

WA Supreme Court reverses century-old Yakama decision: 'An injustice'

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Jack Fiander, a tribal lawyer, worked for a quarter-century to get the conviction thrown out. "For me, you know, rather than elation, it's like now this one is checked off and let's go to the next case." (Daniel Kim / Seattle Times, file)

By [David Gutman](#)

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The Washington state Supreme Court overturned a century-old conviction Thursday of a Yakama tribal member who had been prosecuted for hunting, repudiating the conviction and the body of law upon which it once rested as a "stain on this nation."

The defendant, Jim Wallahee, died decades ago. The family member who continued his case died in 2007. But Jack Fiander, a tribal attorney who represented the family, kept pursuing the case, for more than a quarter-century, trying to get a conviction reversed that he viewed as unjust and demeaning.

The case is part of a [yearslong effort by the current state Supreme Court to address institutional racism](#) in the legal system. And [the 7-2 decision](#) shows the justices grappling with how best to do so: whether to leave past injustices on the books, powerless but still standing, like a scarlet letter of the nation's shame, or whether to explicitly wipe them away, seeking to ameliorate wounds that have long since scarred over.

Treaties that predate the state of Washington, between the United States and Indian tribes, granted the tribes the right to fish in their usual places and to hunt on open and unclaimed land.

But state courts in the 19th and 20th centuries often ignored those treaties, prosecuting tribal members for hunting and fishing that should have been protected.

Wallahee was originally convicted for hunting deer on traditional Yakama tribal grounds in 1924. He appealed his conviction, but in 1927, the state Supreme Court ruled against him, adding insult to injury, as it wrote that the tribe “was not an independent nation nor a sovereign entity of any kind, the Indians being mere occupants of the land.”

On Thursday, nearly a century later, the state Supreme Court officially admitted it was wrong.

“Today we reject the harmful logic that underpins his wrongful conviction and recognize that Mr. Wallahee had a clear and enforceable treaty right to hunt that deer,” Chief Justice Steven González wrote for the majority. “Mr. Wallahee’s conviction was incorrect on the law, harmful, and an injustice. Our nation’s history is rife with such injustices.”

González has previously cited the case as among [the worst decisions](#) in the history of the state Supreme Court.

The court’s 1927 opinion, González wrote, advanced “centuries worth of harmful tropes about Native Americans” and comes from a body of law used to justify federal laws removing Indians from their lands and later breaking up their reservations.

“Removal, allotment, and Jim Wallahee’s conviction all stem from the belief that Native Americans lack basic human and equal rights and therefore treaties with them may be disregarded,” González wrote. “We have a duty to explicitly repudiate that belief and to disavow our opinions that reflected that belief. We do so today.”

The court’s efforts to address racial injustice led all nine justices to sign a [2020 open letter](#) to the legal community, calling on judges and lawyers to “ask ourselves how we may work together to eradicate racism.”

Since then, the court has ruled, repeatedly, that the nation and the legal system’s history of racism must be taken into account in legal proceedings, from [police stops](#) to [prosecutorial questioning](#) to [jury selection](#) to [civil litigation](#).

The court has gone out of its way to right old wrongs — tossing out [a century-old Indian fishing conviction](#) and a decades-old decision that had allowed [racial segregation in cemeteries](#).

Unlike many of those decisions, however, Thursday's was not unanimous.

Justice Barbara Madsen, in dissent, wrote that while the original ruling in Wallahee's case used discriminatory language and is a "historical injustice," its legal framework has already been overturned and Wallahee's estate lacks legal standing to have the conviction overturned.

"I agree with the majority that Wallahee is wrong on the law," wrote Madsen, joined by Justice Debra Stephens. "However, whether a decision should be overruled is decided within the context of a live controversy."

The case was before the Supreme Court largely due to the efforts of one man. Fiander first noticed Wallahee's conviction in the late 1990s. He asked Kittitas County Superior Court, where the conviction first happened, to overturn it, but was told it didn't have the authority.

In 2005, he asked the state Supreme Court, but was told essentially the same thing.

But in 2014, the Legislature passed a law explicitly giving judges the power to overturn old Indian fishing convictions that contradicted treaty agreements. So Fiander went back to work. He got fishing convictions, both more than a century old, overturned for two Yakama tribal members.

(The dissent argued, in part, that Wallahee's estate lacked legal standing because the 2014 law applies only to old Indian fishing convictions, not hunting convictions.)

And Fiander went back to the Supreme Court with Wallahee's case.

Fiander, a self-described "small-town, country lawyer" who works out of the trunk of his car, got the court's ruling Thursday morning, while he was driving to see a client. He pulled over into a Burger King parking lot to read it, a quarter-century after he'd begun trying to get it overturned.

"It was on my bucket list," he said.

"I guess my feeling on it," Fiander, 71, a member of the Little Shell Chippewa Tribe, paused, for about 15 seconds.

He explained: "Between sentences, you can go out and have a cup of coffee and I'd still be answering your question, it's just how I talk."

"I don't think it's been a long time or that I've been working on it a long time," he said. "It kind of disturbs me when I hear the treaties characterized as though they are like

ancient documents. It wasn't that long ago when those promises were made, you know, because when I look back on my life, as you probably look back on yours, it seems so short. But if I put two of my lifetimes together, back to back, you'd be right back at the time of the treaty. You know, the state of Washington is kind of a young place."

"For me, you know, rather than elation, it's like now this one is checked off and let's go to the next case," he said.

The justices, in Wallahee's case, agreed that the prior decision was wrong, but disagreed on the best way to address the mistake.

The dissent argued that vacating the conviction, which no longer carried the force of law, only amounted to "wiping away the discomfort and shame of past decisions."

"Removing all trace of the offensive language and tropes in Wallahee salves the shame of discrimination by erasing that shame. It does not eradicate it," Madsen wrote.

"Allowing the case to exist (disavowed and without authority) helps ensure that future generations can see the documented history of discrimination and disenfranchisement of a people. It is our history. We cannot forget it."

But González, for the majority, argued "there is a difference between erasing history and redressing harm."

"This court's wrongful decision can be characterized as an instructive feature of the past only by those who do not feel its sting in the present," he wrote. "Today we take a step toward reconciliation."