

SEI FUJII:

An Alien-American Patriot

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BACKGROUND OF THIS ARTICLE

A few years ago, I was approached to represent the Little Tokyo Historical Society and the Japanese American Bar Association to seek the posthumous admission of Sei Fujii to the State Bar of California. At the time, I knew nothing of Fujii and had never heard about the profound impact he had had on the rule of law in California. I was unaware of Fujii's role as the plaintiff in the landmark 1952 case of *Fujii v. California*,¹ in which the California Supreme Court eloquently struck down California's Alien Land Law on constitutional grounds, despite a U.S. Supreme Court precedent that upheld the same law only thirty years earlier.² Just seven years after ending the war with Japan, in the heartland of pre-World War II anti-Japanese sentiment,³ the majority, concurring, and dissenting opinions of

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¹ 38 Cal.2d 718.

² *Potterfield v. Webb*, 263 U.S. 225 (1923).

³ [UNITED STATES] COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *PERSONAL JUSTICE DENIED: REPORT OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS* (1982; reprint 1997); John Leo, *An Apology to Japanese Americans*, TIME, Jan. 24, 2001; Stuart Anderson, *When America*

the California Supreme Court challenged past justifications and cemented the foundation for a new postwar vision of civil rights under the United States Constitution, two years before the Warren Court's *Brown v. Board of Education* decision.⁴

The executive producer (Fumiko Carole Fujita) and director (Jeffrey Gee Chin) of the award-winning movie *Lil Tokyo Reporter* began my education about Fujii based on their own research for the film which dramatically documented part of Fujii's life as the founder of a newspaper in Los Angeles' Little Tokyo. Indeed, years earlier, neither Fujita nor Chin had heard of Fujii and only learned about him when his name emerged in the context of their research about the Japanese Hospital in Boyle Heights that Fujii helped to establish in 1929.

As I listened to Fujita and Chin unfold the story of Fujii, I was joined by an associate, Kimberly Nakamaru, who closely identified with parts of the story and wished she had heard it earlier. Her grand-aunt, Dr. Sakaye Shigekawa, a physician born in South Pasadena, California, in 1913, the year the Alien Land Law was enacted, had just died in 2013 after delivering 20,000 to 30,000 babies over her career, mostly in the Japanese community of Los Angeles. Dr. Shigekawa's father had emigrated from Japan and was a part-owner of a hog farm, but his name was not on the deed because of the Alien Land Law.⁵

Imprisoned Japanese Americans, FORBES, Feb. 18, 2017; Brian Niiya, *Fifth Column*, <http://encyclopedia.densho.org/Fifth%20column> (last visited Aug. 29, 2017) (Fear based on a lack of evidence of espionage or sabotage justified the incarceration of Japanese to then-Attorney General Earl Warren and West Coast Military Commander General John DeWitt); *but cf.*, TOM COFFMAN, *HOW HAWAII CHANGED AMERICA: THE CAMPAIGN FOR EQUAL TREATMENT OF JAPANESE AMERICANS IN THE WAR AGAINST JAPAN* (2014) (The military governor, Gen. Delos Emmons, Army intelligence commander, Col. Kendall J. Fielder, and FBI Hawaii station chief, Robert Shivers, took the opposite view about the absence of evidence of espionage and sabotage and extended trust rather than fear to the Japanese community in Hawaii, risking their careers by their defiance of the president's calls for incarceration of Japanese in Hawaii as on the West Coast.).

⁴ 347 U.S. 483 (1954).

⁵ After the bombing of Pearl Harbor on December 7, 1941, all of the Japanese staff at the Los Angeles County Hospital, including Dr. Shigekawa who was doing her residency there, were dismissed. She briefly worked at another hospital before being forced by Executive Order 9066 to give up her home and practice to be incarcerated at the Santa Anita Race Track Assembly Center where, at 29 years old, she was one of seven physicians (the youngest and only woman) caring for nearly 19,000 other Japanese suddenly uprooted and deposited in horse stalls for the next seven months before they were

Oral histories from Fujii's descendants and close associates assisted Fujita and Chin in their research. They followed up by scouring the UCLA library for old newspaper articles by Fujii and about Fujii.⁶ As the picture of Fujii emerged from these puzzle pieces, questions kept racing through their minds: Why haven't we ever heard of Fujii before? What can Fujii's story teach us today? Are we repeating history?

Fujita and Chin's film *Lil Tokyo Reporter* recounts Fujii's life as the founder of *Kashu Mainichi*, a Japanese- and English-language newspaper that confronted the unlawful acts of organized crime in Little Tokyo and, at the same time, promoted the positive contributions of second-generation Japanese (Nisei) who were born in California and were beginning to succeed on their own in the years before World War II. His newspaper attempted to protect Japanese farmers who would venture into Little Tokyo and visit entertainment clubs where they would be swindled and robbed. His warnings and attacks on organized crime sparked an attempted assassination that he survived only because the Japanese Hospital that he helped to establish in 1929 admitted him, kept him alive, and nursed him

dispersed to other detention centers in desolate areas for the balance of the war. Like Dr. Shigekawa, two-thirds of those incarcerated were U.S. citizens, born and raised in the U.S., who had committed no crime other than looking like the enemy. Dr. Shigekawa returned to Los Angeles in 1948 and set up her lifelong practice near where she grew up as a child. She was inspired to become a physician because of the influenza epidemic that affected her father and also prompted the establishment of the Japanese Hospital that Fujii helped to set up in 1929. Jocelyn Y. Stewart, *For Doctor, Time Has Much to Heal*, LOS ANGELES TIMES, Dec. 28, 1999; *Pioneering Nisei Doctor Sakaye Shigekawa Dies at 100*, RAFU SHIMPO, Oct. 28, 2013; Alison Bell, *Santa Anita Racetrack Played a Role in WWII Internment*, LOS ANGELES TIMES, Nov. 8, 2009; *Santa Anita (Detention Facility)*, http://encyclopedia.densho.org/Santa_Anita_%28detention_facility%29 (last visited Aug. 28, 2017).

⁶ Historical references in this article to Sei Fujii's life are based on the research by Fujita and Chin. In addition to reviewing newspaper articles from Fujii's paper and other publications during this time period, Fujita and Chin interviewed members of Fujii's family, the daughter of J. Marion Wright, and Kenichi Sato who published a biography in Japanese on Fujii's life, *LOS ANGELS GIGYŪ ONDO: HAINICHI TOCHIHŌ O HŌMUTTA FUJII SEI NO KIROKU* (1983). They also searched the "Santa Fe Internment Camp File: Sei Fujii," Los Angeles Evacuation District, National Archives at Riverside, U.S. Department of Justice, 1944 (RG 85, F 15942, sub-file 1720) and gathered pictures and stories from former residents of Little Tokyo. They are in the process of publishing a biography about Sei Fujii that gathers together the research they have collected.

back to health. In addition to a newspaper, Fujii started a radio program to familiarize the larger Los Angeles community with young Japanese Americans who were making their mark and contributing to the growing Los Angeles community. As the winds of war with Japan began to swirl, Fujii wrote a book and published articles telling Japanese in the United States how they could show their loyalty to the United States and tamp down the rising flames of anti-Japanese sentiment that were spreading throughout California. Fujii also worked to build cultural and commercial bridges between the Japanese community and the larger Los Angeles community by starting the annual Nisei Week Festival in Little Tokyo and the Japanese Chamber of Commerce.

HISTORICAL BACKGROUND

In contradiction to its rule of law, culture, and Fourteenth Amendment emphasis on equal protection, the United States, and California in particular, displayed a history of overt discriminatory hostility toward Asians as a distinct class of “others.” Even before the 1882 Chinese Exclusion Act, there was a perception that Asians were “a race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point.”⁷ Hostile sentiments toward Chinese led to the formation of the Working Men’s Party of California in 1877 and a constitutional convention (with one-third of its delegates from that party) that specifically changed the California Constitution to discourage Chinese from residing in the state.⁸ Violence against Chinese prompted the federal 1882 Chinese Exclusion Act and the decline in Chinese migration to the U.S. from that date forward.⁹ This was followed by a rise in Japanese immigration and the transferred resentment of white workers in California “adroitly exploited by the political agitators anxious to secure the labor vote.”¹⁰

⁷ *People v. Hall*, 4 Cal. 339, 404–405 (1854) (reversing the conviction of a free white citizen’s murder of a Chinese victim based on the trial court’s erroneous admission of testimony from witnesses of Chinese descent, which was interpreted as contrary to the rules of admissible evidence).

⁸ Edwin E. Ferguson, *The California Alien Land Law and the Fourteenth Amendment*, 35 CAL. L. REV. 61, 62 (1947).

⁹ *Id.* at 63.

¹⁰ *Id.* at 64.

By 1905, the Asiatic Exclusion League was organized in San Francisco for the purpose of reducing or eliminating emigration from Asia and to segregate Japanese children from white children in school.¹¹ In 1906, the San Francisco Board of Education passed a resolution segregating Japanese pupils from white pupils in the public schools which was immediately protested by the Japanese government. This prompted President Theodore Roosevelt to step in and forge the 1907 “Gentlemen’s Agreement” with the Japanese government to limit passports to the United States in exchange for rescinding of the Board of Education’s resolution. This did not quell the anti-Japanese campaigns in California which increased after the 1911 U.S.–Japan Treaty that protected the right of Japanese nationals to lease land for residential and commercial purposes.¹² Hostility toward the Japanese was driven by fear. Unlike the Chinese,

the Japanese were seen as threats to the American body politic from both within and without. They were seen as threats from within . . . [for their low wage job–stealing potential, like the Chinese]. The Japanese, however, were also perceived as a threat from without. Japan’s growing industrial strength, its imperial military aspirations in the Pacific and the defeat of Russia in 1905, collectively enticed American politicians to inscribe on Japanese immigrants an image of disloyalty and allegiance to a threatening foreign military power. They were portrayed as an imminent fifth column threat within the United States waiting to be activated at the emperor’s command . . .¹³

FUJII’S EARLY LIFE

In 1882, Sei Fujii was born in Iwakuni, Yamaguchi Prefecture, Japan, seventeen years after the assassination of President Abraham Lincoln and fourteen years after the enactment and ratification of the Fourteenth Amendment to the United States Constitution. He was born into a family of the former

¹¹ *Id.*

¹² *Id.* at 65–67.

¹³ Keith Aoki, *No Right to Own?: The Early Twentieth-Century “Alien Land Laws” as a Prelude to Internment*, 19 B.C. THIRD WORLD L.J. 37, 44–47 (1998), <http://lawdigital-commons.bc.edu/cgi/viewcontent.cgi?article=1182&context=twlj>.

samurai military nobility. His father died when he was three and he was raised by his grandfather who instilled in him the Bushido Code of samurai principles such as justice, courage, compassion, respect, integrity, honor, loyalty, and self-discipline. Though strong within his own family, the Bushido Code and the public respect for the samurai were waning in the aftermath of the 1868 defeat of the Tokugawa shogunate (the last pre-modern period of feudal military rule by the Tokugawa clan) and the beginning of the Meiji Restoration (the early-modern period of “enlightened rule” by the emperor).

In 1903, Fujii traveled to the United States. He arrived in Seattle on July 3rd, 1903 and saw for himself, on his first full day in America, the celebrated pride of the United States in its rule of law culture that exalted concepts



SEI FUJII ON
GRADUATING FROM
USC SCHOOL OF
LAW IN 1911.

*Photo courtesy of Little
Tokyo Historical Society.*

similar to the Bushido Code. He was impressed.

He studied for four years at Compton Union High School in Southern California while working as a houseboy for the family that established the Ralph’s supermarket chain and diligently perfected his English language abilities in the process.

In 1908, he attended the University of Southern California School of Law and immersed himself in the rule of law despite a steady drum-beat of anti-Asian, and particularly anti-Japanese, sentiments that made it impossible for him to become a naturalized U.S. citizen or a lawyer when he graduated.¹⁴

In the course of his studies, he met a fellow student, J. Marion Wright, who shared Fujii’s

¹⁴ In re Hong Yen Chang, 84 Cal. 163 (1890) (refusing to allow non-white Asians to become lawyers because of their inability to become citizens); Kiyoko Kamio Knapp, *Disdain of Alien Lawyers: History of Exclusion*, 7 SETON HALL CONST. L.J. 103, 126–131 (1996); In re Hong Yen Chang on Admission, 60 Cal.4th 1169 (2015) (admitting Hong Yen Chang posthumously to the State Bar of California and discussing California’s history of denying bar membership to Asians who could not become citizens due to discriminatory immigration laws); ADMINISTRATIVE ORDER 2017-05-17 (S239690), 394 P.3d 488, 2017 CAL. LEXIS 3768, ***1 (Cal. 2017) (admitting Sei Fujii posthumously to the State Bar of California); Leonard Siegel, *Aliens and the Practice of Law: Rafaelli v. Committee of Bar Examiners*, 6 LOY. L.A. L. REV. 398 (1973) (discussing exclusion of alien lawyers from admission to the bar).

sense of justice, courage, compassion, respect, integrity, honor, loyalty, and self-discipline.

In 1911, Fujii graduated from law school and fell in love with a woman named Same Sato, the beautiful wife of a local bookstore owner. After Sato gave birth to Fujii's first son in America, they ran off together to Japan.

FUJII WORKS TO OVERTURN CALIFORNIA'S ALIEN LAND LAW OF 1913 AND TO REMEDY OTHER INJUSTICES FACING LOS ANGELES' JAPANESE COMMUNITY

During his two-year absence from California, Fujii received a steady flow of letters from Wright and friends in Los Angeles about the increasing hostility toward the Japanese community and the enactment of the Alien Land Law of 1913 that targeted Japanese farmers who had turned deserts into the most productive farmlands in Southern California.¹⁵ Although neutral in language, the law's focus on denying land ownership to aliens who could not become U.S. citizens was unmistakably directed at Japanese farmers and only Japanese farmers:

By its terms the land law classifies persons on the basis of eligibility to citizenship, but in fact it classifies on the basis of race or nationality. This is a necessary consequence of the use of the express racial qualifications found in the federal code. Although Japanese are not singled out by name for discriminatory treatment in the land law, the reference therein to federal standards for naturalization which exclude Japanese operates automatically to bring about that result.¹⁶

¹⁵ *Fujii v. California*, *supra* note 1, at 742 (“The Japanese were pioneers who reclaimed the San Joaquin Valley from the desert. They turned this land from “its unhealthy barren state of wasteland into the richest and most productive district in the state of California.” Through sheer perseverance they gained control of the berry, potato, flower and truck-garden markets,” quoting MILTON R. KONVITZ, *THE ALIEN AND THE ASIATIC IN AMERICAN LAW* 157 (1946)); *see also Oyama v. California*, 332 U.S. 633 (1948) (deciding a San Diego Alien Land Law case on non-constitutional grounds but concurring opinions urged overturn of law on constitutional grounds); Rose Cuison Villazor, *Rediscovering Oyama v. California: At the Intersection of Property, Race, and Citizenship*, 87 WASH. U. L. REV. 979 (2010) (exploring the historical and political background of the case).

¹⁶ *Fujii v. California*, *supra* note 1, at 729.

To white California farmers, Japanese farmers posed an economic threat that needed to be quashed.¹⁷ As stated in Justice Frank Murphy's dissent in *Oyama v. California* (1948):

The California Alien Land Law was spawned of the great anti-Oriental virus which, at an early date, infected many persons in that state. The history of this anti-Oriental agitation is not one that does credit to a nation that prides itself, at least historically, on being the friendly haven of the tired and the oppressed of other lands. Beginning in 1850, with the arrival of substantial numbers of Chinese immigrants, racial prejudices and discriminations began to mount. Much of the opposition to these Chinese came from trade unionists, who feared economic competition, and from politicians, who sought union support. Various laws and ordinances were enacted for the purpose of discouraging the immigrants and dramatizing the native dissatisfaction. Individual Chinese were subjected to many acts of violence. Eventually, Congress responded to this popular agitation and adopted the Chinese exclusion laws. . . . [T]he arrival of the Japanese fanned anew the flames of anti-Oriental prejudice. . . . Numerous acts of violence were perpetrated against Japanese businessmen and workers, combined with private economic sanctions designed to drive them out of business. . . . Campaigns were organized to secure segregated schools and to preserve "America for the Americans."¹⁸

In 1913, Fujii returned to California as Wright was graduating from law school and for the next forty years Wright and Fujii worked together to defend and promote the dignity of the Japanese community in Southern California. They represented Japanese farmers falsely accused of distributing harmfully

¹⁷ Aoki, *supra* note 13, at 54 n.49; Fujii v. California, *supra* note 1, at 735:

"It is generally recognized, however, that the real purpose of the [Alien Land Law] was the elimination of competition by alien Japanese in farming California land. . . . A former attorney general of California declared that the basis of the alien land law legislation was 'race undesirability' and that 'It was the purpose of those who understood the situation to prohibit the enjoyment or possession of, or dominion over, the agricultural lands of the State by aliens ineligible to citizenship, — in a practical way to prevent ruinous competition by the Oriental farmer against the American farmer.'"

¹⁸ *Oyama v. California*, *supra* note 15, at 651–653 (Murphy, J., concurring).

contaminated produce, Japanese who were unpaid for their services, Japanese injured in accidents, Japanese swindled by gangsters, Japanese facing government fines, penalties, and criminal prosecution, and in many other matters besetting the lives of Japanese in Southern California — Wright with a law license and Fujii without. This lifelong partnership continues even today in the monument erected in Little Tokyo to honor Sei Fujii. The plaque on the



AT THE SEI FUJII MEMORIAL LANTERN IN LITTLE TOKYO'S JAPANESE VILLAGE PLAZA, ERECTED BY THE LITTLE TOKYO HISTORICAL SOCIETY (LTHS).

(L.-R.) LTHS DIRECTOR JEFFREY GEE CHIN, CO-PRODUCER, CO-AUTHOR, AND DIRECTOR OF *Lil Tokyo Reporter*; SIDNEY KANAZAWA OF MCGUIREWOODS LLP, WHO WORKED ON THE PETITION FOR FUJII'S POSTHUMOUS ADMISSION TO THE STATE BAR; SAN FRANCISCO ATTORNEY ADAM ENGELSKIRCHEN, GREAT-GRANDSON OF J. MARION WRIGHT, FUJII'S LAW PARTNER; PASADENA ATTORNEY CORALIE KUPFER, DAUGHTER OF ATTORNEY OWEN KUPFER, WHO WORKED WITH WRIGHT AND FUJII ON THE U.S. SUPREME COURT CASE IN 1928 THAT PERMITTED THE CONSTRUCTION OF THE BOYLE HEIGHTS-BASED JAPANESE HOSPITAL OF LOS ANGELES AND THE OVERTURNING OF THE CALIFORNIA ALIEN LAND LAWS; AND LTHS DIRECTOR CAROLE FUJITA, EXECUTIVE PRODUCER OF *Lil Tokyo Reporter*.

Photo courtesy Little Tokyo Historical Society.



FILMMAKER JEFFREY GEE CHIN, LEFT, AND SCULPTOR MILES ENDO, HOLDING THE FAR END OF VEIL, REVEAL AN 8-FOOT-TALL STEEL LANTERN IN LITTLE TOKYO'S JAPANESE VILLAGE PLAZA. THE MONUMENT IS DEDICATED TO THE JAPANESE-BORN LATE CIVIL RIGHTS ACTIVIST SEI FUJII. (IRFAN KHAN / LOS ANGELES TIMES)

Photo and caption courtesy Los Angeles Times.

monument includes the name of J. Marion Wright as Fujii's colleague and collaborator.¹⁹

The enactment of California's Alien Land Law on May 19, 1913 relegated people of Japanese ancestry to yet another second-class status. Unlike other persons born outside of the United States, Japanese, by law, had no right to "acquire, possess, enjoy, use, cultivate, occupy, transfer, transmit and inherit real property, or any interest therein" because they were unique among aliens in that U.S. immigration laws denied the right of "non-white" Asians from becoming U.S. citizens.²⁰

Ironically, the 1918 worldwide Spanish influenza pandemic (which disproportionately devastated the Japanese community due to its lack of

¹⁹ For press coverage of the monument in the wider Los Angeles community, see Martha Groves, *An Activist Remembered: Monument Honors Little-Known Japanese Advocate Sei Fujii*, LOS ANGELES TIMES, August 2, 2015.

²⁰ Aoki, *supra* note 13, at 55–62.

access to non-Japanese hospitals in Southern California) presented the first opportunity to chip away at the Alien Land Law.

In the wake of the 1918 influenza pandemic, a group of Japanese doctors, with the support of the Japanese community, banded together to build a Japanese Hospital. To avoid the prohibitions of the Alien Land Law, the doctors formed a corporation to acquire the land for the hospital. California's secretary of state refused to recognize the corporation because its purpose would violate the restrictions of the Alien Land Law.

Wright and Fujii teamed together to help the doctors and successfully took their case up through the California Supreme Court and U.S. Supreme Court, despite community leaders' predicting a coming war with Japan²¹ and California political campaigns to save "California — the White Man's Paradise" from the "yellow peril."²² In the aftermath of the favorable decision by the U.S. Supreme Court,²³ the Japanese community raised \$100,000 to build the hospital in 1929, just before the stock market crash, and built the hospital despite the Great Depression that followed.²⁴

By law, Fujii could not practice law in California, but he could and did make a difference in how the rule of law was applied, and he affected the Japanese community by the power of his pen.

Although the 1907 "Gentlemen's Agreement" was supposed to stop the immigration of new workers from Japan, some continued to arrive through Canada and Mexico. There were also profiteers. Corrupt immigration officers and opportunistic Japanese informants extorted and exploited the illegal status of these immigrants. Some Japanese newspapers were complicit and refused to expose this illegal activity.

Even without a law license, Fujii could not stand silent in the face of this injustice. He rallied the Japanese community to oppose this

²¹ WALTER R. PITKIN, *MUST WE FIGHT JAPAN?* (1921).

²² *Oyama v. California*, *supra* note 15, at 658–659 (1948) (Murphy, J., concurring opinion); Paul Finkelman, *2015 Mid-Atlantic People of Color Conference: Coping with a New "Yellow Peril": Japanese Immigration, the Gentlemen's Agreement, and the Coming of World War II*, 117 W. VA. L. REV. 1409 (2015).

²³ *Jordan v. Tashiro*, 278 U.S. 123 (1928).

²⁴ Japanese Hospital, located at First & Fickett Streets, also served the Latino, Black, and Jewish communities for many years, and was granted historic designation by the City of Los Angeles on November 1, 2016.

corruption and inhumanity. As documented in the *Los Angeles Times*, over 1,800 Japanese people came to rally with Fujii against the injustice.²⁵ This gathering sparked a major raid but his followers fought back. Despite a \$150,000 defamation lawsuit by an immigration officer,²⁶ Fujii refused to be silent and spoke louder for the Japanese community by founding his newspaper, *Kashu Mainichi*, on November 5, 1931 with the support of Japanese farmers and donors from the Yamaguchi Prefectural Association.

Kashu Mainichi not only spoke for the immigrants being abused by the immigration system, it spoke for farmers being swindled and cheated by organized crime in Little Tokyo, and for young students making positive contributions to the community around them.

Not all appreciated Fujii's voice. On several occasions, organized crime attempted to burn down his office and to assassinate him as well. On November 25, 1932, assassins were nearly successful, leaving Fujii bloodied on the street. Fortunately, the Japanese Hospital had been built by then and it is where he was taken to recover from his gunshot wounds.

During World War II, on February 22, 1942, Fujii was taken to a high-security detention center because of his leadership position at the *Kashu Mainichi*.

Upon his release, Fujii again joined with Wright to confront the Alien Land Law. Despite the reluctance of second-generation Japanese Americans (Nisei) to "rock the boat" in the immediate aftermath of the Allied forces' victory over Japan, Fujii was insistent on filing a lawsuit to directly challenge the Alien Land Law after the U.S. Supreme Court avoided the question of whether the Alien Land Law was constitutional in the case of *Oyama v. California*.²⁷

In 1948, Fujii, still unable to become a U.S. citizen,²⁸ purchased a property on North Record Avenue in East Los Angeles to specifically challenge

²⁵ *Rioters Rout Federal Men: Immigration Officers Flee Japanese Attack*, LOS ANGELES TIMES, November 5, 1931.

²⁶ *Immigration Man Sues on Accusation*, LOS ANGELES TIMES, October 14, 1931.

²⁷ 352 U.S. 633 (1948).

²⁸ *Ozawa v. United States*, 260 U.S. 178, 198 (1922) (holding that the Japan-born appellant "is clearly of a race which is not Caucasian and therefore belongs entirely outside the zone on the negative side" and is therefore ineligible for citizenship); see also Devon

the law.²⁹ The state used the Alien Land Law to take the property from him by escheatment. Fujii and Wright used this taking to challenge the constitutionality of the Alien Land Law and successfully obtained that result before the California Supreme Court on April 17, 1952. Two years later, with the change in immigration laws, Fujii became a U.S. citizen and died fifty-one days later.

THE CALIFORNIA SUPREME COURT UNANIMOUSLY ADMITS FUJII POSTHUMOUSLY

A petition was filed on January 23, 2017 by the Little Tokyo Historical Society and the Japanese American Bar Association for the posthumous admission of Sei Fujii to the State Bar of California, with the support of 72 bar associations and community leaders (listed at the end of this article). On May 24, 2017, the California Supreme Court issued a unanimous administrative order³⁰ granting honorary posthumous membership in the State Bar of California to Sei Fujii, a Japan-born 1911 USC law graduate who — even without a license to practice law — dedicated his life to using the rule of law to promote justice and dignity for the Japanese community in Southern California, including his service as the plaintiff in *Fujii v. California*.³¹ In granting Fujii's admission to the bar, the court noted, in part:

W. Carbado, *Yellow by Law*, 97 CAL. L. REV. 633 (2009) (for historical and civil rights context of *Ozawa*).

²⁹ David Sloss, *How International Human Rights Transformed the U.S. Constitution*, 38 HUMAN RIGHTS Q. 426 (2016) (discussing facts of *Fujii v. California* and how it used non-discrimination provisions of the United Nations treaty to transform U.S. constitutional law).

³⁰ ADMINISTRATIVE ORDER 2017-05-17, *supra* note 14, at ***1 (Cal. 2017). The petition was filed by McGuireWoods (Kimberly Nakamaru, Arsen Kourinian, Adam Summerfield, Dana Palmer, Leslie Werlin, and Sidney Kanazawa). Much of this generous outpouring of support for the petition was initiated by the enthusiastic volunteer efforts of Fumiko Carole Fujita (Little Tokyo Historical Society), Mark Furuya (assistant general counsel, Clark Construction Group, LLC; president, Japanese American Bar Association), Doris Cheng (partner, Walkup, Melodia, Kelly & Shoenberger), Robert Meneses (administrative deputy, Los Angeles County Office of Alternate Public Defender), and Michael Wu (general counsel, Carters, Inc.) over the holidays just before the filing of the petition.

³¹ 38 Cal.2d 718 (1952).

Though Fujii both graduated from law school and made his career in California, throughout his entire professional life he was barred from obtaining a license to practice law in the state. This was an injustice that we repudiate today by granting Fujii honorary posthumous membership in the State Bar of California. . . .

Despite being formally excluded from joining the ranks of the legal profession throughout his life, Fujii spent much of his career using the courts to advance the rule of law in California. . . . Fujii's work in the face of prejudice and oppression embodies the highest traditions of those who work to make our society more just.³²

The referenced “prejudice and oppression” are amply reflected in the *Fujii v. California* dissent. The dissent begins at a logical place:

There is no question as to what the law is. It was enacted in the year 1920 by the people of California through the initiative [citation omitted]; it is based, as to the classification established, on an act of the Congress of the United States [footnote deleted]; for the past 32 years this law . . . has been consistently upheld by this court and by the Supreme Court of the United States as against the precise attack now made on it. But now, say the majority, upon an elaborate analysis of the trend of recent decisions of the Supreme Court of the United States, they think that that court, if the question were to be again presented to it might or would change its holding. The most careful study of the majority opinion discloses no other legal basis for their holding than this conjecture.³³

But then the dissent seems oblivious to its own unfounded bias toward an entire class of persons and the odiousness of that generalized classification to our constitutional principles requiring “probable cause” rather than assumptions of guilt:

[I]t can hardly be seriously doubted that use or ownership of land by persons ineligible to citizenship may reasonably be determined by the people of a state to constitute a threat to the safety or welfare of the state because such ineligible persons cannot be bound

³² ADMINISTRATIVE ORDER 2017-05-17, *supra* note 14, at ***2, ***6–***7.

³³ *Fujii v. California*, *supra* note 1, at 753 (Schauer, J., dissenting and concurring).

by an oath of allegiance to the United States, of which each state is an inseparable part, and, as a class their loyalty to and interest in the state are suspect, and further, such ownership of the land by its citizens, or those who can become such, bears a vital relationship to the strength of a free country. . . . The ownership of the soil by persons morally bound by obligations of citizenship is vital to the political existence of the state. It directly affects its welfare and safety. . . . The question is not whether every individual ineligible alien may be said to be disloyal to this nation, but whether the loyalty of such ineligible aliens *as a class* [italics in original] may be doubted. [Footnote 7: As is pointed out by Walter Pitkin in his “Must We Fight Japan?” (1921, The Century Co., p. 440), “The loyalty of the Japanese to his Government stands above all else. That is his religion.”] It is not within the province of this court, especially in the light of history which need go no further back than December 7, 1941, to declare that such doubt is unreasonable and bears no substantial relationship to the public welfare.³⁴

Incredibly, the dissent justifies the Alien Land Law’s overt discrimination against Japanese based on stereotypes and fears, rather than any rational basis for different rules of law for aliens from Japan and aliens from non-Japanese countries. The dissent found arguments in pamphlets supporting the anti-competitive purpose of the Alien Land Law to be rational and justified. The pamphlet stated: “[The Alien Land Law’s] primary purpose is to prohibit Orientals who cannot become American citizens from controlling our rich agricultural lands . . . Orientals, and more particularly Japanese, [have] commenced to secure control of agricultural lands in California.” The dissent further justifies the law on the basis of the threat posed by Japanese farmers who work fourteen to eighteen hours a day (as compared with non-Oriental American farmers who take Sundays off and work only ten to twelve hours a day) and have built a growing market dominance because of their efforts — e.g., producing 80% of the tomato crop and 80–100% of the spinach crop in the state and becoming a significant proportion of the growers of various crops:

³⁴ *Id.* at 766–767 (Schauer, J., dissenting and concurring).

berries (88%), sugar beets (67%), grapes (52%), vegetables (46%), citrus fruits (39%), and deciduous fruits (36%).³⁵

Chief Justice Phil Gibson's majority opinion in *Fujii v. California* first analyzed whether the human rights and equal protection provisions of the United Nations Charter could be the basis for overturning the Alien Land Law. While acknowledging that its "humane and enlightened objectives" are "entitled to respectful consideration by the courts and legislatures of every member nation, since that document expresses the universal desire of thinking men for peace and for equality of rights and opportunities" and that "[t]he charter represents a moral commitment of foremost importance, and we must not permit the spirit of our pledge to be compromised or disparaged in either our domestic or foreign affairs," the majority concluded that the charter was not "self-executing" and cannot "operate to invalidate the Alien Land Law."³⁶

The court then considered the Fourteenth Amendment's Due Process and Equal Protection Clauses in the face of U.S. Supreme Court precedents upholding the law and more recent precedents suggesting that the Alien Land Law was unconstitutional:

The clear import of the statements quoted above from the *Korematsu*, *Oyama* and *Perez* cases is that the presumption of validity is greatly narrowed in scope, if not entirely dispelled, whenever it is shown, as here, that legislation actually discriminates against certain persons because of their race or nationality. This view, now established by the latest declarations of the United States Supreme Court, is irreconcilable with the approach previously taken by that court in the *Porterfield* case in determining whether there was a reasonable relation between the purposes sought to be accomplished, and the classification adopted, in the California Alien Land Law.³⁷

The majority found that

[t]he only disqualification urged against Sei Fujii is that of race. . . .
"Nothing in this record indicates, and we cannot assume, that

³⁵ *Id.* at 767 n.8, 768 n.10 (Schauer, J., dissenting and concurring).

³⁶ *Id.* at 720–725.

³⁷ *Id.* at 730–731.

he came to America for any purpose different from that which prompted millions of others to seek our shores — a chance to make his home and work in a free country, governed by just laws, which promise equal protection to all who abide by them.”³⁸ [Internal quotes and citations deleted.]

The court noted, “Shortly after the statute was enacted this court recognized that the legislation was directed at the Japanese and that its purpose was to discourage them from coming into this state [citation omitted]. Moreover, the state has enforced the law solely against persons ineligible to citizenship because of race and primarily against Japanese [citing statistics presented in *Oyama v. California*].”³⁹

The court then concluded:

In the light of the foregoing discussion, we have concluded that the constitutional theories upon which the *Porterfield* case was based are today without support and must be abandoned. The California Alien Land Law is obviously designed and administered as an instrument for effectuating racial discrimination, and the most searching examination discloses no circumstances justifying classification on that basis. There is nothing to indicate that those alien residents who are racially ineligible for citizenship possess characteristics which are dangerous to the legitimate interests of the state, or that they, as a class, might use the land for purposes injurious to public morals, safety or welfare. Accordingly, we hold that the alien land law [sic] is invalid as in violation of the Fourteenth Amendment.⁴⁰

The concurring opinion by Justice Jesse Carter was even more forceful: “It is clear, therefore, that there is not now and never has been any rational basis for excluding the Japanese from land ownership.”⁴¹ The ineligibility of Japanese for U.S. citizenship has no relation to the interests and welfare of the state. “It would take a high degree of judicial

³⁸ *Id.* at 733–734.

³⁹ *Id.* at 735 (quoting *Ex parte Kawato*, 317 U.S. 69, 71 (1942)); *Oyama v. California*, *supra* note 15, at 661–662 (Murphy, J., concurring).

⁴⁰ *Id.* at 737–738.

⁴¹ *Id.* at 742 (Carter, J., concurring).

deference to local judgment to believe that Japanese were the worst offenders in nonproductivity.’⁴² Justice Carter quoted, as well, from Carey McWilliams:

“It was George Shima, an immigrant, who taught the Californians how to develop a good potato seed. It was Japanese farmers who developed berry production in the West by increasing the yield four or five times over what it had been It was the Japanese who took over the semi-abandoned community of Livingston and made it a profitable farming area”⁴³

The concurring opinion also noted the Japanese contribution to the defense of the country during World War II and chided the dissent for wanting to deny rights to the widowed mother of a Congressional Medal of Honor recipient.⁴⁴ “The Japanese . . . have probably contributed more to America than any other Asiatics. Their sons formed the famous 442nd Regimental Combat Team, which probably received more decorations and suffered more casualties than any unit of similar size in the entire U.S. Army.”⁴⁵ The concurring opinion also noted, “These antiquated statutes [i.e., the Alien Land Law and immigration statutes focused on race] give the Communists in the Far East a powerful anti-American propaganda weapon, and damage our relations with the people of Asia.”⁴⁶

STORY OF COURAGE

If nothing else, the California Supreme Court’s recognition of Sei Fujii with an honorary posthumous admission to the State Bar of California reminds us of what President John F. Kennedy called “that most admirable of human virtues — courage” in his book *Profiles in Courage*

⁴² *Id.* at 747 (Carter, J., concurring) (quoting Dudley O. McGovney, *The Anti-Japanese Land Laws of California and Ten Other States*, 35 CAL. L. REV. 7, 39 (1947)).

⁴³ *Id.* (quoting CAREY MCWILLIAMS, PREJUDICE: JAPANESE-AMERICANS: SYMBOL OF RACIAL INTOLERANCE 79 (1944)).

⁴⁴ *Id.* at 748 (Carter, J., concurring) (quoting an unnamed article by Blake Clark in THE FREEMAN, July 16, 1951).

⁴⁵ *Id.* at 749 (Carter, J., concurring) (quoting Clark).

⁴⁶ *Id.* at 748 (Carter, J., concurring) (quoting Clark).

published one year after Fujii's death. It took courage for Fujii to come to the United States, attend USC law school, and study law in the face of laws preventing his U.S. citizenship and admission to the bar. It took courage for Fujii to fight for justice and dignity for the Japanese community against criminal elements within the Japanese community and against the larger non-Japanese community with the training, but not the license, to practice law. It took courage for J. Marion Wright to partner with Fujii to defend the Japanese community in the face of overwhelming anti-Japanese sentiment throughout California before, during, and after World War II. It took courage for the California Supreme Court to strike down the Alien Land Law, seven years after the end of the war with Japan, in the face of a U.S. Supreme Court precedent upholding the same law only thirty years earlier, and to justify this nullification of popular legislation by highlighting the achievements and sacrifices of the Japanese community in proving their loyalty to a country that had treated them like untrustworthy "others" because they looked like a wartime "enemy." And it took courage for the current California Supreme Court to decide to retell this story in this divisive period of polarized politics.

Fujii's story reminds us that now, more than ever, we need the same courage that Fujii and Wright mustered to stand up for "others." To step outside of our political and internet echo-chamber silos. To listen. To empathize. To champion the rights and dignities of those who may not be like us but who deserve the same justice, fairness, and kindness that we expect for ourselves.⁴⁷ To



PHOTO OF SEI
FUJII FROM THE
USC SCHOOL OF
LAW CLASS OF 1911
ALBUM.

⁴⁷ Sabrina Tavernise, *The Two Americans*, NEW YORK TIMES, August 26, 2017; Michael Barbaro, "The Daily": *Two Lives Collide in Western Arkansas*, NEW YORK TIMES, THE DAILY PODCAST (August 30, 2017) (an audio version of Sabrina Tavernise's moving story about vandalism and kindness involving two Americans, Abraham Davis and Hisham Yasin, and a Muslim mosque in Fort Smith, Ark.).



SUPPORTERS OF THE PETITION FOR SEI FUJII'S POSTHUMOUS
ADMISSION TO THE STATE BAR

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Photo courtesy Little Tokyo Historical Society.

act as attorneys.⁴⁸ And in the end, we may find — just as Fujii, Wright, and the California Supreme Court found — that we are more alike than different and that, in “the land of the free and the home of the brave,” we need the courage to trust and respect each other as fellow citizens, rather than fear each other as enemies in a land of the mean and a home of the scared.

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⁴⁸ Sidney K. Kanazawa, *Erase the Lines . . . We're All in This Together*, in ILLP REVIEW 2017: THE STATE OF DIVERSITY AND INCLUSION IN THE LEGAL PROFESSION 93, 99 (2017) (“Our oath of office is not simply a license to earn money in the business of law. By pledging to uphold the constitution and the rule of law, we joined a profession dedicated to keeping our society together by reminding our fellow citizens of values and principles we hold in common.”).

LIST OF SUPPORTERS — in response to the petition by the Little Tokyo Historical Society and the Japanese American Bar Association for the posthumous admission of Sei Fujii to the State Bar of California, filed by McGuireWoods (Kimberly Nakamaru, Arsen Kourinian, Adam Summerfield, Dana Palmer, Leslie Werlin, and Sidney Kanazawa) on January 23, 2017:

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ORGANIZATIONS

American College of Trial Lawyers

Arizona Asian American Bar Association

Asian Americans Advancing Justice — Asian Law Caucus, Asian American Bar Association of Chicago

Asian American Bar Association of Houston

Asian American Bar Association of New York

Asian American Legal Foundation, Asian Americans Advancing Justice — Los Angeles

Asian Law Alliance

Asian Pacific American Bar Association

Asian Pacific American Bar Association of Central Ohio

Asian Pacific American Bar Association of Maryland

Asian Pacific American Bar Association of Pennsylvania

Asian Pacific American Women Lawyers Alliance

Association of Corporate Counsel (ACC); ACC Sacramento Chapter, ACC
San Francisco Bay Area Chapter, ACC Southern California Chapter
Chinese for Affirmative Action
Civil Rights Education and Enforcement Center
Connecticut Asian Pacific American Bar Association
Dallas Asian American Bar Association
Equal Rights Advocates
Filipino American Lawyers Association of Chicago
Georgia Asian Pacific American Bar Association
Go For Broke National Education Center
Greater Orlando Asian American Bar Association
Historic Wintersburg, Huntington Beach, California
Institute for Inclusion in the Legal Profession
Italian American Bar Association of Northern California
Japanese American Bar Association
Japanese American Citizens League
Japanese American Cultural & Community Center
Japanese American National Museum
Korean American Bar Association of Georgia
Korean American Bar Association of Southern California
Korean American Lawyers Association of Greater New York
Little Tokyo Historical Society
Little Tokyo Service Center
Los Angeles County Asian American Employees Association
Los Angeles County Board of Supervisors
Minnesota Asian Pacific American Bar Association
Missouri Asian American Bar Association
National Asian Pacific American Bar Association
National Asian Pacific Islander Prosecutors Association
National Bar Association
National Conference of Vietnamese American Attorneys
National Filipino American Lawyers Association
Orange County Asian American Bar Association
Oregon Asian Pacific American Bar Association
Philippine American Bar Association
San Francisco Chapter of the American Board of Trial Advocates

San Francisco Trial Lawyers Association
South Asian Bar Association of Southern California
Taiwanese American Lawyers Association
Thai American Bar Association
The Bar Association of San Francisco
The California Chapters of the American Board of Trial Advocates
Tuna Canyon Detention Station
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