HISTORIC U.S. COURT CASES

AN ENCYCLOPEDIA

SECOND EDITION

JOHN W. JOHNSON, EDITOR

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Editor

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Despite the stirring affirmations of equality in the Declaration of Independence and the U.S. Constitution, thousands of legal disputes in the history of the American colonies and the United States have involved discrimination or perceived discrimination against racial minorities, women, homosexuals, and persons with disabilities. Since 1750, the general tendency has been for American courts to extend incrementally, albeit at a glacial pace, rights to racial minorities and women that most white men enjoyed from the beginning. Only within the last few years have gay men and women and persons with disabilities begun to receive any protection under the law.

Most experts would agree that the American courts have been more sympathetic to the rights of the "historically disadvantaged" than have this country's legislative or executive bodies. Courts, in other words, have been the focus and the forums for the most significant advances in the legal rights of the people whom the "founding fathers" (an appropriate term for fifty-five white males who attended the 1787 Constitutional Convention in Philadelphia) largely left out of the great democratic experiment. The forty-three selections in this portion of the *Encyclopedia* examine a sample of some of the most important U.S. cases involving discrimination and its remedies.

Slavery

By any quantitative or qualitative standard, the greatest injustice to a racial minority in American history was the chattel slavery of African Americans. It is important to emphasize that slavery was a legally protected institution from the earliest colonial times until well into the nineteenth century in virtually all jurisdictions of North America. "The End of Slavery in Massachusetts" presents a discussion of an early set of cases that helped extinguish slavery in New England.

The other five selections in this section deal with the vexing legal issues presented when slaves were taken out of the American South. "Emancipation of Slaves in Transit" describes a famous ruling in which a Massachusetts court held that any slave, except a fugitive, becomes free the moment he or she enters a free jurisdiction. The fugitive slave exception is covered in "Upholding the Fugitive Slave Law of 1793." The landmark case of *Dred Scott v. Sandford*, sometimes called the U.S. Supreme Court's "greatest self-inflicted wound," is examined in "They Have No Rights." Efforts by northern states to resist fugitive slave laws on the eve of the Civil War are discussed in "Slavery, Freedom, and Federal Judicial Power" and "Slaves-in-Transit and the Antebellum Crisis."

African Americans Since 1865

The advancement of African Americans from slavery to freedom has taken over a century. And the process is still not completed. The twelve selections in this section chart the ebb and flow of legal rights of black Americans. The retreat from black civil rights in the Reconstruction is discussed in "No 'Right' to Vote: The Reconstruction Election Cases" and "Civil Rights or Last *Rites*?" The selec-

tion "'Separate But Equal' Approved" presents a discussion of the case that provided the inglorious justification for the segregation of blacks from whites.

"Race, Law, and Gender in South Carolina" and "Justice Vindicated: The Case of William Harper" describe two little-known but revealing state cases involving black defendants in the years between World War I and World War II. Perhaps the most notorious example of racism in the southern courts of the Jim Crow years is discussed in "The Scottsboro Cases."

The appointment of Earl Warren as Chief Justice of the United States in 1953 proved to be one of the most important events in the modern American civil rights movement. Warren, as discussed in "Separate Education Is Not Equal Education," was able to convince all his judicial brethren to join in his 1954 opinion in *Brown v. Board of Education,* striking down school segregation. The initial resistance to the implementation of the *Brown* decision was massive, as noted in "The Little Rock Crisis: State Interposition Against the Supreme Court." Most southern states further limited the freedom of African Americans by prohibiting marriage between blacks and whites. As noted in "A Case of Black and White: Removing Restrictions Against Interracial Marriages," such "anti-miscegenation laws" were not voided by the U.S. Supreme Court until 1967.

In the late 1960s, as discussed in "The School Busing Case," courts began to approve complex busing plans to attempt to integrate the public schools. Since the 1970s, however, as examined in "Desegregation Heads North" and "Far Enough? The Rehnquist Court and Desegregation," courts have been increasingly hesitant to use legal compulsion to remedy patterns of school segregation.

Native Americans

Native Americans have been involved in several significant U.S. court cases since 1800. The first selection in this section, "The Cherokee Cases," deals with the attempt of one Indian tribal unit to have its status as a "nation" respected by American law. Although the Cherokees did technically win certain legal rights before the Supreme Court, the momentum of white migration and executive policy forced the Cherokees to suffer removal from their ancestral lands the and to relocate by traveling the brutal "Trail of Tears."

The next two selections in this section, "The 'Death Knell of the Nations'" and "Why Native Americans Can No Longer Count on Treaties with the U.S. Government," illustrate how the Supreme Court in the post-Civil War era allowed Congress to override stipulations in Indian treaties. However, a recent spate of Indian land claim litigation has reversed the pattern of legal defeat by Native Americans. One of the leading cases is profiled in "Native American Land Claims: The Indians Finally Win."

Other Racial Minorities

Although African Americans and Native Americans have been the parties to most of the important U.S. court cases involving racial discrimination, there are a number of historically significant cases growing out of disputes involving other

racial minorities. In "Chinese Laundries and the Fourteenth Amendment," the late nineteenth-century U.S. Supreme Court uncharacteristically ruled in favor of a Chinese litigant. However, in "The Japanese Internment Cases," an essay focusing upon a set of cases which tested the legality of the imprisonment of over 100,000 Americans of Japanese background (most of whom were U.S. citizens) during World War II, the Court found against the Japanese American plaintiffs. "How Should We Pay for Our Schools?" discusses a 1973 case involving public school financing and the Fourteenth Amendment in which the plaintiff children were Mexican Americans.

The last two essays in this section, "Affirmative Action: Can a White, College-Educated Male Be a Victim of Discrimination?" and "Is Race Still a Compelling Factor?" examine the leading appellate cases on affirmative action, the most controversial dimension of civil rights public policy today.

Women

Although not a numerical minority, throughout most of the country's history American women have enjoyed fewer rights and privileges than their male counterparts. Many legal experts would argue that women have been forced to suffer a pattern of discrimination similar to that of racial minorities.

The nine selections in this section provide a glimpse of some of the leading cases on women's rights. "Should a Woman Be Admitted to the Bar?" discusses a nineteenth-century case in which the then typical practice of excluding women from the highest paying and highest status professions was upheld. In the early twentieth century, some state legislatures passed "protective" or "compensatory" legislation, allegedly for the benefit of women. "Aberration in the Movement Toward an Eight-Hour Day" discusses a state case in which a protective maximum hours law for women was struck down. But, in "The Law Recognizes 'Women Are Different,'" the U.S. Supreme Court, benefiting from the pioneering "Brandeis Brief," upheld the constitutionality of another state maximum hours law for women.

The next two essays—"A Supreme Court First: Equal Protection Applied to Women" and "Sex Discrimination: Reasonable or Suspect?"—provide illustrations of how the modern Supreme Court is attempting to struggle with state statutes that allegedly deny women equal protection of the laws under the Fourteenth Amendment. "Law Upheld Guaranteeing Right to Return to Work after Childbirth Leave of Absence," discusses a 1980s case in which a California pregnancy leave statute was upheld by the U.S. Supreme Court. A recent corporate attempt to "protect" women in their childbearing years from employment in a high-paying but hazardous industry, reminiscent of the compensatory practices of the early twentieth century, is discussed in "The Fetus and the Workplace." Another selection, "Do Women Belong in Military Academies?," examines the constitutionality of prohibiting women from attending state-supported military schools. The final selection in this section, "Protecting Students from Sexual Harassment," examines two U.S. Supreme Court decisions of the 1990s that

interpreted a category of congressional legislation passed primarily for the benefit of females.

Gays and Lesbians

In this section are three selections—one from the 1970s, one from the 1980s, and one from the 1990s—examining cases involving the legal rights of homosexuals. In the first two—"When Consenting Adults Can't: Privacy, the Law, and Homosexual Conduct" and "Does the Right to Privacy End Where Sexual Preference Begins?"—the U.S. Supreme Court upheld state legislation challenged by homosexual plaintiffs. In the third, " 'Animus' or Moral Justification?: Anti-Gay Laws and Equal Protection," the Court struck down a controversial amendment to the Colorado state constitution that sought to remove protections recently extended to gays and lesbians.

Americans with Disabilities

The Americans with Disabilities Act (ADA), passed by Congress and signed by President George Bush in 1990, transformed the legal landscape for persons with physical or mental handicaps. The first essay in this section, "Three Generations of Imbeciles Are Enough," is illustrative of the glib prejudice against a person with a disability that existed prior to the passage of the ADA. The other three essays—"School Medical Services for Children with Disabilities," "Mitigating Measures and the Definition of Disability," and "Is Walking an Integral Part of the Game of Golf?"—present discussions of recent cases, only one of which found in favor of the disabled plaintiff.