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The Casebook and Beyond: Incorporating Pluralistic Visions of Trusts and Estates

The Japanese YWCA Case

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(Note: A more in-depth treatment of this case was published as "A Racial Trust: The Japanese YWCA and the Alien Land Law" 7 UCLA Asian Pac. Amer. L.J. 1 (2001))

What I'm going to do is tell you the story of a particular case, a particular piece of litigation that arose in San Francisco and was just settled last Spring. A brief summary is that the San Francisco YWCA found itself strapped for cash in 1996, and decided to sell a building that they owned in what was a very hot San Francisco real estate market. The building at 1830 Sutter Street in San Francisco's Japantown had once been the Japanese YWCA, or what the San Francisco Y called the "Japanese Branch."

Members of the Japanese American community were disturbed to hear of the YWCA's plans. They wanted to preserve the historic building as a community asset, but their efforts to persuade the YWCA to change its mind failed.

In an effort to save the building, a lawsuit was filed in 1997 by representatives of the Japanese American community. What's interesting about this lawsuit for the purposes of this panel are two main points, the first of which has several parts. First, the theory of the case brought by the plaintiffs involved several key episodes in Asian American legal history, including—and these are the several parts—the racially exclusive naturalization laws, the discriminatory

statutes limiting the right to own property based on alienage and eligibility for citizenship, the wartime internment of Japanese Americans, and the postwar return to San Francisco of a community traumatized by the internment experience and its aftermath. I'll trace that theory out for you in a moment. The second point I want to emphasize involves the way the case settled, because it tells us something about the current nature of the construction of racial group identity and collective memory. I'll talk about that at the end.

The property in question was purchased in 1921 for the purpose of housing the Japanese YWCA. Title was in the name of the San Francisco Y. The Japanese Y and its independent Board of Directors occupied and managed the property until the Japanese YWCA was dissolved in 1942, following the onset of World War II. The San Francisco YWCA has managed the property ever since. In 1996, when it became clear that no one in the community could come up with the \$1.65 million the YWCA wanted for the building, it seemed as though the building would be lost to private developers.

The legal theory pursued by the Japanese American community was the product of recovered collective memory. In negotiating to purchase the building, there was a sense among some in the community that the Japanese American community had raised money for the property. Some thought that the community somehow owned it or had an option on it. It was like folklore—many of the Sansei, third-generation Japanese, just had the impression that their Issei, or immigrant grandparents had been involved in raising money for the Japanese “Y.” The churches in particular had an inkling that they had played a part in

raising funds for the property. When asked, the Nisei women, or second-generation Japanese, remembered their mothers holding fundraisers to support the Japanese YWCA. Community members began to research the minutes of the San Francisco YWCA, thinking that there might be some moral argument for an offset against the purchase price if they could find out how much money had been raised.

The volunteer who reviewed the minutes had a banking background, and came back with questions about certain language that he discovered in YWCA documents: “This property to be held in trust for the Japanese YWCA.” And in another document: “No decision is to be made about the uses of this property without consultation with the Japanese YWCA Board.” In another: “If this property is sold or any income derived from it other than Japanese YWCA uses, the funds shall be applied to Christian work for Japanese women and girls in San Francisco after consultation with the Japanese YWCA Board or their successors.”

That’s pretty much all there was. No trust document. Isolated excerpts from board minutes. Language that might be interpreted to indicate either a private trust for the benefit of the Japanese YWCA or a charitable trust intended to serve a particular ethnic community. And a growing sense among Japanese American community leaders that the building represented the story of a Japanese immigrant community of Issei women who, despite considerable hardship and oppression in 1921, managed to play an active role in the building

of their communities by raising the money to purchase and establish a community center.

I'm not going to work through the doctrinal issues of whether one could correctly find some kind of purchase money resulting trust based on this kind of evidence. What's really missing here is some kind narrative or context to explain why anybody would have wanted to resort to the legal instrument of a trust in these circumstances? If they could raise the money to build a community center, why didn't they just buy it for themselves?

By 1921, anti-Asian sentiment in California and other western states was focused on the Japanese. New Chinese immigration had been prohibited by treaty and statute since 1882. The Chinese population had therefore peaked in 1910 and was on the decline. Japanese immigration, on the other hand, and perhaps as a direct consequence, sharply accelerated after 1900. After an international incident over the schooling of Japanese children in San Francisco in 1906, Japanese immigration was curtailed by the "Gentleman's Agreement" between the United States and Japanese governments in 1908. By 1913 one estimate was that some 300,000 acres of agricultural property in California was owned or farmed by Japanese farmers, the great majority of which were still immigrants, as opposed to second generation Americans. There is some evidence that their property was the most valuable and productive property, and thus the accusation that they were monopolizing the prime agricultural real estate. There is also evidence that the Japanese farmers reclaimed property that

nobody else wanted, and turned it into the most productive agricultural property in the state.

So in 1913 the first California Alien Land Law prohibited Japanese from owning property. What the 1913 statute actually said was that all aliens eligible for citizenship could acquire and possess land to the same extent as citizens. All other aliens—those not eligible for citizenship, and we'll come back to that in a moment—could acquire property to the extent provided for by treaty, and not otherwise. The statute was aimed primarily at Japanese farmers. There were two parts, one targeting Japanese and one targeting agricultural property.

“Aliens eligible for citizenship” referred to the fact that the naturalization statute of 1790 required you to be a “free white person” in order to become a citizen. After the civil war the Act was amended to include persons of African nativity or descent. So there are a series of cases in which people of varying national backgrounds claimed that they should be allowed the benefits of citizenship, usually by arguing that they were White. One by one, lower courts determined that Chinese, Burmese, Japanese, Filipinos, Koreans and Hawaiians were not White, and were thus ineligible for citizenship, no matter how pale or thoroughly assimilated. Armenians from east of Europe were determined to be White; Asian Indians, although classified by racial taxonomers of the time as Caucasian, were not. Concerted efforts by the Japanese government to secure naturalization rights failed, and after the Alien Land Law passed in 1913 Japanese on the west coast decided to support bringing the issue to the Supreme Court in 1917. But the Court postponed hearing the case for several

years, so in 1921 the prospects for eligibility for citizenship didn't look good. Indeed, the following year, 1922, the Court confirmed in *Ozawa* that Japanese were ineligible for citizenship.

So aliens ineligible for citizenship—Asians, including Japanese—could own property to the extent provided for by treaty, and not otherwise. This language referred to the fact that the 1911 treaty between Japan and the United States gave Japanese nationals the right to own or occupy “houses, manufactories, warehouses, and shops,” and to lease land for residential or commercial purposes. Agricultural property was considered not to be residential or commercial.

You might wonder why, if agricultural property was the concern, the Japanese YWCA would be worried about purchasing a community building in San Francisco. The answer is that in his zeal to enforce the law against Japanese property owners, the state Attorney General personally argued the first case, which involved residential property, entirely ignoring the protections of the treaty. He would eventually bring actions against other non-agricultural property, including a health resort and a hospital.

Moreover, in 1920 the state passed by initiative amendments to the act that closed loopholes and increased penalties. You see, the 1913 Act hadn't actually been very effective. Japanese immigrants bought property in the name of their minor American-born children, for whom they would be trustees or guardians, or they formed corporations to buy the property for them. After 1920, Japanese could not buy shares in any corporation that owned an interest in land.

They could not be appointed guardians for the property of their minor children. Conveyances made to avoid the prohibition were void. Property taken in the name of a citizen but paid for by a Japanese were presumed to be intended to evade the law.

So in 1921 the organizers of the Japanese YWCA were faced with a statute that had just been considerably strengthened by popular vote, a zealous attorney general eager to enforce it, a naturalization statute that the Supreme Court kept postponing hearing, and the consequences of being found in violation were severe—the property would escheat to the state, and conspiracy to evade the terms of the act was a felony. So we have a racially oppressive environment that explains 1) why they might resort to having the San Francisco YWCA hold the property in trust for them—and there is evidence that trust arrangements were in common use in the Japanese community at the time—and 2) why they might not have wanted to have an explicit trust document around detailing what could have been prosecuted as a criminal conspiracy.

You might expect there to be a laches problem here. The San Francisco YWCA had been managing the property since 1942. Why no action to recover control of the property until now? Here, the explanation starts with the internment itself—the Japanese YWCA was dissolved when all of its officers and Board of Directors were sent to internment camps in 1942. Less familiar is the story of how, when the interment ended, there was strong pressure for Japanese Americans to disperse and assimilate. There was hostility and violence waiting for them in the West Coast communities they had left, and many were for their

part not eager to return. The War Relocation Authority issued instructions that Japanese Americans were to assimilate. Specifically, they were advised not to walk together in groups of more than three, or eat together in restaurants in groups of more than five, or live next door to each other. And many of them were anxious never to be singled out as different again. So Japantown was never again to be the thriving residential Japanese American community it once was. Moreover, during this time the San Francisco YWCA was leasing the property to groups that served the community, consistent with the purposes of the trust.

So that's how this one little trust dispute implicates virtually all of Asian American legal history.

The case settled last Spring. The Y got a lot of bad press over it, their insurance company kicked in a significant contribution, and the Y agreed to sell the building to the community day care center, Nihonmachi Little Friends, which managed to scrape together a down payment. But now you get a different problem. The plaintiffs had waged a very public community campaign convincing community leaders that the property belonged to the community. Money was again raised in the community through fundraisers and the like to support the legal efforts. Simply transferring the property to another private entity, albeit a currently trusted one, didn't accomplish what the plaintiffs set out to do. So the Nihonmachi Little Friends and the plaintiffs negotiated a careful Memorandum of Understanding setting out how NLF's services and mission were consistent with the purposes of the trust, and with the NLF agreeing to carry out the trust's

charitable and community purposes consistent with the broad vision and intent of the Issei women of the Japanese YWCA.

So now—suppose you were skeptical about the historical predicate—that there actually existed a trust intent, and that the purchase of a YWCA branch could be thought of as benefiting a particular ethnic community in this concrete and enforceable way. Through the MOU, which is being broadly distributed to institutions in the community, the parties are in a way creating a collective, documented, community understanding regarding the status of the property. They are making their historical understanding a reality.

I said that this case said something about the formation of racial group identity. Sometimes people say, “what do you mean, ‘the Japanese American community’? Everybody of Japanese descent? Surely not every Japanese American agreed with these actions. Who are these self-appointed spokespeople? Isn’t it time we stopped separating ourselves into these kinds of groups?” Here this case suggests two answers. First, there clearly was a specific group of people ineligible for citizenship under the naturalization laws, targeted by the Alien land laws, and interned during the war. That’s the community that raised the money to buy this property. Second, this case was initiated, supported, and beneficially settled because of community support, regardless of the formal legal accuracy of the theories advanced. The terms of the MOU will only be enforced so long as that collective claim survives in the consciousness of a critical mass of people willing to fight to support it. If the time comes that the Japanese American community in San Francisco loses the cohesion and vitality

that made this effort a success, the MOU may not withstand legal challenge, and when that happens this trust, if that's what it is, could fade away.

I'm not going to tell you exactly how to use this case in class, or how it's relevant to the themes and principles that you cover, but I trust that you'll be able to find some use for it.