



Exhibit display case, “Expanding Justice for All,” Archives Room, the Ronald M. George State Office Complex, San Francisco. Photo: Jake Dear.

Expanding Justice for All: The Supreme Court of California in Times of Change

BY MARIE SILVA

SINCE THE CREATION of the Supreme Court of California in 1849, ordinary Californians have sought justice through the courts with extraordinary determination, pressing for recognition of their rights as the state and its judiciary grappled with rapid social, political, economic, and environmental change. California’s highest court has rendered far-reaching decisions that reveal dramatic collisions of private lives with public institutions and laws. These interactions — asymmetrical yet often surprising — have helped transform the meaning of justice in California.

A new exhibition, currently on display in the Archives Room on the first floor of the Ronald M. George State Office Complex in San Francisco’s Civic Center, features primary source materials that illustrate the struggles of diverse Californians to obtain justice before the high court in traumatic and transformative times. For much of the state’s history, large numbers of Californians were deprived of basic rights, including the right to vote. Despite these exclusions, immigrants, Native Californians, Latinos, African Americans, Asian Americans, women, and LGBTQ people have played an active role in the judicial history of the state, bringing suits before California’s highest court that challenged slavery, segregation, anti-Asian legislation, and discrimination. The historical cumulation of these efforts has helped expand the legal interpretation of “justice for all” in California and across the nation.

The exhibition, organized by the California Judicial Center Library and the Supreme Court of California (which are headquartered a few floors above), features 12 landmark cases decided by the California Supreme Court and four decided by the Court of Appeal, First Appellate District, spanning the history of modern California from 1850 to 2008. Each case is described in an illustrated panel, supplemented by primary source materials (in original and facsimile) on display. This article

focuses on three cases that reveal the Janus-faced nature of California history: its painful legacies of genocide, racism, and anti-immigrant hostility, on the one side, and its hopeful traditions of diversity, idealism, and civil rights activism on the other.

***People v. Smith* (1850) 1 Cal. 9**

The first case heard by the new supreme court concerned California’s original sin: genocidal violence against the region’s Native peoples. Before European colonization, California was home to approximately 300,000 Native Americans speaking more than 100 different languages.¹ The Spanish and American conquests of the eighteenth and nineteenth centuries devastated indigenous communities and after the American takeover in 1848, violence against Native Californians increased. This violence was often overlooked or sanctioned by local, state, and federal authorities.

In February and March 1850, white settlers attacked the Coast Miwok, Pomo, and Wappo communities in the Napa and Sonoma region. Multiple witnesses attested that the men killed unarmed people, burned their homes, and drove them from their villages. Seven men were arrested and held by the Sonoma County sheriff. Represented by attorneys Charles Semple and future United States Senator and California Governor John B. Weller, the men petitioned the newly established California Supreme Court to be discharged from the sheriff’s custody. The court, in the first case it heard, denied the request but did permit the prisoners’ release on bail. None of the men ever stood trial for the massacres.² Historian Benjamin Madley argues that “the court’s failure to prosecute the accused amounted to a grant of judicial

1. Benjamin Madley, *An American Genocide: The United States and the California Indian Catastrophe, 1846–1873*. New Haven: Yale Univ. Press, 2016, 23.

2. *Id.*, 120–27; *People v. Smith* (1850) 1 Cal. 9.

Peter Barry called and sworn. Deposed. Lives at Nicholas Higuera's. Capt. Smith - this gentleman - come up to the ranch and says to Don Nicholas that he would have to drive the Indians to the mountains. So Don Nicholas called me to interpret, and he say if the Indians not out in one quarter of an hour they should be shot. Don Nicholas want time. He said No! if they are not all gone when I come back, I shoot them and the old man too. I tell Don Nicholas, and he said that he would be shot first, that his Indians had been with him 20 years. Then the rest of the people quit, and went and set fire to the Indians houses. Witness was in the blacksmiths shop about 20 yards from the

Report of testimony in case *People v. S. Kelsey* as noted in footnote 5 below, March 1850. Supreme Court of California Records, California State Archives.

impunity for large-scale California Indian killing by vigilantes.”³

Associate Justice Nathaniel Bennett’s opinion in the case does not convey the horror of the crimes of which the vigilantes, led by “Captain Smith,” were accused. However, witness testimony held at the California State Archives as part of the case file for *People v. Smith* provides a vivid and disturbing narrative of the attacks. A reproduction of Peter Barry’s testimony is included in the exhibition. Barry gave the following account, describing the unsuccessful efforts of an elderly *Californio*⁴ ranch owner, Nicolás Higuera, to defend the Native people who lived and worked on his lands.

Capt. Smith — this gentleman — come up to the ranch and says to Don Nicholas that he would have to drive the Indians to the mountains so Don Nicholas called me to interpret and he say if the Indians not out in one quarter of an hour they should be shot. Don Nicholas want time. He said No! if they are not all gone when I come back, I shoot them and the old man too. I tell Don Nicholas, and he said that he would be shot first, that his Indians had been with him 20 years. Then the rest of the people quit, and went and set fire to the Indians houses. Witness was in the blacksmiths shop about 20 yards from the house. The loss to Don Nicholas was more than \$3000. All his barley and provisions for the Indians was burned. When

3. Madley, *An American Genocide*, 138.

4. *Californios* were a diverse group of Spanish-speaking people who immigrated to California from Mexico in the late eighteenth and early nineteenth centuries or were descended from these early settlers. Some *Californio* families received large land grants from Spain and, after 1821, from the new republic of Mexico. After the secularization of the California missions in the 1830s, many indigenous Californians found work as agricultural laborers on lands owned by *Californios*. See *Californio Society*, retrieved July 30, 2020 from *Calisphere*, <https://calisphere.org/exhibitions/6/californio-society/#overview> [as of June 22, 2022].

Mr. Smith saw the houses burning he went down to the other rancheria and drove them too out to the mountains.⁵

Barry’s testimony serves as a tragic example of the reality experienced by indigenous Californians and *Californios* after 1848. At the same time *Californios* struggled to defend their lands from legal and extralegal attacks, Native people faced overwhelming violence in a new and radically unfamiliar cultural, political, and legal landscape.⁶ The endurance of Native Californian communities, traditions, and languages into the present day is “a testament to their tenacious defiance and intelligent survival strategies against overwhelming odds.”⁷

***In re Yick Wo* (1885) 68 Cal. 294**

By 1853, approximately 25,000 Chinese people had immigrated to California as part of the Gold Rush.⁸ Chinese people in California faced an onslaught of discriminatory laws, cultural opprobrium, and mob violence. Yet Chinese Californians did not suffer oppression with “helpless stoicism.”⁹ Rather, they actively resisted discrimination, making significant contributions to the civil rights movements of the nineteenth century. Chinese immigrants formed protective associations, or



Chinese laundry house of Yick Wo *In re Yick Wo* filed January 22, 1886. Supreme Court of California Records, California State Archives.

5. Report of testimony in case *People v. S. Kelsey*, March 1850, Supreme Court of California Records, California State Archives.

6. See Miroslava Chávez-García, *Negotiating Conquest: Gender and Power in California, 1770s to 1880s*. Tucson: Univ. of Arizona Press, 2004.

7. Madley, *An American Genocide*, 348.

8. Amy K. DeFalco, *Consuming Identities: Visual Culture in Nineteenth-Century San Francisco*. New York: Oxford Univ. Press, 2018, 57.

9. Charles J. McClain, *In Search of Equality: The Chinese Struggle against Discrimination in Nineteenth-Century America*. Berkeley: Univ. of California Press, 1994, 3.

tongs, which advocated for their members' rights in and out of the courts. Because Chinese people were barred from practicing law in California, tongs hired some of the state's best white attorneys, including the famed lawyer Hall McAllister.

In 1880, the city of San Francisco passed two ordinances designed to effectively outlaw Chinese-owned laundries. Laundry owners were required to obtain permission from the Board of Supervisors to operate out of wooden buildings, yet the board always denied Chinese laundry owners' applications. In 1885, longtime laundry owner Yick Wo, also known as Yick Wo Chang, was arrested for operating a laundry in a wooden building without a permit. With financial support from the Chinese laundry workers' tong, Wo sued for relief.¹⁰ Although the California Supreme Court upheld the city ordinances in 1885, the United States Supreme Court ruled in Wo's favor the following year. This landmark decision held that a neutral-seeming law enforced in a discriminatory way — “with an evil eye and an unequal hand” — is unconstitutional.¹¹ Since 1886, the U.S. Supreme Court's opinion in *Yick Wo* has been cited nearly 3,000 times, including in the court's decision in *United States v. Wong Kim Ark*, which upheld birthright citizenship.¹²

Despite the historical and legal significance of Wo's case, there are no surviving photographs of or first-person accounts written by Yick Wo. This large-format photograph of Wo's laundry was used as evidence in both the California Supreme Court and United States Circuit Court cases. The case file held at the California State Archives includes photographs of other Chinese-owned laundries in San Francisco, providing rare visual documentation of these lost monuments to civil rights.

James v. Marinship Corp. (1944) 25 Cal.2d 721

African Americans have played an outsized role in the struggle for civil rights in California, beginning in the 1850s when Black abolitionists organized legal challenges to slavery, racist testimony laws, and segregation in the new state.¹³ During World War II, large numbers of African Americans migrated to California from the South as part of the Second Great Migration, finding work in the state's booming wartime industries. Although African Americans found economic opportunity in California, they faced discrimination in housing, education, and employment, from employers and unions alike.

In 1939, African American singer Joseph James immigrated to California with a Federal Theatre Project troupe to perform at the Golden Gate International Exposition



African American boilermakers' strike, Marin shipyards, Sausalito, 1943. *San Francisco News-Call Bulletin*, Bancroft Library, U.C. Berkeley.

(GGIE) on Treasure Island.¹⁴ In 1942, he found work as a welder at the Sausalito shipyard Marinship. According to the company's newsletter:

No one at Marinship is better known, or better liked, than the author of this article. Joe James came to Marinship on August 1, 1942, and is now a journeyman welder, a member of the select “Flying Squadron” of expert stinger welders who are sent wherever they are most needed. As a concert baritone, Mr. James is known to musical circles from coast to coast . . . He has been heard often at yard programs and at launchings, where he is a popular favorite. In addition, he is a leader of progressive thought among Bay Area Negroes.¹⁵

One week before this article was published in *The Marin-er*, the International Boilermakers' Union chartered a segregated auxiliary for African American workers, requiring that James and his fellow Black co-workers join or face discharge. On behalf of Marinship's approximately 1,000 African American workers, James filed suit against Marinship and the International Boilermakers' Union.¹⁶ James' legal team included the head of the NAACP Legal Defense Fund and future U.S. Supreme Court Justice Thurgood Marshall.¹⁷ In a groundbreaking opinion by Chief Justice Phil Gibson, the California Supreme Court ruled in James' favor, holding that racial discrimination against union membership violates “a definite national policy against discrimination because of race or color.”¹⁸

14. Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941–1978*. New York: Oxford Univ. Press, 2010, 15.

15. Joseph James, “Marinship Negroes Speak to Fellow Workmen,” *The Marin-er*, Aug. 21, 1943, San Francisco History Center, San Francisco Public Library.

16. *James v. Marinship Corp.* (1944) 25 Cal.2d 721.

17. Brilliant, *The Color of America Has Changed*, 15.

18. *James v. Marinship Corp. supra* 25 Cal.2d 721.

10. *Id.* 115–25.

11. *Yick Wo v. Hopkins* (1886) 118 U.S. 356.

12. (1898) 169 U.S. 649.

13. See *Gold Chains: The Hidden History of Slavery in California*, retrieved June 25, 2020, from <https://www.aclunc.org/sites/goldchains/index.html> [as of June 22, 2022].

This ruling was cited in subsequent civil rights decisions by the Gibson Court over the next two decades, including *Perez v. Sharp*,¹⁹ which nullified California's ban on interracial marriage; and *Sei Fuji v. State*,²⁰ which invalidated the state's anti-Asian Alien Land Law.

Primary source materials documenting these and 13 other significant California Supreme Court and Court of Appeal, First Appellate District cases are on view now, with an accompanying exhibition booklet available online.²¹ As California and the nation face a daunting present and an uncertain future, these histories remind us that the legal struggles of the past were not in vain.

Cases Featured in *Expanding Justice for All: The Supreme Court of California in Times of Change*

People v. Smith (1850) 1 Cal. 9. In the first case heard by the new California Supreme Court, the court permitted release on bail of white settlers charged with the massacre of unarmed Native Californians in the Napa and Sonoma region. None of the men charged were ever tried.

Lin Sing v. Washburn (1862) 20 Cal. 534. Chinese merchant Lin Sing successfully challenged the so-called "Chinese Police Tax."

In re Archy (1858) 9 Cal. 147. With aid from California's African American community, the fugitive slave Archy Lee escaped his enslaver, Charles Stovall. The California Supreme Court's ruling ordering Lee's return to Stovall's custody was widely scorned; Lee was later freed by a federal commissioner and immigrated to British Columbia.

People ex rel. Kimberly v. De La Guerra (1870) 40 Cal. 311. The California Supreme Court ruled that the Treaty of Guadalupe Hidalgo guaranteed citizenship rights to *Californios*.

Foltz v. Hoge (1879) 54 Cal. 28. Suffrage activists and lawyers Clara Foltz and Laura de Force Gordon sued Hastings Law School after they were denied admission because they were women. The California Supreme Court ordered Hastings to admit Foltz.

In re Yick Wo (1885) 68 Cal. 294. Business owner Yick Wo challenged the discriminatory San Francisco ordinances that effectively barred the operation of Chinese-owned laundries. Although the California Supreme Court upheld the city ordinances in 1885, the United States Supreme Court ruled the ordinances unconstitutional the following year.

In re Mooney (1937) 10 Cal.2d 1. The California Supreme Court heard the case of accused Preparedness Day

Parade bomber and labor activist Tom Mooney three times, twice in 1918 and again in 1937.

James v. Marinship Corp. (1944) 25 Cal.2d 721. Shipyard welder Joseph James challenged a requirement that he join a segregated African American auxiliary of the International Boilermakers' Union or face discharge. The California Supreme Court ruled in James' favor, citing national policy against racial discrimination.

People v. Oyama (1946) 29 Cal.2d 164. Japanese American teenager Fred Oyama appealed to the California Supreme Court after the State of California confiscated his family's property while the Oyamas were interned during World War II. Although the California Supreme Court ruled in the state's favor, the United States Supreme Court reversed the state court's ruling, striking down key provisions of California's Alien Land Law.

Perez v. Sharp (1948) 32 Cal.2d 711. In a pathbreaking ruling, the California Supreme Court overturned the state's interracial marriage ban, allowing an African American man and a Mexican American woman to marry.

Mulkey v. Reitman (1966) 64 Cal.2d 529. The California Supreme Court struck down Proposition 14 — a ballot initiative that overturned the Rumford Fair Housing Act — as discriminatory and unconstitutional.

In re Marriage Cases (2008) 43 Cal.4th 757. The California Supreme Court affirmed marriage rights for LGBT people.

Escola v. Coca-Cola Bottling Co. of Fresno (Cal. App. 1943) 140 P.2d 107. The Court of Appeal, First Appellate District, ruled that Coca-Cola was not responsible for an injury to a waitress caused by an exploding soda bottle. However, it was Presiding Justice Raymond Peters' dissent that would have a lasting influence on tort law. In 1944, the California Supreme Court agreed with Justice Peters, holding Coca-Cola responsible for the waitress' injury.

Bayside Timber v. Board of Supervisors of San Mateo County (1971) 20 Cal.App.3d 1. The Court of Appeal, First Appellate District, struck down the 1945 Forest Practice Act, transforming forest management in California.

Pugh v. See's Candies, Inc. (1981) 116 Cal.App.3d 311. The Court of Appeal, First Appellate District, ruled in favor of a former longtime See's Candies employee, setting limits on employers' right to terminate "at-will" workers.

Home Builders Assn. v. City of Napa (2001) 90 Cal.App.4th 188. The Court of Appeal, First Appellate District, upheld the city of Napa's inclusionary zoning ordinance requiring that developers set aside ten percent of all newly constructed housing units as affordable housing. ★

19. (1948) 32 Cal.2d 711.

20. (1952) 38 Cal.2d 718.

21. See http://library.courtinfo.ca.gov/special_collections_archives/exhibits/ [as of June 22, 2022].

MARIE SILVA is the Special Collections Librarian & Archivist at the California Judicial Center Library in San Francisco.