

(1) After graduating from our wonderful Yale Law School (and prior to having -- to avoid becoming draftee cannon fodder in the bad ol' Vietnam War the next year -- to join the Army Reserve and trudge up-and-down the sand dunes of Fort Ord), I returned home to Hawaii to law-clerk for the then Chief Justice of Hawaii, William S. Richardson -- the first part-Native Hawaiian Chief Justice of Hawaii. The late Chief Justice is now perpetually honored by the fact that the law school at the University of Hawaii at Manoa flagship campus is named "William S. Richardson School of Law."

Chief Justice Richardson was ardent in his view that the Native Hawaiians had been short-changed in their legal rights and, during his tenure (1962 to 1978), he pushed the five-member Hawaii Supreme Court in the direction of asserting, for Native Hawaiians, their ancient rights of access (contra to the Western view of sacrosanct private property, such as the ancient rights to reach the seashore, across private property rights introduced by the Western-dominated real property interests in the 19th Century, and rights to gather medicinal herbs on private property).

When I started law-clerking for the Chief Justice, he assigned me research on a case, *In re Kelley*, in which Mr. Kelley, a hotel owner who lived on the seashore near the Diamond Head Lighthouse, had filed a claim to the large sandy beachfront in front of his private property, claiming that that area had always belonged to his private parcel. Mr. Kelley had won in the State lower courts, and the matter came on appeal to the Hawaii Supreme Court. The Chief Justice convinced his peers to assign the majority opinion (which was unanimous) to him to write. Under the rules of the Hawaii Supreme Court at the time, in land-rights cases, the Justices were allowed not only to review the court proceedings but also to visit the sites in dispute, without running afoul of the *ex parte* view that such a site visit would be outside the record on appeal.

After I studied the file, I decided to go out to the site, below the Diamond Head Lighthouse, to see for myself what the layout was. There's only a small narrow road that inches downhill alongside the lighthouse to the shoreline. I parked my car on Diamond Head Road and traipsed down the small narrow road to the seashore where the disputed shorefront parcel was. The State had argued, in the lower courts, that the expanse of sandy beach along the shoreline -- being about two football fields long -- about 200 yards -- was NOT part of the original conveyance to Mr. Kelley's predecessors and then to Mr. Kelley, but had actually been part of a public roadway, under the Kingdom, for the public traversing from Waikiki to Kahala. I looked at, and walked slowly over, the vast expanse of shoreline, and I thought to myself, "The State is correct in its argument -- that this parcel is part of an ancient roadway route from Waikiki to Kahala, which was used by pedestrians and people on horses and in light carriages."

Then, I started to walk up the narrow small road back up to the Lighthouse. Lo and behold -- There was a large black car coming down the road toward me. The car stopped, and the front window opened: It was the Chief Justice. He told me that he, too, had decided to come out to look at the situation.

The next day, back in the office, the Chief Justice called me in and said: "You and I like to walk along the beach, don't we?!?" And that's how the case of *In re Kelley* was decided in favor of the State of Hawaii, and not Mr. Kelley!

(2) U.S. Chief Justice Earl Warren became good friends, from judicial conferences, with State of Hawaii Chief Justice Richardson during Chief Justice Warren's tenure at the U.S. Supreme Court. Richardson, C.J. -- being from the minority Native Hawaiian community (ancestry -- 1/4 Native Hawaiian; 1/4 Chinese; 1/2 Caucasian) -- particularly liked the Warren Court's decisions on defendants' rights, such as the Miranda ruling.

Chief Justice Warren chose to take a "Hawaii / Hawaiian vacation" in August 1968. He flew out to Hawaii and visited, in chambers, with Chief Justice Richardson. Richardson, C.J., then called me in to introduce me to Chief Justice Warren, and announced, "Why don't you join us for lunch today?" Of course, I accepted -- and then Richardson, C.J., said: "We're going to the Halekulani Hotel." I swallowed deeply because that's where my Dad had been working as a dining room waiter since 1952 (when he lost his job at the declining Wailuku Maui plantation hotel dining room and had to move to Waikiki to find a new job). I didn't want the ignominy of having my Dad waiting on the two Chief Justices and me. Richardson, C.J., had already sensed that and had asked that someone else from the wait staff besides "Mr. Masuda's father" be the serving waiter. Yet, that was how, after lunch, I was able to introduce my Dad to Chief Justice Warren and Chief Justice Richardson (whom he had met before, when Richardson, C.J., had sworn me in -- after I passed the Bar exam (and had waited, nervously, for the (positive) result) -- a private ceremony because a time conflict prevented me from attending the public ceremony). As CJ Richardson and I left Chief Justice Warren after lunch -- he was staying at the Halekulani -- Chief Justice Warren turned to me and said, "Whenever you're in Washington, D.C., do come by to say hello!"

Long Story A Little Bit Shorter -- Chief Justice Warren retired in June 1969, and, as is the tradition at the U.S. Supreme Court, he was allowed, despite retirement, to occupy an office in the U.S. Supreme Court building. In May 1970, after the nationwide annual White House Fellows competition (it was entering its fifth year then, having started in 1965, and it is now in its 57th year), I "lucked out" and was chosen as the first White House Fellow from Hawaii and of Japanese American ancestry (and the second of Asian American ancestry). The Fellowship (if you wish, you can "Google" White House Fellows Program for more details) involves moving to D.C. for one calendar year, Sept. of the first year to Aug. of the next year, and serving as a non-partisan administrative aide to a Cabinet member or a high-ranking White House official. I chose to serve my one-year Fellowship as an aide to the then U.S. Secretary of the Treasury, David Kennedy, who had been a prominent banker in Chicago.

In September 1970, shortly after I started work as a White House Fellow, I did call Chief Justice Warren's office and I made an appointment to "take him up on his

offer," made to me in Waikiki -- namely "Whenever you're in D.C., do come by and see me."

My "courtesy call" to Chief Justice Emeritus Warren started at 5 PM late one September 1970 afternoon. We had a good discussion about emerging legal issues in the State of Hawaii that Chief Justice Richardson was dealing with as well as, off-the-record, the last decisions that Chief Justice Warren had issued before retiring. I remember distinctly that the sun was setting over the National Mall, as our 45-minute "courtesy call" drew towards its denouement.

Then -- like the brash young attorney of age 27 that I was back then -- I said to Chief Justice Warren: "I hope that you don't mind if I raise the following question with you --Why did you support, under Executive Order 9066, issued two months after the Pearl Harbor attack, the internment of all Japanese Americans and Japanese nationals in the 11 Western States?" Chief Justice Warren had been prosecuting attorney of Alameda County, CA, at the time of the Pearl Harbor attack, and he was very, very vocal, in the days and weeks following the attack, that all individuals of Japanese ancestry should be rounded up and placed in internment camps. I should have expected what the Chief Justice's reply to me would be -- given the fact that Chief Justice Warren had been a superb elected politician, through and through: After his support of the internment, which assured him of re-election (if he had opposed it, he would have been defeated and we never would have heard of him as a public servant, again), Warren had a meteoric rise to Governor of California -- from which post, in 1953, he was appointed the Chief Justice of the USA (in a move that, many years later, president Eisenhower said, "That's the worst mistake I made as president," perhaps recalling all the turmoil caused by the 9 to 0 U.S. Supreme Court decision in *Brown v. Board of Education* in 1954).

After I asked my straightforward question, in effect inquiring flat-out, "Why did you do it?" about his support of the internment, Chief Justice Warren looked straight at me and said: "Well, you have to understand how we were convinced, after Pearl Harbor, that the Japanese would attack the West Coast." And then he went on to a 10-minute discussion and defense of his action. He never did acknowledge that his position was a mistake I thanked him very much for the "courtesy call" and departed into the cold Washington, D.C., night.

Various records show that Chief Justice Warren never did go on the public record to say that he was mistaken in his support of the internment. The closest that he ever came, apparently, was a backstage *en passant* remark that he made to the president of the Japanese American Citizens League, in the early 1970s, that he "regretted" his support of the internment in the days of war hysteria following the Pearl Harbor attack. But, never any public apology on the record. A supreme politician, through and through! And, from that perspective, I can understand, if not forgive!