1-1-1988

Judge Ogden Hoffman and the Northern District Court of California

Christian G. Fritz

University of New Mexico - School of Law

Follow this and additional works at: https://digitalrepository.unm.edu/law_facultyscholarship

Part of the Law Commons

Recommended Citation
Christian G. Fritz, Judge Ogden Hoffman and the Northern District Court of California, 1 Legal History 99 (1988).
Available at: https://digitalrepository.unm.edu/law_facultyscholarship/623
JUDGE OGDEN HOFFMAN
And the Northern District of California

BY CHRISTIAN G. FRITZ

I'm delighted to be here today and to talk to you about one of my favorite subjects, Ogden Hoffman and the early history of the United States District Court for the Northern District of California. It seems particularly appropriate to me that we've gathered in the ceremonial courtroom, presided over in a sense by the spirit of Ogden Hoffman and certainly by his portrait that hangs to the rear of this room. Just as that portrait gives us a visual sense of the man, I hope to provide a sketch of Hoffman as a judge and leave you with an impression of his forty years on this bench.

First, I'd like to talk about his background. Then I will discuss three areas of law important to Hoffman's court: admiralty, land, and Chinese immigration. Finally, I'd like to assess the meaning of Hoffman's judgeship in contrast to that of United States Supreme Court Associate Justice Stephen J. Field.

Born and raised in New York, Hoffman came from a very old and respected Dutch family. He grew up taking a fierce pride in what he called his "long descent from an historic name." Both his father and grandfather had taken prominent roles in the political and legal affairs of the state. Hoffman's father, in particular, became one of the preeminent criminal trial lawyers of his generation and ultimately served as the United States Attorney for the Southern District of New York.

The impressive legal and political accomplishments of the Hoffmans helped give them access to the highest circles of New York society. The combination of social and literary figures, politicians and financiers that formed his father's circle was an experience that Hoffman never forgot. Indeed, he claimed it as his birthright.

Christian G. Fritz is Assistant Professor of Law at the School of Law, University of New Mexico. This article was transcribed and edited from a talk given by Professor Fritz at a meeting of the U.S. District Court for the Northern District of California Historical Society on June 11, 1986 in San Francisco.
Judge Ogden Hoffman, Jr., 1822-1891. Educated at Columbia University and Harvard College, New York lawyer Hoffman moved to California in 1850 and a year later was appointed by President Fillmore as the new state's first district judge. He presided over the majority of the land grant cases and his court gained a strong reputation — among both passengers and commercial interests — in admiralty. Frustrated at not being appointed to a higher court, Hoffman nevertheless remained committed to his work in San Francisco, serving forty years as a district judge there. [U.S. District Court, Northern District of California]
Hoffman's enormous pride in his family and his background is vital to understanding not only his character but his self-perception as a judge. As the only judge for the northern district during its first forty years, Hoffman came to directly identify with the court. He was the court. Attacks on the court were seen as personal attacks. His personality thus assumed a major role in how the institution itself functioned and responded.

Like his grandfather and father, Hoffman was also extravagant. All three tended to spend more than they could afford and, despite numerous professional opportunities, were unable to provide financial security for themselves and their families. Hoffman's grandfather spent his last year dodging creditors, and when Hoffman's father died he left his family with tremendous debts. Indeed, friends and political allies were forced to take up a collection in order to stave off the disgrace of destitution. Hoffman as well, although he never married, was apparently perpetually in debt and, even though he experienced a financial windfall in the 1870s, died a relatively poor man in 1891.

Hoffman had quite a good education. He received his B.A. from Columbia and then attended Harvard Law School [class of 1842] while Joseph Story was still teaching there. In addition Hoffman received the more common practical training of reading law for several years in the offices of New York lawyers. After passing the bar, Hoffman, like many law graduates today, took a well deserved vacation. In his case he went to Europe and spent a considerable amount of time in Paris. Upon his return to New York, Hoffman seemed restless and his father was after him to settle down and seriously practice law. After about a year in his father's office, Hoffman left for California in the wake of the gold rush, arriving in San Francisco in May of 1850.

Hoffman's effort to succeed in San Francisco was ill-fated. The frenetic pace of the gold rush bar, high inflation, the lack of social deference, and his own propensity to spend money doomed his success. One observer noted that a background such as Hoffman's could be a liability. "Polished education without a strong Democratic feeling" unfitted a man from taking part in such a "hand-to-hand struggle" with other lawyers. Some business did come Hoffman's way, however, mainly from New York connections, but inflation ate up most of what he made. Moreover, Hoffman, unlike other lawyers, was not about to sleep on the floor of his office to save money. Indeed, to maintain himself as a gentleman undoubtedly placed him under a severe financial strain.

Hoffman's struggle at the bar was cut short, happily for him, by his appointment as judge of the northern district less than one year after he arrived in San Francisco. He was only twenty-nine years old.
The story of Hoffman's appointment is quite a complex one and really beyond the scope of this talk. Suffice it to say that behind Hoffman's appointment loomed the figure of his father, whose good friend Daniel Webster was President Millard Fillmore's secretary of state. In addition to his father's influence and efforts, Hoffman found strong support from William H. Aspinwall, the president of the New York owned Pacific Mail Steamship Company, the firm that provided a vital transportation link between California and the East Coast.

Aspinwall hoped that Hoffman, whom he knew as his son's youthful friend, would declare the taxation of his vessels by California unconstitutional. Whatever the expectations of Hoffman's judgeship, his youth and relative inexperience were major objections to his appointment on February 1, 1851.

Hoffman's first test as a judge came in his admiralty docket. A great many of those who came to California during the gold rush arrived in San Francisco by sea, and the city quickly became the state's foremost port and commercial center. The many sailing vessels that choked San Francisco's harbor in the 1850s led an observer to describe them as "a perfect forest of masts." Such a "forest" guaranteed a tremendous admiralty docket. In fact, Hoffman would hear over three thousand cases during the first decade he was on the bench.

Although many of these cases, some 40 percent, were libels for wages by seamen, Hoffman's admiralty court was most frequently used as an important commercial tribunal by San Francisco's businessmen and merchants. The commercial litigation tended to
fall into two broad categories: suits for nondelivery or damage to goods shipped to San Francisco and suits for payment for supplies, repairs, services, or money provided a ship.

Hoffman's relationship with the business community was ultimately something of an ambivalent one. While he frequently rendered decisions that were highly unpopular to that group, his court provided a very useful forum, and collectively businessmen became Hoffman's staunchest defenders. The source of that support and the respect Hoffman received from the business community stemmed far less from the substantive results of his decisions than from his manner of handling admiralty matters.

From the first case Hoffman adjudicated he was determined to demonstrate his legal scholarship. He was, of course, relatively young and mindful of the fact that he needed to prove himself, especially to the local bar. This impulse manifested itself in the extended factual discussions and the scholarly productions of his earliest opinions.

While Hoffman may have impressed lawyers and businessmen with his erudition, he won their support by insisting that his court be true to the traditional de-emphasis of procedure in admiralty, by hearing the testimony of witnesses and arguments of counsel with patience, by sifting and weighing evidence and arguments with extraordinary conscientiousness, and by exhibiting a fierce judicial independence.

Despite the crush of business before his court, particularly in the first decade of its existence, Hoffman took the time to insure that litigants had their day in court. With cases that came to trial, Hoffman invariably took notes that in effect created a transcript
of the testimony presented in court. In the commercial cases these notes ranged in length from just a few pages to several hundred pages and symbolized his close attention to detail.

One of the most fascinating series of cases Hoffman dealt with in admiralty concerned his handling of the grievances experienced by passengers coming to California in the wake of the gold rush. One historian of this event has entitled his book *The World Rushed In*, which captures, I think, the essence of the experience of San Francisco in the 1850s.* The eagerness to get to California, whether from the East Coast of the United States or from Australia or other parts of the world, led to the terrible conditions under which such argonauts traveled.

Upon their arrival in San Francisco, passengers often brought suit before Hoffman's court alleging that the carriers, the ships that brought them to the city, had violated their passenger contract. If the carriers had deliberately overbooked or were unable to provide the promised provisions and accommodations, the issue was readily resolved as a breach of contract.

More interesting is the process whereby Hoffman became increasingly innovative in providing legal relief for passengers and in facilitating their law suits. In the early 1850s Hoffman allowed several passengers to join in one suit — a type of class action — to overcome costs and time that made individual suits impractical. Moreover, he permitted passengers to sue *in rem* (i.e., to sue the vessel), in effect to hold shipowners responsible not only for the negligence but also for the intentional torts of their employees. In so doing, Hoffman developed a theory of implied passenger contract that converted what were essentially tort claims into contract actions. In Hoffman's words the passenger contract was breached "whether the passenger be deprived of suitable food and accommodations or be subjected to ill usage by blows and false imprisonment or by habitual obscenity, insult and opposition."

Hoffman's willingness to stretch the passenger contract to include torts stemmed in part from his seeing himself as the only hope for many of the passengers who had suffered during their voyages to California. Moreover, he had personal knowledge of the conditions complained about, having traveled by steamship from New York to San Francisco via the Panama route. His sensibilities as a gentleman were particularly outraged when women bore the brunt of hardship, ill-treatment, or lewd behavior. Indeed, virtually all of the suits based on rudeness and verbal abuse involved women.

Giving relief by allowing passengers to sue ships *in rem* helped, but did not complete, the process of educating the ship owners

---

about their duty to passengers. Punitive damages in cases of flagrant abuses provided yet another means of monitoring behavior on the high seas. In the face of profits to be made in transporting human cargo, Hoffman declared that "it is only by the firm and constant enforcement by the courts of the rights of passengers that the repetition of abuses [against them] can be prevented." In taking such a stance, Hoffman clearly disappointed William H. Aspinwall, whose Pacific Mail Steamship Company often found itself before the northern district. We can only speculate whether Hoffman's judicial reputation insured him a comfortable passage during his subsequent visits to New York.

LAND

If the law of the sea initially preoccupied Hoffman's court, by the mid-1850s he began hearing a series of cases dealing with title to California's most valuable lands. Arising as appeals from a specially created federal land board, these cases involved claims to often vast ranchos based on land grants issued by the Mexican government. Under the terms of the Treaty of Guadalupe Hidalgo, the United States promised to respect the Mexican ownership of property within California. The Mexican land grants that predated the American conquest in 1846 ultimately became the focus of bitter controversy lasting several decades.

One claimant summed up the frustrations of many others when he declared in 1857: "That we should be kept back to be made the football for squatters and speculators and lawyers to kick at is something I never looked for when I invested my money in this property." This complaint by a non-Hispanic Californian points up a common myth about the state's early land disputes. It is often assumed that the decisions of the American courts were responsible for depriving California's Hispanics of their most valuable lands. In fact, over 40 percent of the land claims presented were filed by non-Hispanics. California's Hispanics did indeed lose much of their land to the Anglos, but it is important to keep in mind how many claims passed out of their hands prior to and during the litigation before the courts and how relatively few as a result of the decisions of those courts. Indeed, the adjudication over California's land grants assumed a distinctly national character, with significant individual and collective interests in such claims centered in Washington, D.C., Philadelphia, and New York City.

One case in particular, San Francisco's claim for its pueblo lands, pitted Judge Hoffman against his colleague, Associate Justice Stephen J. Field of the United States Supreme Court. As successor to the Mexican town of Yerba Buena, San Francisco claimed it was entitled under Mexican law to approximately eighteen thousand
acres. These pueblo lands were the keystone to an extraordinarily complex and attenuated land struggle. For the purpose of today's talk, however, the most interesting aspect of this struggle is the contrast in judicial style, so to speak, between Hoffman and Field.

Stephen Field was on the California Supreme Court for six years and presided as its chief justice at the time of his appointment to the United States Supreme Court in 1863. By that date Hoffman had more than a decade's experience on the northern district court and some, including Judge Hoffman, felt that the promotion to the higher federal bench was his by rights. If Hoffman's disappointment at being passed over created some tension between the two judges, Field's aggressive approach toward settling the pueblo case deeply strained their relationship.

By the early 1860s San Franciscans could perceive important differences in the attitudes of these two judges toward the pueblo title. Hoffman seemed to be dubious about the existence of the pueblo and his general approach to the land grant adjudication emphasized the technical requirements under Mexican law. On the other hand, Field had clearly indicated his support for the existence of a pueblo and seemed determined to see it confirmed.

From the moment of his appointment, Field sought to gain control over the pueblo case, which was technically before Hoffman's court. In conjunction with a political ally, Senator John Conness of California, Field worked to insure that San Francisco's
pueblo title was confirmed and that Hoffman's judgeship was eliminated in the process. The failure of bills that struck at his judgeship could not erase Hoffman's bitterness that Field had plotted with Conness to do him in.

Field did manage to get jurisdiction over the pueblo case and, as expected, promptly and perfunctorily confirmed the city's claim. Field's refusal to hear arguments against the existence of a pueblo and his refusal to allow an appeal to the Supreme Court underscored his determination to settle the case. Indeed, even after the Supreme Court, with Field vigorously dissenting, granted a writ of mandamus directing Field as the circuit justice to allow the appeal, Field refused to acquiesce. While the pueblo case remained in the Supreme Court docket pending appeal, Field drafted a bill that Conness introduced into the Senate to confirm San Francisco's title. The bill passed in March 1866 and effectively ended an ongoing struggle of sixteen years.

How Field and Hoffman viewed their role as judges was shaped in part by their different characters, while the clash of their personalities tended to accentuate differences between them. It may well be that their contrasting behavior in part reflected the fact that Field's judicial experience was primarily appellate while Hoffman mainly served as a trial judge. Each man's perception of the appropriate role for a judge and the nature of the judicial process, however, had a far greater impact on the degree of restraint or activism that each employed in doing his job. Field had the utmost confidence in his ability to perceive the problems inherent in the struggle over the pueblo title and to devise the appropriate solution for it. He proceeded with aggressive determination, and even if contemporaries questioned his means, there was no denying that he ended a troublesome dispute.

To a man of action such as Field, Hoffman's careful, conscientious, and seemingly plodding approach to judicial questions must have seemed unnecessary or even a sign of weakness. At the same time, Field's heavy hand in resolving the pueblo dispute and his legislative collaboration with Conness insulted Hoffman's pride and estranged him from California's circuit justice.

---

**CHINESE IMMIGRATION**

The clash between Field and Hoffman over the pueblo case marked only the beginning. The two judges would be at odds once again in the 1880s over the issue of Chinese immigration.

With reference to the Chinese, Field is best known for his decisions pertaining to the Fourteenth Amendment, of which *Yick Wo v. Hopkins* is perhaps his most famous opinion. Field's decisions in the Chinese civil rights cases had in a sense less to do
with the Chinese than they did with Field's particular view of the
Fourteenth Amendment and the judiciary's role in maintaining a
balance between business and government. The important
doctrinal legacy of these civil rights opinions has obscured
another series of cases that had a far greater practical impact on
the Chinese in America.

Far less well known are the over seven thousand *habeas corpus*
cases brought by the Chinese in Hoffman's court after 1882. In
resolving whether the Chinese petitioners were unlawfully
detained by federal customs officers, Hoffman embarked on a
series of cases that would preoccupy him for nearly a decade. In
the process he allowed many thousands of Chinese into San
Francisco despite intense pressure not to.

Nonetheless, there was a big difference between what Hoffman
said and did about the Chinese appearing before him. Along with
most white Californians — including most of the lawyers
representing the Chinese and the other federal judges serving the
Far West (including Field) — Hoffman favored the restriction of
Chinese immigration and regarded them as racial inferiors.

Anti-Chinese sentiment had long existed in California, but the
movement to exclude them peaked in the 1870s. Part of that
pressure resulted in the renegotiation in 1880 of the Burlingame
Treaty with China. The revised treaty continued to extend "most
favored nation" status to the Chinese already in the country while
giving Congress the right to suspend the immigration of Chinese
laborers. In 1882 Congress passed the first of several laws designed
to halt the influx of Chinese laborers. Interpreting these so-called
restriction acts in the light of the treaty proved no easy task.

From the very beginning San Francisco's customs officials
refused to land virtually every Chinese person who arrived by sea
and questioned their right to seek writs of *habeas corpus* from
Hoffman's court. At the heart of most of the *habeas corpus* cases
was the factual question of whether the Chinese petitioner was a
laborer (and thus excludable) or was a merchant or a returning
resident who had simply gone to China on a visit (and was thus
titled to entry). Ultimately, the tremendous number of
petitioners seeking relief from the northern district induced
Hoffman to nickname his court "the *Habeas Corpus* Mill."

There were two aspects to these cases: the hearings themselves,
after which Hoffman rendered a decision, usually without a
written opinion, and some dozen "test cases" that sought to discuss
the interpretation of the restriction acts more generally. While
Field participated in these "test cases," he took no part in the
individual hearings.

In fact, as California's circuit justice, Field presided over these
"test cases" when he was in San Francisco. Initially, Field agreed
with Hoffman that the restriction act should be interpreted in the
light of the treaty with China. However, with increasing public
pressure adversely affecting his bid for the United States presidency, Field reversed himself and took a much harder line toward the Chinese. On the other hand, Hoffman steadfastly upheld the treaty with China. In 1884 the Supreme Court vindicated Hoffman's position, but not before he came in for considerable abuse from the local press.

In some sense the institutional pressure on Hoffman's court came from his own commitment to judicial due process. By insisting that each detained Chinese person had a right to challenge his imprisonment, Hoffman insured himself of a crowded docket. Moreover, such hearings could be protracted because Hoffman held that the Chinese were entitled to present any evidence that might establish their unlawful confinement.

Denial of access to his court or of the right to testify and present evidence was not merely a violation of basic rights to a fair trial guaranteed by the treaty with China and the Fourteenth Amendment, but also ran counter to Hoffman's conception of his role as a federal judge. He refused to abdicate the decision of Chinese exclusion to customs officials regardless of the grief it caused him. Despite serious misgivings, Hoffman felt obliged to render decisions that, in his words, suggested he was "engaged in a persistent effort to defeat on technical grounds the operation of the law."

Eventually, proponents of unilateral exclusion of Chinese laborers prevailed with federal legislation enacted in 1888. Even then, however, Hoffman refused to allow the local customs officers to bully him into denying due process to those Chinese who sought relief before the northern district.

Perhaps the most fascinating question about Hoffman's behavior in these cases is why he didn't avail himself of the many options that could have relieved the pressure of his court. At one level, his adherence to treaty obligations and procedural guarantees provides answers. In the final analysis, however, I would suggest that Hoffman's experience as a trial judge, rather than his attitudes toward treaties, procedure, or judicial independence, proved more determinative of the fact that thousands of Chinese walked out of his courtroom.

Despite his generalized bias against the Chinese, in his court he did not face "the Chinese," but rather individual Chinese petitioners. The thousands of separate hearings individualized the Chinese and forced Hoffman to see and hear them as human beings with distinct explanations and histories that had to be dealt with on a case-by-case basis. Hoffman ultimately could not maintain the detachment of Field, who only heard test cases in which the Chinese petitioner at hand was largely incidental. For instance, Hoffman expressed his delight at being able to avoid separating Chinese children from their parents. Likewise, he repeatedly spoke of the admirable and respectable qualities of
individual Chinese even as he decried their limitations as a race.

In contrast, Field, whose vision remained unclouded by the intensity of human interaction faced by Hoffman, would speak in sweeping terms about how to deal with "the Chinese problem." His perspective did not include the need to look at the Chinese coming before the federal courts as individuals.

As a trial judge, Hoffman found himself enmeshed in a far more complicated process. Despite his strong desire to be rid of "the habeas corpus mill," Hoffman could not avoid those cases without repudiating his concept of judicial review and duty. By adhering to that call to duty, his court gave thousands of Chinese the chance to convince him on an individual basis that they were entitled to their freedom to enter the country.

In summing up Ogden Hoffman's judgeship, it is perhaps appropriate to cast a glance at his more famous colleague Stephen Field. Without a doubt Field had a brilliant mind and his thirty-four years on the United States Supreme Court left an important impact on the doctrinal history of American law. In that sense, Field was a great judge in a way that Hoffman was not. At the same time, it seems to me that if we compare the two in terms of those qualities we value in a judge — evenhandedness, being apolitical, and conscientiousness — Hoffman emerges as the better judge. It is ironic to think that some of the qualities that insured Field's importance as a legal figure — his dynamism and singlemindedness — detracted from his judicial capacity.

In the final analysis, Hoffman's life and judgeship tell us far more about the nature of federal courts and process in the nineteenth century. There were, after all, far more Hoffmans than Fields. And despite his faults as a man and a judge, Hoffman emerges as a sympathetic character worth our attention in his own right. Hoffman's judicial legacy was a proud one and marks a fitting beginning to the history of this court.

The editor thanks Michael Griffith, Ph.D., Archivist of the U.S. District Court for the Northern District of California, for his assistance in preparing this article for publication.