People v. Hall:

A Postscript

BY JOHN S. CARAGOZIAN*

Michael Traynor's excellent lead article in the CSCHS Spring/Summer 2017 Newsletter explores the infamous 1854 case of *People v. Hall*.

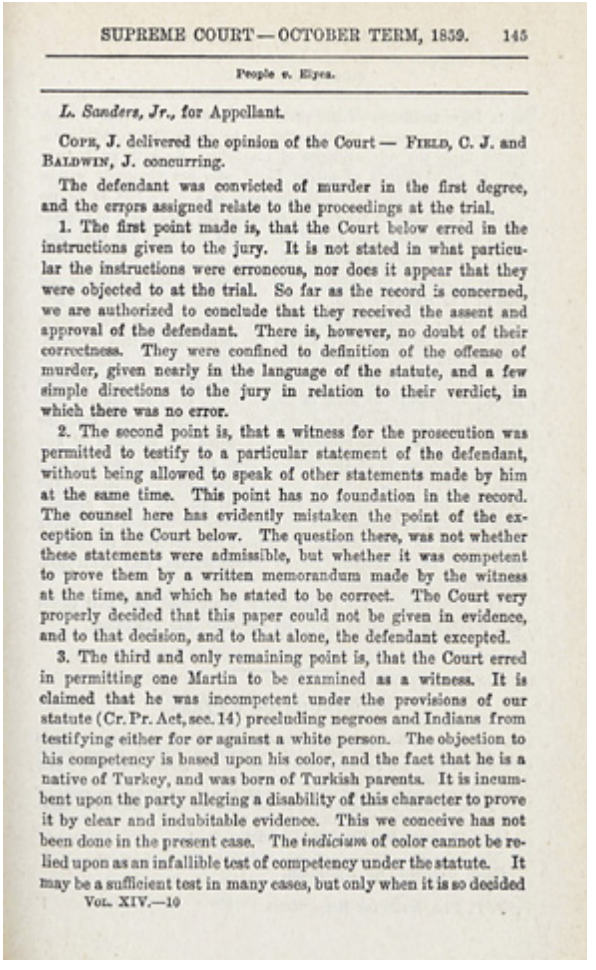
As the article recounts, defendant George Hall was convicted of murder, but the California Supreme Court reversed the conviction because three of the prosecution's dozen witnesses were Chinese. At the time, California's Criminal Proceedings Act provided, "No Black or Mulatto person, or Indian, shall be allowed to give evidence . . . against a white man." While the Act never mentioned Chinese witnesses, *Hall* held it to bar their testimony because (a) Chinese and Indians are of the same racial origins, (b) the word "Black" in the Act "means everyone who is not of white blood," and (c) as a matter of policy, the California Legislature could not have intended to allow Chinese to testify.[1]

The postscript begins five years after *Hall*, when the California Supreme Court dealt with a similar case. In *People v. Elyea*, the defendant was convicted of murder, and a witness against him was a native of Turkey.[2] The defendant objected to the testimony, relying on the same Act, "based upon [the witness'] color and the fact that he is a native of Turkey, and was born of Turkish parents."[3]

The *Elyea* Court acknowledged *Hall* as settled but added, "[W]e cannot presume that all persons having tawny skins and dark complexions are within the principle of that decision."[4] The Court then quoted the Act, which defined mulatto as a person "having one-eighth or more of negro blood" and an Indian as a person "having one-half of Indian blood."[5] These definitions would allow testimony from a witness with less than the specified proportions — apparently even if the witness had dark skin — "thus rendering impossible the adoption of any rule of exclusion upon the basis of mere color."[6]

Elyea noted that, in Turkey, "the Caucasian [race] largely predominates" and affirmed the defendant's conviction.[7]

Hall and *Elyea* illustrated the difficulty of applying expressly racist laws — whatever twisted bases they might have elsewhere — in California, which had been multiracial since before statehood.[8] Indeed, various such laws



SUPREME COURT—OCTOBER TERM, 1859. 145

People v. Elyea.

L. Sanders, Jr., for Appellant.

COPE, J. delivered the opinion of the Court — FIELD, C. J. and BALDWIN, J. concurring.

The defendant was convicted of murder in the first degree, and the errors assigned relate to the proceedings at the trial.

1. The first point made is, that the Court below erred in the instructions given to the jury. It is not stated in what particular the instructions were erroneous, nor does it appear that they were objected to at the trial. So far as the record is concerned, we are authorized to conclude that they received the assent and approval of the defendant. There is, however, no doubt of their correctness. They were confined to definition of the offense of murder, given nearly in the language of the statute, and a few simple directions to the jury in relation to their verdict, in which there was no error.

2. The second point is, that a witness for the prosecution was permitted to testify to a particular statement of the defendant, without being allowed to speak of other statements made by him at the same time. This point has no foundation in the record. The counsel here has evidently mistaken the point of the exception in the Court below. The question there, was not whether these statements were admissible, but whether it was competent to prove them by a written memorandum made by the witness at the time, and which he stated to be correct. The Court very properly decided that this paper could not be given in evidence, and to that decision, and to that alone, the defendant excepted.

3. The third and only remaining point is, that the Court erred in permitting one Martin to be examined as a witness. It is claimed that he was incompetent under the provisions of our statute (Cr. Pr. Act, sec. 14) precluding negroes and Indians from testifying either for or against a white person. The objection to his competency is based upon his color, and the fact that he is a native of Turkey, and was born of Turkish parents. It is incumbent upon the party alleging a disability of this character to prove it by clear and indubitable evidence. This we conceive has not been done in the present case. The *indicium* of color cannot be relied upon as an infallible test of competency under the statute. It may be a sufficient test in many cases, but only when it is so decided

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were struck down in California, in some cases decades before the United States Supreme Court followed suit.

Two twentieth-century cases of this pattern are particularly exemplary. The first began with a 1946 lawsuit, *Mendez v. Westminster School District of Orange County*.[9] Several Mexican-American parents sued Orange County school districts that had long practiced assigning students of "Mexican or Latin descent" and "White or Anglo-Saxon children" to separate schools.[10] The United States District Court enjoined this segregation, finding a denial of equal protection.[11]

The school districts appealed to the Ninth Circuit, and the litigation attracted nationwide interest, including from Thurgood Marshall, who filed an amicus brief on behalf of the NAACP.[12] The Ninth Circuit, sitting en banc, unanimously affirmed the District Court.[13] Judge William Denman (who would later become chief judge) concurred, eloquently explaining segregation's dangers, especially in California:

> California is a state as large as France . . . . All the nations of the world have contributed to its people. Were the vicious principle sought to be established in Orange and San Bernardino[14] Counties followed elsewhere, in scores of school districts the adolescent

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minds of American children would become infected. To the wine producing valleys and hills of northern counties emigrated thousands of Italians whose now third generation descendants well could have their law-breaking school officials segregate the descendants of the north European nationals.

Likewise in the raisin districts of the San Joaquin Valley to which came the thousands of Armenians who have contributed to national prominence such figures as Saroyan and Haig Patigan. So in the coastal town homes of fishermen, largely from the Mediterranean nations, the historic antipathies of Italian, Greek and Dalmatian nationals could be injected and perpetuated in their citizen school children.

Or, to go to the descendants of an ancient Mesopotamian nation, whose facial characteristics still survived in the inspiring beauty of Brandeis and Cardozo — the descendants of the nationals of Palestine, among whose people later began our so-called Christian civilization, as well could be segregated and Hitler's anti-Semitism have a long start in the country which gave its youth to aid in its destruction.[15]

Not until seven years later, in 1954's landmark *Brown v. Board of Education* involving black/white segregation, did the United States Supreme Court invalidate school segregation throughout the nation.[16]

The second example was a 1948 challenge to California's anti-miscegenation law, California Civil Code section 60, which prohibited a white person from marrying "a Negro, mulatto, Mongolian or member of the Malay race."[17] At the time, 30 of the then-48 states had anti-miscegenation laws, none of which had been invalidated.[18]

In *Perez v. Sharp*, the California Supreme Court explained the difficulties in applying this law in California:

> [S]ection 60 . . . does not include "Indians" or "Hindus"; nor does it set up "Mexicans" as a separate category, although some authorities consider Mexico to be populated at least in part by persons who are a mixture of "white" and "Indian." . . . [Section 60] permits marriages not only between Caucasians and others of darker pigmentation, such as Indians, Hindus, and Mexicans, but between persons of mixed ancestry including white.[19]

The *Perez* Court continued by emphasizing some of the statute's "absurd results" in a multi-racial state:

> [A] person with three-sixteenths Malay ancestry might have many so-called Malay characteristics and yet be considered a white person in terms of his preponderantly white ancestry. Such a person might easily find himself in a dilemma, for if he were regarded as a white person under [S]ection 60, he would be forbidden to marry a Malay, and yet his Malay characteristics might effectively preclude his marriage to another white person.[20]

Indeed, the Court impliedly questioned the validity of *any* racial classifications:

> [T]he Legislature has adopted one of the many systems classifying persons on the basis of race. Racial classifications that have been made in the past vary as to the number of divisions and the features regarded as distinguishing . . . each division. The number of races distinguished by systems of classification "varies from three or four to thirty-four." [S]ection 60 is based on the system suggested by Blumenbach early in the nineteenth century. . . .[21]

Even with valid classifications, is Section 60 "to be applied on the basis of the physical appearance . . . or . . . genealogical research"?[22]

> If the physical appearance . . . is to be the test, the statute would have to be applied on the basis of subjective impressions. . . . Persons having the same parents and consequently the same hereditary background could be classified differently. On the other hand, if the application of the statute to persons of mixed ancestry is to be based on genealogical research, the question immediately arises what proportions of Caucasian, Mongolian, or Malayan ancestors govern the applicability of the statute.[23]

With one dissenter, *Perez* invalidated California's anti-miscegenation law on equal protection grounds.[24]

Nineteen years later, the United States Supreme Court — in a case involving a black/white marriage — invalidated such laws nationwide.[25]

California's diversity, then, has not just strengthened the state. It has also been a national beacon. ✯

ENDNOTES

1. *People v. Hall* (1854) 4 Cal. 399, 400–01, 403–04.
2. *People v. Elyea* (1859) 14 Cal. 144, 145.
3. *Ibid.* at 145.
4. *Ibid.* at 146.
5. *Ibid.*
6. *See ibid.*
7. *Ibid.*
8. *See, e.g.,* Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815–1848.* New York: Oxford Univ. Press, 2007, 821 ("California was the first state to be settled by peoples from all over the world. (Indeed, it remains the most ethnically cosmopolitan society in existence today.)"). *See also ibid.* at 814–20.
9. *Mendez v. Westminster School Dist. of Orange County* (1946) 64 F.Supp 544 (C.D.Cal.).

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John Van de Kamp Man of Principle

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questions about what actually occurred ensued. No officer was prosecuted. Henceforth, the designated team was to respond to the scene immediately, interview witnesses, and objectively assess whether any officers present should be prosecuted.

3. "Feinstein Goes for TV Jugular with Hillside Strangler Ad," *L.A. Times*, June 1, 1990, OCA3.

4. "Bianchi Now Denies Role in Murders," *L.A. Times*, October 22, 1980.

5. "Dismissal of Buono Murder Counts Asked," *L.A. Times*, July 14, 1981, 1.

6. "Memos Cite Holes in Strangler Case," *L.A. Times*, July 26, 1981, 1; "D.A. Asks State to Study Taking on Buono Case," *L.A. Times*, July 27, 1981, 1.

7. *L.A. Times*, July 28, 1981, A1.

8. "Judge Refuses to Drop Buono Murder Charges," *L.A. Times*, July 21, 1981, A1.

9. The Los Angeles County District Attorney's Office *Legal Policy Manual* (2017, 24) provides, *inter alia*, "A deputy may file criminal charges only if various requirements are satisfied." Among the conditions: "The deputy, based on a complete investigation and a thorough consideration of all pertinent facts readily available, *is satisfied the evidence proves* the accused is guilty of the crime(s) to be charged; and, [t]he deputy has determined that the *admissible evidence is of such convincing force* that it would warrant conviction of the crime(s) charged by a reasonable and objective fact finder after hearing all the evidence available to the deputy at the time of charging and after considering the most plausible, reasonably foreseeable defense(s) inherent in the prosecution's evidence." (Emphasis added.)

A Site-Seeing Tour of Downtown L.A.

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10. *Ibid.* at 545, 550.

11. *See ibid.* at 547–48, 551. The District Court dealt with the U.S. Supreme Court's *Plessy v. Ferguson* (1896) 163 U.S. 536, 551–52 — which had (a) held "social equality" to be unprotected by the Fourteenth Amendment and (b) countenanced separate but equal—by boldly proclaiming, "A paramount requisite in the American system of public education is social equality. It must be open to all children by unified school association regardless of lineage." 64 F.Supp at 549; *see also ibid.* at 550 & n.7.

12. *Westminster School Dist. of Orange County v. Mendez* (1947) 161 F.2d 774 (9th Cir.).

13. *Ibid.* at 781. The Ninth Circuit distinguished *Plessy*, but on narrower grounds than the District Court. *See supra*, note 11. The Ninth Circuit acknowledged that amicus parties had urged it to "strike out independently on the whole question of segregation," but, instead, the Court held only that (a) lawful segregation could not be established by the defendant school districts' "administrative or executive decree" (as opposed to legislation), and (b) the districts' practices were "entirely without authority of California law" and therefore deprived the Mexican-American schoolchildren of due process and equal protection. *See* 161 F.2d at 780–81.

14. "San Bernardino" refers to *Lopez v. Seccombe* (1944) 71 F.Supp. 769, 771–72 (C.D.Cal.), in which the City of San Bernardino had been enjoined from barring Mexican Americans from a public pool.

15. *Ibid.* at 783 (Denman, J., concurring).

16. *Brown v. Board of Education* (1954) 347 U.S. 483, 486, 495.

17. *Perez v. Sharp* (1948) 32 Cal. 2d 711, 712.

18. *Ibid.* at 747 (Shenk, J., dissenting).

19. *Ibid.* at 721 (citations omitted).

20. *Ibid.* at 731.

21. *Ibid.* at 729 (citation omitted). The uncertainty of Section 60's racial classifications was previously illustrated in *Roldan v. Los Angeles County* (1933) 129 Cal.App. 267. A Filipino man applied for a license to marry a Caucasian woman; the Los Angeles County Clerk refused to issue the license but the Superior Court ordered issuance because — at the time — Section 60 barred a white from marrying, *inter alia*, "a Mongolian" and made no mention of Filipinos (also termed Malays). *See ibid.* at 268. The Court of Appeal of California affirmed, finding that Malays were not within the definition of Mongolian. *Ibid.* at 272–73. "Without delay," the Legislature amended Section 60 to additionally bar a white person from marrying a "member of the Malay race." *Perez v. Sharp*, 32 Cal.2d at 747 (Shenk, J. dissenting). The California Supreme Court subsequently viewed the term "member of the Malay race" with substantial "uncertainty." *See ibid.* at 730.

22. 32 Cal.2d at 730.

23. *Ibid.*

24. *Ibid.* at 731–32.

25. *Loving v. Virginia* (1967) 388 U.S. 1, 2, 11–12.