

Supreme Court Case Study 37



Nullifying the Separate but Equal Principle

Brown v. Board of Education of Topeka, Kansas, 1954

***** Background of the Case *****

Linda Brown, an African American teenager, applied for admission to an all-white public school in Topeka, Kansas. The board of education of Topeka refused to admit her. In a 1950 case, *Sweatt v. Painter*, the Supreme Court had for the first time questioned the constitutionality of the *Plessy* decision. The Court had held in that case that African Americans must be admitted to the previously segregated University of Texas Law School because no separate but equal facilities existed in Texas. The National Association for the Advancement of Colored People (NAACP) now saw denying admission to Linda Brown and other young African Americans as an opportunity to challenge segregation in the public schools, even though the facilities in other segregated schools for African Americans were equal to those for white students.

Brown represents a collection of four cases, all decided at one time. The cases had one common feature: African American children had been denied admission to segregated, all-white public schools. The cases reached the United States Supreme Court by way of appeals through lower courts, all of which had ruled in accordance with the 1896 *Plessy* decision.

Constitutional Issue *****

The *Brown* case called for an explicit reappraisal of the *Plessy* decision. Did separate but equal public facilities violate the equal protection clause of the Fourteenth Amendment? In the case of *Plessy v. Ferguson*, the Supreme Court had established the separate but equal principle, which allowed the continuation of segregated schools and public facilities. During the 56 years since the *Plessy* decision, however, Americans' views on segregation had changed. To many people, the very idea of segregated schools as well as other segregated public facilities seemed to be out of step with the times. In the years after World War II, the NAACP and other civil rights groups began pressing for nullification of the separate but equal idea. The justices were not immune to the changing social forces in the United States. Still, if in fact they wished to overturn *Plessy* in the *Brown* case, they faced the challenge of finding a constitutional basis for their decision.

***** The Supreme Court's Decision *****

The Court ruled unanimously to overrule the separate but equal principle. Chief Justice Earl Warren, who wrote the decision, was keenly aware that in overruling *Plessy*, an act of enormous social and political consequences, it was important for the entire Court to be in agreement. The *Brown* ruling was thus issued by a unanimous Court.

In his decision, Warren explained that since the relation of the Fourteenth Amendment to public schools was difficult to determine, the Court would "look instead to the effect of segregation itself on public education." The chief justice explained, "We must consider public education in the light of its full development and its present place in American life

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throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the law.”

The Court concluded that segregation of African American schoolchildren “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” To bolster his claim about the huge psychological impact of segregation, Warren quoted the finding of a lower court, even though the lower court ruled against the African American children. That court had stated: “Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has the tendency to [retard] the education and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system.”

Agreeing with this statement, Warren concluded, “Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority. Any language in *Plessy v. Ferguson* contrary to this finding is rejected.”

On this basis the Court concluded “that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal. Therefore we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the law guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the due process clause of the Fourteenth Amendment.”

In a follow-up to the *Brown* case, in 1955 the Court ordered that the integration of the public schools was to go forward “with all deliberate speed.”

Case Analysis Questions

DIRECTIONS: Answer the following questions on a separate sheet of paper.

1. Why do you think the Court recognized the huge psychological impact that segregated schools had on children who attended them?
2. A constitutional scholar has called the Court’s ruling in the *Brown* case “the Supreme Court’s most important decision of the twentieth century.” Why do you think he would make this claim?
3. Do you agree or disagree with the Court’s ruling in the *Brown* case? Give reasons for your answer.
4. How do you think the Court’s *Brown* ruling was received in the South?
5. Initially all the justices may not have agreed that separate but equal schools were unconstitutional. Why then do you think they ultimately agreed with the chief justice?

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- Student answers will vary, but they should include the idea that the rights guaranteed by the Bill of Rights, in this case the First Amendment, apply to all beliefs, whether they are accepted by the majority or only by a minority.

★ CASE STUDY 31

Endo v. United States, 1944

- The Court focused on the fact that Mitsuye Endo was an American citizen whose loyalty had never been questioned.
- Other Japanese Americans could have sued successfully for their release on the grounds that they were American citizens and that their Japanese ancestry did not preclude them from being loyal to the United States.
- Justice Murphy believed that the whole internment program was unconstitutional, whereas Douglas defended the relocation, but argued that the authority to detain a citizen or place conditions on the person's release, as protection against espionage or sabotage, is exhausted when that person's loyalty is conceded.
- Students' answers will vary. Probably most students, more than half a century after World War II, will agree with Justice Murphy. Some students, however, may agree with Douglas on the grounds that the internment program, as unfair as it was, was an attempt by the government to protect the nation.
- Students may speculate that, as is often true in important cases that involve constitutional questions, some other person or organization opposed to the government's internment program on constitutional grounds paid the legal costs involved.

★ CASE STUDY 32

Korematsu v. United States, 1944

- The evacuation orders were based on the war powers of the president and Congress.
- Answers will vary. Students will probably express outrage that his or her patriotism could have been so severely questioned.
- Black's stand in this case did not enhance his reputation as a defender of people's rights.
- Justice Murphy argued that the Japanese Americans had been deprived of equal protection of the law and procedural due process guaranteed by the Fifth Amendment.
- Answers will vary. Students who agree with the description may say that the government's use of the military against its own citizens is definitely alarming. Students who disagree with the description may say that during times of war, the government sometimes needs to approve restrictions that would never be considered in ordinary times.

★ CASE STUDY 33

Everson v. Board of Education, 1947

- There was concern that denying benefits to students attending parochial schools would be seen as discrimination against religion.
- Yes, the Court's ruling would probably apply to such schools as well since the reasoning was that paying for transportation is similar to providing police and fire protection.
- Justice Rutledge argued that the cost of transportation was part of the cost of education, and since the instruction was primarily religious, reimbursement for transportation costs was not allowable.
- Probably not, since paying the teachers was clearly part of the cost of parochial school education.
- Answers will vary. Students who agree with Justice Black may say that tax-subsidized transportation to schools falls into the same category as police and fire protection and should therefore be available to all children, not just to those in public school. Students who agree with Justice Rutledge may stress that the purpose of reimbursing transportation costs is to defray costs, and that the cost of transportation is no less a part of religious instruction than teachers or textbooks. In order to maintain the separation of church and state, the state must withhold what the Constitution forbids it to give.

★ CASE STUDY 34

McCollum v. Board of Education, 1948

- on the grounds that religion and government should be separate from each other
- Frankfurter meant that the separation between religion and government is so important that it should not be easily disregarded.
- the customs of the people
- Answers may vary. One possibility students may suggest is that the justices all wanted to go on record in a decision that varied so markedly from the *Everson* decision.
- Answers will vary. Students who agree with the decision will probably stress the separation of church and state in the constitution. Those who disagree with the decision may argue that religious education is positive for the community and the country and is supported by a majority of people. Therefore religious instruction should be allowed in public schools as long as all religions are provided equal access.

★ CASE STUDY 35

Dennis v. United States, 1951

- The Smith Act had to pass the clear and present danger test.
- Vinson claimed that only the existence of a conspiracy need be proved, while Black and

Douglas held that overt acts were necessary to convict, and that only speeches and publications had been proven.

- Under the Court's reasoning, you might have been found guilty because, according to the Smith Act, it was illegal to advocate the overthrow of the government by force or violence.
- Students' answers will vary. Students who favor protection may say that freedom of speech and thought are protected by the First Amendment, and it has been well established that these protections are especially important for those who advocate unpopular positions. Students who oppose protections may point out that groups who want to change the government already have recourse to do so peacefully; they need not conspire to overthrow a legal government by force or violence.
- The Court might have agreed with Justices Douglas and Black that advocacy alone is not sufficient to prove illegality.

★ CASE STUDY 36

Feiner v. New York, 1951

- Justice Vinson said the police acted properly to prevent public disorder.
- Justice Black saw the majority decision as subjecting all speeches, political or otherwise, to the supervision and censorship of the local police, which he viewed as a long step toward totalitarian authority.
- Students who agree with Justice Vinson's ruling may reason that police need the power to protect public safety even if their actions interfere with an individual's right to free speech. Students who agree with Justice Black's dissent may express concern about the possibility of overzealous police officers censoring public speech, especially speech that they consider offensive, instead of protecting speakers from unsympathetic audiences.
- Justices Black, Douglas, and Minton thought the job of the police in this situation was to protect freedom of speech, so their most important task would be to protect the speaker, especially one who was espousing unpopular ideas.
- Speakers would probably be careful not to say anything that might incite their listeners to riot.

★ CASE STUDY 37

Brown v. Board of Education of Topeka, Kansas, 1954

- Recognizing the psychological impact that segregation had on children was necessary in order to show that segregation violated the equal protection clause of the Fourteenth Amendment.
- The *Brown* decision affected all public schools, both in the North and the South, so it probably directly affected more people than any other Court decision.

- Students who agree with the *Brown* decision may point out that segregated schools violate the basic principles of equality upon which the United States is founded. Students who disagree with the *Brown* decision may point out that African American students in integrated schools may have to fit into a setting that is dominated by the white culture, whereas they may learn better in a cultural setting that is more familiar to them.
- Students' answers may vary. One possible answer is that many people in the South loudly denounced the *Brown* decision with a determination not to obey the Court's ruling.
- The justices may have realized that a ruling either way in the *Brown* case was bound to be controversial, so they may have planned a show of unanimity in order to decrease public dissension on the issue.

★ CASE STUDY 38

Watkins v. United States, 1957

- Watkins did not believe that the questions he was asked were within the scope of the committee's authority.
- The Court held that HUAC's activities were so broad that they went beyond the normal limits of a congressional investigation. The majority overturned Watkins's conviction because the subject of the investigation was so vague that Watkins could not tell whether the questions he was asked were relevant to the investigation. Therefore, his rights to due process under the Fifth Amendment were violated.
- Witnesses do not need to answer questions that are outside the scope of a committee's authority, or are not relevant to the subject being investigated.
- The standard the Court established prior to Watkins was that the investigation must be for the purpose of drafting legislation. Witnesses refusing to cooperate could be held in contempt of Congress.
- Students' answers may vary. Those who agree with Warren's majority opinion may state that the Committee violated Watkins's constitutional rights. Those who agree with Clark's dissent may state that the Court should not interfere with legitimate congressional investigations because it would violate the principle of separation of powers.

★ CASE STUDY 39

Yates v. United States, 1957

- Advocacy is merely supporting a cause or proposal; incitement is urging or encouraging others to take action in support of a cause or proposal.
- The Court held that the trial judge's instructions were inadequate because he had not informed the jury that to convict under the Smith Act, the prosecution needed to prove not only that the defendants had advocated overthrowing the

government, but also that they had intended to incite people to such action.

- In *Dennis*, the Court made no distinction between advocacy and incitement; in the *Yates* case, the Court did make that distinction.
- The *Yates* case determined that persons who simply advocate communism are not guilty of violating the Smith Act.
- Students who agree with the *Yates* decision may say that the First Amendment protects unpopular speech, so people who advocate Communist causes should be protected unless they take or incite others to take some illegal action in support of their cause. Students who disagree with the decision may point out that elected governments need laws to help protect the public interest by prosecuting groups like the Communists, who not only advocate the forcible overthrow of the government but are also well organized enough to act illegally in support of their beliefs.

★ CASE STUDY 40

Barenblatt v. United States, 1959

- The Court ruled that the First Amendment does not give a witness the right to resist governmental inquiry in all circumstances, and when competing individual and the governmental interests are at stake, a balance must be struck in favor of the government.
- The Court assumed that the committee did have a specified purpose and that its work conformed with Congress's intentions because Congress had regularly provided appropriations for the committee's work and had raised it to a standing committee.
- All dissenting judges agreed that Barenblatt's First Amendment rights had been violated.
- Since the Court defended the committee against all the attacks made on it by Barenblatt, there was no reason why the committee would have to change how it operated.
- Students who agree with the Court's decision may say that the Communist Party was a dangerous threat to this country, so Congress had a right to thoroughly investigate its members even if some of their First Amendment and Fifth Amendment protections had to be relinquished. Students who agree with the dissent may say that Congress should never, under any circumstances, ignore the protections provided citizens by the Bill of Rights. To do so is to violate the Constitution.

★ CASE STUDY 41

Mapp v. Ohio, 1961

- Illegally seized evidence violates the constitutional right to privacy.
- Convicting a criminal by using illegally seized evidence can undermine a

government's authority and determination to observe its own laws.

- The illegally seized evidence in the *Mapp* case was so-called obscene material.
- Evidence rejected as illegally seized in a federal case was acceptable in a state court.
- Students who agree with the *Mapp* decision may emphasize the idea that the authority of government is weakened by failure to observe its own laws. Students who disagree with the decision may say that too many criminals are set free because of the legal technicalities created by the exclusionary rule.

★ CASE STUDY 42

Baker v. Carr, 1962

- The case did not involve a political question; it presented a "case" or "controversy" and if the appellants were correct, the federal courts had the authority and ability to fashion a remedy. The case was therefore justiciable or subject to review by a federal court under Article III, Section 2 of the Constitution.
- The practice of states refusing to reapportion legislative districts to reflect changes in the distribution of their population.
- The *Baker* decision stated that a citizen in the state can ask a federal court to consider whether the legislative districts of the state are proper.
- Students who agree with Justice Brennan may say that the Court had the right to require states to undergo redistricting every ten years according to provisions in the Constitution so as to eliminate inequities and maintain fairness in legislative representation. Students who agree with Frankfurter's dissent may say that federal courts should not be deciding questions involving the internal policies of the states.
- Answers may vary. Possible answer: The *Baker* decision reinforced the democratic principle that every citizen's vote should carry the same weight.

★ CASE STUDY 43

Engel v. Vitale, 1962

- The justices decided that it was unconstitutional for the government to prescribe prayer or governmentally sponsored religious activity because such action violates the establishment clause.
- Students who agree with Justice Black's opinion may say that any prayer as part of a governmental program, whether or not the prayer is compulsory, breaches the separation between Church and State. Students who agree with Justice Potter's dissent may say that the Court has interfered with the free exercise of religion.
- The Hyde Park schools had to abandon their practice of reciting a daily prayer.
- Students' answers will vary, but they should understand that the Founders were