

PASADENA NOW

How a Black Pasadena Family's Challenge to White-only Real Estate Covenants Culminated in the U.S. Supreme Court's Landmark Ruling Outlawing Them Across America



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“Whereas it is for the mutual benefit and advantages of each of the parties . . . that each and every parcel of land within said area shall be limited and restricted to occupancy . . . exclusively by persons of the White or Caucasian Race. That no person shall live upon said property at any time whose blood is not entirely that of the Caucasian race, but if any persons are kept thereon by such Caucasian occupant strictly in the capacity of servants . . . such circumstances shall not constitute a violation of this covenant.”

- Pasadena Improvement Association’s Template for Restrictive Real Estate Covenants, 1940

In 1942, Ross and Helen Raines bought a modest home on Palisade Street in northwest Pasadena. Their new home was within a district where real estate covenants forbid sale to those “whose blood is not entirely that of the Caucasian race.”

Hazel Fairchild and other white homeowners in the district filed a lawsuit in Superior Court against their new neighbors. The plaintiffs claimed the Raines “entered into possession of, and ever since have used and occupied . . . said lot and that defendants Raines are of the negro race and their occupation is contrary to and in violation of the race restriction agreement and plaintiffs have thereby been injured and damaged.” They demanded an injunction to force the Raines family to vacate their new home.



743 Palisade Street in Pasadena, seen today. (Photo by Rick Cole)

Race restrictions on property were widespread in Pasadena in 1942. In fact, 60% of the homes in the city were legally restricted to occupancy by whites only (making an exception for servants.) It was then settled law that “race restriction agreements as to the use and occupancy of real property are normally recognized as valid,” so after a brief trial, a judge imposed an injunction against the Raines living at 743 Palisade.

But a fiery radical-journalist-turned-lawyer would intervene in this now nearly forgotten lawsuit. His work on *Fairchild v. Raines* would ultimately land him in front of the United States Supreme Court. There, with co-counsel Thurgood Marshall, he would argue the

landmark *Shelley v. Kraemer* case that struck down racial covenants in America. The journey to that epic victory began here in Pasadena.

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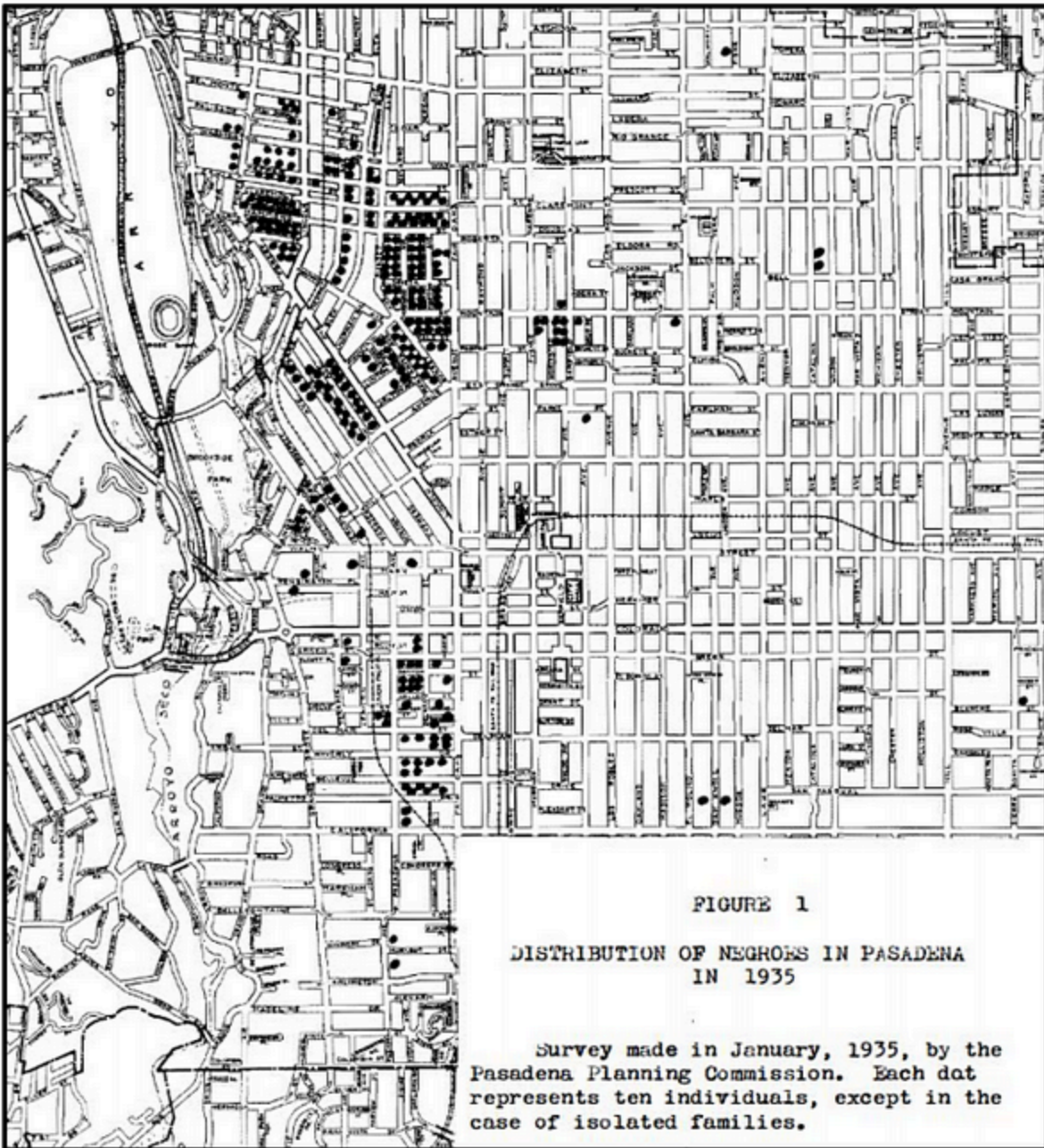
“Racial segregation in housing was not merely a project of southerners in the former slaveholding Confederacy,” argues Richard Rothstein in his best-selling 2017 book, *The Color of Law*. “Official segregation was not the result of a single law that consigned African Americans to designated neighborhoods. Rather, scores of racially explicit laws, regulations and government practices combined to create a nationwide system of urban ghettos, surrounded by white suburbs.”

In the early 20th century, a number of cities imposed zoning ordinances banning the sale of real estate to Blacks in white-majority neighborhoods. In 1917, however, the Supreme Court unanimously ruled against Louisville, Kentucky’s law. In *Warley v. Buchanan*, the court held such ordinances violated the rights of an owner “to acquire, enjoy, and dispose of his property.”

White racism was not so easily defeated. If it was unconstitutional for the government to forbid Blacks from moving into white neighborhoods, then the same goal could be accomplished through private contracts.

Albert Stewart, a member of the City Council, declared “the Negro problem” was the “Number One problem” facing the city and the “only sensible solution” was to keep Blacks out of White neighborhoods.

In California, the push to keep neighborhoods “lily white” was spearheaded by the California Real Estate Association. In 1927, the realtors monthly magazine reported “Pasadena has a large number of negroes who are recently trying to move into desirable sections of the city. Through subdivision restrictions and owners agreements it is attempting to hold them in check.” The National Realtor Code of Ethics sternly warned that “A realtor should never be instrumental in introducing into a neighborhood . . . members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in the neighborhood.” According to Pasadena realtor H. P. Hammond, “It has been my experience that invariably when a Negro family moves into a neighborhood theretofore occupied by white people, the value of the surrounding property drops fifty percent.”



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1935 Pasadena planning Commission map showing the concentration of Black residents in the northwest and southwest area of the city. (Source: "The Social Status of the Negro in Pasadena," Crimi, 1941, Flintridge Center Collection)

Albert Stewart, a member of the City Council, declared "the Negro problem" was the "Number One problem" facing the city and the "only sensible solution" was to keep Blacks out of white neighborhoods. (Stewart would later serve as mayor and be elected as a Republican representing Pasadena in the state Assembly.) Councilmember

Stewart co-founded the Pasadena Improvement Association “for the purpose of placing race restrictions on all of the Pasadena residential districts now occupied by Caucasians.” Its board of directors included Stewart, nine bankers, six real estate men and three attorneys.

The *Star-News* reported in 1939 that the Pasadena Chamber of Commerce “endorsed 100 percent the race restriction program of the Pasadena Improvement Association.” So did the Pasadena Realty Board, the Pasadena Junior Chamber of Commerce, the Pasadena Merchants’ Association, the Pasadena Civitan Club, and the Pasadena Property Owners Division.

The organization operated an office in downtown Pasadena, sending salesmen on commission door to door to ensure white homeowners signed racial covenants for their homes. While most readily agreed, there were holdouts. One of the salesman explained why: “Briefly, there are too many n. . . .-lovers in Pasadena.” Despite those “scattered objections,” by 1940 about 7,500 pieces of property had been restricted to white occupancy.

AGREEMENT AND DECLARATION OF RACE RESTRICTIONS

THIS AGREEMENT made and entered into this..... day of..... 19.....
by and between the subscribers hereto,

WITNESSETH:

THAT, WHEREAS each of the parties hereto is the owner of or has an interest or estate in, or a lien or charge upon, the real property designated and particularly described opposite their respective signatures, all of which said real property is situated in that portion of the City of Pasadena, County of Los Angeles, State of California, and within a certain district therein which is described as follows, to-wit:

Bounded on the North by.....

on the East by.....

on the South by.....

and on the West by.....

WHEREAS, the several parcels of land within the above described area which are now occupied are occupied, with only a few exceptions, exclusively by persons of the White or Caucasian race; and

WHEREAS, it is for the mutual benefit and advantage of each of the parties hereto, and for the benefit and advantage of each and every parcel of land within the district aforesaid, whether the same are now occupied or not, that each and every parcel of land within said area shall be limited and restricted to occupancy by, and that the same shall be occupied exclusively by persons of the White or Caucasian Race;

NOW THEREFORE, in consideration of the premises, and in consideration of the advantages to be derived by each of the parties hereto by the making of this agreement, and further, in consideration of the benefits which will accrue to the real property of the undersigned, respectively, or in which they are respectively interested, IT IS HEREBY MUTUALLY COVENANTED AND AGREED by and between the parties hereto that up to and including the first day of January, 19....., each and every of the lots or parcels of land designated and particularly described opposite the respective signatures of the parties hereto shall be subject to the following restriction and covenant which shall apply to and be binding upon the parties hereto, their and each of their heirs, devisees, executors, administrators, successors and assigns, namely:

That no portion or part of said lots or parcels of land shall be used or occupied by, or be permitted to be used or occupied by, any person not of the White or Caucasian race. That no person shall live upon said property at any time whose blood is not entirely that of the Caucasian race, but if persons not of the Caucasian race are kept thereon by such Caucasian occupant strictly in the capacity of servants or employees of such occupant, such circumstances shall not constitute a violation of this covenant.

IT IS UNDERSTOOD AND AGREED that said covenant is made for the benefit of each lot or parcel of land described after the respective signatures of the parties hereto as against each and every other of said parcels or portions thereof, and that said covenant is made for the benefit of each party hereto, and that said covenant shall operate as a covenant running with the land, and that the same is created as mutual, equitable servitude in favor of each of said lots or parcels as against each and every other of said lots or parcels.

IT IS FURTHER UNDERSTOOD AND AGREED, and it is hereby expressly declared, that the foregoing covenant shall inure to the benefit of and bind each and all of the parties hereto; and that said covenant shall extend to and shall bind the heirs, devisees, executors, administrators and assigns of the parties hereto, and of each of them, and that any breach of said covenant or agreement may be enjoined, abated or remedied by appropriate proceedings by the parties hereto, or by any of them, their and each of their heirs, devisees, executors, administrators and assigns; or compensation recovered for any and all damage which may be occasioned by any such breach.

IT IS FURTHER COVENANTED AND AGREED that, in case it shall be found convenient or expedient to do so, the signature of any party or parties may be subscribed upon separate instruments containing substantially the same covenants and agreements as herein contained, instead of having all of such signatures appended to one single copy of the same, and that when thus executed all such instruments and copies of the same shall be read together and shall be deemed to be and that the same shall constitute one single instrument, and that the covenants and agreements as contained and set forth in any and all such instruments shall be deemed to have been made with and shall bind, and shall inure to the benefit of each and every other person who shall have signed this agreement or duplicate copies of the same, his and each of their heirs, executors, administrators and assigns, and shall have the same force and effect as though the signatures of all parties had been appended to a single copy of this agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and have set opposite our respective names a description of the property owned by us, respectively, or in which we are interested, and which is affected by the covenants of this agreement.

The form used by the Pasadena Improvement Association for "white only" covenants. (Source: "The Social Status of the Negro in Pasadena," Crimi, 1941, Flintridge Center Collection)

In his 1940 master's thesis titled "The Social Status of the Negro in Pasadena, California," USC sociology student James E. Crimi found pervasive hostility to Black neighbors in a survey administered to 244 white residents. When asked, "If a Negro family were to move into your neighborhood, would you . . . ," not a single respondent chose the option of "be pleased." Fourteen percent checked that they would "accept them as neighbors," the same ratio as those who would "just ignore their presence." But 41.1% responded they would "agitate to have them removed" and 30.9% selected the answer that they would move out of the neighborhood.



Albert Stewart, the Pasadena Councilmember (later Mayor and State Assemblymember) who led the drive for "white only" covenants (Pasadena Library Collection)

At the time, the Black population in the city was under 5%. Blacks had lived in Pasadena from before the city was incorporated in 1886. Most had settled outside the original city limits where land was cheaper. As Pasadena grew, those areas were annexed. New white residents began to surround them. Almost entirely confined to two areas (in northwest and southwest Pasadena) the growing Black population sought opportunities for homes in areas restricted to whites. That was the background for *Fitzgerald v. Raines*.

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Ordered to leave their home by the Superior Court decision, Ross and Helen Raines took their case to the Court of Appeals. The justices upheld the trial court's injunction. That's when they enlisted Loren Miller, a co-founder of the *Los Angeles Sentinel* newspaper, who'd become a prominent civil rights attorney.

"The courts ordered an offending Negro's ouster with no thought and no responsibility for his housing," Miller recalled decades later. "If he refused to move in response to an injunction, he was in contempt of court and jailed."

In taking the Raines case to the California Supreme Court, Miller knew the law was not on their side. The Appeals Court decision had affirmed "the rule which has been established in California since 1919, that a provision in an agreement that property shall not be used or occupied by a person other than of the Caucasian race is valid and enforceable." So Miller shrewdly attacked the white plaintiffs' claim that they had been damaged by the Raines family moving onto Palisade Street. He cited trial witness Sadie Wright's testimony that "I have lived in Pasadena over forty years and have been familiar with the area wherein is located Palisades, Del Monte, Forrest and Washington streets since it was an orange grove; that over twenty years ago only white people lived in that area but at the present time, with the exception of the lots covered by the race restriction

agreement, it is occupied principally by negroes and is more suitable for the occupancy of negroes than of white people.”



Loren Miller, a co-founder of the Los Angeles Sentinel newspaper, who became a prominent civil rights attorney. (Source: Wikipedia)

While the trial court judge and the justices on the court of appeals had relied on the settled precedents upholding race covenants, Miller's adroit brief forced California's Supreme Court justices to analyze the facts in the *Raines* case. "It is, of course, true that race restriction agreements as to the use and occupancy of real property are normally recognized as valid and enforceable by injunction," the justices acknowledged. However, Miller's arguments persuaded the justices that "subject to certain broad principles, each case of this character must be determined upon the facts peculiar to it." In this case, they noted, "defendants contend that the undisputed evidence . . . demonstrates such change in the character of the surrounding neighborhood . . . since the making of the race restriction agreement in 1927 as to bring this case as a matter of law within the oft-applied principle that equity courts will not enforce restrictive covenants by injunction in a case where, by reason of a change in the character of

the surrounding neighborhood, not resulting from a breach of the covenants, it would be oppressive and inequitable to give the restriction effect, as where the enforcement of the covenant would have no other result than to harass or injure the defendant, without benefiting the plaintiff.” Citing Wright’s testimony about the change in the nearby neighborhood, the justices noted the “block of which the restricted lots are a part has been invaded” and “is now predominantly negro, ‘more suitable for negroes than for white people,’ and that several of the lots included in the agreement are adjoined by lots on which negroes reside.”

As a result, six of the seven Supreme Court justices declared “the judgment is reversed.” In other words, they accepted Miller’s argument, finding that the “invasion” of nearby Black residents rendered Hazel Fairchild’s claim moot that she’d been “injured and damaged” by the Raines. It was a victory for the Raines family staying on Palisade Street. But it stopped short of invalidating the principle of racial exclusion.

Prophetically, the seventh justice went further than his colleagues. Justice Roger Traynor concurred in their decision, but filed his own lengthy opinion that “the findings of the trial court not only fail to provide an adequate basis for determining whether enforcement of the restriction in the light of changed conditions would impose great hardship upon the defendants with little or no benefit to the plaintiffs, but to consider whether enforcement would be contrary to the public interest in the use of land in urban communities where people are concentrated in limited areas.”



California Supreme Court Justice Roger Traynor. (Source California Museum)

Traynor did not go so far as to find racial covenants unconstitutional. But he made a powerful argument that residential segregation damaged the public interest. “There is a public interest in (easing) the congestion of the limited residential districts for colored people. That congestion is a consequence of residential segregation of the colored population accomplished, not by ordinances, which would be unconstitutional, but by agreements between private persons, which the courts have recognized as valid.”

In his concurring opinion, Traynor quoted the Report of the Committee on Negro Housing of the President’s Conference on Home Building and Home Ownership: “Segregation ... has kept the Negro occupied sections of cities throughout the country fatally unwholesome places, a menace to the health, morals and general decency of cities, and plague spots for race exploitation, friction and riots.” He went on to observe, “The problem of race segregation cannot be solved by the courts alone, for it involves emotions and convictions too deeply

imbedded in the social outlook of men to be uprooted overnight by judicial pronouncements. Nevertheless the problem must be confronted step by step, however provisional the solution, with regard both for the interests of minority groups and the general public interest. It must be recognized that the steady migration of southern negroes and the influx of negroes into urban communities in response to the increasing demands of industry for labor, together with race segregation have made it impossible for many negroes to find decent housing in large centers of population.”

“It is also necessary to determine whether maintenance of this barrier would deprive the colored population of any feasible access to additional housing,” Justice Traynor wrote, “and compress it within the inflexible boundaries of its present district at the risk of a congestion whose evils would inevitably burst the bounds of that district.”

“The courts,” Traynor wrote, “as the agencies of the state confronted with the problem of enforcing racial zoning by private agreements, must consider all of the factors that affect the public interest. It is pertinent to recall the words of Judge Cardozo: ‘The Multiple Dwelling Act is aimed at many evils, but most of all it is a measure to eradicate the slum. It seeks to bring about conditions whereby healthy children shall be born, and healthy men and women reared, in the dwellings of the great metropolis. To have such men and women is not a city concern merely. It is the concern of the whole State. Here is to be bred the citizenry with which the State must do its work in the years that are to come. The end to be achieved is more than the avoidance of

pestilence or contagion. The end to be achieved is the quality of men and women ... If the moral and physical fibre of its manhood and womanhood is not a State concern, the question is, what is?"

Traynor concluded by declaring, "In the present case a residential district populated by colored people now surrounds the restricted area on three sides. The question whether the restricted area shall stand as a barrier against expansion of the negro district cannot be determined entirely by findings with regard to property values and the interests of property owners. It is also necessary to determine whether maintenance of this barrier would deprive the colored population of any feasible access to additional housing and compress it within the inflexible boundaries of its present district at the risk of a congestion whose evils would inevitably burst the bounds of that district."

SUPREME COURT OF CALIFORNIA

24 Cal.2d 818

Aug. 31, 1944.

HAZEL FAIRCHILD et al., Respondents,
v.
ROSS H. RAINES et al., Appellants.

Lester V. Peterman for Appellants.

Loren Miller, Willis O. Tyler, George E. Cryer and R. Alston Jones as Amici Curiae on behalf of Appellants.

McEachern & Ritchie for Respondents.

Hahn & Hahn and Lindstrom & Bartlett as Amici Curiae on behalf of Respondents.

SCHAUER, J.

Defendants have appealed from a judgment rendered by the court sitting without a jury, by which defendants Ross H. Raines and Helen Louise Raines (who are colored Americans) are "enjoined and restrained from using, occupying or residing prior to the 1st day of January, 1950, upon ... Lot No. 43 of the Palisades Tract in the [City of Pasadena,] County of Los Angeles, State of California," and by which defendants Frank F. Winsell and Mary Winsell, his wife (who are Caucasians), are "enjoined and restrained from permitting said defendants ... [Raines], or any other person not of the Caucasian race, to use, occupy or live upon said real property prior to the first day of January, 1950."

The Palisades Tract is a subdivision in the city of Pasadena embracing a total of sixty-nine lots, of which thirty-one front on Palisade Street (which runs east and west) in the block between Arroyo Boulevard on the west and Forest Avenue on the east, and the remaining thirty-eight lots front on the tract boundary streets (Arroyo Boulevard on the west, Forest Avenue on the east, and Washington Street on the south) and are all contiguous to and, either at the side or the rear, abut upon and adjoin some one of the lots fronting on Palisade Street.

Landmark 1944 California Supreme Court Decision in Fairchild v. Raines. (Source: California Supreme Court)

After winning *Fitzgerald v. Raines*, Miller broadened his fight against restrictive covenants. In 1945, he took on the case of Hattie McDaniel, the first black actor to win an Oscar. McDaniel had been sued in state court by an all-white homeowners association for buying a home in the tony West Adams District of LA. After Miller “electrified the courtroom” with his eloquent closing arguments, Judge Thurmond Clark found that “it is time that members of the Negro race are accorded, without reservations or evasions, the full rights guaranteed them under the 14th Amendment. Judges have been avoiding the real issue too long. Certainly there was no discrimination against the Negro when it came to calling upon its members to die on the battlefields in defense of the country in the war just ended.”

Two years later, that success led the NAACP to pair Miller with their chief counsel, Thurgood Marshall, to make the same argument before the United States Supreme Court. In the landmark case of *Shelley v. Kraemer*, Miller and Marshall persuaded the high court that judicial enforcement of racial covenants violated the Equal Protection Clause of the 14th Amendment to the Constitution.

“The undisputed facts disclose that petitioners were willing purchasers of properties upon which they desired to establish homes,” wrote six of the justices. “The owners of the properties were willing sellers. It is clear that, but for the active intervention of the state courts, supported by the full panoply of state power, petitioners would have been free to occupy the properties in question without restraint. These are not cases in which the States have merely abstained from action, leaving private individuals free to impose such discriminations as they see fit. Rather, these are cases in which the States have made available to such individuals the full coercive power of government to deny to petitioners, on the grounds of race or color, the enjoyment of property rights in premises which petitioners are willing and financially able to acquire and which the grantors are willing to sell.”

Ironically, the other three Supreme Court justices recused themselves from the case because they lived in homes covered by white-only covenants.



Pasadena in the 1940s (Pasadena Library Collection)

Even the landmark ruling in *Shelley v. Kraemer* was not the final end of racial covenants. As Lester Granger of the National Urban League complained, “desperately embattled Negrophobic real estate interests have brought in a new device.” While it was now the law of the land that courts could not enforce racial covenants against blacks buying properties, white plaintiffs countered by suing for damages from the white homeowners who sold to Blacks.

In Los Angeles, Olive Barrows and several other adjoining landowners, including Leola Jackson, had all signed whites-only covenants. When Jackson sold to a Black couple in 1950, Barrows

and the other landowners sought damages by suing Jackson in California state court. Jackson turned to Miller, who'd prevailed in both *Fairchild v. Raines* and *Shelley v. Kraemer*. *Barrows v. Jackson* went all the way to the U.S. Supreme Court. Miller argued that what the Court had outlawed directly in *Shelley* could not be sidestepped by exacting damages from the seller. In 1953, the Supreme Court agreed.

Residential race discrimination didn't end there, of course. Miller's legacy was that government could not enforce restrictions against selling to Blacks. But there was no legal protection against sellers refusing to sell or rent to Blacks.

To this day, Northwest Pasadena stands in stark contrast to the rest of the city, just as Justice Traynor predicted when he condemned the “evils” that would result from racist efforts to “deprive the colored population of any feasible access to additional housing and compress it within the inflexible boundaries of its present district.”

During the Civil Rights Era in 1963, the California State Legislature passed the Rumford Fair Housing Act, forbidding residential discrimination on the basis of “race, color, religion, national origin or ancestry.” California realtors immediately gathered signatures for the 1964 ballot to nullify the Rumford Act with an amendment to the State Constitution. Designated Proposition 13, their initiative specifically prohibited the State from “denying, limiting, or abridging the right of any person to decline to sell, lease or rent residential property to any person as he chooses.” In the State voter guide, supporters wrote the

amendment would “guarantee the right of all home and apartment owners to choose buyers and renters of their property as they wish, without interference by State or local government.” In the ballot argument against, the president of the Council of Churches of Southern California, a Catholic Bishop and California’s Attorney General argued it would “write hate and bigotry into the State Constitution.” Voters approved it by 66%. Two years later, the California Supreme Court struck it down, concluding Proposition 14 violated the equal protection guarantee of the federal Constitution. On appeal, the U.S. Supreme Court agreed.

A half-century later, the scars of Pasadena’s long history of neighborhood racial exclusion are still plainly visible. The area in southwest Pasadena where Blacks and Latinos once predominated was uprooted by redevelopment and freeway construction. To this day, Northwest Pasadena stands in stark contrast to the rest of the city, just as Justice Traynor predicted when he condemned the “evils” that would result from racist efforts to “deprive the colored population of any feasible access to additional housing and compress it within the inflexible boundaries of its present district.”

As philosopher George Santayana observed, “Those who cannot remember the past are condemned to repeat it.” Within the memory of people alive today, prominent Pasadena elected officials, judges, realtors, community leaders, businessmen, bankers, attorneys and civic organizations actively fought to exclude anyone “whose blood is not entirely that of the Caucasian race” from moving into white neighborhoods. Today, it is not the overt racism of restrictive covenants, but the invisible hand of the market that increasingly excludes people of color from moving into Pasadena’s single-family neighborhoods – and increasingly displaces them from the neighborhoods they have long occupied.

It took courage, hope and vision for Ross and Helen Raines, Loren Miller and Justice Roger Traynor to battle the evils of segregation. Will

we find the same courage, hope and vision to pursue housing access
in our own time?