
100 YEARS OF NINTH CIRCUIT HISTORY IN SAN FRANCISCO COURTHOUSE

Over the last 100 years, the history of the nation has been reflected in matters of law decided by the U.S. Court of Appeals for the Ninth Circuit. The following summaries, which list some of the important Ninth Circuit cases that have helped shape the American West, are derived from exhibits prepared for the centennial celebration and now on display at the James R. Browning U.S. Courthouse.

1905-1915

The Chinese Exclusion Act of 1882 was the first law to limit immigration in the country's history. An important case heard by the Ninth Circuit in 1905 was *United States v. Ah Sou*, involving a Chinese slave illegally brought to this country by her master, who continued to enslave her. She escaped and entered into what may have been a sham marriage in an attempt to avoid being deported to China. In granting a stay of deportation, the district court referred to the Thirteenth Amendment's prohibition on slavery and concluded that Ah Sou's deportation under the exclusion act would return her to a life of slavery. The Ninth Circuit reversed on the ground that the district court's exception would nullify the Exclusion Act, but expressed regret that Ah Sou had to be deported.

1915-1925

World War I cast a long shadow on this decade. The Ninth Circuit adjudicated cases arising from legal and societal developments, including the extent of the government's control over land near military bases. *Pappens v. United States*, heard in 1918, involved the Selective Service Act, which not only created a military draft, but also empowered the Secretary of War to prohibit "houses of ill fame, brothels, or bawdy houses" within 5 miles of any military camp, station, or fort. The owners of one such house challenged the constitutionality of the legislation, pointing out that nearly all of downtown San Francisco fell within 5 miles of the Presidio or Fort Mason. The Ninth Circuit rejected the challenge, reasoning that Congress' power to raise and support armies and to regulate land and naval forces validated the anti-prostitution regulations.

1925-1935

In a decade marked by the Great Depression and the New Deal, labor unions grew in power and employers and workers clashed, often violently. *In re Mooney*, heard by the Ninth Circuit in 1934, involved a labor leader convicted of a bombing that killed 10 people during a patriotic march in San Francisco in 1916. His death sentence was commuted

to life imprisonment after President Woodrow Wilson intervened. For 20 years, Mooney maintained his innocence from his prison cell, as he became a worldwide symbol for union activism. Although mounting evidence suggested that his conviction was based on perjured testimony, his writ of habeas corpus was denied by just one Ninth Circuit judge, as the rules then provided. Mooney's evidence of perjury was determined to be insufficient, and he remained in prison until being pardoned in 1939.

1935-1945

World War II brought fresh challenges to the courts. Thousands of American citizens of Japanese descent were interned, while men drafted into military service complained that their children attended segregated schools. While the Ninth Circuit deferred to the executive branch's claim of military necessity in the internment of Japanese Americans, its decisions in other cases signaled a changing attitude toward the civil rights of minorities. *Westminster School Dist. of Orange County v. Mendez*, heard in 1947, was a class-action lawsuit on behalf of Mexican-American children in the Los Angeles area who were being segregated into separate and inferior schools. The schools districts argued that school assignments were based solely on English proficiency. The district court was the first federal court to invalidate racial segregation in public schools on the ground that separate schools were not equal, and its ruling was upheld by the Ninth Circuit.

1945-1955

The large-scale emigration to wartime factories and ports changed the West. Thousands of young men and women who left their homes for destinations around the world returned with new attitudes and ideas. As sexual matters became more openly discussed and portrayed in movies and literature, the courts became involved in controversies over censorship. In *Besig v. United States*, heard in 1954, involved author Henry Miller's books, "Tropic of Cancer" and "Tropic of Capricorn," which were seized by U.S. Customs in 1949 as obscene. Ernest

J. Besig, founder of the American Civil Liberties Union of Northern California, claimed the books and asserted their literary merits, supported by eminent authors and literary critics of the time. Unconvinced, the district court ordered the books destroyed, but noted that less than 13 percent of the pages of “Tropic of Capricorn” were obscene. The Ninth Circuit affirmed, calling Miller’s books “debased and morally bankrupt.”

1955-1965

Growing grassroots activism spurred people to voice opinions on a wide array of causes, from farm labor to civil rights to the death penalty. In *Brubaker v. Dickson*, decided in 1962, the Ninth Circuit issued a decision that presaged the right to effective assistance of counsel. The case involved a service-station attendant Charles Earl Brubaker convicted and sentenced to death for murdering a woman and her son. On appeal, Brubaker challenged the quality of representation by his court-appointed counsel, alleging the attorney had consulted with him for only an hour and failed to investigate any defenses. The Ninth Circuit held that Brubaker had shown that his trial was fundamentally unfair due to his counsel’s errors and omissions. It was one of the first federal cases to establish the doctrine of ineffective assistance of counsel, which has since been cited by many state supreme courts and federal circuit courts.

1965-1975

The Vietnam conflict cause deep divisions within American society. Anti-war rallies, public draft-card burnings, and protests disrupted college campuses, public events, and urban centers alike. In *United States v. Coffey*, decided in 1970, the Ninth Circuit took a broad view in upholding one man’s conscientious objector status. Walter Daniel Coffey applied for conscientious objector status, he wrote that war was “destructive and valueless” and that his life demonstrated the “consistency and depth” of his opposition to violence. After his application was denied by the draft board, Coffey was indicted, and later convicted, for refusing induction into the armed forces. The Ninth Circuit reversed the conviction and rejected the narrow view of conscientious objector status that required a showing of religious belief. The court concluded that Coffey’s statements established his conscientious objection.

1975-1985

As innovative technologies transformed the West Coast economy, the Ninth Circuit faced important issues of economic policy. *Continental TV Inc. v. GTE Sylvania Inc.*, decided in 1976 by an en banc court, case involved franchise agreements between television manufacturers and retailers, which limited the geographic region in which a retailer could

operate, and restricted the manufacturer to a set number of retail outlets. A San Francisco retailer sued manufacturer GTE Sylvania claiming the restrictions violated the Sherman Antitrust Act. The jury ruled for the retailer but the Ninth Circuit reversed the decision, holding that the court would examine the franchise agreement for its reasonableness under the Sherman Act. The panel found Sylvania’s gain in market share after years of struggle was a pro-competitive effect of the agreement. The Supreme Court later agreed, changing the world of antitrust law.

1985-1995

This period saw the rise of the Internet and consumer technology such as personal computers, video games and camcorders, the fall of communist governments, and the passage of new legislation such as the Americans with Disabilities Act. The Ninth Circuit also faced issues arising from the long, often tempestuous relationship between the U.S. and the various Native American tribes. One important case contributing to the body of Native American law was *United States v. Washington*, decided in 1985 by an en banc court, upheld an important 1974 decision by Judge George Boldt of the Western District of Washington. Judge Boldt held that the tribes’ right to a “fair and equitable share” of fishing rights was 50 percent of all the harvestable fish destined for the tribes’ traditional fishing places. In 1978, the Ninth Circuit affirmed the decision, finding the tribes were entitled to participate equitably in the supply of fish produced by the state’s fish hatchery, rejecting the argument that hatchery fish were produced by state efforts and could be restricted by the state.

1995-2005

Cutting edge intellectual property cases challenged the Ninth Circuit to strike a balance between consumer access to emerging technologies and protection of the interests of the businesses, inventors, and artists who create them. The best known of these cases, *A&M Records, Inc. v. Napster, Inc.*, heard in 2000, involved computer software that allowed users to share digital music files over the Internet. Napster was sued by record companies and some recording artists for copyright violation and loss of sales. After the district court granted a preliminary injunction to stop use of the software, Napster appealed to the Ninth Circuit. The world followed the oral arguments, which were televised live and covered by more than 250 news and other organizations. In 2001, the Ninth Circuit affirmed the district court, finding that the software was a direct copyright infringement and that Napster could be secondarily liable for its users’ copyright. The case returned to district court, and Napster later filed for bankruptcy protection. 🌿