director of Taiwan's Intelligence Bureau of the Ministry of National Defense (IBMND), and "believed that Henry Liu was damaging the ROC by his criticism of its government."[27] Wang also relied on this "nationalism story" to induce members of the Bamboo Gang into implementing his directive.[28] The Ninth Circuit held that "the ROC [was] liable under *respondeat superior*" because California courts consider mixed motive

19. *Id.* (quoting *Underhill v. Hernandez*, 168 U.S. 250, 252 (1897)).
20. *Liu v. Republic of China*, No. C-85-7461 EFL, 1987 WL 49413, at *1 (N.D. Cal. Aug. 27, 1987).
21. *Id.*
22. *Id.*
23. *Liu v. Republic of China*, 892 F.2d 1419, 1433 (Cal. Ct. App. 1989).
24. *Id.* at 1434.
25. *Id.* at 1426.
26. *Id.* at 1428.
27. *Id.*
28. *Id.* at 1427.

"sufficient to impose vicarious liability on the employer."[29] The ROC, following the Supreme Court's denial of certiorari,[30] settled the case.

CONCLUSION

In holding a sovereign state and American ally responsible for interfering with the life and civil rights of a Chinese American, the US judicial system accomplished what its political counterparts failed to publicly do. Combined with negative press, discrete diplomatic pressure, and the House of Representative's clear disapproval of Taiwanese intelligence activities, the Liu case also led to long-overdue checks on Taiwanese interference with dissent behavior. For one, these factors led to a serious restructuring of intelligence agencies in Taiwan. The Intelligence Bureau of the Ministry of National Defense found its authority reduced to strictly "military matters" and it was instructed to "avoid political domestic issues and to eschew covert actions."[31] Further, the controversy surrounding the Liu case coalesced critics of Taiwan's authoritarian regime and to underscore the need for a more accountable, democratic form of governance—one that would evince a greater respect for the rights and protections of Chinese Americans.

Both the Ninth Circuit's decision to review the politically loaded appeal and its subsequent findings were necessary in the context of Executive inaction. Although the judiciary often follows the Executive's lead in foreign affairs, in this case, the Executive was inactive despite a thorough Congressional record compiled by two separate House committees. The Executive branch also failed to address a persistent interference with basic civil rights—one that went so far as to result in the murder of an American citizen on US soil. In such limited contexts, as this case shows, judicial action can be a powerful, civil rights-advancing tool unrestrained by political and diplomatic realities.

29. *Id.* at 1431.

30. *See Republic of China v. Liu*, 497 U.S. 1058 (1990).

31. Steven E. Philips, *Taiwan's Intelligence Reform in an Age of Democratization in* REFORMING INTELLIGENCE 175–76 (Thomas C. Bruneau & Steven C. Boraz eds., 2007).