- Race was founded on the combined characteristics of complexion, hair, and skull.

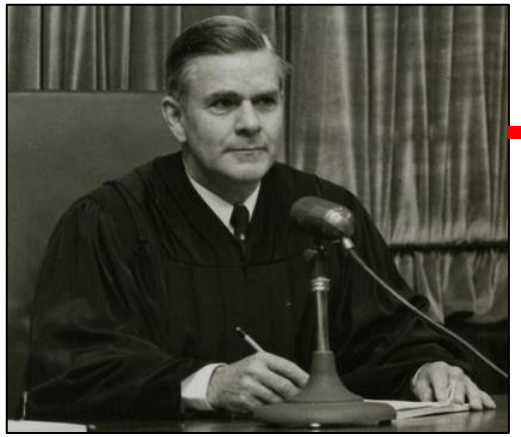
- No one includes the white or Caucasian race with the Mongolian or yellow race.

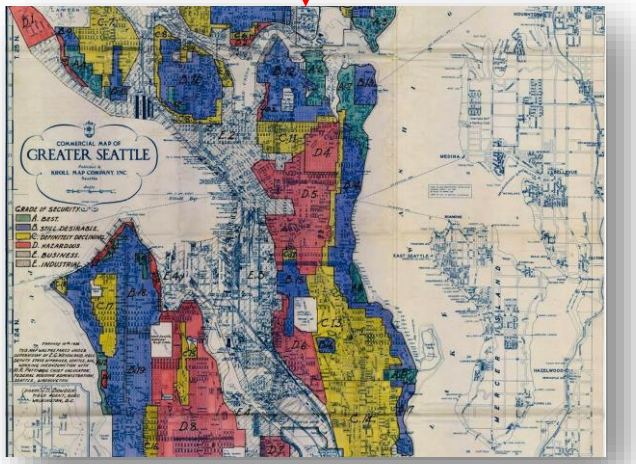
- Persons of the Mongolian race are not entitled to be admitted as citizens of the United States.

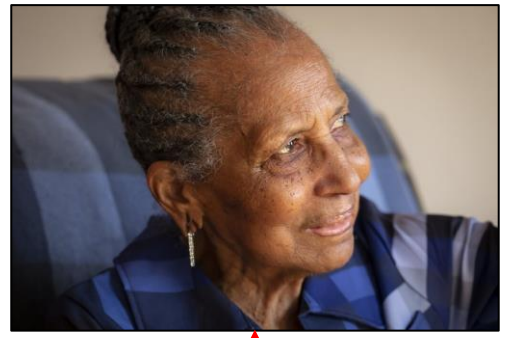
- No one of those classifications recognizing color as one of the distinguishing characteristics includes the Mongolian in the white or whitish race.

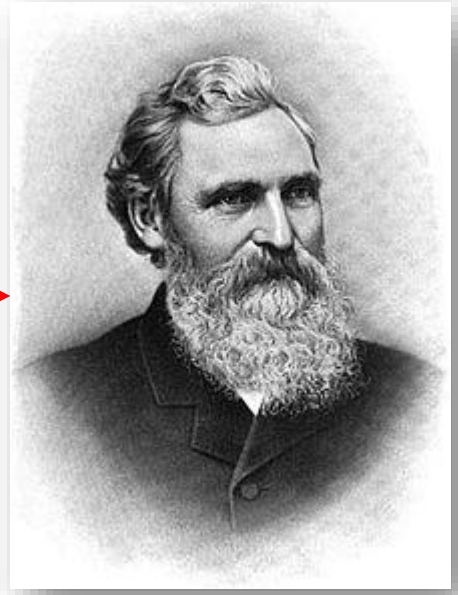
- The words Indian, Negro, Black and White, are generic terms, designating race. Therefore, Chinese and all other people not white are prohibited from bearing witness against Whites.

who said it?




COMMERCIAL MAP OF
GREATER SEATTLE
KROLL MAP COMPANY, INC.
GRADE OF SECURITY
A. BEST.
B. STILL DESIRABLE.
C. DEFINITELY DECLINING.
D. HAZARDOUS.
E. BUSINESS.
F. INDUSTRIAL.





through-lines

institutional racism in the courts

truth

reconciliation

connection

Judge David Keenan
david.Keenan@kingcounty.gov

Commissioner Jonathon Lack
jlack@kingcounty.gov

Superior Court of the State of Washington
for King County

Berkeley Law

Berkeley Judicial Institute

terms

at least four types of racism

internalized – within an individual

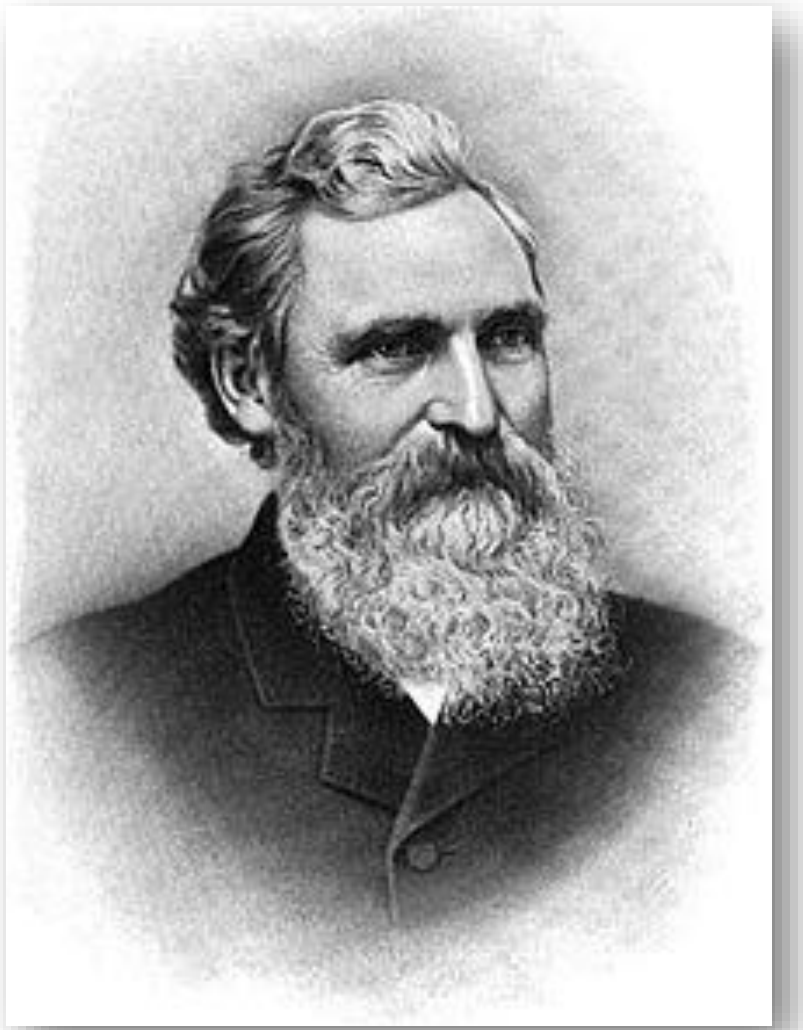
interpersonal – between individuals

institutional – within institutions and systems of power

structural – among institutions and across society

race = construct

- In 1902, the Washington Supreme Court denied Mr. Yamashita admission to the Washington bar, holding that he was not a U.S. citizen and thus could not be admitted to practice, explaining that:
  - (1) "[w]hen the naturalization law was enacted the word 'white,' applied to race, commonly referred to the Caucasian race";
  - **(2) race was "*founded* on the combined characteristics of complexion, hair, and skull"**;
  - (3) "**no one includes** the white or Caucasian race with the Mongolian or yellow race; and no one of those classifications recognizing color as one of the distinguishing characteristics includes the Mongolian in the white or whitish race"; and
  - (4) the exclusion of individuals of Japanese ancestry "must be taken to express a **settled national will**." In re *Takuji Yamashita*, 30 Wn. 234, 237-39, 70 P. 482 (1902) (emphasis added).



- In 1890, the California Supreme Court denied Hong Yen Chang admission to the California bar, holding that he was not a United States citizen and thus could not be admitted to practice, explaining that:
  - “persons of the Mongolian race are not entitled to be admitted as citizens of the United States”; and
  - “[w]e have no doubt about the correctness of this ruling.” *In re Hong*, 24 P. 156, 157 (Cal. 1890).

SUPERIOR COURT OF WASHINGTON
FOR THE COUNTY OF KING

PERSON1, *Plaintiff*, v. PERSON2, *Defendant*.	Case No. 00-0-00000-0 SEA **ORDER**

truth

EXECUTIVE ORDER

- - - - - - -

AUTHORIZING THE SECRETARY OF WAR TO PRESCRIBE MILITARY AREAS

WHEREAS the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities as defined in Section 4, Act of April 20, 1918, 40 Stat. 533, as amended by the Act of November 30, 1940, 54 Stat. 1220, and the Act of August 21, 1941, 55 Stat. 655 (U. S. C., Title 50, Sec. 104):

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military

I hereby further authorize and direct all Executive Departments, independent establishments and other Federal Agencies, to assist the Secretary of War or the said Military Commanders in carrying out this Executive Order, including the furnishing of medical aid, hospitalization, food, clothing, transportation, use of land, shelter, and other supplies, equipment, utilities, facili-

hereunder.

THE WHITE HOUSE,

February 19, 1942.

THE NATIONAL ARCHIVES
FILED AND MADE AVAILABLE
FOR PUBLIC INSPECTION
FEB 21 12 51 PM '42
IN THE DIVISION OF THE
FEDERAL REGISTER
9066

WESTERN DEFENSE COMMAND AND FOURTH ARMY
WARTIME CIVIL CONTROL ADMINISTRATION
Presidio of San Francisco, California
May 3, 1942

INSTRUCTIONS TO ALL PERSONS OF JAPANESE ANCESTRY

Living in the Following Area:

All of that portion of the City of Los Angeles, State of California, within that boundary beginning at the point at which North Figueroa Street meets a line following the middle of the Los Angeles River; thence southerly and following the said line to East First Street; thence westerly on East First Street to Alameda Street; thence southerly on Alameda Street to East Third Street; thence northwesterly on East Third Street to Main Street; thence northerly on Main Street to First Street; thence northwesterly on First Street to Figueroa Street; thence northeasterly on Figueroa Street to the point of beginning.

Pursuant to the provisions of Civilian Exclusion Order No. 33, this Headquarters, dated May 3, 1942, all persons of Japanese ancestry, both alien and non-alien, will be evacuated from the above area by 12 o'clock noon, P. W. T., Saturday, May 9, 1942.

No Japanese person living in the above area will be permitted to change residence after 12 o'clock noon, P. W. T., Sunday, May 3, 1942, without obtaining special permission from the representative of the Commanding General, Southern California Sector, at the Civil Control Station located at:

Japanese Union Church,
120 North San Pedro Street,
Los Angeles, California.

Such permits will only be granted for the purpose of uniting members of a family, or in cases of grave emergency.

The Civil Control Station is equipped to assist the Japanese population affected by this evacuation in the following ways:

1. Give advice and instructions on the evacuation.
2. Provide services with respect to the management, leasing, sale, storage or other disposition of most kinds of property, such as real estate, business and professional equipment, household goods, boats, automobiles and livestock.
3. Provide temporary residence elsewhere for all Japanese in family groups.
4. Transport persons and a limited amount of clothing and equipment to their new residence.

The Following Instructions Must Be Observed:

1. A responsible member of each family, preferably the head of the family, or the person in whose name most of the property is held, and each individual living alone, will report to the Civil Control Station to receive further instructions. This must be done between 8:00 A. M. and 5:00 P. M. on Monday, May 4, 1942, or between 8:00 A. M. and 5:00 P. M. on Tuesday, May 5, 1942.
2. Evacuees must carry with them on departure for the Assembly Center, the following property:
   (a) Bedding and linens (no mattress) for each member of the family;
   (b) Toilet articles for each member of the family;
   (c) Extra clothing for each member of the family;
   (d) Sufficient knives, forks, spoons, plates, bowls and cups for each member of the family;
   (e) Essential personal effects for each member of the family.

All items carried will be securely packaged, tied and plainly marked with the name of the owner and numbered in accordance with instructions obtained at the Civil Control Station. The size and number of packages is limited to that which can be carried by the individual or family group.

3. No pets of any kind will be permitted.
4. No personal items and no household goods will be shipped to the Assembly Center.
5. The United States Government through its agencies will provide for the storage, at the sole risk of the owner, of the more substantial household items, such as iceboxes, washing machines, pianos and other heavy furniture. Cooking utensils and other small items will be accepted for storage if crated, packed and plainly marked with the name and address of the owner. Only one name and address will be used by a given family.
6. Each family, and individual living alone, will be furnished transportation to the Assembly Center or will be authorized to travel by private automobile in a supervised group. All instructions pertaining to the movement will be obtained at the Civil Control Station.

Go to the Civil Control Station between the hours of 8:00 A. M. and 5:00 P. M., Monday, May 4, 1942, or between the hours of 8:00 A. M. and 5:00 P. M., Tuesday, May 5, 1942, to receive further instructions.

J. L. DeWITT
Lieutenant General, U. S. Army
Commanding

SEE CIVILIAN EXCLUSION ORDER NO. 33.

Headquarters
Western Defense Command
and Fourth Army
Presidio of San Francisco, California

Public Proclamation No. 1

March 2, 1942

WESTERN DEFENSE COMMAND AREA

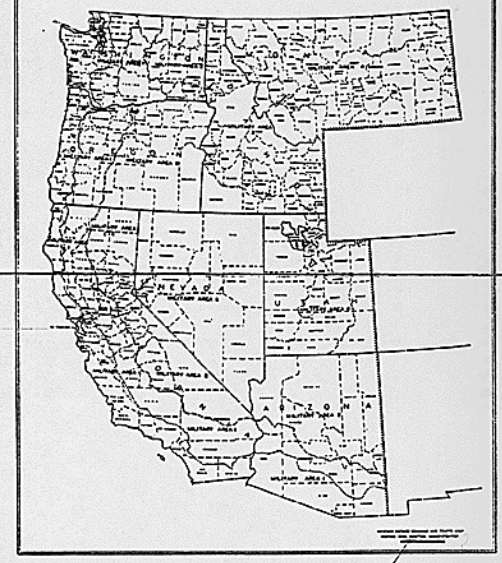


FIGURE 1

NOTICE

Headquarters
Western Defense Command
and Fourth Army

Presidio of San Francisco, California
May 10, 1942

Civilian Exclusion Order No. 57

1. Pursuant to the provisions of Public Proclamations Nos. 1 and 2, this Headquarters, dated March 2, 1942, and March 16, 1942, respectively, it is hereby ordered that from and after 12 o'clock noon, P. W. T., of Saturday, May 16, 1942, all persons of Japanese ancestry, both alien and non-alien, be excluded from that portion of Military Area No. 1 described as follows:

All that portion of the County of King, State of Washington, within the boundary beginning at the intersection of Roosevelt Way and East Eighty-fifth Street; thence easterly along East Eighty-fifth Street and East Eighty-fifth Street extended to Lake Washington; thence southerly along the shoreline of Lake Washington to the point at which Yesler Way meets Lake Washington; thence westerly along Yesler Way to Fifteenth Avenue; thence northerly on Fifteenth Avenue to East Madison Street; thence southwesterly on East Madison Street to Fifth Avenue; thence northwesterly along Fifth Avenue to Westlake Avenue; thence northerly along Westlake Avenue to Virginia Street; thence northeasterly along Virginia Street to Fairview Avenue North; thence northerly along Fairview Avenue North to Eastlake Avenue; thence northerly along Eastlake Avenue to Roosevelt Way; thence northerly along Roosevelt Way to the point of beginning.

2. A responsible member of each family, and each individual living alone, in the above described area will report between the hours of 8:00 A. M. and 5:00 P. M., Monday, May 11, 1942, or during the same hours on Tuesday, May 12, 1942, to the Civil Control Station located at:

Christian Youth Center,
2203 East Madison Street,
Seattle, Washington.

3. Any person subject to this order who fails to comply with any of its provisions or with the provisions of published instructions pertaining hereto or who is found in the above area after 12 o'clock noon, P. W. T., of Saturday, May 16, 1942, will be liable to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving or Committing Any Act in Military Areas or Zones," and alien Japanese will be subject to immediate apprehension and internment.

4. All persons within the bounds of an established Assembly Center pursuant to instructions from this Headquarters are excepted from the provisions of this order while those persons are in such Assembly Center.

J. L. DeWITT
Lieutenant General, U. S. Army
Commanding

All that portion of the County of King, State of Washington, within the boundary beginning at the intersection of Roosevelt Way and East Eighty-fifth Street; thence easterly along East Eighty-fifth Street and East Eighty-fifth Street extended to Lake Washington; thence southerly along the shoreline of Lake Washington to the point at which Yesler Way meets Lake Washington; thence westerly along Yesler Way to Fifteenth Avenue; thence northerly on Fifteenth Avenue to East Madison Street; thence southwesterly on East Madison Street to Fifth Avenue; thence northwesterly along Fifth Avenue to Westlake Avenue; thence northerly along Westlake Avenue to Virginia Street; thence northeasterly along Virginia Street to Fairview Avenue North; thence northerly along Fairview Avenue North to Eastlake Avenue; thence northerly along Eastlake Avenue to Roosevelt Way; thence northerly along Roosevelt Way to the point of beginning.

Christian Youth Center,

2203 East Madison Street,

Seattle, Washington.

Headquarters
Western Defense Command
and Fourth Army

Presidio of San Francisco, California

- - -

Public Proclamation No. 3

- - -

March 24, 1942

TO: The people within the States of Washington, Oregon, California, Montana, Idaho, Nevada, Utah and Arizona, and the Public Generally:

WHEREAS, By Public Proclamation No. 1, dated March 2, 1942, this headquarters, there were designated and established Military Areas Nos. 1 and 2 and Zones thereof, and

WHEREAS, By Public Proclamation No. 2, dated March 16, 1942, this headquarters, there were designated and established Military Areas Nos. 3, 4, 5 and 6 and Zones thereof, and

WHEREAS, The present situation within these Military Areas and Zones requires as a matter of military necessity the establishment of certain regulations pertaining to all enemy aliens and all persons of Japanese ancestry within said Military Areas and Zones thereof:

NOW, THEREFORE, I, J. L. DEWITT, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General, Western Defense Command, do hereby declare and establish the following regulations covering the conduct to be observed by all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the Military Areas above described, or such portions thereof as are hereinafter mentioned:

1. From and after 6:00 A. M., March 27, 1942, all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the geographical limits of Military Area No. 1, or within any of the Zones

46 F.Supp. 657
District Court, W.D. Washington, Northern Division.

UNITED STATES

v.

GORDON KIYOSHI HIRABAYASHI.

No. 45738.
Sept. 15, 1942.

Synopsis

Gordon Kiyoshi Hirabayashi was charged in an indictment with violating Civilian Exclusion Order No. 57 by failing to report to the Civilian Control Station and with violating the curfew provision of proclamation issued by Military Commander of the Western Defense Command. On defendant's demurrer to indictment and plea in abatement.

Demurrer overruled and plea dismissed.

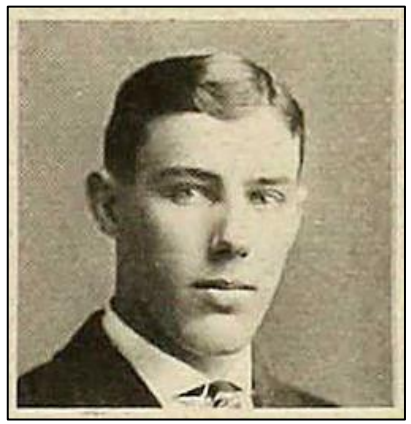
Attorneys and Law Firms

*658 J. Charles Dennis, U.S. Atty., and G. D. Hile and Allan Pomeroy, Asst. U.S. Attys., all of Seattle, Wash., for plaintiff.

Frank L. Walters, of Seattle, Wash., for defendant.

Opinion

BLACK, District Judge.



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
vs.
GORDON KIYOSHI HIRABAYASHI,
Defendant.

No. 45738

JUDGMENT and SENTENCE

Comes now on this 21st day of October, 1942, the said defendant GORDON KIYOSHI HIRABAYASHI into open Court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says, save as he before hath said.

WHEREFORE, by reason of the law and the premises, and the verdict of the jury finding defendant guilty on Counts I and ~~xxxx~~ II of the indictment, it is

CONSIDERED, ORDERED and ADJUDGED by the Court that the said defendant GORDON KIYOSHI HIRABAYASHI is guilty as charged in Count I of the Indictment and that on Count I he be committed to the custody of the Attorney General of the United States for imprisonment in the Federal Prison Camp, Dupont, Washington,

or in such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of three (3) months.

It is further CONSIDERED, ORDERED and ADJUDGED by the Court that the said defendant GORDON KIYOSHI HIRABAYASHI on Count II of the indictment, be committed to the custody of the Attorney General of the United States for imprisonment in the Federal Prison Camp, at Dupont, Washington, for the period of three (3) months; PROVIDED, however, that the execution of the sentence on said Count II shall run concurrently with and not consecutively to the execution of the sentence imposed on Count I of the indictment.

And the said defendant is hereby remanded into the custody of the United States Marshal for this District for delivery to the Superintendent of the Federal Prison Camp, Dupont, Washington, for the purpose of executing said sentence. This judgment and sentence for all purposes shall take the place of a commitment, and be recognized by the Warden or Keeper of any Federal Penal Institution as such.

Done in open Court this 21st day of October, 1942.

LLOYD L. BLACK
United States District Judge

Presented by:

J. CHARLES DENNIS
United States Attorney

Violation of Public Law #503, Curfew Act; and
Civilian Exclusion Order No. 57.

The foregoing is a full, true and correct copy of an original ... Judgment & Sentence ... on file in the

63 S.Ct. 1375
Supreme Court of the United States.

HIRABAYASHI
v.
UNITED STATES.

No. 870.
Argued May 10, 11, 1943.
Decided June 21, 1943.

Synopsis

On Certificate from the United States Circuit Court of Appeals of the Ninth Circuit.

Gordon Kiyoshi Hirabayashi was convicted in the District Court of violating the Act of Congress which makes it a misdemeanor knowingly to disregard restrictions made applicable by a military commander to persons in military area prescribed by him as such as authorized by an Executive Order of the President, and on appeal the Court of Appeals for the Ninth Circuit certified questions of law to the Supreme Court.

Judgment of conviction affirmed.

Original Image of 65 S.Ct. 193 (PDF)

65 S.Ct. 193
Supreme Court of the United States

KOREMATSU
v.
UNITED STATES.

No. 22.
Argued Oct. 11, 12, 1944.
Decided Dec. 18, 1944.
Rehearing Denied Feb. 12, 1945.

See 324 U.S. 885, 65 S.Ct. 674.

Synopsis

Fred Toyosaburo Korematsu was convicted of remaining in a portion of a military area from which persons of Japanese ancestry had been ordered excluded, and to review a judgment, 140 F.2d 289, affirming his conviction, he brings certiorari.

Affirmed.

3 In the light of the principles we announced in the Hirabayashi case, we are unable to conclude that it was beyond the war power of Congress and the Executive to exclude ***218*** those of Japanese ancestry from ****195*** the West Coast war area at the time they did. True,

UNCLASSIFIED//FOR PUBLIC RELEASE

MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA **v.** **KHALID SHAIKH MOHAMMAD;** **WALID MUHAMMAD SALIH** **MUBARAK BIN 'ATTASH;** **RAMZI BINALSHIBH;** **ALI ABDUL AZIZ ALI;** **MUSTAFA AHMED ADAM** **AL HAWSAWI**	**AE 563A (GOV)** **Government Response** To Mr. Ali's Motion to Invalidate Restrictions on Public Dissemination of Mr. Ali's Artwork 13 April 2018

The power to wage war is the power to wage war successfully. *See Hirabayashi v. United States*, 320 U.S. 81, 93 (1943). The Department of Defense has decided part of the way to win this war is to cut off a vital recruiting tool al Qaeda uses; the words and statements of their fighters who have successfully attacked America. This power to successfully wage war

> . . . extends to every matter and activity so related to war as substantially to affect its conduct and progress. The power is not restricted to the winning of victories in the field and the repulse of enemy forces. It embraces every phase of the national defense, including the protection of war materials and the members of the armed forces from injury and from the dangers which attend the rise, prosecution and progress of war.

Hirabayashi, 320 U.S. at 93. To be sure, each accused, including Mr. Ali, will be able to speak

reconciliation

United States District Court,
W.D. Washington.

Gordon K. HIRABAYASHI, Petitioner,
v.
UNITED STATES of America, Respondent.

No. C83–122V.
Feb. 10, 1986.

Synopsis

Japanese-American filed petition for writ of error coram nobis, seeking vacation of his convictions for violating wartime measures requiring Japanese-Americans to remain within their residences and to report to civilian control stations. The District Court, Voorhees, J., held that government's failure to disclose to Japanese-American military commander's actual reason for ordering exclusion of those of Japanese ancestry from West Coast was fundamental error in regard to conviction for failure to report to civilian control stations, requiring vacation of that conviction.

Petition granted in part and denied in part.

Attorneys and Law Firms

*1446 Rodney L. Kawakami, Arthur G. Barnett, Camden M. Hall, Michael Leong, Craig Kobayashi, Daniel J. Ichinaga, Benson D. Wong, Seattle, Wash., for petitioner.

Gene S. Anderson, U.S. Atty., Susan E. Barnes, Asst. U.S. Atty., Seattle, Wash., Victor D. Stone, Richard L. Edwards, Attys., *1447 General Litigation and Legal Advice Section, U.S. Dept. of Justice, Washington, D.C., for respondent.

MEMORANDUM DECISION

VOORHEES, District Judge.

828 F.2d 591
United States Court of Appeals,
Ninth Circuit.

Gordon K. HIRABAYASHI, Petitioner-Appellant,
v.
UNITED STATES of America, Respondent-Appellee.
Gordon K. HIRABAYASHI, Petitioner-Appellee,
v.
UNITED STATES of America, Respondent-Appellant.

Nos. 86–3853, 86–3887.
Argued and Submitted March 2, 1987.
Decided Sept. 24, 1987.

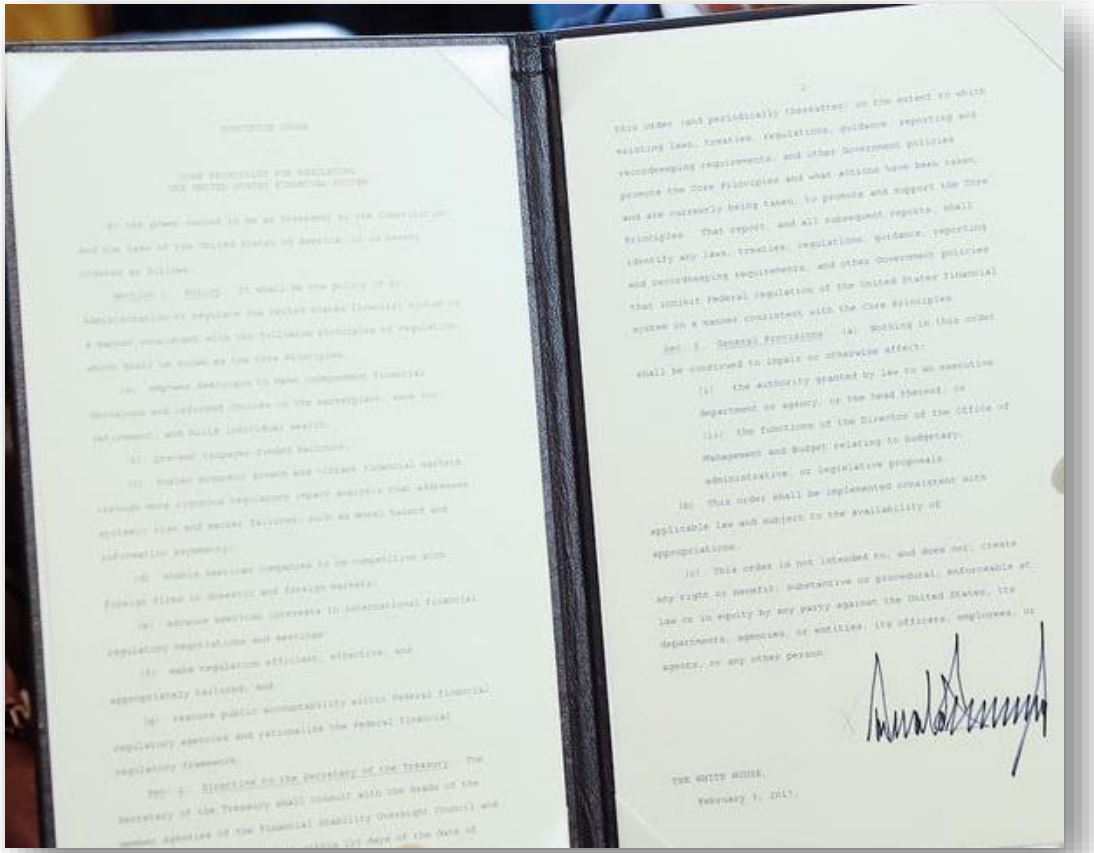
Synopsis

Japanese-American filed petition for writ of coram nobis, seeking vacation of his convictions violating wartime measures requiring Japanese-Americans to remain within their residences and to report to civilian control stations. The United States District Court for the Western District of Washington, Donald S. Voorhees, J., 627 F.Supp. 1445 granted petition in part and denied it in part, and Government and petitioner appealed. The Court of Appeals, Schroeder, Circuit Judge, held that: (1) claims were not barred by laches, and (2) fact that convictions were for misdemeanors did not render case moot.

Affirmed in part and reversed and remanded in part.


UNITED STATES COURT HOUSE

connection



Executive Order 13769 of January 27, 2017

Protecting the Nation From Foreign Terrorist Entry Into the United States

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, and section 301 of title 3, United States Code, and to protect the American people from terrorist attacks by foreign nationals admitted to the United States, it is hereby ordered as follows:

Section 1. *Purpose.* The visa-issuance process plays a crucial role in detecting individuals with terrorist ties and stopping them from entering the United States. Perhaps in no instance was that more apparent than the terrorist attacks of September 11, 2001, when State Department policy prevented consular officers from properly scrutinizing the visa applications of several of the 19 foreign nationals who went on to murder nearly 3,000 Americans. And while the visa-issuance process was reviewed and amended after the September 11 attacks to better detect would-be terrorists from receiving visas, these measures did not stop attacks by foreign nationals who were admitted to the United States.

Numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001, including foreign nationals who entered the United States after receiving visitor, student, or employment visas, or who entered through the United States refugee resettlement program. Deteriorating conditions in certain countries due to war, strife, disaster, and civil unrest increase the likelihood that terrorists will use any means possible to enter the United States. The United States must be vigilant during the visa-issuance process to ensure that those approved for admission do not intend to harm Americans and that they have no ties to terrorism.

Trump Travel Ban Judge James Robart: A Soft-Spoken Jurist Who Minces No Words

Federal Judge James L. Robart has lived much of his life out of the spotlight – until he elicited Trump's outrage over his travel ban ruling.

Ahead of Supreme Court fight, Trump travel ban opponents reflect on past anti-Asian policies

Oral arguments before the Supreme Court are scheduled for Wednesday in a case regarding Trump's travel ban.

SUPREME COURT OF THE UNITED STATES

Syllabus

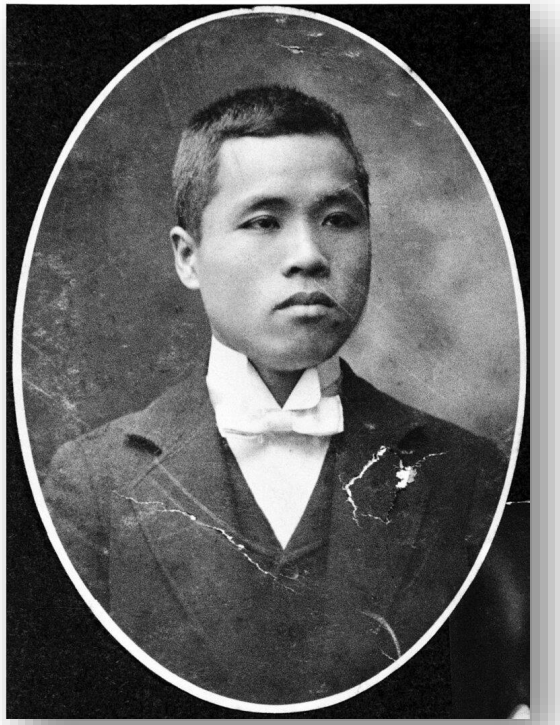
TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.
v. HAWAII ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 17–965. Argued April 25, 2018—Decided June 26, 2018

In the intervening years since *Korematsu*, our Nation has done much to leave its sordid legacy behind. See, *e.g.*, Civil Liberties Act of 1988, 50 U. S. C. App. §4211 *et seq.* (setting forth remedies to individuals affected by the executive order at issue in *Korematsu*); Non-Detention Act of 1971, 18 U. S. C. §4001(a) (forbidding the imprisonment or detention by the United States of any citizen absent an Act of Congress). Today, the Court takes the important step of finally overruling *Korematsu*, denouncing it as "gravely wrong the day it was decided." *Ante,* at 38 (citing *Korematsu*, 323 U. S., at 248 (Jackson, J., dissenting)). This formal repudiation of a shameful precedent is laudable and long overdue. But it does not make the majority's decision here acceptable or right. By blindly accepting the Government's misguided invitation to sanction a discriminatory policy motivated by animosity toward a disfavored group, all in the name of a superficial claim of national security, the Court redeploys the same dangerous logic underlying *Korematsu* and merely replaces one "gravely wrong" decision with another. *Ante,* at 38.

Our Constitution demands, and our country deserves, a Judiciary willing to hold the coordinate branches to account when they defy our most sacred legal commitments. Because the Court's decision today has failed in that respect, with profound regret, I dissent.



60 Cal.4th 1169
Supreme Court of California

In re HONG YEN CHANG on Admission.

No. S223736.
March 16, 2015.

Synopsis

Background: Law students and applicant's descendants requested posthumous admission to State Bar for applicant previously denied admission under the federal Chinese Exclusion Act and a state law citizenship requirement.

Holdings: The Supreme Court held that:
1 denial of admission violated applicant's right to equal protection, abrogating *In re Hong Yen Chang*, 84 Cal. 163, 24 P. 156, and
2 Supreme Court would grant posthumous admission to State Bar.

CALIFORNIA **BAR JOURNAL**

OFFICIAL PUBLICATION OF THE **STATE BAR OF CALIFORNIA**

Supreme Court corrects 125-year-old ruling, grants license to Chinese immigrant

The California Supreme Court made history last month when it granted posthumous State Bar admission to Hong Yen Chang, who was denied a law license 125 years ago due to federal and state laws denying citizenship and employment to Chinese Americans.

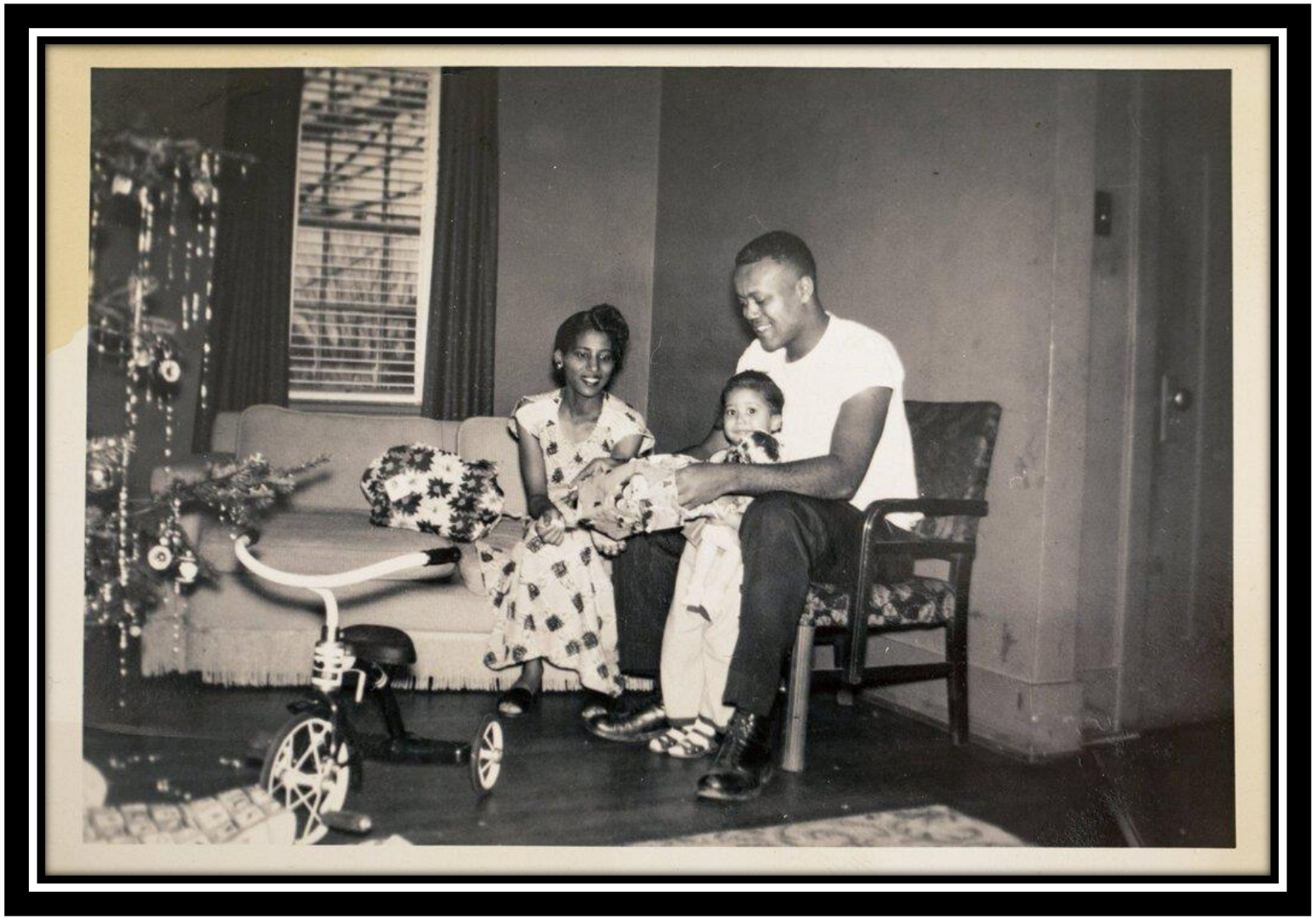
Chang overcame numerous obstacles to become licensed to practice in New York in 1888, but when he moved to California two years later, the high court here rejected his application.

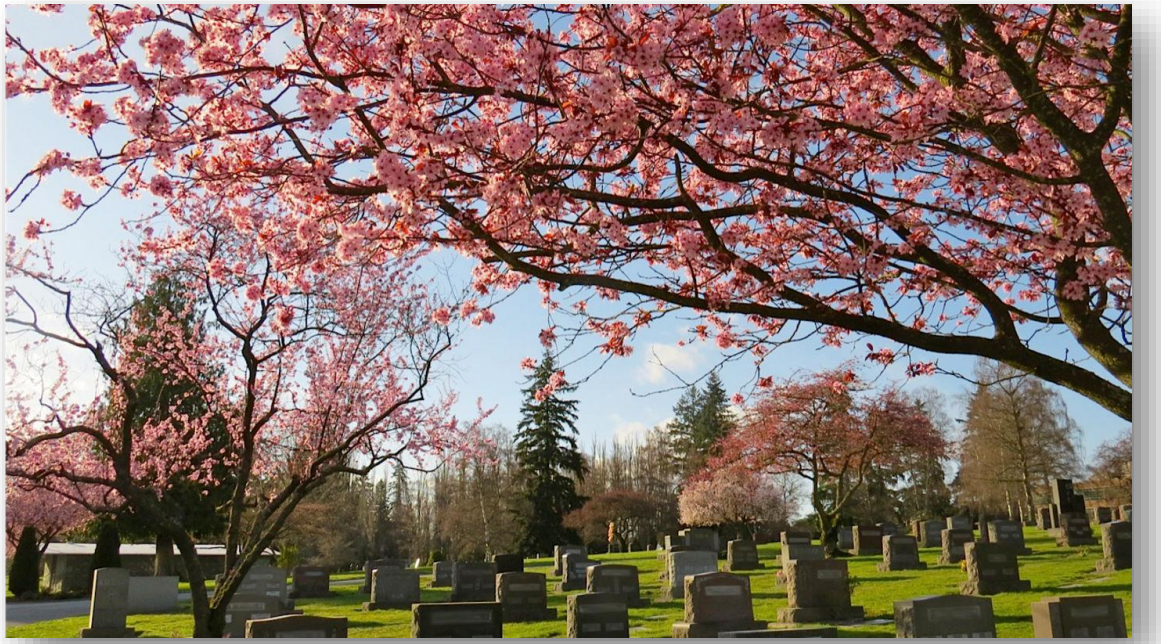
Hong Yen Chang - Courtesy of the Ah Tye Family

Since then, the anti-Chinese exclusionary laws and policies that led to his rejection have been renounced.

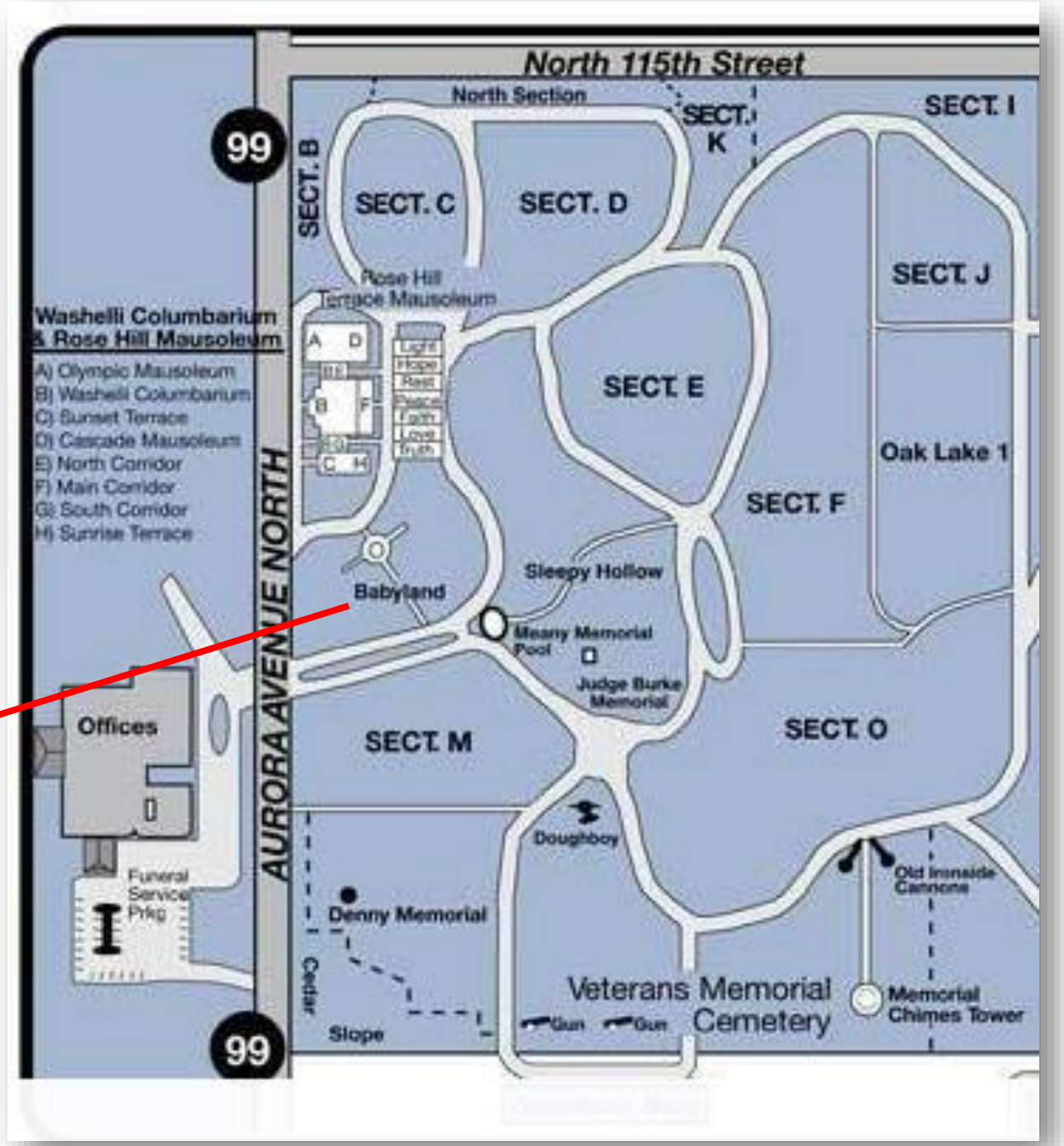
"Even if we cannot undo history, we can acknowledge it and, in doing so, accord a full measure of recognition to Chang's path-breaking efforts to become the first lawyer of Chinese descent in the United States," the court wrote in its unanimous March 16 opinion.

truth






C H
Babyland


North 115th Street
North Section
SECT. K
SECT. I
99
SECT. B
SECT. C
SECT. D
SECT. J
Rose Hill Terrace Mausoleum
Washelli Columbarium & Rose Hill Mausoleum
A) Olympic Mausoleum
B) Washelli Columbarium
C) Sunset Terrace
D) Cascade Mausoleum
E) North Corridor
F) Main Corridor
G) South Corridor
H) Sunrise Terrace
SECT. E
Oak Lake 1
SECT. F
AURORA AVENUE NORTH
Babyland
Sleepy Hollow
Meany Memorial Pool
Judge Burke Memorial
Offices
SECT. M
SECT. O
Doughboy
Old Innsaide Cannone
Funeral Service Prkg
Denny Memorial
Cedar
Slope
Veterans Memorial Cemetery
Gun
Gun
Memorial Chimes Tower
99

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

MILTON V. PRICE and BERNICE K. PRICE, his wife,

Plaintiffs,

vs.

EVERGREEN CEMETERY COMPANY OF SEATTLE, a Washington corporation,

Defendant.

No. 513159

COMPLAINT

The son of the plaintiffs, Milton V. Price, Jr., born December 18, 1953, was accidentally killed on August 28, 1957. The following day, plaintiff wife telephoned defendant for the purpose of purchasing a plot in Babyland Memorial Sanctuary, a portion of defendant's cemetery reserved for the remains of young children. Defendant's employee quoted a price and told her that a plot was available. Plaintiff told the employee that she would come to their office the following morning and purchase the plot. On the morning of August 30, 1957, plaintiffs went to the office of defendant, accompanied by plaintiff wife's mother and Gertrude Peoples, to complete the arrangement. Plaintiff wife advised the employee in charge that she was there for the purpose of purchasing the lot discussed

on the telephone the previous night. Defendant's employees thereupon told plaintiffs that Negro babies could not be buried in "Babyland".

IV

Defendant refused the burial of Milton V. Price, Jr. in that portion of its cemetery known as "Babyland" because he was not of the Caucasian race, in violation of the provisions of RCW 68.05.260.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

MILTON V. PRICE and BERNICE K. PRICE, his wife,

Plaintiffs,

vs.

EVERGREEN CEMETERY COMPANY OF SEATTLE, a Washington corporation,

Defendant.

No. 513159

V E R D I C T

We, the jury in the above entitled cause, do find for the defendant.

Allerton C Lewis

Foreman

In the instant case, the quoted title gave no intimation to the members of the legislature that they were voting either for or against civil rights, as applied to the sale or purchase of a lot in a privately owned cemetery. It is the enactment of this type of 'hodge-podge or log-rolling legislation' that is prohibited by Art. II, § 19, of the state constitution. State ex rel. Washington Toll Bridge Authority v. Yelle, supra. See Power, Inc. v. Huntley, 1951, 39 Wash.2d 191, 235 P.2d 173.

We hold that RCW 68.05.260 (Laws of 1953, chapter 290, ***355** § 53, p. 838) is violative of Art. II, § 19, of the state constitution; hence, it is unconstitutional.

Negroes Invade White Rights, Judge Charges

OLYMPIA, Dec. 8.— (A.P.) —State Supreme Court Judge Joseph A. Mallery today accused the Negro race of attempting to deprive white persons of their right to choose their associates in private affairs.

MALLERY, Judge (concurring).

***356** The cemetery representative tried earnestly to show and sell appellants a burial plot in a children's section of the cemetery where both white and Negro children were interred. The appellants refused to even look at it. They insisted on burial in 'Babyland' and brought this action for injuries to their feelings because they were not permitted to intrude upon the white children segregated therein. Obviously, if Negro children were admitted to 'Babyland,' its white exclusiveness would be gone, and it would be in the same category as the unsegregated section which was rejected by the Negro appellants. The appellants' grievance is the mere *existence of any exclusive section* for white children into which Negroes cannot intrude at will. In view of the fact that the respondent cemetery provides unsegregated facilities of equal quality for the general public, including Negroes, there is no other possible issue herein than that of compulsory total desegregation in cemeteries.

This lawsuit is but an incident, the second of a series, in the over-all Negro crusade to judicially deprive white people of their right to choose their associates in their private affairs.

reconciliation

The Supreme Court
State of Washington

June 4, 2020

Dear Members of the Judiciary and the Legal Community:

We are compelled by recent events to join other state supreme courts around the nation in addressing our legal community.

The devaluation and degradation of black lives is not a recent event. It is a persistent and systemic injustice that predates this nation's founding. But recent events have brought to the forefront of our collective consciousness a painful fact that is, for too many of our citizens, common knowledge: the injustices faced by black Americans are not relics of the past. We continue to see racialized policing and the overrepresentation of black Americans in every stage of our criminal and juvenile justice systems. Our institutions remain affected by the vestiges of slavery: Jim Crow laws that were never dismantled and racist court decisions that were never disavowed.

The legal community must recognize that we all bear responsibility for this on-going injustice, and that we are capable of taking steps to address it, if only we have the courage and the will. The injustice still plaguing our country has its roots in the individual and collective actions of many, and it cannot be addressed without the individual and collective actions of us all.

As judges, we must recognize the role we have played in devaluing black lives. This very court once held that a cemetery could lawfully deny grieving black parents the right to bury their infant. We cannot undo this wrong—but we can recognize our ability to do better in the future. We can develop a greater awareness of our own conscious and unconscious biases in order to make just decisions in individual cases, and we can administer justice and support court rules in a way that brings greater racial justice to our system as a whole.

As lawyers and members of the bar, we must recognize the harms that are caused when meritorious claims go unaddressed due to systemic inequities or the lack of financial, personal, or systemic support. And we must also recognize that this is not how a *justice* system must operate. Too often in the legal profession, we feel bound by tradition and the way things have "always" been. We must remember that even the most venerable precedent must be struck down when it is incorrect and harmful. The systemic oppression of black Americans is not merely incorrect and harmful; it is shameful and deadly.

As judges, we must recognize the role we have played in devaluing black lives. This very court once held that a cemetery could lawfully deny grieving black parents the right to bury their infant. We cannot undo this wrong—but we can recognize our ability to do better in the future. We can develop a greater awareness of our own conscious and unconscious biases in order to make just decisions in individual cases, and we can administer justice and support court rules in a way that brings greater racial justice to our system as a whole.

Supreme Court of California Issues Statement on Equality and Inclusion

By Cathal Conneely
Jun 11, 2020

> *"In view of recent events in our communities and through the nation, we are at an inflection point in our history. It is all too clear that the legacy of past injustices inflicted on African Americans persists powerfully and tragically to this day. Each of us has a duty to recognize there is much unfinished and essential work that must be done to make equality and inclusion an everyday reality for all.*
>
> *We must, as a society, honestly recognize our unacceptable failings and continue to build on our shared strengths. We must acknowledge that, in addition to overt bigotry, inattention and complacency have allowed tacit toleration of the intolerable. These are burdens particularly borne by African Americans as well as Indigenous Peoples singled out for disparate treatment in the United States Constitution when it was ratified. We have an opportunity, in this moment, to overcome division, accept responsibility for our troubled past, and forge a unified future for all who share devotion to this country and its ideals.*
>
> *We state clearly and without equivocation that we condemn racism in all its forms: conscious, unconscious, institutional, structural, historic, and continuing. We say this as persons who believe all members of humanity deserve equal respect and dignity; as citizens committed to building a more perfect Union; and as leaders of an institution whose fundamental mission is to ensure equal justice under the law for every single person.*
>
> *In our profession and in our daily lives, we must confront the injustices that have led millions to call for a justice system that works fairly for everyone. Each member of this court, along with the court as a whole, embraces this obligation. As members of the legal profession sworn to uphold our fundamental constitutional values, we will not and must not rest until the promise of equal justice under law is, for all our people, a living truth."*

Footnotes

1 We take this opportunity to overrule this court's opinion in *Price v. Evergreen Cemetery Co. of Seattle*, 57 Wash.2d 352, 357 P.2d 702 (1960). We may overrule a prior case when it is both incorrect and harmful. *Deggs v. Asbestos Corp.*, 186 Wash.2d 716, 727-28, 381 P.3d 32 (2016) (quoting *In re Rights to Waters of Stranger Creek*, 77 Wash.2d 649, 653, 466 P.2d 508 (1970)). *Price* is both. *Price* considered the constitutionality of a 1953 law that said, "It shall be unlawful for any cemetery under this act to refuse burial to any person because such person may not be of the Caucasian race." LAWS OF 1953, ch. 290, § 53, at 838. Section 53 was part of a larger bill with the title "AN ACT relating to the regulation of cemeteries." *Id.*, ch. 290. The majority concluded the bill had two subjects in violation of article II, section 19: "(1) civil rights, and (2) the endowment care funds of private cemeteries and the creation of a cemetery board." *Price*, 57 Wash.2d at 354, 357 P.2d 702. This was a strained and incorrect way to divide the subjects in the bill, all of which were germane to the subject of cemetery regulation. It is harmful for two reasons: first, because it suggests a more stringent standard than is required to survive an article II, section 19 challenge, second, and more importantly, the case is harmful because of Justice Mallery's concurrence, which condemns civil rights and integration. *Id.* at 355-58, 357 P.2d 702. "As judges, we must recognize the role we have played in devaluing black lives." Letter from the Wash. State Supreme Court to the Members of the Judiciary and the Legal Cmty. 1 (June 4, 2020) (addressing racial injustice). The *Price* concurrence is an example of the unfortunate role we have played.

Called into Doubt by In re Chang, | Cal., | March 16, 2015

4 Cal. 399, 1854 WL 765 (Cal.)

THE PEOPLE, Respondent,

v.

GEORGE W. HALL, Appellant.

Supreme Court of California.
October Term, 1854.

***399** Section 394 of the Civil Practice Act provides, "No Indian or Negro shall be allowed to testify as a witness in any action in which a White person is a party."

Section 14 of the Criminal Act provides, "No Black, or Mulatto person, or Indian shall be allowed to give evidence in favor of, or against a White man."

Held, that the words, Indian, Negro, Black and White, are generic terms, designating race. That, therefore, Chinese and all other people not white, are included in the prohibition from being witnesses against Whites.

****290** Hostility toward Chinese labor, together with cultural tensions and xenophobia, prompted the California Legislature to enact a raft of laws designed to disadvantage Chinese immigrants. (See, e.g., Stats. 1880, ch. 116, § 1, p. 123 [establishing commercial fishing ban for "aliens incapable of becoming electors of this State"]; Pen.Code, former §§ 178, 179, added by Amends. to Codes 1880, ch. 3, §§ 1, 2, pp. 1, 2 [imposing criminal liability on corporations that employed Chinese workers]; Stats. 1862, ch. 339, § 1, p. 462 [creating "the Chinese Police Tax" in order "to protect Free White Labor against competition with Chinese Coolie Labor, and to discourage the Immigration of the Chinese into the State of California"]; Stats. 1855, ch. 174, § 1, p. 216 [imposing license tax on each foreigner who was "ineligible to become a citizen"].) Many of the era's discriminatory laws and government actions were upheld by this court. (See, e.g., *Mott v. Cline* (1927) 200 Cal. 434, 253 P. 718; *In re Yick Wo* (1885) 68 Cal. 294, 9 P. 139, revd. *sub nom. Yick Wo v. Hopkins* (1886) 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220; *Ex parte Ah Fook* (1874) 49 Cal. 402, revd. *sub nom. Chy Lung v. Freeman* (1875) 92 U.S. 275, 23 L.Ed. 550; *People v. Brady* (1870) 40 Cal. 198; *People v. Hall* (1854) 4 Cal. 399, 404–405; *People v. Naglee* (1850) 1 Cal. 232.)

connection

Chief Justice	Date Assumed Office as Chief Justice
Joseph A. Mallery	January 13, 1947

In this 2019 photo, Washington Supreme Court Justice Steven González listens to testimony during a hearing in Olympia. (AP Photo/Ted S. Warren, File)

Steven González will be next chief justice of Supreme Court

truth

Commander O'Meara testified that, as of Monday morning, April 20, 1959, he thought his neighbors might have some thoughts on the matter of a Negro purchasing respondents' home, and that if so, he might give some consideration thereto if he was not bound by law to accept an offer from complainant

check. Mrs. O'Meara said she wasn't interested and refused to take the agreement and the check, and when Mr. Winsor said he would leave them, she said she would burn them. She did not look at the earnest money agreement and check and they

BEFORE THE WASHINGTON STATE BOARD AGAINST DISCRIMINATION

IN THE MATTER OF	
ROBERT L. JONES,	
Complainant	Case # H-498
and	
COMMANDER JOHN J. O'MEARA,	OPINION, FINDINGS OF FACT AND ORDER
Respondent.	

OPINION

A hearing was held in this matter in Seattle, Washington, on Saturday April 25, 1959, on a complaint filed by Robert L. Jones with the Washington State Board Against Discrimination. The Washington State Board Against Discrimination was represented at the hearing by Wing C. Luke and Elihu Hurwitz, assistant Attorneys General of the State of Washington. Complainant appeared in person and by his attorney Robert W. Winsor; respondents John J. O'Meara and Donna A. O'Meara his wife appeared in person and by their attorney, Commander W. K. Earle, United States Coast Guard.

The only reasonable conclusion that can be drawn from Mrs. O'Meara's telephone conversation with complainant on Sunday afternoon, at a time when respondents had received no offer of purchase from anyone, is that she was refusing to even discuss or negotiate a sale to complainant solely because of his color. When

the law singles out was) the peculiar source of the evil that it desired to prevent.'

"There is no reason to suppose that persons with FHA mortgages on their homes are more likely to discriminate against minority groups than those who have conventional mortgages or no mortgages, or those who are purchasing upon contract. This act would prohibit Commander O'Meara from doing what his neighbors are at perfect liberty to do. It gives to those who have conventional mortgages, or no mortgages, and those who are buying upon contract, special privileges and immunities which are not accorded to him. The classification is arbitrary and capricious and bears no reasonable relation to the evil which is sought to be eliminated. It not only violates the equal protection clause of the 14th Amendment to the United States Constitution, but violates the special privileges and immunities clause of Article I, Section 12, of the Washington State Constitution."

The judgment appealed from is affirmed.

another Mallery concurrence

A casual examination of the act reveals that the committee or tribunal serves as a flying squadron to be called anywhere to bargain on behalf of any disgruntled Negro who has complained against a white man. It is called a board in this bargaining state of the proceeding. It designates itself as a tribunal in the succeeding coercive stage.

reconciliation

Superior Court of the State of Washington
for the County of King

JAMES E. ROGERS
Presiding Judge

King County Courthouse
Seattle, Washington 98104-2381
Jim.Rogers@kingcounty.gov
(206) 477-1597

June 8, 2020

Dear Members of the King County Legal Community:

We judges, commissioners, and staff of the King County Superior Court have watched the events of these past weeks with compassion, sorrow, and reflection on the injustices at play. As the largest trial court in the State, we acknowledge that, at times, our court system has upheld injustice. Today's judiciary must reconcile its past with the present and work towards a better future.

We take this opportunity to share with you our understanding of our role in the justice system and our commitment to you as members of the community we serve.

We recognize that the justice system exists as a check on the excesses of power by other branches of government and by individuals who seek to engage in acts of oppression. As Dr. Martin Luther King famously said, "morality cannot be legislated, but behavior can be regulated. Judicial decrees may not change the heart, but they can restrain the heartless."

We understand that the justice system exists in a world of historical and contemporary racial oppression. At times, judges have acted to reinforce racist acts. At times, court decisions have wrongfully deprived Black Americans of their liberty in criminal cases and have precluded them from fully engaging in civil society, for example, by upholding racist real estate deeds that prevented moving into certain Seattle neighborhoods.

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connection

redlining