

IN THE DISTRICT COURT OF THE  
UNITED STATES  
IN AND FOR THE SOUTHERN DISTRICT OF  
CALIFORNIA  
SOUTHERN DIVISION

.....

UNITED STATES OF AMERICA  
Plaintiff

vs.

SAKHARAN GANESH PANDEY  
Defendant

.....

NOTICE OF MOTION AND OFFERS OF PROOF

.....  
Due service of a copy of the within  
papers is hereby admitted, this 26th  
day of April 1926.

Samuel W. McNabb  
U. S. Attorney

*Edwin Simpson*

Asst. U. S. Attorney  
Plaintiff

**FILED**

APR 26 1926

CHAS. W. WILLIAMS, Clerk

*W. J. Williams*

S. G. Pandit

5135 Range View Avenue  
Los Angeles, California  
(Garfield 2557)

1           The defendant offers to prove by the testimony of  
2 Professor Karl Tinsley Waugh, ~~who was~~ <sup>of American missionary parents</sup> born in India, B.A. (Ohio  
3 Wesleyan University), M.A. (Harvard), Ph.D. (Harvard), Professor  
4 of Philosophy and Mathematics (Claflin University, S.C., 1900-  
5 1904), Weld Fellow and Assistant in Philosophy (Harvard 1906-7),  
6 Associate Professor in Psychology (University of Chicago  
7 1907-9), Head of Department of Philosophy and Psychology (Beloit  
8 College (1909-18), Dean and Professor of Psychology and  
9 Philosophy (Berea, Ky., College 1919-1923); educational and  
10 psychological investigation in China and India (1916-17);  
11 lecturer in Psychology (University of Colorado 1909, 1914) and  
12 Northwestern University (1920); served as first lieutenant,  
13 captain and major, United States Army, psychological division,  
14 World War (August 1917 to February 5, 1919); in Surgeon  
15 General's Office, Washington, D.C.; Chief Psychological Examiner  
16 at Camp Gordon, Ga., Camp Clennan, Ala., transferred to Fort  
17 McPherson, Ga.; Supervisor Federal Board for Vocational  
18 Education, 5th District (Feb. to Sept. 1919); Fellow of the  
19 American Association for the Advancement of Science; Member of the  
20 American Psychological Association; and Dean of the School of  
21 Liberal Arts in the University of Southern California since  
22 1923:

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24           That Hindus were always regarded as Caucasians and  
25 of the white race by the general consensus of scientific opinion,  
26 and are so regarded today; that in popular opinion in this coun-  
27 try they were also similarly regarded in 1875, and are so  
28 regarded at the present time; that while there is hardly any  
29 pure race in existence, there was certainly a relatively less  
30 mixture of the Caucasian with other races in the Hindu than  
31 there has been among all the Caucasian peoples of Europe and  
32 America; that the Brahmans of India are relatively the purest  
representatives of the Caucasian or white race; that he has

1 made a study of race classifications, both from a popular and  
2 a scientific standpoint; that the evolution of the popular  
3 meaning of the terms, "white person" and "whiterace", in this  
4 country has been as follows: those terms included all persons  
5 except the American Indian in colonial days; soon the Negro  
6 also came to be excluded (the question regarding the Negro not  
7 arising at all in this connection earlier, because he was in  
8 those times hardly regarded as human and was denied a soul even  
9 by biblical scholars and ministers <sup>of religion</sup> in the United States); still  
10 later the Mongolians inhabiting Eastern Asia were excluded from  
11 the meaning of those terms; that the Hindu without any question  
12 is more akin to the European than to the Mongolian, the Negro  
13 or the American Indian; that from his study of history and of  
14 the popular mind, and the evolution of popular ideas in this  
15 country, and the fact that the framers of the naturalization  
16 statute in 1790 had in mind the exclusion of the Negro and the  
17 Red man from the privilege of naturalization, he is of the  
18 opinion that Congress would have been glad in 1790 to admit any  
19 group of settlers who would have coöperated harmoniously with  
20 those who were here, excluding the Negro and the American Indian,  
21 and that the congressional attitude towards the naturalization  
22 of Hindus would have been favorable, if the question had been  
23 raised at that time; that Congress would have been willing to  
24 vary the language of the statute so as to include the Hindus  
25 within its privileges, if that were necessary; that it would  
26 not have been necessary to vary the statutory language for that  
27 purpose, as the term "white person" would have included the  
28 Hindu; that the popular meaning of the term Caucasian in this  
29 country includes Europeans, as well as Western Asiatics such  
30 as the Hindus, and others, to the exclusion of the Negro, the  
31 Mongolian and the aborigines or hill tribes or jungle folk of  
32 India; that ethnologists are generally agreed about the inclu-

1 sion of Hindus in the Caucasian division of mankind; that the ef-  
2 fort at a scientific and comprehensive classification of mankind  
3 into races may be traced to the time of Blumenbach, who in 1781  
4 divided mankind into Caucasian, Mongolian, Negro, American Indian  
5 and Malay races; that he included the Hindus, without question,  
6 in his Caucasian race and so also have others down to Professor  
7 Kroeber of the University of California in his recent book called  
8 "Anthropology;" that while there has been a narrowing of the  
9 meaning of the term "white person" in recent years, by means of  
10 an argument in a circle, with a view to exclude the Mongolian  
11 from its connotation for political purposes, the fact remains  
12 that the term has, so far from being narrowed, actually broadened  
13 in meaning in its common usage during the last half century  
14 especially; that the term race refers to classifications on the  
15 basis of heredity, and that in popular usage the terms "Caucasian"  
16 and "Aryan" are synonymous; the explanation of the apparent dis-  
17 agreement between scientific authorities as to what constitutes  
18 a proper racial division is to be found in the varying principles  
19 of division adopted, such as stature, texture of hair, etc.;  
20 that the results obtained by the different authorities mainly  
21 agree as shown by Dr. Kroeber in his "Anthropology;" that on  
22 each of these principles of division the Hindu falls within the  
23 Caucasian or white group; that the features of Europeans and  
24 Hindus are alike, which cannot be said of the European in rela-  
25 tion to Mongolian, Negro or American Indian; that the Hindus  
26 could readily amalgamate with people with whom the Alpines and  
27 Mediterraneans of Europe can, or have, readily amalgamated,  
28 viz. the Nordics, though the Hindus would not consider it as  
29 the fulfilment of an ambition to so mingle as some of the  
30 Europeans do.  
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1           The defendant offers to prove by the deposition of  
2 Doctor Grafton Elliot Smith, who has been a member of the  
3 faculties of Cambridge (England), Sydney (Australia), and  
4 Manchester (England) Universities, is Professor of Anatomy at  
5 the University of London (England); taught in the Cairo Medical  
6 school in Egypt for nine years, is a Fellow of the Royal Society  
7 of England and of the Royal College of Physicians, Doctor of  
8 Medicine of the Universities of Sydney and of Adelaide (Australia),  
9 Master of Arts of the University of Cambridge (England), Doctor  
10 of Science of the University of Liverpool, and Doctor of Liter-  
11 ature of the University of Manchester, Honorary Member of the  
12 Anthropological societies of Paris, Munich and Rome, author of  
13 scientific reports and bulletins, of books including "The  
14 Ancient Egyptians," "The Royal Mummies," "The Evolution of the  
15 Dragon," "Essays on the Evolution of Man," and of the article  
16 on Ethnology for the last edition of the Encyclopedia Britannica,  
17 and has been awarded the Prix Fauvelle of the Societe d'Anthropo-  
18 logie de Paris and the Royal Medal of the Royal Society  
19 for his discoveries and contributions to science:  
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21           That the term race is used in the sense of groups  
22 of men who present similar physical characters and who are be-  
23 lieved to have been separated up into groups at a very remote  
24 period of time; that there are six races into which existing men  
25 are divided, viz. the Australian aborigines, the Negro, the  
26 Mongol, and (the three races which are often grouped together  
27 as Caucasian;) the Mediterranean, the Nordic and the Alpine;  
28 that color is not an important distinctive feature among  
29 races other than the Australian Aborigine and the Negro; that  
30 members of the white or Caucasian race may have a pure white  
31 skin, or all shades of olive complexion; that the Alpine,  
32 Mediterranean and Nordic races are invariably called the white  
race, and all of them are included in what is popularly known

1 as the Caucasian race; that there are representatives of the  
2 Alpine, Mediterranean and Nordic races to be found in Asia;  
3 that the majority of the population of India belongs to the  
4 same race as those called the Mediterranean in Europe; that  
5 Alpines are also to be found in India; that upon the pure  
6 ground of race there is no obstacle to the assimilation of  
7 Hindus and Europeans; that there is no physiological barrier or  
8 impediment to it; that all ethnologists agree in regarding Hindus  
9 as members of the Caucasian race or of its subdivision, the  
10 Mediterranean; that the terms commonly used for classifying men  
11 in 1790 were white, black, red and yellow men; that the term  
12 white at that time included all the people of Europe and Asia,  
13 excluding the Mongol races; that while the Hindus are white  
14 people, the aborigines of India called the jungle or hill tribes,  
15 who live a wild life, are outside of all intercourse with Hindus,  
16 and are quite primitive, are related to the black race; that  
17 his opinions are based on the results of his study and  
18 examination of skeletal remains in museums in England,  
19 material sent from India for examination, study of the scientific  
20 reports which have been issued by the Indian Government in  
21 connection with the ethnologic survey of the different terri-  
22 tories, and considerable familiarity with Hindus from all  
23 provinces of India who are students in the universities of  
24 England.

1           The defendant offers to prove by the testimony of  
2 Professor Clarence Vosburgh Gilliland, A.B. (Cornell College),  
3 S.T.B. (Garrett Biblical Institute), A.M. (University of Chicago),  
4 D.D. (Dakota Wesleyan University), Minister of Methodist  
5 Episcopal Church, formerly Professor of Biblical Literature,  
6 Dakota Wesleyan University, President of Carleton College,  
7 Farmington, Missouri, 1911-1913, Dean of the College of Liberal  
8 Arts and Professor <sup>of</sup> History, Dakota Wesleyan University, 1913-  
9 1919, Head of the Department of History, University of Southern  
10 California since 1919:

11           That the term, "White person," has been used  
12 historically in this country and also in popular parlance mainly  
13 as a convenient designation for any and every person except one  
14 of the Negro or American Indian races; that the Hindu resembles  
15 most the European in type and features, and is just as readily  
16 distinguishable as is the latter from the Mongolian, the Negro  
17 and the American Indian; that the popular classification of  
18 persons follows pretty closely that given on page 19 of Myers'  
19 Ancient History into Hamites, Semites and Aryans; Aryans being  
20 further subdivided into Asiatic Aryans (including the Hindus,  
21 Medes, Persians) and classical peoples (Greeks, Romans), Celts,  
22 Teutons, Slavs; that while the term Aryan was borrowed by  
23 philologists to designate a linguistic group, it still is used  
24 to designate an important branch of the racial division known as  
25 Caucasian; that historically and popularly, the term, "white  
26 person," as well as the word "Caucasian" has been used in  
27 this country to exclude the American Indian and the Negro, and  
28 latterly the Chinese and Japanese as well; that "white person"  
29 as well as "Caucasian" has reference to breed or blood and not to  
30 geography or complexion, as may be seen from the fact that some  
31 Chinese and Japanese are of a lighter complexion than some persons  
32 of the "white" race; that in the debates in Congress in regard to

1 naturalization in 1870, 1873 and 1875, the object of the  
2 senators who insisted on retention of the term, "white person,"  
3 in the naturalization statute, was to exclude Chinese from  
4 citizenship, and the term "Asiatic" when used in that  
5 debate, as clearly shown by the context, was used as a loose  
6 or rhetorical equivalent of the term Chinese, as witness the  
7 free use of the term "Asiatic" in the discussion regarding the  
8 California Alien Land law at the time of its passage, when  
9 what was distinctly meant was "Japanese."

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1           The defendant offers to prove by the testimony of  
2 Professor William C. Smith, Ph.D. (University of Chicago),  
3 Associate professor of Sociology at the University of Southern  
4 California, and in charge of Ethnological Studies at the  
5 University, who has spent some years making ethnological  
6 investigations in India, ~~Africa~~ and other countries:

7           That the Hindu was regarded in 1875 as Caucasian and  
8 of the white race by the general consensus of scientific opinion  
9 as well as of popular opinion, in this country, insofar as  
10 there was any popular opinion on the subject, for knowledge of  
11 the Hindu and of India was limited mostly to the educated or the  
12 traveled at that time; that the Caucasian or Hindu blood has  
13 been, and is, far less mixed with other races, e.g. the black  
14 or yellow, than has been the Caucasian in Europe or in America;  
15 that he has made a study of popular and scientific race class-  
16 ifications and has lectured on them; that the popular meaning of  
17 the term "white person" in colonial days was directed to the  
18 exclusion of the American Indian, later to the exclusion of  
19 the Negro as well, and still later, i.e. from about the last  
20 quarter of the nineteenth century, the Mongolian also came to  
21 be excluded from the meaning of the term; that the Hindu is  
22 unquestionably akin to the Northern European and is equally  
23 and obviously different from the Negro, the Mongolian, the  
24 American Indian and the Malay; that most Hindus belong to the  
25 Mediterranean stock of the Caucasian race, a few to the Alpine,  
26 and fewer to the Nordic; that the dark complexion of a large  
27 number of people in India is due to the effect for several  
28 generations of the tropical sun on white skins, as in the case  
29 of the English planter who returns from a long sojourn in  
30 India with his skin charged with a dark pigment which no amount  
31 of pears' soap can remove during the rest of his life; that  
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1 from his knowledge of history and of the vicissitudes of  
2 popular prejudice and of the evolution of the popular meaning of  
3 the term "white person" in this country, he is of the opinion  
4 that if the naturalization of Hindus had been suggested to  
5 Congress in 1790 or 1875, its attitude would have been favor-  
6 able to it, and if it had been necessary to change the language  
7 of the statute in order to include Hindus within its privileges,  
8 Congress would have done so; that while there is difference of  
9 opinion among ethnologists regarding the position of certain  
10 Polynesians, etc., in the classification of races, there is no  
11 debate regarding the racial position of Hindus, and all  
12 ethnologists include them in the Caucasian division of mankind  
13 as white people; that an effort at a comprehensive division of  
14 mankind into races may be traced as far back as Linnaeus (1707-  
15 1778) who spoke of the European White, Asiatic Yellow,  
16 American Red and African Black varieties of mankind; Linnaeus,  
17 however, was not writing of geographical limits, for he made  
18 his European race inhabit Europe, Western Asia and Northern  
19 Africa; and his Asiatic race peopled Eastern and Northern Asia  
20 only; his African race was absent from the Mediterranean  
21 seaboard of Africa; Linnaeus included the Hindus in the Euro-  
22 pean or white race; that outside of a few insular spots of  
23 ignorance or prejudice, the term "Caucasian," in its popular  
24 meaning, has had a broadening rather than a narrowing of scope,  
25 through common usage in this country, during the last half  
26 century especially, because of the increasing realization that  
27 practically no race can be regarded as pure, and because of  
28 general education and wider international contact; that today,  
29 in its popular meaning, the word "Caucasian" or the term  
30 "white person" includes many persons who in 1790 and in 1875  
31 would not have been included in its meaning; that race means  
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1 common descent or stock; that while the term Aryan is being  
2 less and less used by ethnologists in their classifications,  
3 in the United States the popular use of the term Aryan as synon-  
4 ymous with Caucasian and white man is quite prevalent even at the  
5 present time; that the explanation of the apparent disagreement  
6 among scientific authorities as to what constitutes a proper  
7 racial division is to be found in the confusion by some between  
8 divisions and subdivisions, and the finding of newer and better  
9 criteria and standards of differentiation; that there is no pure  
10 race in existence today, though the Brahmans of India are  
11 probably purer Caucasians than any group of people in Europe or  
12 America or elsewhere; that race is nothing objective, it is a gen-  
13 eral average used as a standard; that the people of Europe are  
14 unquestionably akin to Hindus, and the Hindus could readily  
15 amalgamate with them and with the descendants of these Europeans  
16 in America; the physical group characteristics of Hindus do  
17 not render them readily distinguishable from Europeans of  
18 Mediterranean stock, and children born in this country of Hindu  
19 parentage would not retain indefinitely the clear evidences of  
20 their ancestry, but would be of American type even in the early  
21 generations, as are the children of English, French, Mexican,  
22 Swedish, Italian, Greek, German and Jewish parentage; that  
23 where a powerful religious restriction like caste is not in  
24 operation, people living in the same area usually intermarry,  
25 and in America Hindus would not show any more tendency to marry  
26 among themselves than do other nationalities who have been  
27 domiciled here.  
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1           The defendant offers to prove by the testimony of  
2 Professor Roy Malcom, A.M. (Harvard University), Ph.D. (Boston  
3 University), Head of the Department of Political Science at the  
4 University of Southern California, who has made a special study  
5 of the subject of citizenship in the United States and has lec-  
6 tured extensively thereon and has written for scientific maga-  
7 zines and journals on that subject:

8           That he has made a study of race classifications, both  
9 popular and scientific; that the term, "white person," and the  
10 term, "white race," in this country at least, were used until  
11 after 1875 as a convenient designation for all types of persons  
12 except the Negro and the American Indian; that since 1875 the  
13 Mongolians have also come to be excluded from the connotation of  
14 those terms; that in cultural and educational circles the Hindu  
15 has always been recognized as most closely resembling all types  
16 of Europeans, and as being clearly distinguished and different  
17 from the Mongolian, the Malay, the American Indian, or the Negro;  
18 that most Hindus resemble sufficiently closely, to be identifiable  
19 with, Mediterraneans of Caucasian stock in Europe, and the latter  
20 are undoubtedly more akin to the Northern European than to the  
21 Red Indian, the Negro or the Mongolian; that from his study of  
22 history and political science, and in view of the fact that the  
23 framers of the naturalization statute in 1790 had in mind the  
24 exclusion of the Negro and the American Indian from the privilege  
25 of naturalization, and that they used the term, "white persons,"  
26 in the statute as a more compact and less circumlocutory term to  
27 convey the idea, it is his opinion that the congressional atti-  
28 tude towards the naturalization of Hindus, if it had been sug-  
29 gested in 1790, would have been distinctly favorable; that it  
30 would not have been necessary to change the language of the  
31 statute for that purpose, for Hindus have always been recognized  
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1 as white persons; that the popular meaning of the term "white person"  
2 includes Europeans, Western Asiatics and North Africans; <sup>that</sup> the  
3 popular meaning of the term "Caucasian", through common usage in  
4 this country during the last half century especially, has con-  
5 tinued to exclude the Negro and American Indian, and has in  
6 addition shown a distinct tendency to exclude the Chinese and  
7 the Japanese; that the Hindus could readily amalgamate with  
8 people with whom the Alpines and Mediterraneans of Europe have  
9 readily amalgamated; that he has made a study of the debates in  
10 Congress in 1870, 1873 and 1875 in regard to naturalization,  
11 and that the word "Asiatic" as used in that debate was used as  
12 synonymous with the word "Chinese," which was more frequently  
13 used therein, and not in any other sense; that children of  
14 foreign parentage born in this country do not retain indefinitely  
15 the clear evidences of their ancestry, as witness the results of  
16 the study conducted among Japanese especially, by the Department  
17 of Child Psychology at Stanford University, giving American-ward  
18 variations of stature, etc., and the careful observations of  
19 Professor Franz Boas on American immigrants from various parts of  
20 Europe, which seem to show that the new environment does in  
21 some unexplained way modify the head-form to a remarkable extent;  
22 for example, amongst the East European Jews, the head of the  
23 European born is shorter and wider than that of the American-born,  
24 the difference being even more marked in the second generation  
25 of the American-born; at the same time other nationalities  
26 exhibit changes of other kinds, all these changes, however,  
27 being in the direction of a convergence towards one and the  
28 same American type; that, as remarked by his friend Prof. Dixon  
29 of the University of Southern California, who knows people of  
30 Asia well in their native habitat, as well as in America, "even the  
31 first American generation of Asiatics, like that of Europeans,  
32 is ridiculously American."