

*Excerpt from*

The Scientist and the Spy by Mara Hvistendahl

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Mo Yun had hired a high-powered legal team from Los Angeles, independent of Robert's, a move that was fairly common in cases involving multiple defendants. Her lawyers had flown in to argue that Mark Betten's airport questioning of her was illegal, because it happened before the agent had read her Miranda rights...

Mo Yun's attorney Gary Lincenberg rose for cross-examination. He asked Mark to draw a diagram of the gate area, marking out the locations of the window and the boarding gate, along with where he and Mo Yun had stood.

"Now, Agent Betten," the defense attorney probed, "during the interrogation Ms. Mo also had a five-year-old daughter for large parts of it hanging on her, correct?"

"I would say probably the entire part of it."

"And it's still your testimony that you believe that there was a risk that she could leave that area and run away from the questioning; is that your testimony?" Lincenberg asked.

"No, that's not my testimony," Mark said. "I'd consider it highly unlikely that she would try to run away, so because of that we didn't position ourselves in any strategic location to try to prevent that. We positioned ourselves in a manner that was conducive to conducting a consensual interview."

In his closing statement, Lincenberg alluded to the diagram that Mark had drawn. He argued that Mo Yun was backed against a window in a crowded boarding area and questioned in a foreign language while her children watched: "Three much larger male agents in deep voices with a gun showing and the baton showing then stood in front of her," he said with a flourish. "She was physically constrained. And Agent Betten even testified that they were probably even closer in Ms. Mo's face than they would have ordinarily been because of the background noise. She, faced with walls in front of her, posts to the left, agents in front of her, a daughter hanging around her neck and seats behind her, had no place to go."

Judge Rose agreed. Few of the travelers picked out by CBP agents for questioning have the impression that they can just walk away, she noted. "We've got at least four officers with this one woman—one of whom is in uniform wearing a gun and baton—approaching this woman, who is a citizen not of any country but of China, that has some of the worst human rights violations out there, and in which you, as a citizen, do not challenge the government," the judge said. "If the government says to you, 'You'll answer our questions,' you'll answer their questions." Mo Yun, she ruled, was entitled to have her Miranda rights read.

It was a remarkable development, and not only because Judge Rose, whose involvement in the slaughterhouse raids had earned her the eternal wrath of immigrant advocates, had ruled in favor of a noncitizen. The decision meant that all of Mo Yun's statements in the airport were inadmissible as evidence. Two months later, the judge threw out the MSN chats as well.

On July 28, 2015, the U.S. attorney's office dropped charges against Mo Yun and removed her name from the indictment. Investigators didn't have much else on her, and Griess and colleagues no doubt knew that in the absence of highly incriminating evidence, a jury was not likely to look kindly on the government's forcibly separating a mother from her children. Almost as quickly as the case against Mo Yun was built, it was dismantled. After a four-year investigation involving offices around the country, the government was back to one defendant: Robert.