



WESTERN LEGAL HISTORY

A Publication of Ninth Judicial Circuit Historical Society

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STRANGERS IN A STRANGE LAND



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Cover Photo: Tom Kobayashi stands in the south fields of the Manzanar Relocation Center at the foot of the Sierra Nevada Mountains, 1943. Photograph by Ansel Adams. Courtesy of the Library of Congress.

Michael Daly Hawkins

Introduction: Strangers in a Strange Land¹

The mass migration of millions of Ukrainians, fleeing the Russian assault on their homeland reminds us, as did the American withdrawal from Afghanistan, of the toll armed conflict can take on the innocent. In this issue, we present the unique stories of five individuals who found themselves coming to or being taken out of their country in ways that intimately touch the history of our collective past. Each of them experienced “the knock on the door” in one fashion or another and each of them now play important roles in the administration of justice in the western United States.

World War II

Carlos Bea was all of 5 ½ years old, enjoying one of his idyllic summers with his older brother Al on the beaches of Biarritz, France just across the border from his native San Sebastián home in the Basque region of Spain when his call came from his mother, urging the pair to return home and pack. War clouds were gathering around Europe as the Spanish Civil War was ending. They fled first to Portugal and then by ship, through U-boat infested waters, to his father’s native Cuba. His mother had seen the power of the Third Reich during the Spanish Civil War and instinctively knew that France would soon be overrun. Eventually, they wound up in America. In love with his newfound home, he found himself fighting to stay here as one of the few Article III judges ever having to face deportation, a decision later rescinded by the Board of Immigration Appeals.

Pearl Harbor

The knock of the door for Judge Wallace Tashima came on a bright spring southern California day. With his eighth birthday approaching, he² and his close knit family were swept up in the aftermath of the Japanese attack on Pearl Harbor and forcibly uprooted and removed to a hastily built camp on

1. With apologies to Robert A. Heinlein, the author of the science fiction masterpiece “Stranger in a Strange Land” (1961), whose title derives from Exodus 2:22 “Zipporah gave birth to a son, and Moses named him Gershom, saying “I have become a foreigner in a foreign land.”

2. Atusushi Wallace Tashima was Internee number 10602D, showing his birth year as 1934. Relocation Authorities (WRA)/Case Files: archives.gov/research/japanese-americans/wra-case-files.

the Arizona-California border.³ Long after his return to California and a more normal life, including service as a U.S. Marine during the Korean Conflict, he would discover and maintain a friendship with the late William D. Browning, a Tucson-based District Judge (D. Ariz. 1984-2008), who was himself interned along with his family in the Philippines when Japanese forces overran Manila. "I think he had it much worse than I did," Wally (as almost everyone now knows him) observed.

Vietnam

Jacqueline Nguyen and her siblings were awakened with a message from her father who was an officer in the Army of the Republic of South Vietnam (ARVN) the morning of April 30, 1975, and, like the Bea brothers, told to quickly pack. They had to depart what is now Ho Chi Minh City as North Vietnamese Army (NVA) forces crashed through the gates of Saigon's Independence Palace. Her father was a prime candidate for imprisonment or worse had they stayed. A U.S. Army officer, a friend of her father's, drove the family to the Tan Son Nhut airport convincing a guard "this is my family." They were taken to an American naval vessel bound for Guam, then to the Marine Corps base at Camp Pendleton, California. Judge Nguyen describes the experience of family members, some of whom stayed behind.

Chief District Judge Miranda Du (Nevada) and her family had a bit of a different itinerary from Judge Nguyen: first by a harrowing boat journey from Hoi Phong, Vietnam to Malaysia, then to a refugee camp in Kuala Lumpur, then to Alabama and finally to California. When the boat they shared with 250 others tried to dock in Trenngganu, Malaysian authorities turned them away. To reach shore, her father had to breach the boat and direct the occupants to swim ashore. One problem: the young Miranda didn't know how to swim, so she had to latch on to an uncle who was able to get her safely to shore. Like Judge Nguyen, her family's stop, after a time in a refugee camp, was in the American Deep South, Alabama for her. There, the kindness of strangers helped the family settle in and find schooling for the children.

The Cuban Revolution

The quite literal knock on the door came for ten-year-old Roger Benitez when armed men banged on his family's door following the overthrow of the

3. The camp at Poston, Arizona was constructed by the Del Webb Company under a contract with the U.S. Government. Mr. Webb's company would later build Sun City, a large retirement community on the west side of Phoenix. He would also become the owner of the New York Yankees baseball team.

regime of Fulgencio Batista. San Diego-based District Judge Roger T. Benitez (S.D. Calif.) brings his experience as part of Operation Peter Pan (Operación Pedro Pan), which brought thousands of unaccompanied children from Cuba to America between 1960 and 1962.

Special Introduction

Western Legal History is honored to have a special introduction to this issue written by a recent appointee to the Ninth Circuit, Lucy H. Koh. Judge Koh's mother was born in North Korea and, at the age of ten, walked to South Korea just as the war between North and South was about to break out. Judge Koh's father fought for the South in the ensuing conflict. The parents immigrated to America, where the mother taught at Alcorn State University, an Historically Black University. Judge Koh was bussed to predominately African American segregated public schools in rural Mississippi, ultimately moving on to Harvard College and its law school. A former state court trial judge and U.S. District Judge, Judge Koh is the first woman of Korean descent to serve on the U.S. Court of Appeals.



Lucy H. Koh*

Special Introduction

Like most of you reading this, I grew up surrounded by stories—sometimes told to me in intricate detail by my grandmother, more often shared inadvertently or even with initial reticence after dinner or a family visit. These stories made me acutely aware that we Americans are a diverse bunch: not everyone in Mississippi, where I spent much of my early life, garnished their grits with kimchi, or had parents who'd been forced as kids to learn the language of an occupying power that had colonized their country. Sometimes my siblings and I were too distracted to pay much attention, but often we were thirsty to hear about our parents and grandparents, vaguely aware that we might feel less like strangers in a strange land if we could find tidbits in the stories to better blend the kimchi and the grits.



The author's parents before her father came to the United States in 1966. Photo likely taken at Kimpo Airport in Seoul.

The federal judiciary is replete with amazing stories of extraordinary lives. This beautiful collection of such stories will move you. At least four common threads run through all of them—connecting them despite time differences ranging from 1939 to 1975 and differences in setting ranging from Cuba to Vietnam.

First is the resourcefulness, courage and grit of parents willing to give up everything for freedom and security, and in some cases, willing to give up their children so they can grow up with better lives. Judge Nguyen's parents sent their 5 children who were 10 years old and younger on a plane to Saigon not knowing whether they would ever see them again. Similarly, Judge

* Judge Koh is a Ninth Circuit Court of Appeals Judge and was formerly a U.S. District Court Judge and California Superior Court Judge. She was formerly a law firm partner, a federal prosecutor, a special assistant to the U.S. Deputy Attorney General, and a U.S. Senate Judiciary Committee staffer.

Benitez's mother put her 10 year old and 13 year old sons on a plane to Miami to escape Fidel Castro's indoctrination in Havana not knowing whether she would ever see them again.

Judge Bea's mother, having seen the impact of German might in the Spanish Civil War instinctively knew Europe would soon be engulfed in war. She moved her sons from the Basque region of Spain to Portugal, then by boat to Cuba. In 1938 she bought a Buick roadster and drove her sons from Miami, believing that no one there spoke Spanish, to a city named Los Angeles, to establish a new home in a city where she was convinced Spanish must be widely spoken.

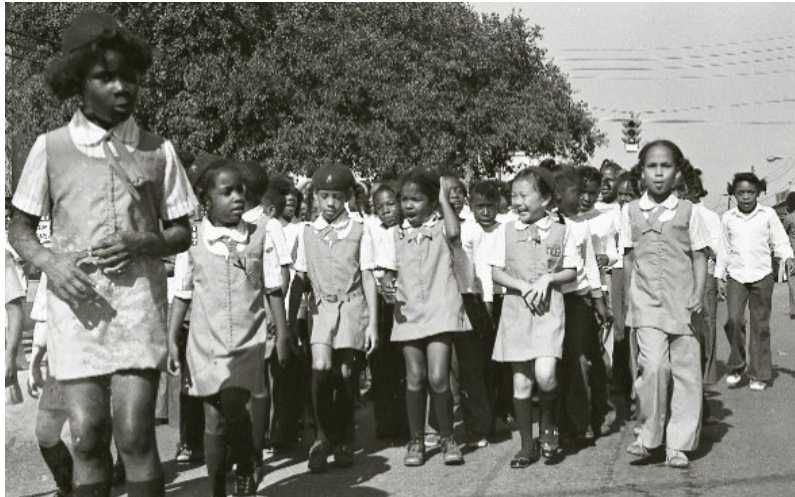
Second is the gift of generosity and second chances. That was the gift bestowed by the dairy farmers in Alabama who sponsored Judge Du's family, and by Judge Benitez's uncle and aunt who took in their two nephews despite scarce space and money. For Judge Bea, it was the Board of Immigration Appeals reversing the Hearing Officer and reinstating Judge Bea's resident status, which allowed him to become a U.S. citizen. For my mother, it was a family willing to risk feeding my mom and her uncles and cousins as they fled North Korea through the mountains.

Third is how the shared mission of administering justice is in the hands of such a diverse group of remarkable people whose families navigated extraordinary risks to come to the United States. However, although Judges Bea, Benitez, Du, and Nguyen found safe haven in the United States and became naturalized U.S. citizens, the only judge in this collection who had birthright citizenship was interned by the United States. From ages 8 to 11, Judge Tashima was interned in Poston, Arizona. Although Judges Nguyen and Du waited in refugee camps in the Philippines, Guam, Malaysia, and San Diego to reach the United States, Judge Tashima was imprisoned in a desolate internment camp where entire families lived in one room in barracks with no running water or sanitary facilities.

Despite the injustice of Judge Tashima's situation, there is still something beautiful about him being able to interpret the law of the United States for over 50 years. It is also beautiful that people from all over the world have found in the United States a new life where they now interpret the laws of their adopted home.

Fourth is the possibility of finding shared experiences amidst all the interesting differences across all the stories. Reading them left me reflecting on my own family. My mother escaped from North Korea by walking for two weeks at the age of 11 and contracting yellow fever on the journey. Like Judges Nguyen and Du, my father, as a member of South Korea's Student Volunteer Army, fought Communists in a civil war. Like Judge Du growing up in Alabama, I grew up primarily in Mississippi where my mother taught at Alcorn State University, the first African American land grant college in the United States,

and conducted epidemiology studies to measure malnutrition in Mississippi's rural populations.



The author marching with the Brownie Scouts of Alcorn State University Troop 104 in the Port Gibson High School homecoming parade on October 31, 1975 in Port Gibson, Mississippi.

These themes are not enough to resolve every question about the American judiciary, or even about the work or lives of the judges whose stories are told here. What we can find in these pages instead are fragments of a map: one tracing the intricate and improbable journeys that make us American, that lead us to mix grits and kimchi, and that enrich the larger story of our country and the judiciary entrusted to help it live up to its commitments. In some sense we are all strangers in a strange land. But when we read these stories and what they tell us about ourselves, we can better appreciate our common bonds hiding in plain sight.



Carlos T. Bea*

COMING TO CALIFORNIA



The author at the beach with his uncle Pedro. St. Jean de Luz, Summer 1939.

My coming to California started September 1, 1939. I was 5½ years old, playing on the beach in Biarritz, France, just across the border from my hometown, San Sebastian, Spain. My mother, older brother and I were spending the summer in Biarritz to avoid the privations in Spain, where the Civil War had ended only the previous April. I was told we were going home to pack

and leave France because the Germans had just invaded Poland and war had been declared. My mother had seen the German military prowess during the Spanish Civil War and predicted that the Germans would make short work of the French in a matter of weeks. My uncle Pedro disagreed; he thought the Maginot Line would hold. He stayed in France, but it took him two years to get out and back to Spain, and then Cuba.

We packed up quickly and drove to our home in San Sebastian. After a few days assembling our things, we drove to Estoril, Portugal, a suburb of Lisbon. Mother booked passage on a ship that was headed to Havana, Cuba. Why Cuba? My father (who had died in 1937) was born in Matanzas, Cuba where his father had been in business. My mother's mother had also been born in Matanzas; her father had been a business partner with my grandfather

* Senior Circuit Judge Carlos Tiburcio Bea was born in Spain of Cuban parents, and grew up in Los Angeles. He attended Stanford for both undergraduate and law school. He practiced trial law in San Francisco, taught at Hastings and Stanford Law Schools and was appointed to the California Superior Court in 1990 where he served until his appointment to the Ninth Circuit Court of Appeals in 2003.

Tiburcio Bea. My mother's idea was to sit out the European war in the Americas. Our ship was the "Colonial," a smallish Portuguese ship that had at one time been the presidential ship used by the Portuguese ruler, Antonio de Oliveira Salazar, to visit what were then Portuguese colonies in Africa. When we sailed, the World War had started. The



"Life Preservers." The author and his brother Alvaro aboard *Colonial*, Lisbon to Havana. October 1939.

The smokestacks on the *Colonial* were painted with the green and red colors of the Portuguese flag; Portugal was a neutral. But the threat of German submarines was ever-present. We were made to wear life vests at all times, even in our bunks. The *Colonial* was slow. It took us two weeks to make Havana.

It didn't take Mother long to find she didn't want to stay in Cuba. "It's hot and there are mosquitoes," she said. She decided we should visit the U.S. As we had inherited Cuban citizenship through my father, entry into the States was not a problem. We arrived in Miami. Mother was disappointed that no



"Coca Cola." Judge Bea (right) and his brother in Los Angeles, 1940.

one—then—in Miami spoke Spanish. She decided that everyone in California must speak Spanish because all the important cities in California had Spanish names—San Francisco, Los Angeles, Sacramento, San Diego. She bought a used 1938 Buick sedan, packed us in, and we headed West.

From photographs and family lore I remember a series of "motor camps" (as motels were then called) and long days' drives as we made our way to California. It must have taken us a month, given stops along the way, including the Grand Canyon. We found a house to rent in Los Angeles, school for my brother and a nursery school for me. Los Angeles was sunny, warm, and

without freeways or smog. It was grand. We stayed for two years, until we drove back to Miami and by boat to Cuba, perhaps because Mother was worried about the threat of war with Japan. Sure enough, war broke out shortly after we arrived in Havana. I remember hearing the news on the radio of the Pearl Harbor attack. I was confused. After our two wonderful years in Los Angeles, I couldn't understand why anyone would bomb Americans.



The author and his school mates from Colegio de la Salle, Marianao, Havana at the Ingenio Rosario, Matanzas, Cuba, 1943.

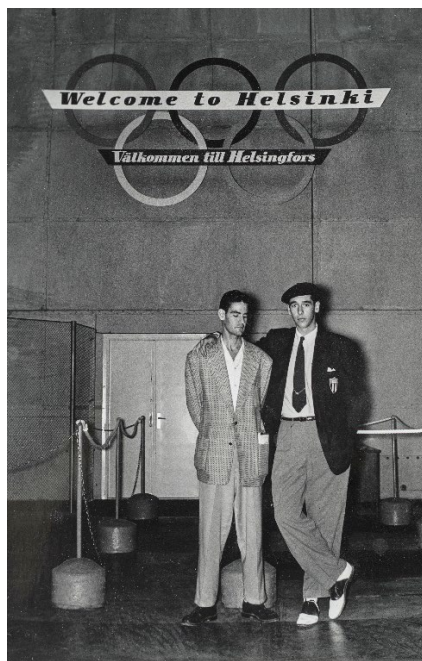
After two years in Havana, and with the War, in 1943, having taken a turn for the better, we decided to go back to Los Angeles. This time, by train, notwithstanding that due to war time "priorities" orders, passengers on trains could be bumped off at any station by soldiers, sailors or anyone connected with the War effort. We were "bumped" in Jacksonville and New Orleans.

My brother and I went to school through High School in Los Angeles. I graduated from University High School, alma mater also to Judges Stephen Reinhardt and Raymond Fisher. After high school, I attended Menlo Junior College, then Stanford. My last stretch in Cuba was in 1952 when I was in training and then part of the Cuban national basketball team in the Helsinki Olympics.

After the Games, and a year playing for Real Madrid in Spain, it was back to California, Stanford and Stanford Law School, before going to work in a law firm in San Francisco. It's been California ever since, albeit there was a hiccup.



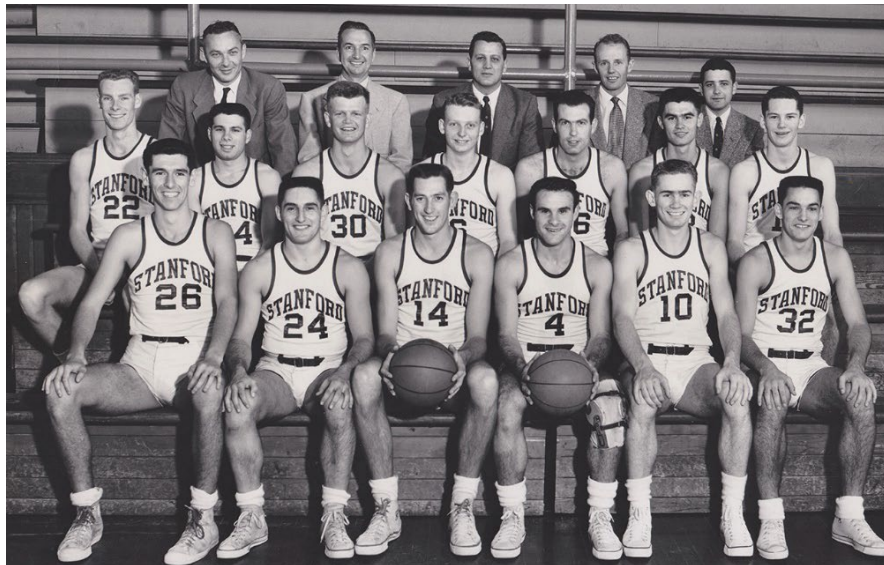
Cuban Olympic team (Judge Bea waving in back row), 1952.



Arriving in Helsinki, 1952.



Basketball in Valladolid, Spain, 1953 (the author at left).



Stanford basketball team, 1954 (the author is #26).

As a Cuban citizen, I had a U.S. resident visa before I went to Helsinki and Madrid. When I was preparing to come back to Stanford for the 1953-4 basketball season, I went to the American Embassy in Madrid to make sure my passport and papers were in order. When asked why I wanted to return to the States, I responded that I wanted to go back to college at Stanford. The consular official stamped my Cuban passport with a student visa. Unbeknownst to me, that interrupted my resident



Judge Bea aloft during a Stanford game vs. Idaho.

status and made me a non-resident. Two years later, when I was about to turn 21 and wanted to become an American citizen, I learned that I was ineligible, since I was a non-resident and my previous residency didn't count. Immigration counsel advised that I had to make a declaration under oath that I intended to stay in the U.S., and that would trigger a deportation proceeding. Sure enough, that happened. The Hearing Officer (who now would be referred to as an Immigration Judge) found I had abandoned my resident status, and rejected that I had taken non-resident status unknowingly and through a mistake; he ordered me deported, but allowed me voluntary departure during an appeal. That would allow me to finish law school. In my third year of law

school, I had a hearing before the Board of Immigration Appeals (BIA) in Washington, D.C. Following oral argument, but in open court, the Chairman of the BIA asked me a couple of questions about what position I had played on the Stanford basketball team (forward, center) and whether I had met UCLA coach John Wooden (yes, he had attempted to recruit me to go to UCLA). The BIA reversed the Hearing Officer, and reinstated my resident status, which allowed me to become a U.S. citizen. I was sworn into citizenship at Courtroom Five in the San Francisco Browning Courthouse, where I now sit as a Senior Circuit Judge.

Learn more about Judge Bea with the NJCHS Oral History records:

As you read above, Judge Bea played basketball for Cuba in the Olympics and in his youth, he was under threat of deportation from the U.S. But there are so many more fascinating stories about him which are part of his oral history. Learn more about Judge Bea, his life, his legal and judicial career, and his judicial philosophy in his oral history, as interviewed by Ben Feuer, Esq.

Read the interview transcript at nichs.org/meet-the-honorable-judge-carlos-bea/.



A. Wallace Tashima*

THE AFTERMATH OF EXECUTIVE ORDER 9066: BOYHOOD RECOLLECTIONS



Civilian exclusion order #5, posted in San Francisco California, Apr.1942. Photo by Dorothea Lange. Courtesy of the Library of Congress.

I was a seven-year-old second grader at First Street Grammar School in East Los Angeles when President Franklin Delano Roosevelt signed Executive Order 9066, 7 Fed. Reg., on February 19, 1942.¹ That order authorized the Secretary of War and military commanders in the western United States designated by the Secretary, including California, Oregon, and Washington, to remove and exclude from areas within their jurisdiction all persons the commanders deemed inimical to the war and defense effort. Pursuant to EO 9066, Lieutenant General John L.

DeWitt, commanding general of the Western Defense Command, which included California, ordered the exclusion of all persons of Japanese ancestry, “aliens and non-aliens.”²

* The Hon. A. Wallace Tashima is a trailblazing judge with a half-century of public service and leadership. He has been an inspiration to Asian Americans in the legal profession and to all who admire his integrity and dedication to upholding the principles of justice. He has been the recipient of many awards and accolades, most recently the 2022 UCLA Award for Professional Achievement. A.B., UCLA, 1958; LL.B. Harvard Law School, 1961.

1. Some of the background and details of EO 9066 are discussed in the several opinions in *Korematsu v. United States*, 323 U.S. 214 (1944), abrogated by *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018).

2. In classic government-speak, the orders never mentioned that the majority of those ordered removed from their homes were American citizens.

By late May 1942, we were on our way to a “War Relocation Center” in Arizona. This is my boyhood recollection of that “internment,” which some, with justification, would call detention or imprisonment.

We were authorized to bring with us only what we could carry. We were first ordered to gather at the local Japanese Free Methodist Church in Boyle Heights. There we boarded busses to the Union Station in downtown Los Angeles. At Union Station, we boarded a train guarded by armed U.S. Army guards and started our journey to the “internment center.”



Japanese women board bus for evacuation and relocation, 1942. Courtesy of Los Angeles Daily News Negatives, Library Special Collections, Charles E. Young Research Library, UCLA.



Japanese Americans boarding trains from Los Angeles to the internment camp in Manzanar, California, April 1942. The internment camp was one of ten in the country, with the author's family having been sent to Poston, Arizona. Courtesy of the National Archives, Records of the War Relocation Authority.

I asked my mother where we were going. She didn't know; nobody knew. But after an all-day train ride, we arrived at Parker, Arizona, a desolate, desert town just across the Colorado River from California. It was after dark. We were herded onto Army trucks and driven 14 miles south to the Poston, Arizona, War Relocation Center, which turned out to be a sprawling camp of hastily-constructed, tar-paper covered barracks.³ There, we would spend the duration of World War II.

Upon arrival we were assigned a unit – a single room. Our unit (and address) was Block 46, Barrack 5, Unit A. There were Army cots and blankets in the unit and absolutely nothing more. The mattresses hadn't yet arrived, so we were handed mattress bags and instructed to fill them with straw from a haystack. And so we spent our first night in Poston and many more. Apparently, the food supplies also had not yet been delivered. My first meal in Poston was a sandwich made of white bread and apple butter, something I had never heard of, and which I quickly learned to detest. For several days, all we had to eat, breakfast, lunch, and dinner was apple butter sandwiches.



Poston, Arizona. May 1942. Japanese Americans filling straw ticks for mattresses at the Colorado River Relocation center. Courtesy of the National Archives and Records Administration.



Poston, Arizona, May 1942. Evacuees of Japanese ancestry arriving at this War Relocation Authority center. Courtesy of the National Archives and Records Administration.

We arrived in Poston in late May 1942. I remember that my younger sister “celebrated” her sixth birthday on May 25, a few days after our arrival in Poston. I celebrated my eighth birthday a month later, on June 24. Although it was no concern of mine, the adults quickly noticed that there was no schoolhouse, no school buildings in the camp. They commenced a voluntary effort

3. Poston was actually three camps – Camps 1, 2, and 3. Once the camps were filled with evacuees/detainees, Poston became Arizona's third largest “city.”

to build a school, which was completed in time for the start of the Fall semester.⁴ There, I completed the third, fourth, and fifth grades of my education.⁵



Poston Elementary School at the Colorado River (Poston) Relocation Center. Images courtesy of Cal State University (left), National Park Service Photo (right).

Although I was born in Santa Maria, California, a farming town in northern Santa Barbara County, we moved to Los Angeles shortly after my father died. So I had spent most of my boyhood before World War II in the city – as a city boy. Thus, “moving” to Poston, despite its desolation, was something of an adventure for me. Poston was a bare bones internment camp – everything the term implied. It was block after block of suboptimal living units. Each family had one room; no one had any privacy. Each block had 14 barracks of living quarters, each barrack divided into four one-room units, in which there was no running water or sanitary facilities. There were also a mess hall and a recreation barrack. And, in the middle of the block, a women’s shower and latrine, a men’s shower and latrine, and a laundry room. That was it. There were no parks or playgrounds, no “downtown” or commercial area, no department store, drug store or grocery store, and no theater, restaurant, ice cream shop, or library.

But as children do, we made do with what was available. I quickly learned to enjoy the outdoors. I learned to swim in the irrigation canals that ran through the camp. And it seemed like every weekend that we hiked down to the Colorado River, which was about three miles away, where I learned to fish, trap, and camp. I became a good enough swimmer that I could swim across the Colorado. Coming home after an outing



Parker, Ariz. Apr. 1942. Constructing buildings for Japanese-American evacuees on the Colorado River Indian Reservation. Courtesy of the Library of Congress.

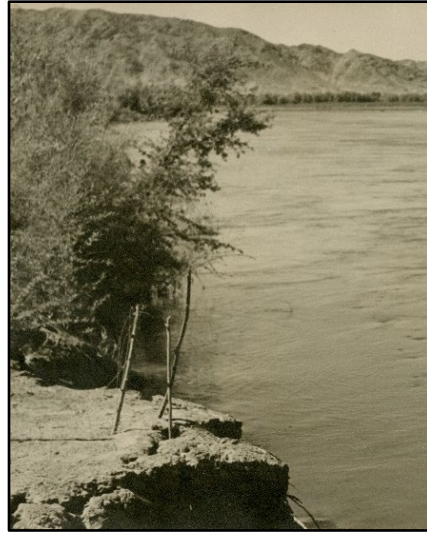
4. On a visit I made to Poston some fifty or more years later, the only buildings still standing were some adobe school buildings, including the school auditorium.

5. By definition, the internment camp schools, which were operated by the War Relocation Authority – the federal government – were *de jure* racially segregated schools.

on the river, I liked to tell my mother, “Mom, I swam to California today.” So, as a boy, there were many things about camp life that I enjoyed. And, I wasn’t burdened with the thoughts and worries that confronted the adult detainees.



A grove of the desert at the Colo. River Relocation Center, Poston, Arizona, 1942-1945. Courtesy of the Gerth Archives and Special Collection, CSU Dominguez Hills.



View of Colo. River, in which the author swam, Poston, Arizona 1942-1945. Courtesy of the Gerth Archives and Special Collection, CSU Dominguez Hills.

But, of course, life goes on. And even a small boy notices life’s events happening around him. As I mentioned earlier, there were no movie theaters in camp. But movies were shown weekly – outdoors. Children would sit on the ground in front and the adults would sit on folding chairs behind them. Every once in a while, a short, solemn ceremony would take place. A young Army officer in dress uniform would step forward before the crowd to read a military citation. It was a citation for “intrepidity and valor” posthumously awarding a silver star, or some other medal, for bravery. The Army officer would then pin the medal on the dead soldier’s grieving mother. I suspect that many of those mothers hardly knew what was going on – Japanese women of that generation barely spoke and understood English. Although, as a nine- or ten-year-old, I could not parse all of the strands, I do recall having the uneasy feeling that something was not right about that picture. That haunting picture has stayed with me.



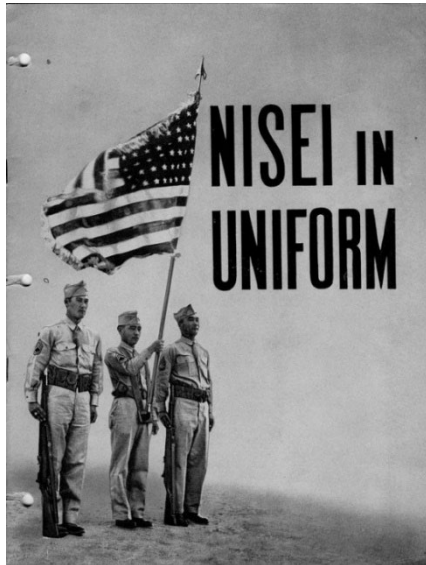
The Hirano Family, left to right, George, Hisa, and Yasbei, posing with a photograph of their other son, a United States Serviceman, at the Colorado River Internment Camp in Poston, Arizona, 1942 – 1945. Courtesy of the Records of the War Relocation Authority.



Memorial service for fallen soldiers, c.1942-1945, Hunt, Idaho. The soldiers honored during this service were: Pfc. Akira Kanzaki, Pvt. Yohei Sagami, Pfc. Yoshito Noritake, Pfc. Hideo Yasui, Pfc. Yoshio Kato, Cpl. Jimmy T. Kokubu, Sgt. Ban Ninomiya, Pvt. Shin Sato, Pfc. George S. Miyaoka, Sgt. Ned T. Nakamura. Courtesy of the National Archives, photo no. 210-CMB-MS1-1507.

As I grew older, another picture came to haunt me. Many young men were drafted from the internment camps into the Army, just as they were from other parts of America. And like other draftees, when they finished their basic training, they were allowed a 30-day home leave, before being shipped out to the European Theater. But for them, “home” leave was to return to Poston – to the internment camp – because that was where their families were imprisoned. I’ve often wondered what those young American soldiers thought, as they spent what might be the last 30 days of American life in an American internment camp with their imprisoned families?

Then, too, I recall wounded veterans coming “home” to the Poston internment camp on convalescent leave. Some were on crutches, some in wheel chairs, others missing limbs or eyesight. I’ve asked myself innumerable times a question whose answer still evades me: How does a battle-wounded American veteran cope, mentally and psychologically, with being sent to an American prison camp to recover from his war wounds? In some way, this insult, heaped upon an injustice, must be accounted for when tallying the sacrifices these young, American soldiers had made, greater than the rest of us.



“Nisei in Uniform,” a publication of the U.S. Department of the Interior and the War Relocation Authority in collaboration with the War Department, c. 1940s. Courtesy of Densho Encyclopedia, the Merrill Family Collection.



General Frank D. Merrill congratulating a nisei soldier upon presentation of the Legion of Merit for his exploits at Walawbum, Burma. Awarded in the Fall of 1944. Courtesy of Densho Encyclopedia, the Matsumoto Family Collection, and the U.S. Army.

These are some of the long ago memories of an eight- to eleven-year-old boy. Memories which have stayed with me for more than three-quarters of a century.

In August 1945, we finally were permitted to return home to California – to pick up the pieces and start life anew. I was then eleven years old and started the sixth grade at the Playa del Rey Grammar School in Venice, California. Because I was just a boy, I'm sure that the transition was easier for me than it was for the older Nisei, many of whom had lost farms, businesses, careers, or had their college and graduate education interrupted. In fact, in addition to the incalculable loss of our constitutional rights, the evacuation imposed a huge economic loss and social cost on the Japanese American community. But that's another story!⁶



Returning to Los Angeles after incarceration in Heart Mountain concentration camp, Wyoming, Nov. 5, 1945, Los Angeles, California. Courtesy of Los Angeles Times photographic archive, Department of Special Collections, Charles E. Young Research Library, UCLA and Densho Encyclopedia.

Postscript: I close with a quote from the Commission's Report: "The broad historical causes that shaped these decisions [to promulgate and implement EO 9066] were race prejudice, war hysteria, and a failure of political leadership. . . . A grave personal injustice was done to the American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them, were excluded, removed, and detained by the United States during World War II."

6. Much of the story of the relocation and eventual return home of the Japanese American evacuees/detainees, and its costs, is set forth in "Personal Justice Denied, Report of the Commission on Wartime Relocation and Internment of Civilians" (GPO 1983).

Complementary resources

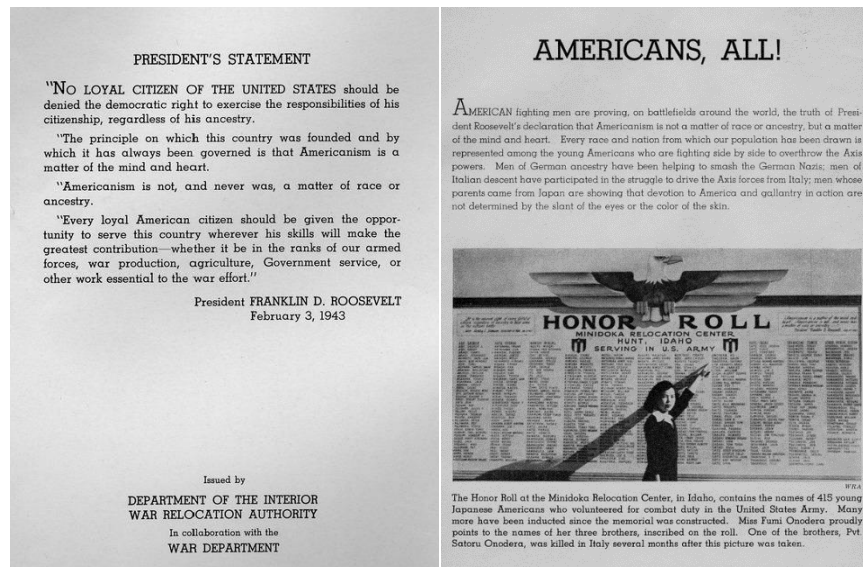
Densho Encyclopedia is a free online resource about the history of the Japanese American WWII exclusion and incarceration experience.

"The Encyclopedia covers key concepts, people, events, and organizations that played a role in the forced removal and incarceration of Japanese Americans during World War II. The reviewed articles are written by a wide range of contributors, and are enhanced with photos, documents and video drawn from Densho's digital archives and other sources."

Learn more at [Densho.org](https://densho.org).

We suggest the following items as a place to start:

1. *Passing Poston* is a documentary film that tells the story of Poston through the lives of four Japanese Americans who were interned there. Learn more at the following link: [resourceguide.densho.org/Passing%20Poston%20\(film\)/](https://resourceguide.densho.org/Passing%20Poston%20(film)/)
2. *Nisei in Uniform* is a publication of the U.S. Department of the Interior and the War Relocation Authority in collaboration with the War Department, c. 1940s. This pamphlet describes the military service of Japanese American citizens during World War II, focusing on acts of the 42nd Combat Team and the 100th Battalion.



Images courtesy of Densho Encyclopedia. View the full document here: encyclopedia.densho.org/media/encyc-psms/en-denshopd-p155-00019-1.pdf

Take a look at the NJCHS Exhibit “Executive Order 9066: History and Legacy.”

1 EXECUTIVE ORDER 9066: HISTORY AND LEGACY

During World War II, the U.S. government incarcerated nearly 120,000 people of Japanese ancestry, including American citizens and lawful permanent residents, in desolate sites in the interior of the United States.

There is no one story of the impact that these actions had on Japanese Americans. There are myriad stories. They are complex and nuanced. No single exhibit can do them justice. What can be said is that the consequences of these actions were deeply felt and continue to be so today, 75 years later.

Through this exhibit, we introduce you to some of these stories.

PRE-WWII

Even prior to the bombing of Pearl Harbor, Japanese Americans were subjected to discrimination. In the press, Japanese immigrants were depicted as morally degenerate and criminal. Additionally, in 1922 the United States Supreme Court ruled in the *Ozawa* case, reaffirming the ban on Japanese immigrants from becoming naturalized U.S. citizens. (This ban would last until 1952.)



Courtesy of the San Francisco Chronicle



San Francisco residents read newspapers the day after Pearl Harbor.

Tensions between the United States and Japan grew in the 1930's. In anticipation of a possible war, the U.S. government began surveillance in the Japanese American community. Although these investigations determined that Japanese Americans would present minimal security risks, the government prepared lists of Japanese community leaders to be rounded up and imprisoned in the event of war.

November 1941

A U.S. Intelligence report known as the "Munson Report" commissioned by President Roosevelt concluded that the great majority of Japanese Americans were loyal and did not pose a threat to national security in the event of war with Japan.

Explore the rest of the panels at the following link: njchs.org/wp-content/uploads/Executive-Order-9066-Panels.pdf



*Roger T. Benitez**

HOPE ON A PLANE

“Abrén la puerta! Abrén la puerta!” (“Open the door!”) The loud voices and banging at our front door sent my grandmother rushing from the kitchen. As a curious ten-year-old, I followed her to see what the commotion was about. When she opened the door late that night, I nervously peered around her hip. There, stood two bearded men, wearing olive green fatigues and tin cup caps, each armed with a rifle of some sort. They demanded to speak to my mother.

December 31, 1958, was an ordinary New Year’s Eve in Havana, Cuba. The early morning of January 1, 1959, on the other hand, would alter my life like no other event ever could. As Camillo Cienfuego and his army of rebels rolled into Havana that morning, the government of Fulgencio Batista was toppled. Not long after, Fidel Castro would emerge as the leader of the new revolutionary government.

Over the next few months, promises of equality, justice, and democracy would be repeated often and with such apparent candor that one could not help but be optimistic and wish success for this new regime. But the promises would soon disappear into the ether and prove to be merely a prologue to a national tragedy. Almost immediately upon seizing power, the new regime began a reign of terror.

Public executions became a daily affair. Anyone associated with the prior government, as well as anyone who dared to express dissent from the new revolutionary government was subject to being rounded up, placed before a wall, and shot. To instill fear in the population, many of these executions were televised. In some cases, where a lesser punishment was deemed sufficient, the transgressors were promptly shipped to the La Cabana

* Judge Roger T. Benitez is a Senior District Judge in San Diego, California. He was a lawyer in private practice for 18 years before being appointed to the Superior Court in 1997. Judge Benitez became a Magistrate Judge in 2001 and was appointed to the District Court in 2004. He has served on the Ninth Circuit Education Committee, the State Federal Judicial Council, the Financial Disclosure Committee of the Judicial Conference U.S. and is currently sits on the Judicial Panel for Multi-District Litigation.

prison. For some it was a fate worse than death. Whatever due process existed in the Batista regime was a stranger under Fidel Castro.

Spying networks known as Comité de Defensa de la Revolución (CDRs) were quickly set up on each residential block. The purpose was to spy on and detect and squelch dissent by any means necessary.

The Agrarian Reform Act was enacted under the pretext of creating economic and social equity. In its aftermath my grandmother's farm, which had been in our family for generations, was taken without compensation. Because private property was deemed anti-revolutionary, my father's furniture and electronics business, established just two years earlier, was also seized without compensation.

Education and religion also would be compromised. Cuba's largest university, La Universidad de Havana, where my father taught accounting, was shuttered. Our Catholic church was closed, as were Catholic schools. Having recently celebrated my First Communion, a rite of considerable import to young Catholics, I recall being confused and bitterly disappointed about the closures. Eventually all churches, synagogues, and temples would be closed, and all religious gatherings would be strictly forbidden.¹

Newspapers, television and radio stations would be taken over by the new regime and would become little more than propaganda purveyors. My uncle, a well-known TV personality, was forced to flee with his wife and daughter virtually overnight after having been ordered to produce commercials supporting the regime and speaking favorably of Russia and its Communist rule.

Having heard the cacophony at our front door, my mother rushed out of the bedroom where she had been preparing for bed. "Where are the guns?" the loud men demanded. "What guns?" she replied. "We know you have guns. Where are they?" Notwithstanding her vigorous denials, her attempts to disabuse them of their misinformation fell on deaf ears. A search of our home ensued, although no warrant was ever produced. Disappointed that their search had failed to produce the expected results, they escorted my mother away for further questioning. We would not hear from her for three days and three nights. We knew not if she was dead or alive. After three days she was released.

Although this ordeal would not be the last straw, it certainly became the catalyst for my mother's desire to leave this oppressive regime and my eventual introduction to Operación Pedro Pan (Operation Peter Pan).

With all of these disturbing changes and recent experiences in mind, my mother frantically commenced searching for ways to get our family out of her beloved Cuba. Her destination: the shining city on the hill—the United States of America. Applications for exit and entry visas, payment of endless fees, passport photographs, and satisfaction of medical requirements such as

1. "Religion is the opiate of the masses." Karl Marx.

vaccinations became part of her daily tasks. That she was a well-educated professional, however, posed serious difficulty. Professionals were discouraged, if not prohibited, from emigrating for fear of what was known as “brain drain.”

Then, in April of 1961, the Bay of Pigs invasion was launched. During and shortly after the failed invasion, repression escalated exponentially. In May, private schools were closed down. My brother and I attended Collegio de La Luz, a well-known private school. Its director was arrested and school gates chained and padlocked. We were then compelled to enroll in and attend a public school.

From my first day of class at our new school, and daily thereafter for that matter, students were instructed that as good citizens and “revolutionary Pioneers,” it was our duty to report to the CDR if we ever heard our parents or anyone else say anything bad about Fidel Castro or the Revolution. This was the last straw; my mother realized that there was no hope.

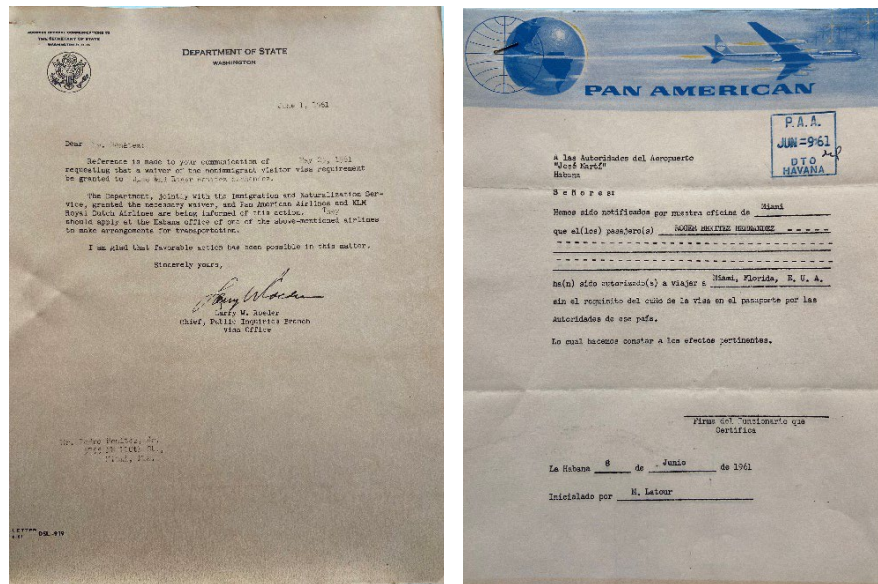
Although she redoubled her efforts to save the family, she quickly learned that would not be possible and that she would have to make the agonizing decision to send her boys to the USA alone. Like many other Cuban parents, my mother made the right decision, choosing unselfishly to put her children’s future first. The solution? Operación Pedro Pan.



Boys holding the American and the Cuban flags at St. Raphael's Hall, Camp Matecumbe, Florida, c. 1961-1964. Courtesy of Operation Pedro Pan – Cuban Children's Program Records, Barry University Archives and Special Collections, Miami Shores, Florida.

Having found the vehicle, there was a real sense of urgency to take advantage of it. Although my father and mother were going through a bitter divorce, they were somehow able to put their differences aside and to cooperate so as to gain our exit. To that end, they turned for help to my tío (uncle) Pedro, who was an American citizen living in the U.S. On May 25, 1961,

my uncle applied to the U.S. State Department for the desired visa waivers. With incredible speed, on June 1, 1961, the State Department granted our visa waivers. On June 9, Pan American Airlines issued its travel authorization, also waiving the required visas. The car had left the starting line. No looking back. After the smoke cleared, there were no assurances that either my mother or my father would ever see us again.



Original visa waiver documentation for the author and his brother, allowing the two entry into the United States.

On July 31, 1961, at age ten and accompanied by my brother, Joe, who was nearing thirteen, I became a beneficiary of Operation Peter Pan. As we prepared to board the Pan Am flight that would take us to Miami, Florida, we first had to walk through what was known as the Pescera, or Fishbowl. This was a large, glass enclosed room furnished with tables manned by soldiers and customs officials. Before boarding their flight, those children who had been given permission to leave Cuba were lined up single file and directed to enter the Fishbowl. There they would be questioned and searched by government officials.

For all we knew, entering the Fishbowl would be the last time that we might ever hug, kiss or touch our parents or other loved ones again, and for some it was. One parent for each child was allowed to stand outside the Fishbowl as his or her child/children ran the gauntlet. Once a child entered the Fishbowl, no communications were allowed with anyone outside. Although parents, including my mother, tried hard not to show their anguish, even a ten year-old could recognize the tracks of the tears.

After being questioned about where we were going, about our parents, and about their loyalty, we were searched. I was allowed to take with me my hypo-allergenic pillow and one piece of luggage the size of a litigation

briefcase. It contained all of my worldly belongings. As luck would have it, I was assigned a government official who seemed to have compassion and understanding. I was treated well during the process.

Once my brother and I were cleared, we walked out onto the tarmac, looking back one last time at our mother. She was, and always will be, my hero. As we and the 24 other children boarded the plane, we settled into our seats, the doors closed, the engines roared to life, and we rolled down the runway. Lifting off, we got one last glimpse of what had been our home. Sad as it was, however, hope boarded that plane with us.

We landed at the Miami International Airport after a short 45-minute flight. There we were met by my uncle, Rosendo

Rosell; my tía (aunt) Marta; and my cousin, Martica. To this day, I recall vividly the sun setting as we crossed the MacArthur Causeway on our way to our new home. Our new home would be an efficiency apartment (a studio for some) where all five of us would live. My uncle and aunt shared a divan, Martica slept on a rollaway, and my brother and I shared another divan.

Money was scarce, and barriers that the strange language presented were difficult to navigate at first, especially when it came to school. But the Miami community, made up overwhelmingly of Jewish families, was welcoming and we quickly adapted with the indefatigable resilience of youth. Our hope materialized, thanks to Operation Peter Pan.

Some have attributed the inception of Operation Peter Pan to the CIA and its desire to remove from harm's way the children of those who were preparing to assist the United States with its planned Bay of Pigs invasion. Although there is some evidence for this genesis, it is scant and not the commonly accepted version. It is most commonly believed that the program was the brainchild of one man, James Baker, director of an American private school in Havana, the Ruston Academy. He had been approached by parents who feared that their children were being indoctrinated and that the government would begin to interfere with parental rights or ship their children to Russia on forced work details. Some have argued that this was rumor, hyperbole, or planted conspiracies. But as my dear friend and colleague, Judge William Enright, once said to me, "The greatest enemy of the historian



Pedro Pan children took direct Pan American flights from Havana to Miami. Courtesy of Operation Pedro Pan Group, Inc.

is the eyewitness.” In the end, who or why Operation Pedro Pan began became inconsequential.

Once the program was conceived, James Baker and Father Bryan O. Walsh, a Catholic Priest who was the director of the Catholic Welfare Bureau in Miami, became the unstoppable forces behind the Operation. It is believed to have begun in December of 1960, with only a small number of children immigrating to the United States on student visas issued by the State Department. As the year went by, the number of children continued to grow as more Cubans, most often of middle-class families, became disillusioned with the new regime.



Boys unpack in dormitory at Pedro Pan receiving facility in Florida, c. 1963-1966. Courtesy of Operation Pedro Pan – Cuban Children's Program Records, Barry University Archives and Special Collections, Miami Shores, Florida.



Cuban boys enjoy swimming in Olympic-size pool at Camp Matecumbe, Florida, c. 1962-3. Courtesy of Operation Pedro Pan – Cuban Children's Program Records, Barry University Archives and Special Collections, Miami Shores, Florida.

Father Walsh, with the help of others, was able to set up group homes and camps where children would be housed and cared for as they arrived, usually waiting to be picked up by family or friends or placed in foster homes throughout the country. After the failed Bay of Pigs invasion, more and more Cuban parents grew concerned over the indoctrination of their children and became convinced that the overthrow of the Castro regime was not on the horizon. The number of refugee children increased exponentially. To accommodate the growing influx of children, the State Department began cutting the cumbersome student visa red tape by granting visa waivers. The waivers would then be distributed in Cuba by many unsung heroes who risked their lives and liberty in order to facilitate the accelerating exodus. In the U.S., Father Walsh, with the cooperation of federal and local authorities, established larger receiving facilities such as Camp Kendall, Camp Matacumbe, and Camp Opa-Locka. The program came to a screeching halt after the Cuban missile crisis.



Young Cuban boys arriving to the Miami International Airport, c. 1962-1966. Courtesy of Operation Pedro Pan – Cuban Children's Program Records, Barry University Archives and Special Collections, Miami Shores, Florida.

A total of 14,048 children escaped Cuba and came to the U.S. under Operation Peter Pan. Most were between the ages of 12 and 18. The largest group was comprised of males older than 12 and many of whom were over 17, the age of conscription in Cuba. Ninety-three percent were Catholic children, 396 were Jewish, and between 500 and 700 were Protestant. Half of the children were picked up at Miami International Airport by family or friends.

By 1966, ninety percent of the children had been reunited with their families. Fortunately, our family was able to be reunited in 1962. Of course, it begs the question: How was it that our mother was able to leave if she had tried so hard before but had been unsuccessful in her attempts? The

answer is incredibly simple: My mother, a clever and intelligent woman, was able to convince the Cuban authorities that she was going to the U.S. to retrieve her children. Amazingly, she had a change of heart once the plane's wheels touched the runway at Miami International Airport. Funny how that happened.

Although some who participated in Operation Peter Pan suffered disappointment and perhaps worse, it is well established that most of us are grateful for the opportunity it presented. Most are thankful to James Baker and Father Walsh, as well as to the many who participated—and sacrificed their lives and liberty—in order to facilitate this previously unprecedented

exodus of unaccompanied children. And, of course, we are grateful to a country that opened its arms to us, but most of all to our parents, who made the agonizing and unselfish decision to put Hope on a plane. I sure am.

Complementary resources suggested by the author:

1. Operation Pedro Pan Group is a charitable organization founded in 1991 by the former unaccompanied Cuban children who traveled to the United States. It was created to honor the sacrifice of their parents and the nation that welcomed these children in a time of need. Learn more at www.pedropan.org/.
2. "The History of Operation Pedro Pan," a video accessible at youtube.com/watch?v=NpakURg3ij8.
3. Resource guide from the Florida International University Libraries accessible at library.fiu.edu/PedroPan.
4. Hear from curator Steve Velasquez, who was part of the initiative to collect Cuban migration history, talk about Operation Pedro Pan on this podcast by the Smithsonian Institution: americanhistory.si.edu/connect/podcasts/pedro-pan.
5. *Against All Hope: A Memoir of Life in Castro's Gulag* by Armando Valladares
6. *The Red Umbrella* by Christina Diaz Gonzalez
7. *Waiting for Snow in Havana: Confessions of a Cuban Boy* by Carlos Eire



Jacqueline H. Nguyen *

A REFUGEE'S FLIGHT FROM SOUTH VIETNAM TO AMERICA

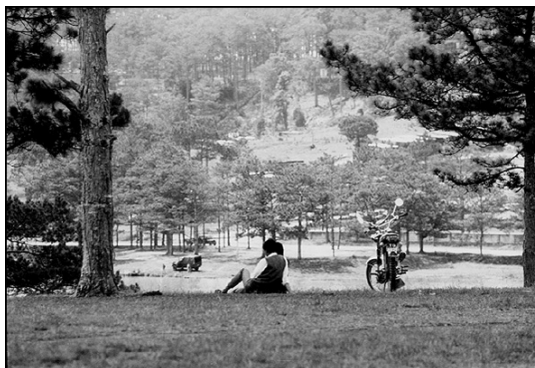
The Vietnam War ended on April 30, 1975, when North Vietnamese tanks crashed through the gates of the Independence Palace in Saigon. In the final days before the fall of South Vietnam, the United States led a chaotic evacuation effort of American citizens, their dependents, and a small number of Vietnamese refugees. My family was fortunate to be among them.

Fleeing from Dalat

I was born into a military conflict that was already a decade old. My father, an officer in the Army of the Republic of Vietnam, lived in his military uniform, stiffly starched-pressed at home twice a week. By the 1960s, he was no longer directly commanding troops and was permanently stationed in Dalat, a small, scenic city in the Central Highlands. Except during the Tet



The author's father, an officer in the Army of the Republic of Vietnam.



The author's hometown, Dalat, Vietnam, c. 1970. Photo by Bill Diebold.

* Nominated by President Barack Obama, Judge Nguyen was confirmed to the United States Court of Appeals for the Ninth Circuit on May 7, 2012 and received her commission on May 14, 2012. She was born in Dalat, Vietnam, and came to the United States at the age of 10 with her family when South Vietnam fell to Communist forces. Judge Nguyen was the first Asian American woman appointed to a federal court of appeals.

Offensive,¹ for me and my five siblings, ages three to ten when the war ended, our daily lives were secure and carefree.

North Vietnamese forces began their military onslaught in the Central Highlands in March, 1975. No one told the children much, but we all knew that something serious was happening. My father no longer came home and slept at headquarters. We stopped going to school and were not allowed outside the house.

As the cities and towns adjacent to Dalat rapidly fell one after another, escape routes were cut-off for the thousands of civilians and soldiers who tried to flee south to neighboring cities and to the capitol of Saigon. Commercial flights were grounded, and major roads were mined with explosives. At the air base by the military headquarters, cargo planes carrying supplies from the capitol occasionally landed, sometimes ferrying military personnel and their dependents back to Saigon. To avoid danger, the planes landed and took off almost immediately, so any evacuation opportunity would come with little notice.

By this time, a local university student named Lan had moved into our house. She was nineteen years old, and alone in the city with no way to get home to her family in Saigon.² My father promised to include Lan in whatever evacuation options he found for his own children.



The author's family: Judge Nguyen (second from the right) with her mom and siblings, c. 1969.

1. The Tet Offensive was a major coordinated series of attacks by the Viet Cong communist guerillas on more than 100 locations in South Vietnam, including Dalat, during the Lunar New Year celebrations in 1968. The homes of government officials, ARVN officers, and police forces were directly targeted. My earliest memory was crawling through a secret passage in the middle of the night to hide in our neighbor's house.

2. My mother had decided after my last brother was born to go to college part-time. Lan was one of her classmates.

Each morning my mother would dress us in thick layers, which we were not allowed to take off. We had to wear our change of clothes on our bodies in case of a sudden departure. She thought, at least for my younger siblings, that they were too young to be counted on for any last-minute responsibilities. I did not know it then, but the five older children were to be evacuated alone with Lan. My mother would stay behind with my baby brother. As a government employee, she could not abandon her post. Since it was known that my father had six children, Lan would be counted as his oldest.

On the morning we left, my father received word that a cargo plane was en route. Unable to leave, he immediately sent his aide, Chu Hien. We did not quite understand what was happening when Chu Hien suddenly came and ordered us onto his Jeep. He rushed us to the air base, where I could see a military plane on the field, its engines roaring. The gates were closed and with no time to lose, Chu Hien took us to a fence and threw us over, one-by-one. Someone caught us on the other side and rushed us to the waiting plane.

Inside, the air was suffocating. The cargo hold had a few fold-out seats on the sides, and the remaining passengers crammed together and on top of one another on the floorboard. Lan did her best to keep us clustered tightly together, with my five-year-old brother on her lap. My sister, then seven years old, recalls that her legs were crushed the entire flight. Somehow she knew there was nothing to be done, so she never made a sound. Now, decades later, I still remember vividly our fear and confusion, the deafening noise of the engines and the eerie silence of its passengers.

Later, we learned that my father had rushed to pick up my mother so that she could say goodbye, but we were already gone. Unable to contact Lan's family, they did not know when they would see us again.

Chaos in Saigon

Lan's parents welcomed us warmly, but we were full of anxiety, not knowing whether and when my parents would come. It was a happy reunion when my mother made her way to Saigon. Weeks went by with no news of my father.

ARVN troops had been ordered to withdraw from the Central Highlands to regroup around the capitol, but the retreat was grim and disorderly. Some, including my father, fought their way to the coastal city of Nha Trang. Fierce firefights and shelling blocked land routes. There were chaotic efforts of air evacuations of civilians and military personnel from Nha Trang, but my father did not make it onto any of these flights. Finally, he found another escape route. One of his soldiers had an uncle who was a fisherman. They hid in his small boat and in the middle of the night, the fisherman quietly rowed them out of Nha Trang.



Crewmen of the amphibious cargo ship USS Durham take Vietnamese refugees from a small craft in the South China Sea, 1975. Courtesy of the National Archives, General Records of the Department of the Navy.

Saigon was under siege by the time my father found us. The United States was evacuating its remaining citizens, their dependents, and a small select number of “at risk” Vietnamese, such as interpreters and embassy personnel. For my father, who spoke English and worked closely with U.S. allies, the danger was obvious. With tens of thousands of refugees trying to flee the country, there were simply too many clamoring for help. The seemingly frantic and disorganized evacuation efforts only increased their desperation. Knowing that their chances of evacuation were dwindling, large crowds swarmed evacuation points for buses, airport, sea ports, and the U.S. Embassy. One of my father’s American counterparts pledged to try and get him out, but he could not take the family. Despite the prospect of certain harm or death, my father refused to leave us behind.

Unexpected Savior and Flight to Freedom

Having exhausted his military contacts, my father reached out to an American businessman named Bill Minor, who had settled in South Vietnam with a large Vietnamese family of his own. His wife was friendly with my mother. Whether due to paperwork delays for his dependents or a reluctance to abandon his home and large extended family or both, Bill had not yet been evacuated. But with Saigon’s imminent collapse, he was resigned to flee. Bill said he would try to help. No one knew how, but they would try and stay in contact.

Had it not been for the actions of a random thief, our lives would have been very different. At daybreak, my father rode his motorcycle through the

city streets to scour for intelligence. Suddenly, a thief on a passing motorbike forcefully snatched his wristwatch. It was a valueless item, but in his stress and anger, my father doggedly chased him for miles through the streets and narrow alleys of Saigon. When he finally lost the thief's trail, he realized that he was on a street leading to the Minors' home. He had not intended to find the Minors that day.

There, Ba Ngoai³ told my father the disheartening news. The Minors had already left. Suddenly, the telephone rang. As she ran to pick up, my father started to leave. The Minors were on the line, shocked at the sheer coincidence of my father's presence. As he was at the front door, Ba Ngoai shouted for my father to come back. A plan was quickly formed.

At the heavily-guarded Tan Son Nhut Air Base, Bill fought for our entry as his family. He knew that, as an American civilian, he was an urgent evacuation priority, and he was determined to help. Once inside the secured area, we huddled together with hundreds of families waiting for the C-130 planes that landed at nightfall. Holding tightly to one another, we rushed the runway and were airlifted to safety.



C-130 aircraft, c. 1968. Image courtesy of the United States Air Force.

3. Ba Ngoai (maternal grandmother) was Bill's mother-in-law.

A New Homeland

Our first home in the United States was an army tent, shared with two other families. After a brief stop at Clark Air Base in the Philippines, and a longer stay at Andersen Air Force Base in Guam, we settled into hastily constructed camps at Marine Corps Base Camp Pendleton in San Diego, California.⁴ We slept on cots and kept warm in military field jackets, which were adult-sized and covered the children's knees. I remember queuing up for everything, from the washrooms to the mess halls. Volunteers stepped forward to teach the children English, and cultural lessons for the adults.

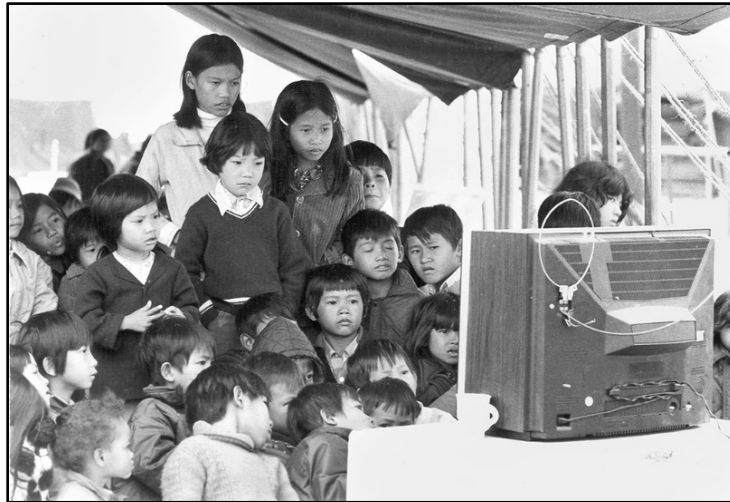


Camp Pendleton, April 1975. Vietnamese Refugees Arrival. Photo by Jim Mosby. Image from [Flickr Creative Commons](#).

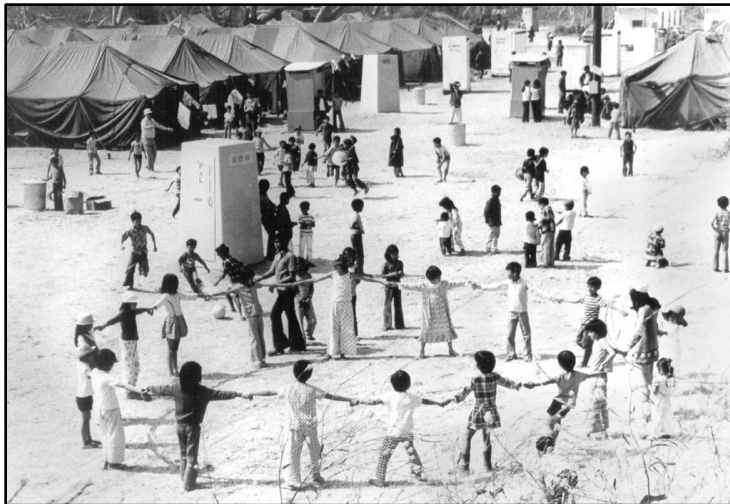


May 1975. Vietnamese refugees at a temporary housing facility wait in line at a mobile exchange. Courtesy of the National Archives.

4. Camp Pendleton was the first reception center established in the United States for the initial influx of Vietnamese refugees. Eight tent cities eventually housed 50,000 refugees.



Camp Pendleton, California, 1975. Vietnamese refugee children gather around to watch Sunday morning cartoons on television. There is no language barrier for these children, as these children understand the American pastime of watching cartoon shows. Image from [Flickr Creative Commons](#).



Camp Pendleton, California, 1975. New arrival refugees from Vietnam with volunteer teacher, Be Thi Nguyen. Nguyen taught these children English children's songs and nursery rhymes. Image from [Flickr Creative Commons](#).

For my parents, it was a time of great grief, a mixture of gratitude, fear and guilt as we took our first steps into a new life. My tenth birthday passed in the camps without notice, marking the end of my childhood.

Learn more about Judge Nguyen's experience as an immigrant and a judge with the resources below.

1. Judge Susan Oki Mollway's book, *The First Fifteen: How Asian American Women Became Federal Judges*.

Judge Nguyen is the third Asian American woman to have been appointed as an Article III judge. Learn more about her story, and the compelling stories of the other fourteen, in Judge Mollway's book, available here: rutgersuniversitypress.org/the-first-fifteen/9781978824515

2. *The Judgement Calls* podcast presented by Bolch Judicial Institute

Judge Jacqueline Nguyen of the U.S. Court of Appeals for the Ninth Circuit and David F. Levi talk about Judge Nguyen's career and time on the bench. The wide-ranging conversation includes: her experience as a refugee during the Vietnam War, her role as the first Asian American woman to serve on a federal court of appeals, and the importance of diversity on the bench.

Listen to the interview and read the transcript at the following link: judicialstudies.duke.edu/2021/09/s2-ep4-judge-jacqueline-nguyen/



Miranda M. Du*

MY FAMILY'S BRIDGE OVER TROUBLED WATERS: OUR JOURNEY FROM VIETNAM TO AMERICA



Chief Judge Du's family in Vietnam. The author is at front left, standing between her parents.

Along with my family, I left Vietnam as a refugee on a long journey that brought us, not without difficulties, first to Malaysia, then Alabama, and eventually to Oakland, California. We left after the fall of Saigon (now Ho Chi Minh City). The plan was to escape by boat from Hoi Phong, about an hour's drive from where we were living in Ca Mau, in the southern part of Vietnam. Relatives from Saigon and other parts of the South were descending on Ca Mau on the pretext that they were attending my second uncle's wedding. On the night of our departure, we left in small groups to avoid alerting the local authorities—even though my family was leaving under a program implemented to push out Vietnamese of Chinese descent like my dad.

In October 1978, we left Hoi Phong with other boats, but the flotilla was broken up when Vietnamese naval vessels appeared, warning us to turn around and firing at our boats. There were 255 people on our boat. We arrived in Trengganu, Malaysia six days later, on October 22. Local authorities refused to let our boat dock, directing us instead to Singapore. Concerned about an approaching storm, my dad followed the suggestion of other Vietnamese refugees on the beach to breach the boat. We thus had to swim ashore. I made it to the beach with the help of an uncle because I did not know how to swim.

*Judge Miranda Du was nominated by President Barack Obama and took the oath of office on April 23, 2012. Judge Du started her term as Chief Judge of the District of Nevada in September 2019.

We were among the early boats (no. 91) to settle in the refugee camp on Pulau Bidong Island. With few resources, everyone in the family contributed to our collective survival and wellbeing. Merchant boats would dock close to the island to sell goods. My dad was among those who would swim out to the boats to buy merchandise—I mostly recall apples—and bring them on the island to sell. My sister and I were among the kids who set up stalls to sell our goods. We sold what our dad brought in from the boats, but also pastries our aunt made. For children of our family, life on the island settled into a routine that also involved attending classes and spending lots of time with our cousins.



Refugees fleeing Vietnam by boat. Image from [Flickr creative commons](#).



The author upon arrival in Malaysia.



A small shop on Pulau Bidong. Image from Lang Nam's blogspot.

We were the first group in our family to leave the island, in July 1979, for the Sungai Besi transit camp in Kuala Lumpur. Our family of ten included my paternal grandparents and our dad's three youngest siblings. Because of my grandmother's health issues, we were delayed at the transit camp where we parted with aunts and uncles, who left the island after us, but departed for the United States before us.

We arrived in the United States on September 29, 1979. I am still amazed at how my parents were able to navigate international airports, taking us from Kuala Lumpur to Atlanta, Georgia, where our sponsor, William Oswalt, and his family picked us up for the drive to Winfield, Alabama.

Life in rural Alabama probably did not turn out as my parents expected, but at least my dad is blessed with buoyancy of character. We settled in to living in a house outside of town. My dad worked at Mr. Oswalt's dairy farm while my mom learned how to sew. Dad's younger married siblings were sponsored by different families in Tuscaloosa so we would see them occasionally. We took the bus to school. There was one other Vietnamese family (also from Ca Mau) in Winfield whose children attended the same school. The school arranged for us to attend a special English class together. It didn't take our group long to progress from guessing that the answer to any question may be "yes" or "no," to learning to be rather fluent, to helping our parents with translation. In any event, we moved to Tuscaloosa later that same school year, as I transitioned from third to fourth grade.

I experienced many wonderful firsts in the fifth grade in Tuscaloosa. With the support of an amazing teacher (Ms. Thomas) and a volunteer tutor from a local church (Bill Fesmire), I was assigned to help out at the school library (and discovered a love of reading), did my first speech in the school assembly, won third place in a 4H Club baking contest (with Bill's help), went trick or treating wearing a princess crown my sister made with aluminum foil, and celebrated my first Christmas with my family. My parents also settled into a new life. Dad got a job at a local Chinese restaurant and worked his way up from dishwasher to an assistant cook. He took over cooking for the family at that time and has



Chief Judge Du's family in Alabama.

cooked for us ever since. Mom worked as a seamstress. My parents worked long hours but we also did many weekend road trips to the surrounding cities and states. Even while working hard, they instilled in their children a love of travel and a curiosity about the world.

I know my parents experienced different struggles as they managed the many unknowns during our time in the refugee and transit camps and our first few years before settling in Oakland, California. My dad and uncles had collectively planned the boat trip to leave Vietnam, raised funds to purchase the fishing boat, learned how to operate it, and navigated us to Malaysia. Upon arrival in the United States, my parents worked long hours, oftentimes doing multiple jobs (which sometimes involved all of us pitching in to help) to supplement our income. But through sheer grit and determination my parents learned new skills, a new language, and assimilated to a new way of life. Even still, and to this day, our parents made sure all of us retained our rich, mixed Vietnamese/Chinese culture—we speak Vietnamese at home, took Mandarin and Cantonese lessons, and celebrated the Lunar New Year and other holidays in inventive ways (though always involving food and family gatherings). I have grown to appreciate all of this even more as I have gotten older. At our parents' 50th wedding anniversary a few years ago, I found myself crying when speaking about my siblings and how we were the beneficiaries of our parents' love, sacrifices, and blessings. My memories of our journey from Vietnam to Alabama remain full of wonder because my parents were our filters, blocking out the hardships and allowing positive and hopeful experiences.

Learn more about Chief Judge Du's experience in Judge Susan Oki Mollway's book, *The First Fifteen: How Asian American Women Became Federal Judges*.

Chief Judge Du is the eighth Asian American woman to have been appointed as an Article III judge. Learn more about her story, and the compelling stories of the other fourteen, in Judge Mollway's book, available here: rutgersuniversitypress.org/the-first-fifteen/9781978824515



Charles McClain *

THE MARTINEZ RIOT OF 1882¹

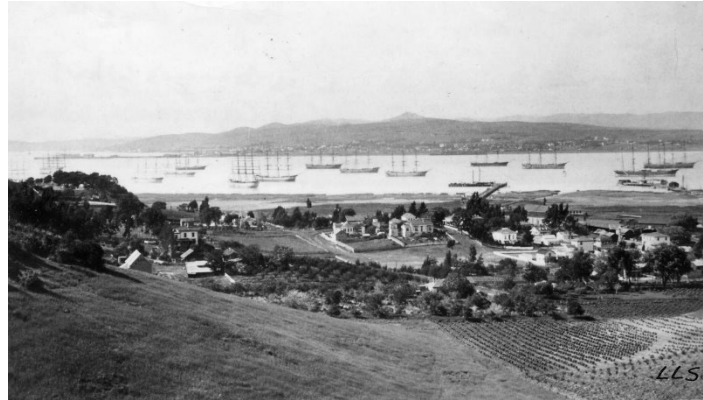
Prologue

In the early days of the Covid-19 pandemic, when California was under semilockdown and its residents were being urged to stay at home, I, like many Californians, took the opportunity to tackle long deferred household tasks, among them clearing out the garage. While doing this, I came across a box of materials I had acquired many years before but whose contents I had never really bothered to examine very closely. The box contained some thirty Contra Costa County Superior Court case files, most criminal cases, most dating from the nineteenth century (the earliest dated from 1868) and almost all involving Chinese litigants. As best I can recall, my wife and I acquired them from a friend, now deceased, who gave them to us, I suppose, because of our interest in the Chinese and their nineteenth-century legal struggles. How this friend came to possess the files, I do not know. I can only conclude that they must have been discarded at some time by the Contra Costa Superior Court. As I looked through these files, which were in various states of completeness, one in particular caught my attention. Almost complete, it documents the indictment by a local grand jury and the subsequent prosecution of four individuals, one the County Recorder, for their roles in an anti-Chinese riot that occurred on the evening of April 26, 1882 in Martinez, California, a town

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1. I would like to thank Judge William Fletcher, Laurene Wu McClain and Reuel Schiller for helpful comments on an earlier draft of this text. I wish too to thank Berkeley Law librarians Kristina Chamorro, Marlene Harmon, Keri Klein, Edna Lewis, and I-Wei Wang for assistance in locating sources. Finally, I want to acknowledge the help given me by the volunteer staff of the Contra Costa County Historical Society's History Center during my several visits.

of about a thousand inhabitants located on the Carquinez Straits, some twenty miles northeast of San Francisco.²



City of Martinez with grain ships in the background. Viewing north from west side hills. Left, partly out of view is Granger's Wharf, and to the right of center is Calif. Trans. Wharf (later City Wharf). Courtesy of the Contra Costa Historical Society.

Anti-Chinese riots dot the history of California and the American West throughout the latter part of the nineteenth century. In 1871 a riot in Los Angeles, the worst and most horrific in the state's history, took the lives of eighteen Chinese immigrants, seventeen hung on improvised gallows. In the summer of 1877 there was large-scale rioting directed at Chinese laundries in San Francisco. A riot in Denver in fall 1880 destroyed much of that city's Chinatown. Anti-Chinese rioting reached a new level of extent and intensity in the mid-1880's, with vigilante mobs attacking Chinese residents in towns and rural settlements across the West, driving them out of Nicolaus and Eureka, California; Oregon City, Oregon; and Seattle and Tacoma, Washington. And mob action led to violence. Three Chinese hop pickers were killed and several wounded when whites fired into their tents in the town of Squak Valley, Washington. Finally there was the most serious incident of all, the riot that occurred in Rock Springs, Wyoming, on September 2, 1885. There an angry group of white coal miners killed some twenty-eight Chinese miners and burned a large part of the city's Chinese quarter to the ground.³

2. Martinez was the longtime residence of the noted nineteenth-century conservationist, John Muir. It also purports to be the place where the Martini cocktail was invented, a claim disputed by some.

3. For literature on the nineteenth-century anti-Chinese riots see, Roger Daniels (ed.) *Anti-Chinese Violence in North America* (New York, 1978). Jean Pfaelzer, *Driven Out: The Forgotten War Against Chinese Americans* (New York, 2007). Scott Zesch, *The Chinatown War: Chinese Los Angeles and the Massacre of 1871* (Oxford, New York, 2012). Art Chin, *Golden Tassels: A History of the Chinese in Washington, 1857-1977* (Seattle, 1977). The Nicolaus incident and the U.S.

Virtually all of these outbreaks of anti-Chinese violence have received the attention of historians, including this author, but the Martinez riot seems to have escaped notice. But it was a significant event. It prompted the intervention of California's governor, the Chinese consulate in San Francisco, the Chinese Minister in Washington and the U.S. Secretary of State. It was also one of the few instances where local public authorities sought to hold perpetrators to account.⁴

Discovery of the Superior Court case file was the stimulus for the writing of this article, and I have drawn on it liberally. But there is an abundance of other generally available contemporary material documenting the Martinez disturbances and their aftermath. Accounts of the riot and the trial that followed from newspapers across the state can be accessed thanks to the California Digital Newspaper Collection, a vast digital database of newspaper articles stretching back into the nineteenth century. The Contra Costa Superior Court Minute Books, recording the day-to-day progress of the post-riot criminal proceedings are also available, and I have used them liberally. During the trial of the accused the prosecuting attorney was forced to file an interlocutory appeal in the California Supreme Court challenging a ruling by the trial judge that would have ended his case. The file generated by that appeal contains relevant information as well. One should finally mention the Frederick Bee History Project website, a very useful compilation of source material on Chinese American history, put together by Anthony Oertel, containing, among other things, important materials bearing on the event. Unfortunately, neither a transcript nor a complete unofficial record of testimony given in the trials of any of the accused defendants is available.

The Martinez Riot: Background

There are two detailed accounts of the Martinez riot, the first published three days after the event by the local newspaper, the *Contra Costa Gazette*; the other prepared two months later by Contra Costa District Attorney Eli R.

Supreme Court case it eventually gave rise to is discussed in Charles McClain, *In Search of Equality: The Chinese Struggle Against Discrimination in Nineteenth-Century America* (Berkeley, 1994), chap. 7. Documents relevant to several of the anti-Chinese riots can be found at the Frederick Bee History Project website, <http://www.frederickbee.com>.

4. The sheer scale and depravity of the crimes committed in the 1871 Los Angeles riot forced authorities to take action. Ten men were brought to trial on murder charges. Eight were convicted of manslaughter and sentenced to prison. Their convictions were reversed on appeal, however, because of an alleged defect in the indictments. See Zesch, *supra*, n. 2. After the Denver riot, several men were brought before a Justice of the Peace on a riot charge but he acquitted them after a brief trial. See Roy T. Wortman, "Denver's Anti-Chinese Riot, 1880", XLII *The Colorado Magazine* 4, pp. 275-291 (1965).

Chase. The accounts differ in some particulars but agree on the essentials. Sometime the evening of April 26, 1882, an angry mob descended on a building in the business district, where a group of Chinese salmon cannery workers lived. The rioters ordered the Chinese to leave and when they did not, attached a rope to a post in an effort to bring down the building. When that failed, they entered it, smashing windows and doing other damage to the structure. Frightened Chinese fled in all directions, some exiting from the first floor, others jumping from the second story onto a shed. And there was evidence that three were thrown out of a third-story window, suffering serious injuries. Both accounts emphasize to one degree or another the key role played in the disturbances by Greek and Italian fishermen.⁵ This might at first blush seem surprising. Why, one might ask, would Greek and Italian fishermen bear any special animus toward Chinese working in a salmon cannery? An answer of sorts may lie in an historic antagonism between European immigrant *fishermen* and their Chinese counterparts. Chinese had been fishing the waters off the California coast since the beginnings of the immigration.



Salmon fishing in the 1880s and 1890s in the Strait of Martinez. Hay scow and Italian fishing boats, c. 1890. Courtesy of the Contra Costa Historical Society.

(Indeed they had played a key role in launching the state's commercial fishing business.) But they had encountered hostility from European fishermen from the outset. Racial antipathy, so much a part of the atmosphere of the day, explains much of this. But it was exacerbated by the belief among some of the Europeans that the Chinese were using illegal methods to catch fish. Perhaps these fishermen shared that belief and transferred hostility over to Chinese having any connection with the fishing industry.⁶

5. *Contra Costa Gazette*, April 29, 1882. Letter Eli R. Chase to W.S. Safford, Executive Secretary to California Governor George Perkins, dated June 30, 1882. Frederick Bee History Project website: frederickbee.com/martinezriotccg.html. Chase did not witness the riot and it is not clear how he came by his information. While the *Gazette* mentions the presence of Greek and Italian fishermen, District Attorney Chase lays principal blame upon them. Chase, also, expresses no doubt that the Chinese were thrown from the building.

6. Chinese immigrants began fishing in Monterey Bay as early as 1851. See Sandy Lydon, *Chinese Gold: the Chinese in the Monterey Bay Region*

The salmon cannery where the Chinese worked was one of two that had been established in Martinez a little earlier in the year. The two combined employed between a hundred and a hundred and fifty Chinese. They were the first built in the town and were doubtless situated there to take advantage of Martinez's location on the Carquinez Straits, where there was a large annual salmon run. Even given the prime location, the owners must have seen theirs as something of a risky venture. While salmon canning had existed in California since 1864, it was not exactly a flourishing industry, California canners having for some time operated in the long shadow of the much larger industry in the Pacific Northwest. Almost from the outset, both in California and the Pacific Northwest, Chinese had constituted the overwhelming majority of workers in the salmon canneries.⁷

Newspaper reaction

The riot prompted considerable reaction in the California press. The local paper, the Contra Costa Gazette, in the article noted above, characterized it as a "brutal and pusillanimous" event that had injured the good name of the county though it stated that objections to Chinese immigration were well grounded and that the "late veto" of the bill for restricting it had aggravated public opinion. The reference here was to President Chester Arthur's April 4, 1882 veto of a bill passed by the 47th Congress suspending the immigration of Chinese laborers for a period of twenty years. The Sacramento Daily Union sounded similar themes. "The people of Martinez," the article began, "seem to have completely lost their heads over the Chinese question." Chinese had been assaulted and their homes demolished. There were even reports that some had been killed. An outrage had been committed, the paper went on, which it hoped would be promptly investigated and its perpetrators punished. Violence like this was, furthermore, counterproductive. Assaults on the Chinese could only have a

(Capitola, CA 1985) See *Santa Barbara Daily Press*, Dec. 11, 1885, quoting a report from Martinez that some Chinese were fishing in San Pablo Bay with nets smaller than those authorized by law.

7. The first salmon cannery to be established in the western U.S. was built in California, along the Sacramento River in 1864, but in the late 1860's many canners, for a variety of reasons, moved to the Pacific Northwest, primarily to the Columbia river in Washington territory, which soon became by far the dominant region for salmon canning. One statistic may be cited in illustration. By 1880 some \$100,000 of capital was invested in Sacramento river canneries versus some \$1,100,000 in those along the Columbia. On the history of salmon canning in the west see Daniel DeLoach, *The Salmon Canning Industry*, Oregon State Monographs, Economic Studies, No. 1, 939; Chris Friday, *Organizing Asian-American Labor: The Pacific Coast Canned Salmon Industry, 1870-1942* (Philadelphia, 1995).

negative effect on “the people of the East” and what it styled “the situation at Washington.” It made clear in an article published the next day that what it had in mind was the legislation limiting Chinese immigration then pending in Congress.⁸

Other papers came close to justifying the actions of the rioters. “The citizens of Martinez,” declared the Sonoma Democrat, tired of waiting for relief from Washington “took the matter in their own hands and drove the Mongolians by force from their midst.” Riots like that at Martinez, thundered the Los Angeles Herald, was but a picture in miniature of what would happen across the country should the grievances of the people with regard to the Chinese not meet with an “honest and correct response at the hands of the lawmaking powers.”⁹ The Contra Costa Gazette, in its account of the riot, makes no mention of President Arthur’s veto. But District Attorney Chase clearly believed it was a contributing factor.¹⁰

Diplomatic Démarches

In 1878 the imperial Chinese government had established a legation in Washington and a consulate in San Francisco. One of the consulate’s missions was to offer some protection to Chinese immigrants against what was seen as a rising tide of Sinophobia. In 1882 it was staffed by a consul general, Huang Tsun Hsien, and a Caucasian consul by the name of Frederick Bee.

On May 3, 1882 the two sent a strongly worded letter of protest to the Contra Costa Board of Supervisors. It styled the riot a “dastardly outrage.” It alleged that the sheriff had refused to conduct any investigation of the riot, claiming, in clear dereliction of duty, that such “detective work” was not his responsibility. More important, it alleged that the identities of the chief rioters was a matter of “common rumor,” and that their number included county officers. It demanded that the guilty parties be arrested and brought to justice and that Chinese who had lost property or been



Huang Tsun Hsien, Chinese San Francisco Consul General. Wikimedia Commons.

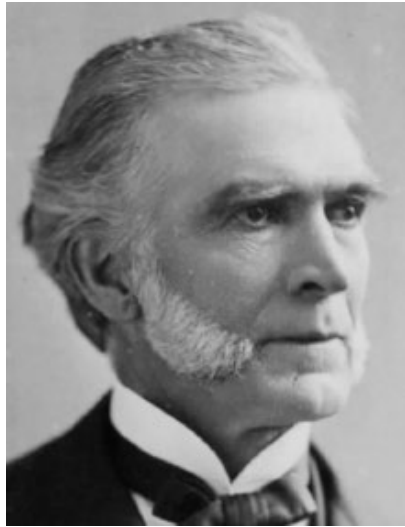
8. *Sacramento Daily Union*, April 28, 29, 1882.

9. *Weekly Butte Record*, May 6, 1882; *Sonoma Democrat*, April 29, 1882; *Los Angeles Herald*, May 3, 1882.

10. See Chase letter, *supra* n. 4. When the period of suspension was reduced to ten years, President Arthur signed the bill.

injured receive full compensation. The writers gave no indication of where or how they had obtained their information.¹¹

At around the same time Consul General Huang also informed the Chinese legation in Washington of what had happened. This prompted the Chinese Chargé d'Affaires, Tsu Shau Pang, to write to U.S. Secretary of State, Frederick Frelinghuysen, asking him to communicate with California authorities, instructing them "to give proper protection to the Chinese



Frederick Bee, San Francisco Vice Consul.
Courtesy of the Lewis & Clark College
Aubrey Watzek Library Archives and Special
Collections.

residents of the state, with a view of preventing the recurrence of such outrages." Failure to do anything, he asserted, would only lead to more similar incidents. This prompted Frelinghuysen to write to California Governor Perkins, including a copy of the Chargé's note with the letter, urging him to do whatever the laws of the state permitted to bring those responsible for the riot to justice. He was making the request, he noted, at the direction of the President. On June 27 Governor Perkins wrote to District Attorney Chase asking for information and for a copy of the indictment which he had learned Chase had in the meantime filed against some of the rioters. It was this missive that prompted the Chase letter of June 30, noted above.¹²

Grand Jury Indictments

According to District Attorney Chase's report to Governor Perkins he was visited by the owners of the two Martinez canneries and others the morning after the riot and invited them to submit complaints, but they said that they were fearful of another attack and that their submission of complaints "would only make matters worse." They contented themselves with an assurance from

11. An image of the original handwritten letter from the consulate to the Contra Costa Board of Supervisors can be found in the Frederick Bee History Project website, frederickbee.com/riotletter.html. Read a full transcription at frederickbee.com/cocoletter.html.

12. The full chain of diplomatic correspondence was included in the *Contra Costa Gazette* issue of July 8, 1882. The Frederick Bee History Project website includes copies of some of the handwritten originals; frederickbee.com/martinezriot.html.

the County Sheriff, who was present at the meeting, that he would prevent any such attack from happening. Chase, according to the letter, then undertook his own investigation, though its details are shadowy. He was, he states, unable to find anyone other than fishermen who were involved in the riot, none of whom could be identified, and many of whom had since left the Martinez area. Nor was he able to find any "head to the outrage." And, it seems, he might have been willing to let matters rest there. But they didn't, for sometime near the beginning of June Judge Thomas A. Brown of the Contra Costa Superior Court ordered a Grand Jury empaneled, charging them with the responsibility of conducting a diligent investigation into the riot and of identifying any parties guilty of crime.¹³

The Grand Jury summoned by Judge Brown met for two weeks at the beginning of June. It interviewed some one hundred witnesses. They included six Chinese, listed in the court records as Charley Yet, Ah Gee, Ah Foo, Ah Wee, Ah Gung and Ah Look. On June 17 it returned a presentment for riot, a misdemeanor, and an indictment for assault by means likely to produce bodily injury, a felony, against four Martinez citizens, C. Ed Miller, E.J. Emmons, Willie Briare and Angelo Berryessa, two of some prominence. C. Ed Miller was the County Recorder, and E.J. Emmons a rising young local attorney. Willie Briare's and Berryessa's occupations are unknown. None of the defendants seem to have been either Greek or Italian.¹⁴

The presentment charged that the four defendants had "riotously unlawfully and tumultuously assembled" and then proceeded to drive some fifty Chinese out of a building that they were peaceably and quietly occupying, to the great terror and disturbance not only of the Chinese occupants but of "all good people inhabiting and residing in the neighborhood." The indictment began almost like a rehash of the riot charge but eventually got to the offense actually being charged, viz. an assault "by means likely to produce great bodily injury." The defendants, it alleged, in the course of the riot, had seized a Chinese man by the name of Ah Wee and thrown him from a third story window, causing him great injury.

Both presentment and indictment alleged that the four had acted in concert with others whose identities were unknown. It is unclear why the Grand Jury, or probably more accurately, District Attorney Chase, chose to proceed against the four via presentment, a rarely used method of initiating

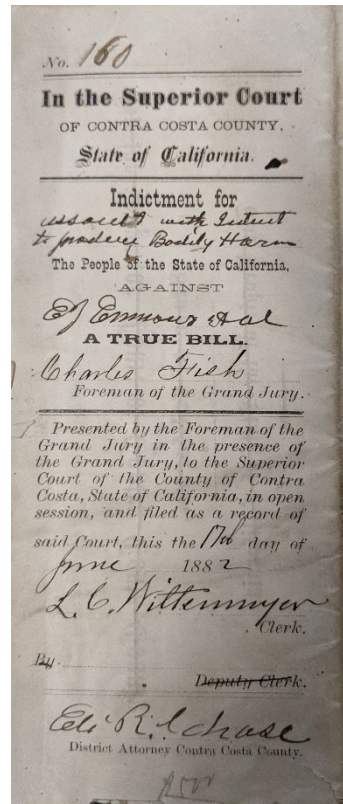
13. On Judge Brown's decision to empanel a grand jury see Chase letter of June 30 to Governor Perkins, *supra* n. 4.

14. Handwritten presentment and indictment found in Contra Costa Superior Court case file, *People v. E.J. Emmons et al.* In possession of the author. The presentment and indictment of County Recorder Miller gives some credence to the Chinese consulate's charge that there was evidence that county officers were among the riot's perpetrators. It is not clear how the consulate came by this information.

criminal proceedings, rather than indictment. The term appears in the Penal Code then in force but was not mentioned as an option for prosecuting crime in the newly adopted California Constitution. In the event, it would turn out not to matter as the riot charge would never be pursued. Why Chase chose to drop the charge is likewise unclear.¹⁵

Initial Trial Proceedings

On June 19 Emmons, Miller and Briare appeared in court and were admitted to bail in the amount of \$500. Berryessa made no appearance and a bench warrant was issued for his arrest. It apparently was never executed as he appeared in court four days later and was also admitted to bail. On June 24 defendants Berryessa and Emmons were arraigned before Judge Brown on the assault charge only. Berryessa entered a plea of not guilty. Emmons was allowed to defer his plea until the following Wednesday. On June 26 Miller appeared and like Emmons was



Indictment against E.J. Emmons, et al. Image courtesy of the author.

15. The indictment, not the most precisely drawn document, at one point alleged that the defendants had thrown Ah Wee out of the window. At another it alleged they had caused him to fall. The handwritten indictment, presentment and list of witnesses interviewed by the grand jury is found in the Superior Court court file. The list of witnesses can also be found in the California Supreme Court case file for *People v. Emmons et al.*, 61 Cal. 487. It seems fair inference that the Ah Wee listed as a witness was the same Ah Wee allegedly thrown from the building by the defendants.

The 1872 California Penal Code, Section 916, defined a "presentment" as "an informal statement in writing, by the grand jury, representing to the court that a public offense has been committed which is triable in the court and, and that there is reasonable ground for believing that a particular individual named or described therein has committed it." However, the newly adopted California Constitution of 1879 identified only two ways of initiating a criminal prosecution, indictment and information, and made no mention of a presentment. Though the presentment in this case was signed by the Grand Jury foreman, it is virtually certain that it, like the indictment, was drawn by District Attorney Chase.

allowed to defer his plea. There is no record in the court minutes of William Briare ever officially entering a plea.¹⁶

On Tuesday, June 27, the day before he was due to enter his plea, Attorney Emmons, representing himself, filed instead a demurrer to the indictment, alleging it was defective on three grounds: that the court lacked jurisdiction inasmuch as the offense charged was a misdemeanor and the court could not claim jurisdiction over such an offense by means of an indictment, that it did not conform to the requirements of the Penal Code, and that the offense charged was not known to the law. Two days later C. Ed Miller, represented by counsel, W.W. Foote, an Oakland attorney, filed his own demurrer stating the same claims as Emmons but adding the claim that the indictment charged more than one offense and was to that extent defective.¹⁷

Judge Brown took the demurrers under advisement and on July 3 issued an order sustaining them, without specifying grounds. At the same time he stated that, in his view, their arguments could be avoided if a new indictment was filed, and he directed that the case be re-submitted to the grand jury when it next convened, a ruling that Emmons and Miller excepted to. On the same day, District Attorney Chase filed a notice of appeal to the Supreme Court of the judgment granting the demurrers. Though neither defendants Berryessa nor Briare had filed their own demurrers, the issues raised by Emmons and Miller applied to their cases as well. So Judge Brown's order meant that the trial of none of the defendants could proceed until the California Supreme Court had spoken.

Interlocutory Appeal to the California Supreme Court

On September 4 Emmons filed his printed brief in the California Supreme Court. It expanded on some of the points he and Miller had made in their demurrers but was not totally congruent with them (Miller filed no brief of his own). He argued that the indictment was bad in that it charged two different offenses, riot and assault. He alleged as well that it failed to conform to the requirements of the Penal Code by omitting in its charging part the means by which the alleged assault had been committed. As so drawn, Emmons claimed, it charged a simple assault, a misdemeanor and an offense outside the jurisdiction of the superior court. Finally, he argued that the court's order sustaining the demurrer was not a final judgment and therefore

16. Superior Court case file. Minutes, Contra Costa Superior Court, vol. 3, pp. 444, 450. The volumes containing the minutes of the Contra Costa Superior Court can be found at the Contra Costa Historical Society, Martinez, California.

17. Superior Court minutes, vol. 3, pp. 458, 460. The original texts of the demurrers can be found in the court file and copies in the California Supreme Court case file, *People v. Emmons et al.*, 61 Cal. 487 (1882).

not subject to appeal. Like many appellate briefs at that time, it consisted in the main of a series of statements of legal propositions, followed by citations to cases, with no elaboration of either.¹⁸



The Contra Costa County Court House, where the initial trial proceedings took place, and MacMahon house, c. 1890. Courtesy of the Contra Costa Historical Society.

Chase's handwritten brief is undated and, though he was the appellant, it reads like a response to that of Emmons. It bears some signs of hasty composition. It rejected the claim that the indictment was defective because of its wording, the basis for Judge Brown's ruling, according to Chase. The alleged defect, he stated, was the indictment's failure to add the words "by means likely to produce great bodily injury" immediately after the word assault. Citing provisions of the Penal Code as well as case authority, Chase showed that the test for judging the sufficiency of an indictment was whether the act alleged to constitute the offense being charged was described in such a manner as to enable a person of common understanding to know what was intended. And this indictment easily passed that test.¹⁹

Chase's response to the claim that two offenses were being charged was curious. It was fairly clear from the indictment that only one was and that the language describing the riot was there to provide background. He could have simply pointed that out. Instead, he took the occasion to advance what looked like a theory of criminal culpability that seemingly differed from that offered in the indictment. The indictment grew out of a riotous proceeding, in which the defendants took part, he declared. And the defendants were liable for any

18. Respondent's brief. Case file, California Supreme Court, *People v. Emmons et al.*

19. *Id.*

crime that resulted from it “whether they personally took part in the offense charged in the indictment or not.” The indictment had charged that the four defendants had personally either thrown Ah Wee out of the building or caused him to fall. One cannot help but think that when the Grand Jury returned its indictment Chase thought he had evidence that linked the four with the actual physical assault on Ah Wee but that he later realized he didn’t and had to advance a new theory of liability.²⁰

The California Supreme Court handed down its opinion October 5, addressing only the insufficiency of the indictment claim. The facts constituting the offense were fully stated in the indictment, it held, and amounted to a charge of felony. If proven they would justify a verdict of guilty under the Penal Code. If the acts alleged to have been done by the defendants had resulted in the death of their victim, the court commented, they would have been guilty of murder or at least manslaughter. It remanded the case to Judge Brown’s court ordering it to overrule the demurrer. The case was now in a posture for the state to proceed against the four defendants. In the meantime a number of private victims of the riot had begun to pursue their own remedies.²¹

Rejection of the claims of riot victims

It will be recalled that on May 3 the Chinese Consulate in San Francisco had sent a letter to the Contra Costa County Board of Supervisors, asking that the perpetrators of the riot be brought to justice and that compensation be paid those who were injured and whose property was damaged. The board did not take up this matter until its meeting of August, the minutes noting that the “matter of the communication of F. A. Bee in relation to the Chinese riot” was put over for consideration at its next meeting, to be held August 28. It was put over at that meeting until October 2 and yet again until November 14, at which meeting it finally addressed the matter. It had by this time received several specific claims for damages from both Chinese and non-Chinese complainants, put forward no doubt under the provision of state law that made counties liable for injuries to real or personal property caused by mobs or riots.²²

One claim came from a Chinese named Charley Yet, demanding damages in the amount of \$1101, the value of property “stolen or destroyed by a mob” during the riot. Yet, it appears, was a labor contractor who had supplied the Chinese workers who worked in the canneries and who,

20. Appellant’s brief, California Supreme Court case file, *People v. Emmons et al.* The indictment charged that the defendants had personally thrown Ah Wee out of the window or caused him to fall from it.

21. *People v. Emmons*, 61 Cal. 489 (1882).

22. 1872 California Political Code, Section 4452.

according to the local press, “kept the boarding house” where they lived. The largest, in the amount of \$5,000, came, according to the minutes, from the “Martinez Docking Company,” presumably the owner of the boarding house vandalized by the mob. Yet may have been making his claim on behalf of the Chinese boarders or it may possibly have arisen from damaged or stolen items he had lent to the workers. It is not clear how either of these figures was arrived at. A third claim was submitted by the Chinese consulate for remuneration for destruction of property and for personal injury to certain Chinese people, with no dollar amount stated. According to the minutes the board decided by unanimous vote to reject all of these. Approximately a week later, the trial of Attorney E.J. Emmons commenced.²³

Trial of the Defendants

As events would transpire, Attorney Emmons and Recorder Miller would be the only defendants put on trial. As noted earlier, no complete record of testimony given at either trial is available. However, using the Superior Court minutes one can put together a skeletal account of the Emmons trial. And with the aid of these minutes, of documents in the court file and of a contemporaneous report of one day’s proceedings published in a local paper, the *Contra Costa Gazette*, it is possible to reconstruct a fuller picture of the Miller trial.²⁴

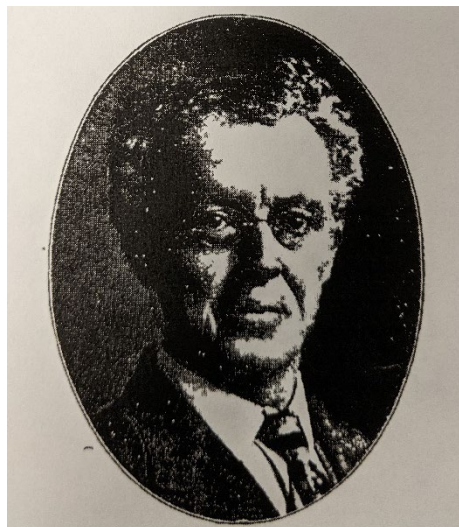
Present in court on November 20, for the opening of the Emmons trial were Emmons, representing himself, Miller’s attorney W.W. Foote, District Attorney Chase, and, significantly, there to assist the prosecution, Thomas D. Riordan. Riordan was a San Francisco lawyer under retainer to the Chinese Consulate. He also from time to time represented the Chinese Six Companies,

23. Minutes of Board of Supervisors, Contra Costa County, Aug. 8, 28, Oct. 2, Nov. 14, 1882. The minutes of the Board of Supervisors are available online at contracosta.ca.gov/129/. *Contra Costa Gazette*, Dec. 6, 1882. Both District Attorney Chase and the *Contra Costa Gazette* state that the owner of the building was one of the two canning companies. The *Gazette* identifies it as the “Martinez Cannery Company.” *Contra Costa Gazette*, April 29, 1882. I can find no reference to a “Martinez Docking Company” in the California Digital Newspaper Collection, which includes a relatively complete run of the Martinez-based *Contra Costa Gazette*. A claim of \$5,000 in 1882 would be worth approximately \$150,000 in today’s dollars.

24. The court reporter present at both trials took down testimony in shorthand, and there are in the Superior Court case file what look like his notes, but they are indecipherable. Since both cases would result in acquittals, judgments from which there could be no appeal, there would be no occasion for the reporter to turn his notes into an official transcript of proceedings.

the coordinating council of the various district associations that had formed early in the immigration based on the various districts in Guangdong province from which the immigrants hailed. Over the course of the nineteenth century it would often go to court to challenge discriminatory legislation.²⁵

The first day of trial was taken up with voir dire. Some twenty-four potential jurors were called and examined. Some were excused from service for one reason or another. Several were successfully challenged for cause by either prosecution or defense. Both prosecution and defense exercised peremptory challenges. By the end of the day a jury had been seated. The next day, the prosecution began to present its case. Six witnesses, including three Chinese, were called and examined. Among the Chinese was Charley Yet, the man who had submitted a claim for damages to the Board of Supervisors, and Ah



E. J. Emmons. Photograph in *History of the Bench and Bar of California*, edited by J.C. Bates, p. 312. San Francisco, Calif., 1912. Courtesy of the author.

Wee, the alleged victim of the assault. On November 22, the prosecution summoned to the stand an additional five witnesses and then rested his case. The defendant called three witnesses of his own and rested as well. Closing arguments were made, and the court gave instructions to the jury. It retired and apparently after brief deliberations returned a verdict of not guilty against Emmons. That is about all that can be said of the Emmons trial. We know nothing about the questions that were asked of the witnesses by prosecution or defense or what their responses were. Nor do we know how Judge Brown charged the jury. We know much more about the trial of Recorder Miller which began December 4.²⁶

As was the case with Emmons, the first day of Miller's trial was devoted to voir dire. District Attorney Chase was present to examine potential jurors, accompanied again, the court minutes note, by his "assistant," Thomas

25. On the Six Companies see Him Mark Lai, "Historical Development of the Chinese Consolidated Benevolent Association/Huiguan system, Chinese America: History and Perspectives (Chinese Historical Society of America, 1987), pp. 13-51.. On their actions in court see McClain, *In Search of Equality*, supra, n. 3, *passim*.

26. Contra Costa Superior Court Minutes, vol. 4, pp. 221-222. The minutes incorrectly give Riordan's first name as "Theodore."

Riordan. W.W. Foote represented the defendant. Ten jurors were excused from service. Two were successfully challenged for cause by the prosecution and two by the defense. The prosecution exercised four peremptory challenges, the defense six, and by the end of the day a jury had been seated. The taking of testimony would consume the next and part of the following day.²⁷

In making its case the prosecution would call a total of sixteen witnesses, including Charley Yet and Ah Wee. For what any said we must rely on a newspaper article in the *Contra Costa Gazette*, which gives a fragmentary, but informative, account of the testimony of six. Comparing the newspaper article and the court minutes, it is difficult to establish with certainty the order in which they testified, but it seems that one of the first to take the stand was a man named George Fuller. He gave a gripping account of the attack on the house where the Chinese lived. He testified that he saw a group of men, Italian and Greek fishermen, he claimed, chopping down a fence around the house with hatchets, smashing its doors and pulling down a portion of the porch. He saw some of the Chinese inhabitants come out of the house and a crowd take after them. He then saw several Chinese exit out of a third-story window. It looked clearly to him as if they had been pushed out. Several Chinese lay on the sidewalk, he said, looking badly hurt. He testified that he never saw Miller. He stated that he saw all of this from the porch of a nearby shoemaker's shop and that when he heard pistol shooting he retreated into the shop.

Charley Yet testified that he heard people banging a gong, witnessed a group of men enter the house where the Chinese lived saying they were looking for gamblers and opium smokers, saw a rope tied to a corner of the house and saw how it was used to tear down a portion of the building, saw some of his countrymen lying on the ground wounded and, most important, saw Miller and Emmons at the scene, the former standing at the door of the house, refusing to let any Chinese leave. The newspaper, regrettably, says nothing about what Ah Wee had to say.

At this point in the proceedings, events took a somewhat dramatic turn. District Attorney Chase asked the court to dismiss the indictment against William Briare and to allow him to testify as a prosecution witness. The court agreed and Briare took the stand.²⁸ The newspaper account of his testimony is spare. He admitted that he was the man who had sounded the gong signaling that the attack upon the Chinese house should begin and he stated that Miller was "at the scene." Three other witnesses not only placed Miller at the scene but linked him more closely with the disturbances. Henry Overfeld stated that he saw Miller at the scene of the riot and heard him exclaim "I have got them started." A man named Bennett, the owner, it appears, of a livery stable, testified that Miller borrowed a rope from him the evening of the riot and that he heard Miller say: "Boys, we're going to have some fun." Elizabeth

27. Superior Court minutes, vol. 4, pp. 253-254.

28. Superior Court Minutes, Dec. 5, 1882, v. 4, p. 256.

Rowell, who lived in a hotel across the street, recalled hearing Miller say: "They are shooting; boys now go for them". The testimony of prosecution witnesses took up all of December 5 and part of the following day, and then the prosecution rested its case. The defense called five witnesses to the stand that day, including the recently acquitted Emmons, and, likewise rested its case. Unfortunately, the newspaper says nothing about the testimony of the defense witnesses.²⁹

If we are completely in the dark about what instructions were requested or given to the jury in the Emmons case, thanks to documents in the court file, we at least know a great deal about the instructions requested by the defense and prosecution in the Miller case. The California Penal Code allowed each side to present written instructions to the court with a request that they be given. The court was required to accept a proposed instruction if the court thought it correct and pertinent, and, if not, it was to be refused, with a decision signed by the trial judge.³⁰ Defense counsel Foote submitted a long handwritten list of proposed instructions to the court. In the margin next to each is an annotation as to whether it was given or not, initialed, it appears, by Judge Brown. Most were unexceptionable, affirming, e.g. that the prosecution had to prove its case beyond a reasonable doubt, that the jury was the sole judge of the credibility of witnesses, that the defendant had the right not to take the stand and that no unfavorable inference was to be drawn from his failure to do so, a principle that had been affirmed in a recent court decision.³¹ Several proposed instructions were not given, one of which deserves special attention. Foote asked that the jury be instructed that to be guilty of the crime charged the defendant "must have aided, abetted or advised in the very crime committed" or "the circumstances must be such as to conclusively show that he intended "the very crime committed."³²

In addition to the full list of Foote's requested instructions, one finds in the Superior Court case file a typewritten page containing a single proposed instruction to the jury but bearing no signature or name. Given its tenor, it seems fairly certain that it was offered by the prosecution. It asked the court to instruct the jury that if the defendant counseled or advised others to make

29. Account of trial proceedings and testimony of witnesses taken from: *Contra Costa Gazette*, Dec. 9, 1882. Superior Court Minutes, Dec. 5-6, 1882, v. 4, pp. 253-258.

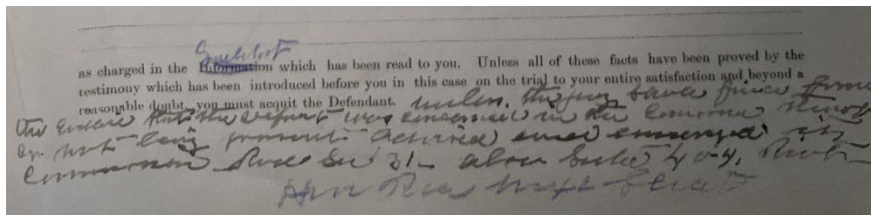
30. 1872 California Penal Code, Sec. 1127.

31. The privilege against self-incrimination is one of the rights included in the California Constitution of 1879. See 1879 California Constitution, Art. I., Sec. 13. In *People v. Brown*, 53 Cal. 66 (1878) the California Supreme Court ruled that a defendant's refusal to testify was protected by that privilege and should not be allowed to prejudice his case.

32. Proposed "Instructions for Defense", Contra Costa Superior Court case file.

an assault on the building where the Chinese lived for the purpose of driving them out and that in pursuant of such an agreement Ah Wee was thrown out of the third story window, then every person who was "party to such an agreement or did counsel or advise its commission" whether present or not when the victim was thrown out was "equally guilty with those who were present and directly committed the act." There is no annotation indicating how the court ruled on this request. Comparing this proposed instruction with that offered by defense counsel but rejected by the court, one can see two starkly contrasting theories of criminal liability.³³ For Foote, to establish guilt, the prosecution would have to prove beyond a reasonable doubt that Miller had advised or counseled his confreres to assault Ah Wee. For Chase it was enough that he have been privy to the agreement to attack the Chinese boarding house and drive the Chinese out.

It cannot be said with any degree of confidence how Judge Brown actually charged the jury in the Miller case. The Contra Costa County Superior Court used a general printed form for jury instructions in criminal cases. It contained the standard instructions that would apply in all criminal cases, e.g. the requirement that the evidence establish the prosecution's case beyond a reasonable doubt, with spaces left for filling in the specific crime being charged, the alleged facts constituting the offense, and for stating what would need to be proven to warrant conviction. There is such a form for the Miller case in the court file, but it is largely blank, containing only the defendant's name, the crime charged and the date of the alleged offense. At the very bottom of the form one finds, immediately after the printed words "you must acquit the Defendant," the following words in barely legible script "unless the jury shall find from the evidence that the defendant was concerned in the commission [possibly committal] or not being present advised and encouraged its commission."³⁴



Bottom portion of jury instructions, as referenced above. Courtesy of the author.

It is unclear whether the jury ever saw this form or heard these words from Judge Brown. They tracked closely the language of the Penal Code section on the law of parties to crime, i.e., what sort of involvement in advance of a crime's commission it would take to make someone responsible for the

33. Typewritten instruction, Superior Court case file.

34. I am grateful to Jessie Sherwood of the Berkeley Law library for help in deciphering the writing.

crime actually committed. As given, they would have provided little in the way of guidance to the jurors. But one must hasten to add that, unlike the present when there is ample case law illuminating the meaning of the Penal Code section, there was no relevant case law on the books at that time. Whatever the instructions given, according to the *Contra Costa Gazette*, it took the jury very little time to deliberate and return a verdict of not guilty. On the same day District Attorney Chase moved to dismiss the indictment against Angelo Berryessa, stating to the court that “there was probably not sufficient testimony to convict” him. The court agreed and the indictment was dismissed.³⁵

Thus ended the state of California’s attempt to hold any individual criminally accountable for the riot of April 26, 1882. There is no evidence that any of those whose claims for damages had been rejected by the Contra Costa Board of Supervisors ever pursued actions in court against the county, as was certainly their right.

Taking Stock

The treaty between the United States and China, concluded in November of 1880, laid the groundwork for the first Chinese Exclusion Act. Under its terms China agreed that the United States could temporarily limit the immigration of Chinese laborers. In return Article III of the agreement provided that if Chinese in the United States met with ill treatment at the hands of others, the U.S. government would “exert all its power to devise measures for their protection.”³⁶ But from the outset the United States took a very narrow view of its obligations under this provision. In the wake of the 1880 Denver riot, mentioned above, the Chinese legation in Washington asked the federal government to arrest the perpetrators. In reply, Secretary of State William Evarts declared that under the American federal system the prosecution of ordinary crimes committed in the states was the exclusive preserve of state authorities. This did not mean that the federal government was prepared to do nothing. As noted above, in the wake of the Martinez riot, Secretary of State Frelinghuysen wrote a strongly-worded letter to California Governor Perkins urging him to do what was necessary to bring the riot perpetrators to justice.³⁷

35. For Chase’s motion to dismiss indictment against Berryessa, see Minutes Superior Court, Dec. 6, 1882, v. 4, p. 258. Printed instructions to the jury in Superior Court case file. Report on jury deliberations in *Contra Costa Gazette*, Dec. 9, 1882.

36. Article III, Treaty Between the United States and China Concerning Immigration, proclaimed Oct. 5, 1881; 22 Stat. 826, 827.

37. Evarts correspondence, *Foreign Relations of the United States*, H.R. Exec. Doc. 47th Cong., 1st Sess., 1:319 (1881). In 1886, in the midst of widespread

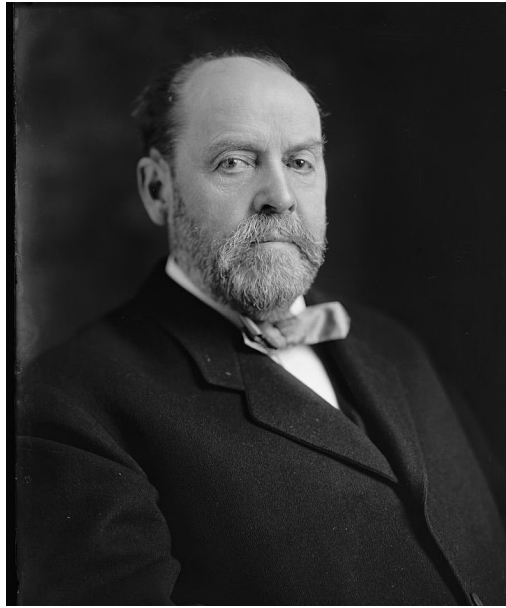


Photo of Governor George C. Perkins. Photo by Harris & Ewing. Courtesy of the Library of Congress.

What then is to be said of actions taken by Contra Costa County in response to the events of April 26? The key player in this story and the person who set the machinery of the law in motion was, of course, Superior Court Judge Thomas Brown. It was he who decided not to leave matters where District Attorney Chase had left them but to order the empaneling of a grand jury, with a view to identifying anyone criminally responsible for the riot. Unfortunately little is known about him or the considerations that might have influenced his decision. There was certainly widespread anger and embarrassment in

the city at what had happened. More than one newspaper condemned the rioters in the strongest terms and urged action against them. According to District Attorney Chase's report to the governor members of the local clergy weighed in with their own condemnations. One imagines he would have shared in these sentiments. Might the strongly worded letter from the Chinese consulate to the Contra Costa Board of Supervisors have been the final factor that moved him to act? Its contents became known to the public on May 9, after Chase had concluded his investigation. In addition to demanding that the riot perpetrators be arrested and prosecuted, it alleged that the identities of the riot organizers were well known and that they included county officers. Or, might he from the outset have been determined to use the Grand Jury to get to the bottom of the disturbances, waiting some weeks to do so for reasons of his own? One is relegated to speculation. The same may be said

anti-Chinese rioting, Chinese victims of a riot in California filed a criminal complaint in federal court, alleging that a Reconstruction era civil rights law could serve as basis for prosecuting the rioters. Arrests were made and the case moved forward, but in the end the U.S. Supreme Court dismissed the charges, holding that the statute could not apply. *Baldwin v. Franks*, 120 U.S. 678 (1887). See McClain, *supra* n. 3. Significantly, in the same opinion, the Court expressed no doubt that Congress had full Constitutional authority to punish those guilty of violating rights guaranteed Chinese residents under the 1880 treaty. Congress never acted to implement this power. *Baldwin*, at 683.

when it comes to explaining the Grand Jury's decision to return a presentment and indictment against the four defendants.³⁸

District Attorney Chase may not have been disposed to undertake more than what seems a perfunctory investigation in the riot's immediate aftermath, but once the Grand Jury was empaneled and he took charge of its proceedings, available evidence suggests that he pursued matters vigorously and to the best of his abilities. Over a two-week period he interviewed some one hundred witnesses before the county Grand Jury and secured the filing of formal criminal charges against four defendants. In presenting his cases to the trial jury, to judge by the Superior Court minutes, Chase seems to have put on the stand the witnesses one would have expected a competent prosecutor to put on. How effective his examination of those witnesses was is a question difficult to answer. The same may be said of his cross-examination of defense witnesses. We have only a brief newspaper account of testimony at the trial of one of the defendants, Recorder Miller. Crucially, we know nothing about the testimony of the victim, Ah Wee, who took the stand in both the Emmons and Miller cases. We do not know what instruction Judge Brown actually gave the jury in either of these cases. It is, in short, hard to judge the strength of Chase's case as it was left in the hands of the trial jury before it began deliberations. Of course, one must ask whether any of this really mattered or did the jurors' very brief deliberations in the two cases suggest that they had reached a verdict before, perhaps long before, the trials ended and were just going through the motions when they entered the jury room?

A question arises whether it might not have been wiser for Chase to have pursued the riot instead of the assault charge (or both charges in separate actions). Riot, according to the California Penal Code then in force, consisted in any use of force or threat to use force by two or more persons to disturb the public peace.³⁹ There seemed to be ample evidence of this at least in the case of Miller. Witnesses placed him at the scene and heard him encouraging others to join him in moving against the Chinese. He was seen blocking their exit from their boarding house. Might a riot conviction and prison sentences have served to deter future would-be rioters? On the other hand, the worst

38. "The [riot] is condemned by all good citizens, by the press **and the pulpit.**" [emphasis added] Chase report to Gov. Perkins, *supra*, note 1. As noted, some of the negative reaction was motivated by fear that the disturbances might undermine efforts in the nation's capitol to pass the Chinese immigration bill, and this might have dissipated somewhat after President Arthur signed the bill on April 4. But some must surely have lingered. For the contents of the Chinese consulate's letter to the Board of Supervisors see, among other press reports, *Sacramento Daily Union*, May 9, 1882.

39. 1872 California Penal Code, Section 404.

aspect of the riot was the violence visited on the Chinese immigrants, Ah Wee in particular. Chase may have thought it most important to get a conviction on this charge. And when he filed the indictment, he may have had witnesses who could testify that the four had actually thrown Ah Wee out of the building, only later to discover that he didn't and be forced to rely on a more indirect theory of liability. But this is all speculation.

Postscript on E.J. Emmons

Little is known about the later lives of the defendants, Angelo Berryessa and William Briare. We do know that C.J. Miller continued to serve as county recorder, but beyond that nothing more. The long and checkered subsequent career of the lawyer E.J. Emmons, on the other hand, could well merit an article in its own right.

Sometime after the Martinez trial Emmons moved to the town of Chico some distance to the north, where he set up a law practice and, significantly, became a leader of local anti-Chinese movement, eventually becoming secretary of the Chico Anti-Chinese Association. At a large and spirited meeting of the Association held in February, 1886, where among other things, a petition was adopted urging Congress to permanently end Chinese immigration, Emmons volunteered to maintain in his office a register of white workers so that "those who would displace their Chinese laborers might be able to find good and competent American laborers to supply their places."⁴⁰

In July of that year, Emmons found himself enmeshed in a criminal case with its bizarre aspects. According to initial news reports, he was accused of stealing items from a house of prostitution. He and another man, it was alleged, had drugged several occupants of the house and then made off with their jewelry and a pistol. He was held to answer on a charge of grand larceny and in November brought to trial, Emmons again representing himself in the proceeding. According to one newspaper, Emmons had initially acknowledged taking the items but claimed it was all a joke. At the trial, however, he denied any involvement in the affair, claiming the house in question was not a house of ill fame but a private home and giving a completely different account of what had happened that evening. The only witness against Emmons at the trial was his co-defendant. And the jury, it appears, chose to believe Emmons, acquitting him after a brief deliberation.⁴¹

Emmons's anti-Chinese proclivities brought him in conflict with the law in 1887. A large number of Chinese workers were employed as lumbermen by the firm of Sisson, Crocker and Co. in the nearby town of Sisson. In

40. *Chico Weekly Enterprise*, 12 February, 1886; *Weekly Butte Record*, 13 February, 1886.

41. *Oroville Weekly Register*, 8 July, 25 November, 1886; *Chico Weekly Enterprise*, 9, 16 July, 26 November, 1886.

September, 1887 a large number of the townsmen held a meeting aimed at drumming up support for forcing Crocker to discharge its Chinese workers. Emmons, who had come down from Chico by invitation, was the principal speaker and, according to one report, made a very inflammatory speech. A Crocker representative who spoke at the meeting stated that the company would let the Chinese workers go as soon as they had completed their contract, and it appears that the crowd was divided as to what to do. Emmons, for his part, urged direct action and led a mob in the direction of the Chinese quarter. The sheriff of Siskiyou county, however, had anticipated problems and was waiting for him. When he failed to heed an order to leave the area, he was arrested. In November he was brought to trial, charged with the misdemeanor of failing to follow a lawful order to leave an unlawful assembly but again escaped conviction.⁴²

In 1893 Emmons moved to Bakersfield in Kern County, California. There, notwithstanding his prior brushes with the law, he secured a position as Assistant District Attorney and served in that post from 1898 to 1902. In that year he entered politics, running as the Democratic candidate for a state Senate seat and handily defeating his Republican opponent. But Emmons's political career was short-lived. In 1905 he was indicted by the Grand Jury of Sacramento County for soliciting and receiving a bribe while in office, was convicted of the crime and sentenced to five years in prison. Shortly thereafter he was expelled from the Senate. He appealed the conviction but the judgment was affirmed and he entered the state penitentiary in 1908. He did not, however, serve his full prison term. In 1910 he received a pardon from Governor James Gillett and was released on parole.

Emmons returned to Bakersfield in 1915 and resumed his law practice, successfully resisting in that year an effort by a Kern County bar association to have him disbarred based on his prior bribery conviction. Emmons handled both criminal and civil cases in the ensuing years, achieving, something of a reputation for his representation of high-profile criminal defendants. His name appears often in the state appellate reports. On November 10, 1927, while arguing on behalf of a defendant in a murder trial, he collapsed in the courtroom and died a few hours later.⁴³

42. *Chico Weekly Enterprise*, 30 September, 1887; *Weekly Butte Record*, 1 October, 1887; *Sacramento Daily Union*, 1 October, 1887; *San Jose Mercury News*, 7 November, 1887.

43. The facts of the bribery case are fully set forth in *People v. Emmons*, 7 Cal. App. 685 (1908). On the effort to disbar Emmons, see *In re Emmons*, 29 Cal. App. 121 (1915). The appeals court there held that the Governor's pardon made it impossible to use the judgment of conviction as a basis for disbarment. For a report of his dramatic death, see *San Pedro News Pilot*, 11 November, 1927.

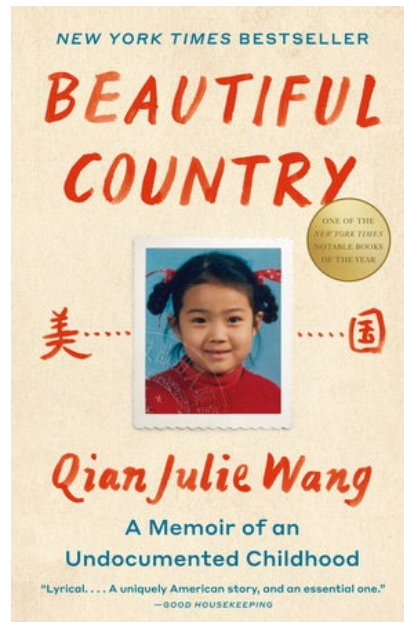
Beautiful Country: A Memoir, by Qian Julie Wang. DOUBLEDAY, 2021. 320 pp.; \$28.95, *hardcover*.

Qian Julie Wang came to the United States from China when she was barely seven years old, but her memoir, *Beautiful Country*, is not a coming-of-age story. Neither does it recount the author's studies at Yale nor her federal appellate clerkship. It's a story about being a child immigrant in Brooklyn.

The memoir primarily recounts the author's life between first grade and middle school, beginning with her arrival in New York and struggle to help her airsick mother push their luggage cart through the airport. Qian Julie's remarkable memory and writing artistry allow her to vividly conjure the sights, sounds and textures of her first years in this country. The author knows that details matter, and she knows that most "da ren" (adults) have forgotten what it's like to be a child. So *Beautiful Country* reminds us: rather than simply recounting her herculean efforts to push the luggage cart, she zooms in and slows down, capturing the seven-year-old protagonist *reaching up* to grab the cart's handlebars, and showing us that the suitcases stacked on the cart nearly blocked her from seeing which way she was going. That's when we understand just how tiny Qian Julie was when she arrived in the United States.

The same patient attention to detail populates *Beautiful Country* when Qian Julie and her mother go to the garment district to work sewing labels on shirts and snipping threads; when Qian Julie ducks into a dark hiding place to spy on her family's landlady; and when she attends her first day of school. Recalling some of my favorite scenes from *Beautiful Country*, I am tricked into thinking that I must have watched them on film because they are described with technicolor clarity. Details like these transport readers into Qian Julie's new life in "mei guo" (America).

If *Beautiful Country* sounds like a memoir that will only resonate with readers who are young Asian women, you are in for a surprise. I am neither young nor Asian and I loved this book. Many of the author's experiences will strike home regardless of readers' backgrounds, and people of all stripes will relate to the tiny protagonist. After all, who doesn't remember the anguish of losing a beloved childhood pet – in Qian Julie's case, a cat dubbed "Marilyn" in honor of Marilyn Monroe; or to the stomach-wrenching homesickness of



missing doting grandparents? It matters not whether you feel more acquainted with the status Qian Julie enjoyed in China, where she was popular among the seven-year old set, always wearing the right dresses, knowing the right answers, and leading her pack at playtime – or more readily identify with the status Qian Julie was relegated to in Brooklyn, where she lacked the right clothes and had no money for coveted toys, or even breakfast. The story is so engaging and well-told that readers will quickly empathize with charismatic Qian Julie as she navigates through an entirely foreign world. My guess is that anyone who has ever parented children, or even closely observed them, will immediately recognize the surveillance techniques Qian Julie employed to learn New York's language, food, subway system, and pecking order. She quietly noted every movement in her orbit.

Beautiful Country's careful descriptions of universal experiences put readers into the author's child-sized sneakers and make it easy to relate to the many things we have in common with Qian Julie's seven- and eight-year-old self. But as the story moves on, *Beautiful Country* confronts readers with other obstacles most of us have never had to imagine, much less endure. In America, hunger was Qian Julie's "constant and reliable friend" that came second only to loneliness, and she quickly learned not to speak of it lest she hurt her mother. Many readers will know the "outsider" feeling of being the new kid in class, but it's clearly something else entirely for a child to absorb the *need to stay* in the relative safety of the shadows and *vigilantly remain* an outsider. *Beautiful Country* leaves no doubt about how this latter imperative dominated the author's life as an undocumented child. For many, it will present a first opportunity to feel burdens that are not at all commonly shared.

No matter your views on our nation's ongoing debate over immigration and immigration reform, there are lessons to be learned from *Beautiful Country*. I am grateful to the author for sharing them, and have recommended this book to just about everyone who crossed my path this year.

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