

BUILDING OUR LEGACY: THE MURDER OF VINCENT CHIN*

ROLES (IN ORDER OF APPEARANCE)

NARRATORS 1 AND 2

BRUCE SAPERSTEIN	<i>Defense attorney for Ebens, state criminal case</i>
JUDGE KAUFMAN	<i>State judge, Wayne County Circuit Court, state criminal case</i>
RONALD EBENS	<i>Defendant</i>
THEODORE MERRITT	<i>Government attorney, first federal trial</i>
DAVID LAWSON	<i>Defense attorney for Ebens, first federal trial</i>
RACINE CALWELL	<i>Government witness; Fancy Pants Lounge dancer</i>
JIMMY CHOI	<i>Government witness; celebrated with Chin at Fancy Pants Lounge</i>
JUDGE TAYLOR	<i>Federal district judge, Eastern District of Michigan, first federal trial</i>
FRANK EAMAN	<i>Defense attorney for Ebens, first federal trial</i>
CLERK	<i>First federal trial</i>
FOREMAN	<i>First federal trial</i>
JUDGE ENGEL	<i>Federal circuit judge, Sixth Circuit</i>
LIZA CHAN	<i>Attorney who helped found the American Citizens for Justice; conducted witness meeting with Choi, Koivu, Sirosky</i>
GARY KOIVU	<i>Government witness; celebrated with Chin at Fancy Pants Lounge; participated in Liza Chan meeting</i>
ROBERT SIROSKY	<i>Government witness; celebrated with Chin at Fancy Pants Lounge; participated in Liza Chan meeting</i>

TIMELINE OF EVENTS

Jun. 19, 1982	Vincent Chin is savagely beaten. Chin dies four days later.
Mar. 16, 1983	State court sentencing proceeding: Ebens and Nitz are each sentenced to three years probation, a \$3,000 fine, and court costs.
Mar. 31, 1983	American Citizens for Justice (ACJ) is founded.
May 17, 1983	Liza Chan meets with Choi, Koivu, and Sirosky.
Jun. 1983	ACJ meets with the Department of Justice.

* During the 2008 presentation of Building Our Legacy: The Murder of Vincent Chin, the presenters used a slideshow to accompany the re-enactment. The slideshow was prepared by Jury Group, <http://www.jurygroup.com>. The slideshow is on file with the authors and available at <http://lawreview.aabany.org/>.

Nov. 1983	A federal grand jury indicts Ebens and Nitz for interfering with Chin's right to use and enjoy a place of public accommodation on account of his race.
Jun. 5, 1984	First federal trial begins (Eastern District of Michigan).
Jun. 28, 1984	The jury finds Ebens guilty.
Sept. 11, 1986	Ebens' conviction is reversed by the Sixth Circuit Court of Appeals. On remand, a motion to change venue is granted, and the second federal trial is held in Cincinnati.
May 1, 1987	The Cincinnati jury acquits Ebens.

INTRODUCTION

NARRATOR 1:¹ This much is certain. On June 19, 1982, just outside Detroit, Vincent Chin -- twenty-seven years old, of Chinese ancestry, a working-class American citizen, engaged to be married the following week -- went out with friends for a bachelor's party. At a strip club, they encountered two men, Ronald Ebens and his stepson, Michael Nitz.

There was an altercation. It continued outside. Some time later and a few blocks away, Nitz held Chin down as Ebens swung a baseball bat. The bridegroom's head was split open -- blood, spinal fluid, and cerebral matter pooled onto the pavement beneath him as he collapsed into a coma.

Chin died four days later.

In state court, Ebens and Nitz faced criminal charges. They accepted a plea bargain. At the sentencing, the prosecutors failed to appear. Judge Charles Kaufman imposed on each man three years' probation, a \$3,000 fine, and court costs.

Everything else is disputed. There would be two federal criminal trials, a protest movement, and more publicity than had ever been devoted to any incident involving an Asian American.² Yet the context, the causes, the consequences of "the Vincent Chin case" -- all have been the subject of great controversy. Although the Vincent Chin case has ceased to be infamous, for Asian Americans it has never stopped being iconic.

NARRATOR 2: The Vincent Chin case is very much a part of our legacy as Asian Americans. This morning we will explore that legacy by re-enacting portions of the court proceedings for you, drawing from the transcripts and court decisions. The words you will hear are the actual words, with minor editing for length.

¹ In addition to the actual transcripts from the court proceedings and court opinions, the basic background information in this reenactment script is largely derived from WHO KILLED VINCENT CHIN? (Film News Now/WTVS 1988); HELEN ZIA, ASIAN AMERICAN DREAMS: THE EMERGENCE OF AN AMERICAN PEOPLE 55-81 (2000), and Frank H. Wu, *Embracing Mistaken Identity: How the Vincent Chin Case Unified Asian Americans*, 19 HARV. KENNEDY SCH. ASIAN AM. POL'Y REV. 17 (2010).

² The case also spawned two civil suits. A suit for the unlawful death of Vincent Chin was settled out of court on March 23, 1987 with Nitz agreeing to pay \$50,000 and Ebens agreeing to pay \$1.5 million. *Vincent Chin v. Ebens*, No. 83-309788 CZ (Mich. 3d Cir. Ct. 1983). In fact, very little of the money was paid. In April 1988, Ebens sued Chrysler for \$10,000 and reinstatement on the grounds of wrongful termination. Chrysler claimed that the action was barred by the statute of limitations. *Ebens v. Chrysler Corp.*, No. 88-810078 CZ (Mich. 3d Cir. Ct. 1988).

THE STATE COURT SENTENCING³

NARRATOR 1: We begin with the sentencing in Wayne County Circuit Court on March 16, 1983. Ebens and Nitz were charged with second-degree murder, but the prosecutors offered a plea bargain to manslaughter. Both men accepted, with Ebens pleading guilty and Nitz no contest.

At sentencing, both men were represented by counsel. As was common at the time because of the high volume of cases and lack of resources in Wayne County, no prosecutor appeared. Nor were the victim's family and friends notified. Defense lawyer Bruce Saperstein spoke on behalf of Ebens, and argued that Chin was the instigator.

SAPERSTEIN: Your Honor, but for the physical assault by the victim in this case, the victim initiating the physical assault, this crime would never have been committed

Mr. Ebens and Mr. Nitz were seated, and the victim walked up and punched Mr. Ebens in the mouth. During the scuffle Mr. Nitz had his head cut open, was bleeding profusely and, in fact, required stitches Either side, Your Honor, could have been the victim in this case. They could have changed places in this particular case.

I think Your Honor would agree in looking at the background, and the background of Mr. Ebens is impeccable, that Mr. Ebens is not a heinous criminal. I don't believe that rehabilitation is even in order in this case. I'm confident this would never happen again And God knows that these gentlemen would like to see this man back, but we can't change what happened here.

With respect to punishment, Your Honor, Mr. Ebens is being punished every day of his life over this incident. He can't change that. He has to live with this. His work background is excellent, 17 years at Chrysler

JUDGE KAUFMAN: Mr. Ebens, do you wish to say something?

EBENS: Only that I'm deeply sorry about what happened. If there is any way I could change it, I sure would.

JUDGE KAUFMAN: [pausing to read report] I was looking to see if there was any background on the victim. Do you have any background on him? . . . Did the victim have a criminal record?

SAPERSTEIN: I don't have any background on him either way, Your Honor.

[pause]

JUDGE KAUFMAN: It's the judgment of this Court that each of the defendants be placed on probation for a period of three years. In addition, I will require that each of you pay \$260 a year

³ The following is derived from the Transcript of the Sentencing Hearing at 5-7, People v. Ebens, No. 82-273374 (Mich. 3d. Cir. Ct. Mar. 16, 1983).

costs at the rate of \$25 per month. That each of you pay an additional fine in the amount of \$3,000, at the rate of \$100 per month. I will leave the question of restitution to civil proceedings.

NARRATOR 2: Judge Kaufman did not explain his reasoning for imposing a sentence of probation, but months later, in an interview, he stated that:

JUDGE KAUFMAN: These weren't the kind of men you send to jail You don't make the punishment fit the crime. You make the punishment fit the criminal.⁴

THE COMMUNITY REACTION

NARRATOR 1: Traditionally, Asian Americans had believed that they should not make waves, and Asian Americans had always been reluctant to discuss race. Asian-Americans did not know the language of civil rights, and in the early 1980s, the subject of race was largely black and white.⁵

The Asian-American community, however, was galvanized by the notion that a Chinese-American could be beaten to death because of his race, with his killers sentenced only to probation and a fine. The two men were white auto workers in Detroit -- one was out-of-work -- at a time when the U.S. auto industry was under tremendous pressure from Japanese imports.⁶ Detroit in 1982 was perhaps the hardest place in America to be Asian-American. You were the face of the enemy. Anti-Japanese sentiment was at its height. There was taunting, violence, and

⁴ In the same interview with the *Detroit Free Press*, Judge Kaufman further opined, "We're talking here about a man who's held down a responsible job with the same company for 17 or 18 years, and his son who is employed and is a part-time student. These men are not going to go out and harm somebody else. I just didn't think that putting them in prison would do any good for them or for society." Judith Cummings, *Detroit Asian-Americans Protest Lenient Penalties for Murder*, N.Y. TIMES, April 26, 1983, at A16 (quoting the *Detroit Free Press* interview); see also ZIA, *supra* note 1, at 60. Judge Kaufman also rejected accusations that his experience in a Japanese prisoner of war camp during World War II had left him with an anti-Asian sentiment. See *Judge Stunned by Outcry Over Chin Case*, ASSOCIATED PRESS, May 11, 1983 ("It was a bad experience, but it doesn't affect any of my feelings against any group of people I'm one of the few judges to know what it feels like to be in prison for a long time.").

⁵ The "bipolar model" or the "black/white binary paradigm" is the conception of race in America as consisting primarily of only two constituent racial groups, black and white, where all other racial groups are viewed through this paradigm. See, e.g., ANDREW HACKER, TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL (1st ed. 1992). This model has come under criticism in recent decades. See, e.g., FRANK H. WU, *The Model Minority: Asian American "Success" as a Race Relations Failure*, in YELLOW: RACE IN AMERICA BEYOND BLACK AND WHITE 39-77 (2002); Robert S. Chang, *Dreaming in Black and White: Racial-Sexual Policing in The Birth of a Nation, The Cheat, and Who Killed Vincent Chin?*, 5 ASIAN L.J. 41 (1998) ("This [racial paradigm] limits people's understanding and willingness to engage with the history and current state of Asian Americans in the United States."); Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CALIF. L. REV. 1213, 1219-20 (1997). For a chronicling of the development of the Asian American civil rights movement against this background, see WILLIAM WEI, THE ASIAN AMERICAN MOVEMENT (1993).

⁶ See MICHELINE MAYNARD, THE END OF DETROIT: HOW THE BIG THREE LOST THEIR GRIP ON THE AMERICAN CAR MARKET (2004) (discussing the impact of imports on Detroit's historical control of American automobile manufacturing). See also THOMAS J. SUGRUE, THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT (Princeton Classic ed. 2005); REYNOLDS FARLEY ET AL., DETROIT DIVIDED (2002) (discussing the disparate effects of the decline of Detroit's automobile manufacturing dominance on whites and blacks).

public displays -- including scenes of politicians and union leaders demolishing Japanese imports -- that “Jap crap” -- with sledge hammers.⁷

NARRATOR 2: It was against this setting that Asian-Americans found cause to speak up. For the first time, Asian Americans crossed ethnic and socio-economic lines to join together -- to seek justice for Vincent Chin.

Led by, among others, attorney Liza Chan, journalist Helen Zia, and Vincent’s mother, Lily Chin, a number of Asian Americans formed American Citizens for Justice.⁸ Their efforts to publicize the case were remarkably successful. The extensive publicity was virtually unanimous in its criticism of the sentence, the judge, the prosecutors, and the two defendants. The case was described as an “outrage,” the product of “racism.”⁹

THE FEDERAL PROSECUTION

NARRATOR 1: In June 1983, Liza Chan, Lily Chin, and others met with the Justice Department in Washington, D.C., to urge the Government to bring federal criminal civil rights charges against Ebens and Nitz.¹⁰ Because of ACJ’s efforts, the Justice Department received thousands of letters and signatures on petitions urging it to prosecute Ebens and Nitz. In November 1983, a federal grand jury in Detroit indicted Ebens and Nitz for interfering with Chin’s right to use and enjoy a place of public accommodation¹¹ -- the Fancy Pants Lounge -- on account of his race, and conspiracy to do the same.¹²

The case was assigned to Judge Anna Diggs Taylor, one of the first African-American women to be appointed to any federal court in the country.¹³

The case was extensively litigated, with numerous pretrial motions, including a motion to dismiss the indictment on the grounds the federal civil rights law in question applied only to blacks and that “Orientals” -- who were considered by many to be white -- were not protected.¹⁴

⁷ See ZIA, *supra* note 1, at 58. For more background on the rampant anti-Japanese sentiment in Detroit at the time, see DANA FRANK, *BUY AMERICAN: THE UNTOLD STORY OF ECONOMIC NATIONALISM* (1999); SHEILA K. JOHNSON, *THE JAPANESE THROUGH AMERICAN EYES* (1991). Anti-Asian racist slurs used by auto-industry and trade executives are documented in Jan Wong, *Asia Bashing: Bias Against Orientals Increases with Rivalry of Nations' Economies*, WALL ST. J., Nov. 28, 1986, at 1.

⁸ See ZIA, *supra* note 1, at 66-67.

⁹ Attacking Judge Kaufman’s reasoning for the sentence he imposed, *Detroit Free Press* columnist Nickie McWhirter wrote, “You have raised the ugly ghost of racism, suggesting in your explanation that the lives of the killers are of great and continuing value to society, implying they are of greater value than the life of the slain victim.” ZIA, *supra* note 1, at 60 (quoting the column).

¹⁰ See generally AMERICAN CITIZENS FOR JUSTICE, CONFIDENTIAL REPORT ON THE VINCENT CHIN CASE TO THE U.S. DEPT OF JUSTICE, CIVIL RIGHTS DIVISION (1983) (setting forth the factual and legal bases supporting prosecution of Ebens and Nitz for federal civil rights violations).

¹¹ 18 U.S.C. §§ 2, 245(b)(2)(F) (1988). Vincent Chin became the first Asian American victim to be covered by this provision. Stewart Kwoh, *Building Bridges to Justice*, 9 ASIAN L.J. 201, 203 (2002).

¹² 18 U.S.C. § 241 (1988) (conspiracy charge).

¹³ Anna Diggs Taylor was appointed by President Carter in May 1979 to the U.S. District Court for the Eastern District of Michigan. Sworn in on November 15, 1979, Taylor became the first African-American woman to serve as a federal judge in Michigan.

¹⁴ See *infra* note 30.

There was also a motion to change venue because of the adverse pretrial publicity. Both motions were denied.

NARRATOR 2: Trial commenced on June 5, 1984. It was undisputed that Ebens and Nitz killed Vincent Chin. But there was sharp dispute over the issue of motivation—the Government had to prove Ebens and Nitz acted because of Chin’s race.

We turn now to the opening statements from United States versus Ronald Ebens and Michael Nitz, the first of the two federal trials. Theodore Merritt, from the Justice Department, opened for the Government, while defense attorney David Lawson spoke for Ebens.

THE OPENINGS¹⁵

MERRITT 1: May it please the Court. Ladies and gentlemen of the jury. . . .

The evidence will show that on June 19, 1982, a brutal crime was committed on the streets in Highland Park. On that night, the defendant, Ronald Ebens, helped by his co-defendant, Michael Nitz, repeatedly beat with a baseball bat, a Chinese-American citizen of the United States by the name of Vincent Chin. And beat him so bad that he died four days later from massive head injuries.

And the evidence will prove that Vincent Chin died at the hands of these defendants *because* he was a Chinese-American, and because he was enjoying the entertainment of a public bar.

The evidence will show that this fatal assault was preceded an hour or so earlier by a confrontation at that bar, between Vincent Chin and the defendants.

The confrontation was caused by Ronald Ebens’ barrage of obscenities, baiting and racial insults directed at Vincent Chin.

What happened in Highland Park that night was a story of ugly racism which turned violent. . . .

LAWSON: Now, the burden is on the government to prove not only that Ronald Ebens and Michael Nitz were responsible for the death of Vincent Chin, but to show that they killed Vincent Chin because of his race. And with the intent to deny his right to use the Fancy Pants Lounge.

Now, we do not believe that the evidence will prove beyond a reasonable doubt that Mr. Ebens acted because of Vincent Chin’s race. We believe the evidence will show that this was not a civil rights case, but a fight between angry and intoxicated men that ended in the death of one of them.

NARRATOR 1: Lawson gave Ebens’s version of the altercation. He also attacked the Government’s witnesses and suggested the issue of race was a fabrication.

¹⁵ The following is derived from the Transcript of the Trial Proceedings of June 13, 1984, United States v. Ebens, No. 83-60629 (E.D. Mich. 1984).

LAWSON: The witnesses will tell you that Ebens was in an outrage and he began swinging the bat at Vincent Chin. The bat struck Mr. Chin several times, including the head, the neck and other parts of his body. Mr. Chin fell in the street with a mortal wound to his head. And he died four days later.

. . . As a result, Ronald Ebens was charged with murder. He pleaded guilty in the Wayne County Circuit Court to manslaughter.

Then something happened in that court on March 16, 1983, which set off a chain of events which has resulted in this trial today. And that was that Ron Ebens got probation for killing Vincent Chin.

Naturally, such a sentence in a case such as this upset and enraged Mr. Chin's family and friends. And also members of the community. And you will hear evidence that after the sentence of probation, Mr. Chin's friends and others met and tried to come up with some evidence that would turn this homicide into a federal matter. We expect that the government will try every opportunity to inject some evidence of racial sayings or racial acts into the case.

Because of the massive publicity in this case, because of the influence placed on the witnesses, because of the strong beliefs held by some members of the community that there was evidence to support the government's charges, we expect that the testimony of witnesses will be distorted or changed to support the government's charges.

THE TESTIMONY

NARRATOR 2: One of the most important witnesses was Racine Calwell, one of the dancers at the Fancy Pants Lounge. As one of the jurors revealed in a post-trial interview, Calwell was seen as a neutral witness who had no reason to lie.¹⁶ Her testimony was critical on the issue of motivation.

DIRECT EXAMINATION OF RACINE CALWELL by MERRITT¹⁷

Q. Where are you employed, Ms. Calwell?

A. Fancy Pants.

Q. Now, Ms. Calwell, let me ask you to direct your attention to the night of June 19, 1982, were you working at the Fancy Pants?

A. Yes, I was.

Q. And did you see Vincent Chin in the Fancy Pants that night?

A. That evening, yes.

¹⁶ See ZIA, *supra* note 1, at 79 ("The jury foreperson explained to filmmakers Christine Choy and Renee Tajima in their documentary *Who Killed Vincent Chin?* that Racine Colwell's testimony was the clincher—in Detroit, it was clear that 'you motherfuckers' meant the Japanese, or people who looked like them.").

¹⁷ Transcript of the Trial Proceedings of June 13, 1984, *Ebens*, No. 83-60629.

- Q. And what was his mood when you saw him?
A. He was laughing and joking.
- Q. Now, did you dance that night?
A. Yes, I did.
- Q. And did you see Vincent and his friends while you were dancing?
A. Yes, I did.
- Q. How long did you dance anyway?
A. Approximately twelve minutes.
- Q. And how was Vincent acting while you were up on the stage?
A. Happy and laughing.
- Q. Now what did you do after you finished dancing?
A. I got off the stage and went back to freshen up in the dressing room. . . . Then I came back out to talk to the customers.
- Q. And did anything happen while you were out there talking to the customers?
A. Yes, I came close to a couple of people that was loud talking, like arguing, and I turned around and I seen Vincent and a couple of people arguing.
- Q. And do you see the man in the courtroom today you saw arguing with Vincent?
A. Yes.
- Q. And can you point him out, if you can?
A. He has on the blue suit and blue tie and light blue shirt. **[pointing at EBENS]**
- Q. And what did you hear the defendant say?
A. All I heard him say when I turned around is, "it's because of you little mother fuckers that we're out of work."
- Q. And after you heard that, what else did you hear?
A. Vincent came back with a remark like "I'm not a little mother fucker," and then it was stated to him, "well, I'm not sure if you're a big one or a little one." And by that time, he got mad.
- Q. And who said that to Vincent?
A. That gentleman over there. **[pointing at EBENS]**
- Q. Did you hear Vincent make any comments directed at the defendant?
A. No, other than, "I'm not a little mother fucker."
- Q. Did he ever call the defendant anything?
A. Not that I heard, no.

Q. In what tone of voice was the defendant talking to Vincent?

A. A loud tone of voice.

Q. And what happened then?

A. He pushed him on the shoulder, you know, kind of hard and pushed him. And then they got into the fight, and the younger fellow jumped into it and started helping him.

Q. And who is that?

A. That's the gentleman that started helping the older man when he started hitting Vince.

Q. And did you subsequently learn his name?

A. Yes. Michael Nitz.

CROSS-EXAMINATION OF RACINE CALWELL by LAWSON¹⁸

NARRATOR 2: David Lawson cross-examined for Mr. Ebens.

Q. [Mr. Ebens] was speaking in a loud tone of voice?

A. Like an argument-like. If I was arguing with somebody.

Q. Was he shouting?

A. Yes, I could hear him over the music.

Q. Now, when he was shouting, what did you hear him shout?

A. "Because of you little mother fuckers, we are out of work."

Q. And then Vincent responded?

A. "I am not a little mother fucker."

Q. Okay. Now, when you were making the rounds and talking to customers, is that part of the business also?

A. Yes.

Q. And were you soliciting customers?

A. No, I was not.

Q. Were you asking them if they wanted a lap dance?

A. No.

Q. Vincent was a friend of yours?

A. A customer. Not like a personal friend, no.

Q. But you liked him?

A. Yes.

¹⁸ Transcript of the Trial Proceedings of June 14, 1984 at 4-23, *Ebens*, No. 83-60629.

- Q. And you liked to see him come in?
A. Yes.

NARRATOR 1: Another important witness was Jimmy Choi. He and two other of Vincent's friends, Gary Koivu and Bob Sirosky, were celebrating with Vincent that night. On direct examination, Choi described the events leading up to the bachelor party, and then testified about the encounter with Ebens and Nitz.

DIRECT EXAMINATION OF JIMMY CHOI by MERRITT¹⁹

- Q. How loud was the music on the stage?
A. It was not blasting like, but it was just the volume was normal.
- Q. So you could carry on a conversation with the person next to you?
A. Yes, Gary.
- Q. And what about the people who were across the stage from you? Could you hear what they were saying in the conversation?
A. No, I didn't pay too much attention at first. Then, after a while, I heard a few things.
- Q. What did you hear and where did that come from?
A. I was in the bar for about 15, 20 minutes; then I heard someone mention foreign cars from across the stage. I didn't pay too much attention. I just glanced around and resumed talking to Gary.
- Q. Did you hear anything else coming from that side of the stage?
A. Then I heard Vincent saying something first, okay. He was talking across the stage.
- Q. And did you hear any other statements from the men again across the stage?
A. Yes, I heard the word "Nips," calling toward our direction; and I recall Vincent saying that "We are not Japanese."
- Q. So that is what you referred to when you understood them to mean --
A. I understood it to be a slang for Japanese.
- Q. Now, when you looked over and you saw -- well, did you see who was making the statements?
A. Yes.
- Q. Do you see him in the Courtroom?
A. Yes.
- Q. Can you point him out --
A. Yes. **[pointing at EBENS]**

¹⁹ The following is derived from *id.* at 121-53.

MERRITT: May the record reflect that the witness had identified Defendant Ebens.

JUDGE TAYLOR: Yes.

Q. Now, when you looked over, was he looking over on your side of the table when he said “Nips?”

A. Yes, across in our direction.

Q. Now, did there come a time when you heard some more words exchanged across the table?

A. Yes. I heard Vincent say in a loud voice, “Don’t call me a mother fucker. I am not a mother fucker.”

Q. And then what?

A. Then, I heard the gentleman say “Big fucker, little fucker, we are all fuckers.”

Q. What happened after he made that statement?

A. Vincent kept on saying, “Don’t call me a mother fucker,” then, he got mad and said, “Come on, let’s get outside.”

Q. And what did Vincent do?

A. He came around the stage and went over to where the two gentlemen were sitting, the man with the grey hair stood, and Vincent punched him.

Q. Then what happened.

A. Then they started exchanging blows.

NARRATOR 2: Choi continued to describe the scuffling in the bar, and then he moved on to what happened outside.

Q. And what did they do?

A. They just went to the car, lifted up the hatch back, and pulled out a baseball bat.

Q. Did you see which one got the baseball bat?

A. The man there. **[pointing at EBENS]**

Q. The man you identified as Mr. Ebens?

A. Yes.

Q. And what did he do when he got the baseball bat?

A. He started in a – not a run, something like a trot, holding the bat like this; and Vincent said, “I am not going to fight you with a baseball bat.” Then they kept on coming, so Vincent ran away from them.

Q. And they pursued Vincent?

A. Yes, they did.

NARRATOR 1: Choi explained that Ebens and Nitz were unable to catch Chin. They returned, and asked the other two members of their group, Gary Koivu and Bob Sirosky, “Where is your friend.” Choi testified that when Ebens and Nitz saw him, they said, “Let’s get *this* little fucker.” At that point, Choi ran away as well. He eventually found Vincent, and the two stopped at a parking lot in front of a McDonald’s. We continue with Choi’s direct testimony.

Q. Then what happened?

A. Well, we were still sitting. Then all of a sudden, I heard Vince say, “Scram.” I turned around and I saw the two men right behind us, three to five steps.

Q. And what did you do?

A. Well, I scrambled. I ran towards north of McDonald’s right off the bat.

Q. And how far did you run?

A. Thirty yards, then I turned back.

Q. What did you see?

A. I saw Vincent running across, just about getting to the median of the cars; then, the younger man came up and tried to grab him from behind, pull him around. . . . Then they were scuffling and the older man came with the bat.

Q. And what did you see when he approached Vincent with the bat?

A. He approached. Vincent was still trying to get away from him; and then, the older man – he could not run too fast, he kind of hobbled -- he took a swing at Vincent’s knees.

Q. Then what happened.

A. At that point, on the knees, one swing; upper section on Vincent, and he blocked like this.

Q. And then what happened? What did you see Vincent doing?

A. Well, he was going down slowly like this; and the old man took a swing right at his head.

Q. What did you do?

A. I don’t know. I was like I couldn’t believe it. I was going, “I cannot believe it.”

Q. And what else did you see?

A. It seemed like slow motion. Vincent was going down; then I saw another blow; then, he was kind of in a crawling position, like this; and then it was in a frenzy like, while he was swinging, he was saying something which I could not hear. He kept mumbling.

Q. How many times did you see him swing the bat?

A. The first blow, I saw it very vividly.

- Q. And where did that blow land?
A. Right here. **[indicating the side of the head]**
- Q. And after that?
A. One more blow to the head while Vincent was going down. He kept swinging, and I don't know whether it was connecting or not, but I could not believe it.
- Q. And what did you do?
A. Well, I ran back, I just ran toward the direction right to Vincent.
- Q. And what did you see when you got there?
A. All of a sudden, I saw guns, service guns, and then, I stopped abruptly and I saw a black man holding the gun. . . . He pulled out a badge, like that, and told the older man to drop his bat.
- Q. Now, when you went over to Vincent, was he conscious?
A. He was still conscious.
- Q. Was he saying anything?
A. Yes, I cradled his head and I said, "Hey, Vincent, are you all right?" And he was saying, "Fight. Fight. It is not fair."
- Q. Was he speaking Chinese?
A. In Chinese.
- Q. And then what did you do?
A. I said, "somebody get a bloody ambulance." I didn't see anyone move; so I ran inside McDonald's . . . and I called the ambulance.
- Q. Then, did you go back outside?
A. Yes. I ran straight to Vincent.
- Q. And was he still conscious?
A. He was still conscious . . . and then I said, "Okay, Vincent." I shook his hand, "Snap up, snap up, snap up. The ambulance will be right here." I was holding his hand all that time.
- Q. Now, did you travel with him in the ambulance?
A. Yes, I did.
- Q. And did you say anything to the defendants before you got in the ambulance?
A. Yes. . . . I saw them talking to the police officers saying something like, "I didn't mean to hurt this boy." And he said, "my son is hurt." I was totally outraged. I said, "If I had a gun, I would shoot you both right here."

- Q. And then you got in the ambulance?
A. Yes.

NARRATOR 2: One of defense counsel's principal themes on cross-examination was that Choi had been unduly influenced by others. Choi and other witnesses had met as a group, before trial, with Liza Chan, the attorney who helped form American Citizens for Justice. Chan met with the witnesses to prepare them for their testimony. The meetings were recorded and the recordings were transcribed. Defense counsel wanted to introduce the recordings into evidence, to show that the witnesses colluded to come up with evidence that race was a motivating factor.²⁰

The Government objected to the tapes as hearsay. Judge Taylor sustained the objection, although she permitted defense counsel to confront a witness with his own words on the tape, but only his own words. She ruled that Liza Chan's statements to the witnesses could be introduced only through her, and only if she were called to the stand. Frank Eaman, one of Ebens's attorneys, cross-examined Choi.

CROSS-EXAMINATION OF CHOI by EAMAN²¹

- Q. Well, you have been asked a lot of questions by a lot of people before coming to Court today?
A. Yes.
- Q. And one of those people was Liza Chan?
A. Yes.
- Q. Now, you met with several people about what happened at the Fancy Pants Lounge; and that included the meeting with Liza Chan in April, with the FBI in May; and with Liza Chan again in May. Do you remember those meetings?
A. Yes, I do.
- Q. And you knew at each of those meetings that the FBI was investigating a civil rights violation?
A. Exactly.
- Q. And you knew, did you not, that the investigation was not about whether those men did what they did?

²⁰ The defense's argument proved effective on appeal to the Sixth Circuit. See *United States v. Ebens*, 800 F.2d 1422, 1432 n.2 (6th Cir. 1986) (in finding the exclusion of the recordings to be reversible error, the Court noted that "the comments of Lisa [sic] Chan in the presence of the witnesses are indeed strongly indicative of an endeavor to influence and rehearse their testimony"). For a discussion of the Liza Chan meeting in the context of collusive witness preparation, see John S. Applegate, *Witness Preparation*, 68 TEX. L. REV. 277 (1989) ("Ebens is an unusual case because, apart from involving particularly unobvious group preparation, (1) the preparation session was conducted by a lawyer who, representing none of the parties, had no claim of privilege, and (2) a tape recording of the session was extant.").

²¹ The following is derived from the Transcript of the Trial Proceedings of June 14, 1984 at 153-59, *Ebens*, No. 83-60629.

MERRITT: Objection, your Honor. Mr. Choi does not know what the point of the investigation was. His question has no foundation.

EAMAN: It goes to the witness's state of mind.

JUDGE TAYLOR: Overruled.

Q. Now, you knew, did you not, that the investigation was whether these men were motivated in doing this act because of your friend's race?

MERRITT: I object again, your Honor. Mr. Choi did not know what the investigation was; and the investigation did not have any particular aim in its course.

JUDGE TAYLOR: Mr. Choi may answer the question. This is cross-examination.

Q. Did you know that?

A. I had a vague idea.

Q. A vague idea?

A. Yes.

Q. Sir, you knew that it was significant whether any racial remarks were made inside the Fancy Pants; did you know the significance of that?

A. I knew the significance, but I did tell the truth.

NARRATOR 1: Choi acknowledged that he did not recall using racial terms when he had spoken earlier to Liza Chan and the FBI. In trying to explain why not, Choi echoed certain familiar themes: Asian Americans do not make waves; Asians do not complain of discrimination; and Asians do not use race as an excuse.

Q. And can you explain, then, when you met with Liza Chan in April, why you did not tell her that you heard the word, "Nip?"

A. Okay. Because that was when the prosecution, at the state level, okay, ended. I was in Toronto for my internship. I got back and didn't know what happened; and all of a sudden, this lady lawyer came to me. I was not prepared, not as much as I wanted to be. I don't ever want to mention discrimination. And she was going for the criminal portion of the case, she didn't ask me [about discrimination].
As I thought about it, more things popped up to me

Q. Since April of 1983, the more you thought about it, the more these remarks have popped up?

A. It depends. It all depends on what has popped up in my memory. All of a sudden, little things, a few things came back to me.

- Q. Well, let me just clear it up, if I might. When you met with Liza Chan in April of 1983, you knew that was after these men were sentenced to probation?
- A. I knew that, yes.
- Q. Do you remember Liza Chan asking you, "Nobody actually heard anything. I mean actually heard how it started. What started it?" And in answering, "I would believe that Ebens might have made a smart-ass remark." Do you remember telling her that?
- A. Yes.
- Q. And I guess you are telling us today that in April of 1983, you didn't remember that the word "Nip" had been used?
- A. Yes.
- Q. Okay. Do you remember also at that interview in April of 1983, being asked by someone, "Besides that did they say anything like Chinaman and things like that, that type of thing, just the four-letter word," and in telling them, "I had not heard that. I don't think they made any racial remarks, nothing." Did you tell Liza Chan that?
- A. Yes, I did.
- Q. Now, when you met with the FBI Agent in May, you did not remember, yet, that the word "Nip" had been used?
- A. No.
- Q. Mr. Choi, am I correct that the first time you mentioned the use of the word "Nip" was before the Grand Jury?
- A. Yes.
- Q. At these meetings that you had, with other witnesses. Do you remember, with Gary Koivu and Bob Sirosky?
- A. Well, we had a meeting, yes, we did.
- Q. And you each talked about what each of you had seen and heard that evening?
- A. Yes, we did.
- Q. And do you remember what you asked Gary, whether he heard you say anything about, "We are not Japanese?"
- A. I cannot recall. That was a year and a half ago. This is just like three conversations, everyone was talking. We were like, what do you remember? Well, do you remember that? That is the extent of the meeting.
- Q. Now, some people didn't remember some things?
- A. Yes, and a few things, okay. Somebody said, okay, "Well, you did that." And I said, "Yes, I remember that. Yes, I kind of have an idea now."
- Q. Well, was the purpose of the meeting to get the stories together for this case?
- A. No, sir.

- Q. Now, did you receive advice from anyone about what parts of this story to tell and what parts not to tell?
- A. I didn't receive any advice to that effect. I was advised to tell the truth and the whole truth.
- Q. Don't you believe that Vincent got angry and overly reacted?
- A. I don't think he overly reacted.
- Q. Didn't you tell Liza Chan that in your opinion, he overly reacted? Will you look at page 11 of the transcript?
- A. Let me think. . . . If I did, I made a mistake. He did not overly react, he tried to ignore any racial remarks, we tried –
- Q. I am referring to right here. [indicating]
- A. Oh, did I say that?
- Q. You do recall saying that then?
- A. I read it, yes.
- Q. Now, at the time you said that, you were describing to Liza Chan in April events which, to the best of your memory, were completely devoid of racial provocation?
- A. Well, there was a time, okay, for Chinese, we try not to, shall I say, react. Usually, we can take a lot of things. There was a time when I just asked basically, "In the bar, how did he grab him? How did he swing the bat?" And she was not really looking for racial remarks. If you go there, it was not a very good place to go to in the first place. I didn't want to do anything, plus I tried to shun all of the racial things away from me. I had a few experiences, mostly when I deal with my classmates at school, but a few times when somebody like drives by and just told me "Chink," I tried to brush it aside.

NARRATOR 2: After the Government rested, the defendants put on a brief defense case. Ebens chose to testify.

DIRECT EXAMINATION OF RONALD EBENS by EAMAN²²

- Q. What happened when you sat down at the bar?
- A. Sat down, I think I got one sip of the glass of beer and this black dancer was dancing and I remember comments coming from across the stage directed at her and telling her what a crummy dancer she was, okay.
- Q. Did you see who was making those comments?
- A. I really don't know who was making those comments.

²² The following is derived from the Transcript of Trial Proceedings of June 19, 1984 at 160-65, *Ebens*, No. 83-60629. Portions of Ebens' testimony detailing his activities on June 19, 1982, leading up to and including his arrival at the Fancy Pants Lounge, have been omitted.

- Q. You know they were coming from across the stage, however.
A. Yes.
- Q. What did you do then?
A. I don't like seeing people picked on for a starter.
- Q. What did you do?
A. I made a comment to the effect that, don't worry about those guys. Show'em what a good dancer is.
- Q. Did you direct those comments at anybody in particular?
A. No, just the dancer.
- Q. Did you say anything else?
A. Not at the time, that I remember.
- Q. When you made those comments, do you recall, referring to the people across the stage, using the term fucker or mother fucker?
A. I don't remember distinctly.
- Q. Could you have said that?
A. Yes, I could have.
- Q. Do you or have you ever used words like that before?
A. Many times.
- Q. Is that language unusual to you?
A. No, it isn't.
- Q. When you use those words, if you did, was it your intention to insult anyone or provoke anyone?
A. No.
- Q. What happened next?
A. I remember, at this point, the oriental that was sitting the second from the end saying something to the man on his left which I couldn't pick up, okay, and he got up.
- Q. Okay, at that point, did you notice that he was an oriental person?
A. I probably did.
- Q. Do you recall the testimony in this Court that Vincent Chin stood-up and said don't call me a mother fucker?
A. Yes.
- Q. Do you recall hearing that in the bar that night?
A. Not distinctly, no.

Q. Do you recall hearing it at all?

A. No, I don't.

Q. Do you recall testimony in Court that you stood-up and said big fuckers, little fuckers, we're all fuckers. Do you remember that testimony?

A. Yes.

Q. Did you say that?

A. I don't remember saying it.

Q. Could you have said it?

A. Yes, I could have said that.

Q. When you saw the person say something to the other gentleman on his left, what is the next thing that happened after that?

A. I really didn't pay much attention to him. I was watching the dancer. He proceeded around, and I guess the next time I was really aware of him was when I turned around and he was standing directly in front of me.

Q. What happened then?

A. He punched me.

Q. Up to that point, did you call him, or anyone else for that matter, the word "Chink?"

A. No.

Q. Do you recall calling anyone a "Nip?"

A. No.

Q. Do you recall saying anything about being out of work or words to that effect?

A. No.

Q. Did you say those words?

A. No.

NARRATOR 1: We move to Ebens's testimony that he and Nitz were driving in their car when they saw Vincent and Jimmy Choi outside a McDonald's.²³

Q. All right, what happened next?

A. And as we drove by, Michael seen him sitting out front on the steps of whatever it was out there, and sitting there laughing, and it must have been real funny to them.

Q. How did you feel at this point?

A. Angry.

²³ The following is derived from *id.* at 182-85. Portions of Ebens' testimony describing the fight taking place inside and outside the Fancy Pants Lounge and his subsequent efforts to find Chin with Nitz and another man named Jimmy Perry are omitted.

- Q. Why?
A. Same reason I guess, the man had sucker punched me; and he was responsible for splitting Mike's head open. I just was angry.
- Q. What did you do?
A. I told Mike to park the car.
- Q. When you got out of the car, did you have the bat with you?
A. Yes.
- Q. What did you do then?
A. I ran around to where they were sitting, and I hollered at him.
- Q. Then what did you do?
A. I said, you sons of bitches.
- Q. Then what did you do?
A. They jumped up and started to run, and I was on top of him and took a swing and caught Chin in the arm.
- Q. You took a swing with the bat?
A. Yes, sir.
- Q. Caught him in the arm?
A. Yes.
- Q. What happened then?
A. I more or less just stopped because they took off running. . . .
- Q. What happened then?
A. Mike came around And he caught Chin in the middle of the lane of traffic out there.
- Q. What did you do then?
A. When I seen Mike scuffling, it just flashed in my mind. He is going to get hurt again, and I started toward him, and something just snapped. I don't remember from there on what did happen.
- Q. Did you hit Mr. Chin?
A. Not that I remember.
- Q. Were you trying to kill Mr. Chin, Mr. Ebens?
A. No.
- Q. Do you remember what you were trying to do?
A. No, I don't.

- Q. What is the next thing that you do remember?
A. I remember looking up and seeing a revolver pointed at me and a man saying drop the bat.

CROSS-EXAMINATION OF EBENS by MERRITT²⁴

NARRATOR 2: The prosecution cross-examined.

- Q. Well, Mr. Ebens, you told us a lot about that night, but now you tell us that you blacked out and you can't tell us much about the beating, is that right?
A. That is true.
- Q. Let me show you Government Exhibit 14. Is that the bat you used to kill Vincent Chin?
A. I can't tell you that; I don't know.
- Q. Could you show us how you were holding the bat when you asked Gary and Bob, where is your friend?
A. I can't tell you that; I don't know.
- Q. Now, when you were in the car, saying when I catch these Chinese guys I'm going to bust their heads, you hadn't blacked out yet?
A. I never said that.
- Q. When you found Vincent Chin and said there they are, you hadn't blacked out yet?
A. I don't know.
- Q. So, only when you caught up with Vincent Chin and started swinging the bat at him -- that is when you blacked out; is that your testimony?
A. Just prior to it.
- Q. You can't remember hitting Vincent Chin in the head so he couldn't run away?
A. No.
- Q. You don't remember hitting him in the arms?
A. No.
- Q. You can't remember hitting him in the chest and shoulder and face?
A. No, I can't remember.
- Q. You can't remember hitting him in the head as he lay there lying on the ground?
A. No I can't.

²⁴ The following is derived from *id.* at 206-09.

Q. You can't remember telling the police that you are sorry, but look at what they did to your son; you do remember that, don't you?

A. Not really.

Q. You had the presence of mind to think of an explanation, didn't you?

A. I don't remember being asked for an explanation.

Q. Mr. Ebens, if you would take the bat, maybe it would bring something back.
[trying to hand the bat to EBENS]

LAWSON: Objection. I think we have had enough with the bat and I think it is meant to harass the witness.

JUDGE TAYLOR: Ask a question, counselor. That wasn't a question.

MERRITT: Yes, all right.

Q. Mr. Ebens, have you ever chased a man because of a drunken fight and beat him to death?

A. No, outside of this time, only Vincent Chin

Q. And because he looked like Vincent Chin; isn't that right, Mr. Ebens?

A. No, it is not right.

THE SUMMATIONS²⁵

NARRATOR 1: The lawyers summed up on June 26, 1984, focusing on the issue of motivation.

MERRITT: There really is only one reasonable explanation for Vincent Chin's brutal killing. In the minds of Ronald Ebens and Michael Nitz, Vincent Chin was a Chink who dared to stand up to them.

Vincent Chin and his friends were having a good time, spending a lot of money, and that bothered Ronald Ebens; and Ronald Ebens began a barrage of racial insults, obscenities directed at Chin's mother; he was talking about foreign cars and, because of you mother fuckers, we in the auto industry are out of work. .

But ladies and gentlemen, you don't have to decide that Ronald Ebens and Michael Nitz acted with any racial intent just on the basis of a few derogatory remarks. Rather examine what they *did* and you will be convinced *why* they did it.

²⁵ The following is derived from the Transcript of Trial Proceedings of June 26, 1984 at 5, 20-23, 31, *Ebens*, No. 83-60629. Portions of Merritt's closing argument summarizing the prosecution's case and the applicable statutes charged, as well as portions stressing Ebens' history of violent, racially-motivated behavior have been omitted.

When they walked into the Fancy Pants Lounge that night, they could only know two things about Vincent Chin -- that he was an Oriental and that he was having a good time. They, of course, had never met him before. . . . They saw an Oriental acting flamboyant, spending a lot of money. How do you think Ronald Ebens reacted to that?

Now the racial animal inside Ronald Ebens had been unleashed, and now his prey was anything Oriental. . . .

The brutality and the ferocity of the attack on Vincent Chin tell you that this was no mere barroom brawl that got out of hand. After Michael Nitz got Mr. Chin in a bear hug, Ebens's savage and repeated use of that bat, even after Chin lay motionless on the pavement, cannot be reasonably explained by mere anger or revenge.

The defendants are wrong in saying that this was nothing more than some barroom fight. This was violent hatred turned loose. This was years of pent-up racial hostilities and rage unleashed. This was a modern-day lynching, but there was a bat instead of a rope.

NARRATOR 2: Defense counsel argued that the issue of race was a fabrication:²⁶

EAMAN: How did this tragic incident become infused with race? . . .

Meetings with witnesses began to take place, and into this scenario of intoxicated violence witnesses began to inject, as Jimmy Choi says, their thoughts and ideas and images of possible racist motivations. A transformation of facts occurs, because people went back to take a second look at what happened, to see if they could come up with any evidence to support a second prosecution. . . .

Suddenly, when Vincent Chin said, "I'm not a motherfucker," it was in response not to simply being called a motherfucker, but instead to being called a Chink, a Nip, to some reference about being out of work and foreign cars.

What had never been a racial incident became one, and it became one gradually. That's why we have three different racial allegations by three different people, surfacing at three different times. People worked hard with each other and their attorneys searching the dark recesses of their minds to find something, anything, that could make this a racial event. . . .

Vincent Chin was the same as Ronald Ebens – a human being. He was not a person who had only great virtues and no faults. Vincent Chin got drunk and went to nude bars and started a fight and then wanted to finish the fight. . . . And Mr. Ebens, like Vincent Chin, became full of rage, and Mr. Ebens wanted revenge.

²⁶ The following is derived from *id.* at 41-44, 69. Portions of Eaman's closing argument questioning the credibility of the prosecution's witnesses and the theory of the prosecution's case are omitted. However, the credibility argument eventually became one of the main bases for the Sixth Circuit Court of Appeal's reversal of the conviction.

Vincent Chin wanted to finish the fight. Does this make him a hero or a martyr?

None of this happened to Vincent Chin because of his race. . . .

THE VERDICT²⁷

NARRATOR 1: On June 28, 1984, the jury returned its verdict.

CLERK: Will the foreman please rise?

Mr. Foreman, do you have a unanimous verdict for each of the counts as to each of the two defendants?

FOREMAN: We have, your Honor.

JUDGE TAYLOR: Will the Clerk please read the verdict?

CLERK: In the case of United States of America versus Ronald Ebens and Michael Nitz, the verdict form reads as follows:

We, the jury, find the defendant Michael Nitz not guilty as to Count One and not guilty as to Count Two.

We, the jury, find the defendant Ronald Ebens not guilty as to Count One and guilty as to Count Two.

NARRATOR 2: The jury thus found Ebens guilty of violating the civil rights of Vincent Chin on account of his race. He was sentenced on September 18, 1984. After hearing from defense counsel, Judge Taylor gave Ebens an opportunity to be heard and then, without elaboration, she tersely announced her sentence:

THE FEDERAL SENTENCING²⁸

JUDGE TAYLOR: Mr. Ebens, is there anything you would like to say?

EBENS: Only, your Honor, I have expressed my regret and remorse on several occasions, and I would just like to reiterate that one more time. I am sorry for what happened. I can't say anymore than that. At this point, I have no recourse but to depend on the American system of justice, and you, your Honor.

²⁷ The following is derived from the Transcript of the Jury Verdict at 2-3, *Ebens*, No. 83-60629.

²⁸ The following is derived from the Transcript of the Sentencing Hearing at 16-17, *Ebens*, No. 83-60629.

JUDGE TAYLOR: Is that all?

It is adjudged, Mr. Ebens, that you are committed to the custody of the Attorney General for a term of twenty-five years. It will be recommended that you be committed to an institution where you may receive treatment for alcohol abuse.

THE APPEAL

NARRATOR 1: Ebens appealed to the United States Court of Appeals for the Sixth Circuit. Circuit Judge Albert J. Engel issued the court's decision on September 11, 1986.²⁹ The court addressed several issues, including Ebens's argument that the federal civil rights law in question did not extend to "Orientals."³⁰ The court rejected this argument, holding that the statute protected "any person" because of his race, color, religion, or national origin, from intimidation or interference in the enjoyment of public accommodations.³¹ Citing *Yick Wo v. Hopkins*,³² Judge Engel wrote:

JUDGE ENGEL: Orientals come within the broad constitutional protections of the Fourteenth Amendment even though the original thrust of the amendment was primarily motivated by concern for the rights of black persons.³³

NARRATOR 2: Judge Engel also rejected the argument that Judge Taylor erred in refusing to transfer the case because of the pretrial publicity.³⁴

JUDGE ENGEL: We have carefully reviewed the extensive record made of the publicity in the case and agree that it was indeed pervasive. . . . The nearly unanimous public judgment that Ebens and his stepson should have received jail terms and the harsh criticism of the state trial judge, followed by the federal prosecution of defendants based upon the same incident, were bound to lead to a strong public impression that justice had not been done in the state court and that it was incumbent upon the federal government to right that wrong by a second prosecution. . . . While it probably would have been advisable for the trial judge to have ordered a change of venue, we conclude that there was not reversible error for the trial judge to proceed to impanel the jury. . . .

NARRATOR 1: Ultimately, however, the Sixth Circuit held that "Ebens was denied a fair trial."³⁵ The court concluded that Judge Taylor had erred in allowing a witness to testify about

²⁹ *United States v. Ebens*, 800 F.2d 1422 (6th Cir. 1986).

³⁰ *Id.* at 1429.

³¹ *Id.*

³² *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

³³ *Ebens*, 800 F.2d at 1429. *But see* John H. Torok, *Reconstruction and Racial Nativism: Chinese Immigrants and the Debates on the Thirteenth, Fourteenth, and Fifteenth Amendments and Civil Rights Laws*, 3 *ASIAN L.J.* 55 (1996) (documenting legislative debates mentioning Chinese Americans when passing the Civil Rights Act). *See also* CHARLES J. MCCLAIN, *IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH-CENTURY AMERICA* (1994).

³⁴ The following is derived from *Ebens*, 800 F.2d at 1426.

³⁵ *Id.* at 1425.

racist remarks about blacks purportedly made by Ebens some ten years earlier.³⁶ The court also strongly disapproved of what it described as “inflammatory language” by the prosecution in summation.³⁷ The court was most troubled, however, by Judge Taylor’s ruling not to allow the defense to introduce the tape recordings of the meetings Liza Chan had with the witnesses:

JUDGE ENGEL: Ebens and co-defendant Nitz sought to introduce into evidence tape recordings of interviews which had been conducted by Liza Chan with these witnesses. The defense purpose was to demonstrate that the witnesses’ testimony concerning Ebens’ racist statements was false, and that it was the result of improper coaching of them by Chan in preparation for the trial. . . . Each time the defendants sought to introduce the tapes, however, the court sustained the government objection on hearsay grounds³⁸ The government concedes that these rulings were erroneous.

We unanimously conclude that a consideration of the [relevant] factors mandates reversal. Ebens should have been permitted to introduce into evidence the entire contents of the tapes The three witnesses were the most crucial of all witnesses for the government. . . . It is true that the District Court permitted the defense to elicit . . . a few of the statements, but it was not within the province of the Court’s proper discretion to prevent the jury from hearing the tapes themselves and judging for themselves the impact upon the witnesses which the purported conversation had and measuring that against the statements made in Court by the witnesses.

NARRATOR 2: The Court of Appeals was so troubled by what it heard on the tapes that it included, as an appendix to its decision, excerpts from the meeting of Liza Chan and Choi, Koivu, and Sirosky on May 17, 1983.³⁹

Liza Chan was only three years out of law school at the time, and she was not a litigator. She met with the witnesses as a group, and she recorded the conversations. We re-enact portions of the meeting for you now:⁴⁰

Liza Chan: The purpose of this meeting tonight is so we can help each other remember exactly what happened, how it happened, when it happened and all the minor details. . . . I was talking this afternoon with the parking lot attendant, the black guy According to his version of the facts, it’s quite different from what I have so far understood them to be. So, I would center on what you, the three of you, say they are and somehow try to fit all the facts around these.

We will agree this is the story, this is it. When it’s a federal prosecution, hmm, we’re all going to have to be agreeing on this is what happened.

³⁶ *Id.* at 1432-36.

³⁷ *Id.* at 1437-41.

³⁸ Hearsay is an out-of-court statement offered to prove the truth of the matter asserted therein. See Fed. R. Evid. 801(c)(2) (“‘Hearsay’ means a statement that . . . a party offers in evidence to prove the truth of the matter asserted in the statement.”). Here, defense counsel wanted to submit the tapes not to prove the truth of the statements on the tapes, but to show the coaching of the witnesses and the purported fabrication of their testimony. See *id.* at 1430-32.

³⁹ *Id.* app. A.

⁴⁰ The following exchange is derived from *id.* app. A at 1443-45.

Now, if you don't agree, like you definitely remembered certain things happened, say, it's a black car and you definitely remembered it's a white car and we kind of, okay, other than that, let's all have it sort of down, have it down pat. Is it five minutes or is it ten minutes? Is it more like eight minutes? Let's all agree. Otherwise, you all look funny on the stand. You all supposedly were there. . . .

Gary Koivu: Is there any harm in getting too accurate, because they could say, well, you all rehearsed this, like, if you're in court and we all have exactly the same times?

Liza Chan: As long as you're within, you know, you could say 8:10, you could say 8:20, I mean, that doesn't matter.

Gary Koivu: Mm hmm. Right, but as long as they have an example --

Liza Chan: Right. But as far as the crucial facts, the crucial ones are not conflicting. I'll give you an example. Like what you people have been telling me and then what the parking lot attendant told me. Totally makes me completely confused. That is going to be raising a question in the jury's mind: well, who's telling the truth? Or what actually happened? Maybe nobody's to be believed. Now, I don't mean exactly everybody agree, okay, everybody agree to 6:30 right on the dot. . . .

Okay. H'm, but I mean, you know, you can't say that we stayed at Fancy Pants for two hours and then another person says we stayed at Fancy Pants for half an hour. I mean that's a big discrepancy there.

Robert Sirosky: Right.

Liza Chan: Then [Vincent] started out of the chair?

Gary Koivu: Yeah.

Jimmy Choi: He ran over.

Gary Koivu: Yeah.

Liza Chan: So, that's -- you remember --

Robert Sirosky: That's why, I remember just before he got up, he says: don't call me a motherfucker. I remember that.

Liza Chan: Okay. We all remember our different lines, okay. There's no agreement that -- that's fine, just remember your different lines --

Robert Sirosky: Right.

Liza Chan: Chink, foreign cars, big fucker, little fucker, all fuckers, don't call me a fucker, we all remember our lines, okay?

Liza Chan: I'm just guessing, it's just logical. You know, I could be wrong. Okay, so he said: I just don't know whether you're a big fucker or a little fucker? Because he had earlier said big fuckers, little fuckers, we're all fuckers.

Gary Koivu: Maybe that's how they thought they heard that.

Liza Chan: I just don't know whether you're a big one or a little one.

Robert Sirosky: Right.

Gary Koivu: Yeah, could be.

Liza Chan: Okay.

Gary Koivu: But after I tapped Vincent and Ebens said, I just don't know if you're a big or little fucker, that's when Vincent said I told you I'm not a fucker, friend.

Liza Chan: Did anybody hear that?

Robert Sirosky: I didn't hear it, but, you know, he's talking to him and, you know, I might have saw him point out of the -- no, I can't say something like that --

Jimmy Choi: I think I heard him say nobody calls me a mother fucker.

Robert Sirosky: -- I can't even say that.

Liza Chan: Mm hmm.

THE SECOND FEDERAL TRIAL

NARRATOR 1: The record did contain other evidence that race was a motivating factor, evidence that was not tainted, even arguably, by the Liza Chan meeting. For example, Racine Calwell, the Fancy Pants dancer, testified that Ebens yelled at Vincent "it's because of you little motherfuckers that we're out of work." Jimmy Perry, a bystander near the Fancy Pants Lounge, testified that he was given twenty dollars by Nitz and Ebens to help them find "two Chinese guys" so that they could "bust their heads."⁴¹ And, as the prosecution argued, the brutality and ferocity of the attack was proof that this was not just another barroom brawl, but an attack driven by race and bigotry.

⁴¹ *Id.* at 1436.

The Sixth Circuit reversed the judgment of conviction and remanded the case to Judge Taylor for a new trial.

On remand, Ebens renewed his motion for a change of venue because of the adverse publicity. This time, Judge Taylor granted the motion.⁴² She observed that there had been even more publicity about the case since the first trial.

JUDGE TAYLOR:⁴³ Most damaging . . . of all the post-reversal coverage, in the view of this court, was the October 12, 1986 Detroit News Sunday Magazine cover story on the victim's mother, Lily Chin.⁴⁴ The magazine cover was comprised of full page color photographs of the still-grieving mother. The lengthy story inside, accompanied by more photographs, told of the tragic deterioration of her life to that of a homeless wanderer, since the death of her son. The effect of this major feature alone, in the newspaper of largest circulation in Michigan and Northern Ohio, is extremely prejudicial to the court's ability to secure an impartial jury in this area.

Moreover, the leadership of this community, including the President and members of the Detroit City Council, who declared a day of mourning in honor of Vincent Chin and presented a memorial to his mother, have been quoted by the news media uniformly to the effect that the defendant must be punished. . . . Editorial comment, both broadcast and press, and letters to the editor, continue strenuously and unanimously to stress the fact that defendant has never been punished.

NARRATOR 2: Judge Taylor ordered a transfer of the case to the Southern District of Ohio, the federal court in Cincinnati. Ironically, the Asian-American community's success at publicizing the injustice to Vincent Chin was a factor in causing the transfer of the case from Detroit—a city with a black majority and a history of civil rights, caught in the economic woes afflicting the automotive industry⁴⁵—to Cincinnati, a city known for its Southern sensibilities.⁴⁶ Indeed, during jury selection in Cincinnati, only 19 of more than 200 prospective jurors said they had ever met an Asian American.⁴⁷

In addition to the different demographics of the jury pool, the prosecution team faced several new challenges. With memories fading, its witnesses would have to testify to five-year old events. More impeachment material existed in the form of testimony from the first trial. Evidentiary rulings that had gone the Government's way the first time had been reversed. And Ebens—whose selective memory had not impressed the jury when he testified in Detroit—did not take the stand in the second trial.

⁴² United States v. Ebens, 654 F. Supp. 144 (E.D. Mich. 1987).

⁴³ The following is derived from *id.* at 145-46.

⁴⁴ Ti-Hua Chang, *Lily*, DETROIT NEWS, Oct. 12, 1986, (Magazine), at 9.

⁴⁵ For more on the history of Detroit, see ARTHUR M. WOODFORD, THIS IS DETROIT, 1701-2001 (2001).

⁴⁶ For more on the history of Cincinnati, see DAVID STRADLING, CINCINNATI: FROM RIVER CITY TO HIGHWAY METROPOLIS (2003).

⁴⁷ See ZIA, *supra* note 1, at 79.

It was no surprise, then, when, on May 1, 1987, the jury returned a verdict in the Cincinnati courtroom finding Ronald Ebens not guilty of violating Vincent Chin's civil rights.⁴⁸

NARRATOR 1: The Cincinnati jury was not convinced beyond a reasonable doubt that Ebens' actions were motivated by Vincent Chin's race.

Was race a factor? Ebens steadfastly denied that he was motivated by Vincent Chin's race, and in post-trial interviews he continued to deny that he was a racist.

Perhaps Ebens was not a hard-core racist. But racism is more ambiguous, complex, and subtle.⁴⁹ Clearly, the mix of the recession, alcohol, testosterone, and tempers was a lethal combination. Perhaps Ebens was not a racist in the conventional, simple sense, but he may very well have been motivated by racial impulses that he was only dimly aware of, if at all. As he put it in trying to explain his actions, something snapped. And the brutality of his actions led to the death of Vincent Chin.

NARRATOR 2: What is the legacy of Vincent Chin?

Despite the disappointment of many in the final verdict, the Vincent Chin case had a great impact, both on the administration of justice in general and on the Asian-American community in particular.⁵⁰

The Vincent Chin case sparked a public discourse on the practice of Wayne County prosecutors not to appear for sentencing proceedings. The case showed how important it was for prosecutors to participate in sentencings and for victims and their families to be given notice of court proceedings.⁵¹ In the years following the Vincent Chin case, federal and state laws—including in Michigan—were enacted giving victims greater rights. And in the discussions leading to the passage of hate crime laws, the Chin case was often cited.⁵²

The Vincent Chin case also highlighted the need for reform in sentencing and plea-bargaining.⁵³ Within a month after Judge Kaufman sentenced Ebens and Nitz to probation, the Wayne County Prosecutor announced a ban on manslaughter plea bargains in murder prosecutions. On the

⁴⁸ The Cincinnati jury, made up of ten whites and two blacks, deliberated for eight hours before finding Ebens not guilty. Isabel Wilkerson, *For Asian-Americans, Acquittal in Rights Cases Arouses Outrage and Fear*, N.Y. TIMES, May 6, 1987, at A20.

⁴⁹ There has been a growing body of scientific studies and academic literature in recent years on the notion of "implicit social cognition" (ISC), which has demonstrated the prevalence of unconscious racial biases that tend not to be well-reflected in explicit self-reported measures. For a discussion on the implications of these studies, see Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489 (2005).

⁵⁰ See U.S. COMM'N ON CIVIL RIGHTS, CIVIL RIGHTS ISSUES FACING ASIAN AMERICANS IN THE 1990S (1992).

⁵¹ See, e.g., Editorial, *The \$3,000 License to Kill*, WASH. POST, Apr. 30, 1983, at A18 (arguing that the Vincent Chin case demonstrates the need for a set of victims' rights and the adoption of sentencing guidelines).

⁵² See, e.g., Lu-in Wang, *The Complexities of Hate*, 60 OHIO ST. L.J. 799 (1999); Terry A. Maroney, *The Struggle against Hate Crime: Movement at a Crossroads*, 73 N.Y.U. L. REV. 564 (1998).

⁵³ See Ronald S. Thompson, *Michigan's Reform Toward a More Determinate Sentencing System*, 62 U. DET. J. URB. L. 499 (1985) (discussing the impact of the Vincent Chin case on Michigan's sentencing laws).

federal level, the Sentencing Reform Act was passed in 1984 in an effort to reduce disparities in sentencing.⁵⁴

As for Asian Americans, the Sixth Circuit Court of Appeals held that, indeed, Asian Americans were protected by this country's civil rights laws. The murder of Vincent Chin and its aftermath awakened our civil rights consciousness. Asian Americans came together and became a community -- one with a voice.

For Asian Americans, the death of a man was the birth of a movement.

NARRATOR 1: Lily Chin, Vincent's mother, was an inspiration to many. Although she barely spoke English, she led a courageous effort to seek justice for her son. She became so disheartened, however, after the final verdict that in September 1987, she returned to her native village in Guangzhou, China. There she remained until 2001, when illness forced her back to the United States for medical treatment.

Lily Chin died on June 9, 2002, at the age of 82, in Farmington Hills, Michigan.⁵⁵

We leave you with these excerpts from the 1988 film *Who Killed Vincent Chin?*⁵⁶

[play excerpt from *WHO KILLED VINCENT CHIN?*]⁵⁷

⁵⁴ See Cassia C. Spohn, *Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process*, in 3 CRIMINAL JUSTICE 2000: POLICIES, PROCESSES, AND DECISIONS OF THE CRIMINAL JUSTICE SYSTEM 427 (Julie Horney ed., 2000); Steve Y. Koh and Kate Stith, *The Politics of Sentencing Reform: The Legislative History of the Federal Sentencing Guidelines*, 28 WAKE FOREST L. REV. 223 (1993)

⁵⁵ See, e.g., Oralandar Brand-Williams, Obituary, *Lily Chin, Fought to Jail Son's Killers*, DETROIT NEWS, June 12, 2002, at 2C; Obituary, *Son's Racial Killing Caused Outcry*, GLOBE AND MAIL, June 15, 2002, at F9.

⁵⁶ For a deconstruction of the film and discussion of its value in legal education, see Paula C. Johnson, *The Social Construction of Identity in Criminal Cases: Cinema Verite and the Pedagogy of Vincent Chin*, 1 MICH. J. RACE & L. 347 (1996).

⁵⁷ The excerpt from *WHO KILLED VINCENT CHIN?* was played at the presentation at the NAPABA Convention in Seattle on November 22, 2008, with the permission of director Christine Choy.