

Name: _____

Complete the chart below and on the following pages.

Case	Background Facts	Legal Issue(s)	Decision/Outcome	Significance
<i>Marbury v. Madison</i> (1803) Judicial Review				
<i>Tinker v. Des Moines</i> (1969) First Amendment				
<i>Hazelwood v. Kuhlmeier</i> (1988) First Amendment				

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Case	Background Facts	Legal Issue(s)	Decision/Outcome	Significance
District of Columbia v. Heller (2008) Second Amendment				
Gideon v. Wainwright (1963) Rights of the accused				
Miranda v. Arizona (1966) Rights of the accused				
In re Gault (1967) Rights of the accused				

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<p>Plessy v. Ferguson (1896) <i>Rights of the accused</i></p>				
<p>Brown v. Board of Education (1954) <i>Rights of the accused</i></p>				
<p>United States v. Nixon (1974) <i>The Presidency</i></p>				
<p>Bush v. Gore (2000) <i>The Presidency</i></p>				

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Imagine a close relative promised you a special present: a favorite book or computer game, a trip to an amusement park, or tickets to a baseball game or musical. Such a promise would surely be wonderful, but if you never actually received the present, you would soon become disappointed.

The Bill of Rights was a splendid promise made to the American people. But without a means of enforcement, the Bill of Rights would have become an empty promise and nothing more. What made the Bill of Rights and later constitutional rights so

effective was the fact that these promises were combined with the active protection of the federal courts, and especially by the U.S. Supreme Court.

In Chapter 7, you learned how the U.S. Supreme Court manages its workload. In this chapter, you will witness the Supreme Court in action. You will see how the Court has interpreted and enforced rights promised by the Constitution, especially those rights found in the Bill of Rights and the Fourteenth Amendment.

The Power of Judicial Review

Marbury v. Madison (1803)

This decision, perhaps the single most important one in the history of the Supreme Court, took place against a background of political rivalry. *Marbury v. Madison* was not about individual rights, but about the powers of the Court itself. It laid the foundation for many later decisions by the Court.

The Political Background

John Adams was the second President of the United States. Adams was defeated by Thomas Jefferson in the Presidential election of 1800. In December 1800, Adams' party in Congress passed laws creating new judicial posts. Their aim was to fill the judiciary with sympathetic judges before Jefferson took power.

President Adams nominated new judges to fill all of these posts. The Senate only completed confirmation of his new appointments on March 3, 1801—Adams' last day in office. The new appointments were quickly signed by Adams and sealed by his Secretary of State, **John Marshall**. Most of the new commissions (*certificates of appointment*) were delivered, but in the last-minute rush, a few were not.

Meanwhile, the Chief Justice of the Supreme Court had resigned in January. Adams appointed John Marshall to take his place. In February 1801, Mar-

shall assumed office as Chief Justice of the Supreme Court, but Marshall also remained as Secretary of State during Adams' final month in office.

On March 4, 1801, Thomas Jefferson took the oath of office as the third President of the United States. He appointed James Madison as his Secretary of State. Jefferson and Madison refused to deliver any remaining last-minute commissions made by Adams. One of these undelivered commissions was to William Marbury.

Marbury's Lawsuit

Marbury sued Madison for failing to deliver his commission.

The **Judiciary Act of 1789** had given the U.S. Supreme Court the power to issue a court order to a government official to perform his duties (*writ of mandamus*). Marbury filed his suit in the Supreme Court, seeking such an order to Madison, requiring him to deliver the commission.

The lawsuit placed Chief Justice Marshall in a delicate situation. As former Secretary of State, Marshall had sealed the very commission he was now asked to enforce. Could his decision be impartial in these circumstances?

The Legal Issues

The case brought two issues before the Court:

1. Should the Supreme Court issue a court order to Madison, as Secretary of State, requiring him to deliver the commission to William Marbury?
2. Can the Supreme Court rule on the constitutionality of a law passed by Congress?

The Decision/Outcome

Marshall found an ingenious solution to his problem.

First, Marshall made it clear that Marbury was fully entitled to his appointment, which had already been signed and sealed.

Then Marshall turned to the question of enforcement. Did the Supreme Court have the power to order the Secretary of State to deliver Marbury's commission?

Marshall explained that the Constitution had given the U.S. Supreme Court "original jurisdiction" in only a small number of cases. Congress did not have the right, under the Constitution, to enlarge this original jurisdiction. Only a constitutional amendment could do this. Therefore, the section of the Judiciary Act of 1789 that gave the Supreme Court the power to issue court orders to officials to perform their duties was an "unconstitutional" expansion of the Court's original jurisdiction.

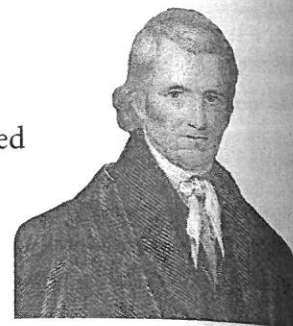
Since this section of the Judiciary Act was unconstitutional, Marshall concluded that it could not be enforced. Therefore, the Supreme Court lacked the power to order Madison to deliver Marbury's commission.

This raised a second issue, which was actually more important than the first: **Which branch of government had authority to determine the constitutionality of laws?** Marshall explained that it was the U.S. Supreme Court that held the final power in

determining whether or not a law, or parts of it, were constitutional.

Here was his argument:

1. The Constitution was the fundamental law of the United States
2. When the Constitution and an ordinary law were in conflict, the Constitution had to be upheld.
3. It was the job of the U.S. Supreme Court to interpret and apply the law.
4. It was therefore the job of the Supreme Court to interpret both the Constitution and individual laws passed by Congress.
5. The Supreme Court could declare laws unconstitutional if it found them to be in conflict with the Constitution.
6. Finally, unconstitutional laws were invalid and could not be enforced.



Justice John Marshall

Ironically, Marshall had limited the Supreme Court's authority by denying it the power to issue certain types of court orders (*writ of mandamus*); at the same time, Marshall had greatly expanded the Court's authority by establishing the principle of **judicial review**.

Significance

The decision in *Marbury v. Madison* firmly established the principle of **judicial review**: the principle that the Supreme Court has the power to rule that laws passed by Congress are unconstitutional and to invalidate them.

With this decision, the Supreme Court took on the role of "guardian" of our Constitution. But remember: the U.S. Supreme Court does not issue "advisory opinions." (*advice to officials on the validity or meaning of a law*) It only determines the constitutionality of a law if it comes before the Court in a real case.

First Amendment Rights

As you learned in the last chapter, the First Amendment guarantees American citizens the right to free speech: “Congress shall make no law . . . abridging

the freedom of speech.” But does this right extend to students?

Tinker v. Des Moines Independent School District (1969)

The Facts

In the 1960s, the United States was involved in an unpopular war in Vietnam. Americans were sharply divided. A group of junior high and high school students in Des Moines, Iowa, decided to show their opposition to the war by wearing black armbands to school. Their parents supported their protest. School officials feared a disruption and banned the wearing of armbands two days before the students had planned their demonstration. When the students still wore the armbands, school authorities suspended them from school until they returned without the armbands. Even though their protest was a silent, symbolic act rather than spoken words, the students claimed that the school authorities had violated their “free speech” rights under the First Amendment.



their constitutional rights to freedom of speech or expression at the school-house gate.” The wearing of armbands was seen as an expression of the student’s views on a public issue and therefore a form of “pure speech” entitled to the protections of the First Amendment. School officials had not

shown that the wearing of armbands by the students had threatened such a disruption that the prohibition was necessary:

“Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible. . . .

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are ‘persons’ under our Constitution. They are possessed of fundamental rights. . . . In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.”

—*Tinker v. Des Moines*, 1969

The Legal Issues

1. Do students have the right to free speech guaranteed in the First Amendment?
2. Was the wearing of armbands to school an exercise of “free speech”?

The Decision/Outcome

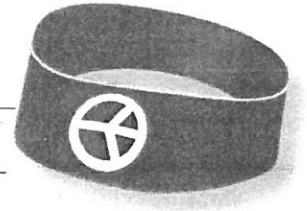
The Supreme Court ruled that the actions of school officials had indeed violated the students’ First Amendment rights. First, the students were individuals entitled to the protections of the First Amendment. Students and teachers did not “shed

Significance:

The decision established that students were citizens entitled to the freedom of speech guaranteed by the First Amendment.

Case Summary

Summarize this case and the Court's decision in your own words.



Hazelwood School District v. Kuhlmeier (1988)

In the aftermath of *Tinker*, there was a flourishing of student expression. Several lower courts ruled against censorship of school-sponsored student publications. **Censorship** refers to the revising of a publication by authorities before it is made public, or even a refusal to permit its publication at all. In *Hazelwood*, the U.S. Supreme Court defined some of the limits on student's free-speech rights.

The Facts

Students in a journalism class in Hazelwood East High School in Missouri published their own student newspaper. The school district paid for the printing and as well as their academic adviser's salary. In 1983, the academic adviser showed the next issue to the school principal for approval. The principal objected to a story on teenage pregnancy in which student reporters had interviewed three pregnant students. The principal also objected to a story about divorce. The paper was printed without the two stories.

Cathy Kuhlmeier, the student editor of the newspaper, and the two student reporters sued the school district for violating their free speech. Their claims were upheld by the U.S. Court of Appeals for the Eighth Circuit.

The Legal Issue

Does the First Amendment protect school-sponsored publications from censorship by school authorities?

The Decision/Outcome

The Supreme Court reversed the ruling of the U.S. Circuit Court of Appeals.

According to the Supreme Court, the right to publish in a school-sponsored newspaper was not the same as the right to wear armbands in *Tinker*. In the case of school-sponsored activities, school officials have the right to exercise control "so long as their actions are reasonably related to legitimate pedagogical

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(educational) concerns.” The situation was seen as different from *Tinker* because here the school was actually promoting the publication through its sponsorship: “A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school.”

The Supreme Court concluded that school-sponsored student publications were *not* protected by the First Amendment. The school principal’s refusal to publish the three articles thus did not violate the student’s rights. Three of the Justices dissented from the

majority opinion, arguing that it showed an “unthinking contempt for individual rights.”

Significance

Hazelwood qualified some of the free speech rights given to students by *Tinker*. It stated that school officials could censor school-sponsored student publications so long as such restrictions served a valid educational purpose. Several states passed their own laws granting students rights to publish student publications more freely. Lower courts are divided on whether the same reasoning should apply to college newspapers.

Case Summary

Summarize this case and the Court’s decision in your own words.

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The Active Citizen

- ▶ Create a Venn diagram or chart comparing the two cases, *Tinker* and *Hazelwood*.
- ▶ Imagine you are Cathy Kuhlmeier. Write a letter to a friend explaining why you have decided to sue your school district.
- ▶ Imagine you are presenting oral argument before the U.S. Supreme Court for either of the parties in *Hazelwood v. Kuhlmeier*. What points would you emphasize?

Second Amendment Rights

We occasionally learn of tragic assaults against students by intruders with handguns and other dangerous weapons. Such events are often followed by demands for stricter gun control.

At the same time, the Second Amendment guarantees our right to “bear arms.” How far should the right to buy and bear arms go? Does this constitutional right prevent local governments from banning certain types of guns?

District of Columbia v. Heller (2008)

In 1975, Washington, D.C., passed its Firearms Control Regulations Act. This law prohibited residents from registering or carrying handguns. In addition, all lawfully owned firearms had to be kept unloaded and disassembled or bound by a trigger lock when in the owner’s home. Richard Heller, a police officer, applied for a handgun permit for his home and was denied. He challenged the law in court.

The Legal Issue

Do local laws prohibiting handgun ownership violate Second Amendment rights to keep handguns and other firearms for private use in one’s home?

The Decision/Outcome

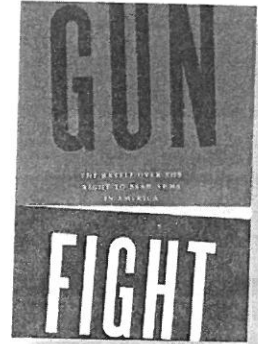
The Second Amendment protects an individual’s right to bear arms and to use those arms for lawful purposes, such as self-defense. The Supreme Court criticized Washington D.C.’s total ban on handgun ownership in the home because it prohibited guns in the very place

where they were most needed for the lawful defense of self, family, and property. Such a prohibition was therefore not permitted under the Second Amendment.

The Court also ruled against the city’s requirement that all lawful firearms at home be disassembled or bound by a trigger lock. This requirement made it impossible for citizens to use arms for the lawful purpose of defending themselves, and therefore was also unconstitutional.

Significance

The right to bear arms under the Second Amendment is an individual right closely tied to the right of self-defense. Local governments cannot totally ban handguns, although they can control licensing procedures and impose other reasonable requirements.



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Case Summary

Summarize this case and the Court’s decision in your own words.

Rights of the Accused

Several of the rights in the Bill of Rights protect those who have been accused of a crime. These safeguards actually serve two different purposes:

1. They protect innocent persons who may be wrongfully accused; and

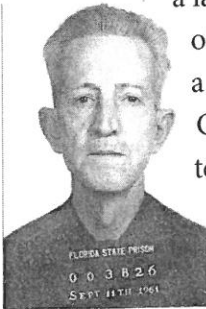
2. They protect us all from arbitrary actions by the government.

Although the rights of the accused were defined by the Bill of Rights, several Court decisions were required to determine the extent of these rights in different situations.

Gideon v. Wainwright (1963)

The Facts

Clarence Gideon was arrested in Florida. He was accused robbing the jukebox in a pool hall. A witness had seen Gideon walking from it with a bottle of wine and change in his pockets. Gideon faced a prison sentence but was too poor to afford a lawyer. He requested



a lawyer but was told that, under the laws of Florida, the court would only pay for a lawyer if he faced the death penalty. Gideon defended himself and was sentenced to five-years imprisonment. From prison, Gideon appealed his case in a hand-written letter to the U.S. Supreme Court.

The Legal Issue

Does the **Sixth Amendment** require a court to provide **counsel** (*a lawyer*) to an **indigent** (*poor*) defen-

dant accused of a **felony** (*a crime punishable with imprisonment of one year or more*)?

The Decision/Outcome

The U.S. Supreme Court held that the government must provide a lawyer to anyone accused of a felony who is too poor to afford one. The right to a lawyer was a fundamental right, essential to a fair trial. The Sixth Amendment guaranteed this right, while the Fourteenth Amendment imposed this requirement on state as well as federal courts. When Gideon was tried again with the help of a lawyer, Gideon was **acquitted** (*found to be innocent*) and released.

Significance

Ever since *Gideon*, states must provide counsel to defendants charged with felonies who cannot pay for their own attorney. **Public defenders** generally fill this role.

Case Summary

Summarize this case and the Court's decision in your own words.

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Miranda v. Arizona (1966)

The Fifth Amendment protects us from self-incrimination, and the Sixth Amendment guarantees a person accused of a serious crime the right to an attorney.

The Facts

In 1963, Ernesto Miranda was arrested in Arizona for kidnapping and rape. After two hours of police questioning, Miranda signed a confession.

However, Miranda was never informed that he had the right to remain silent or to have a lawyer present during the questioning. Miranda was convicted and sentenced to 20 to 30 years imprisonment. Miranda appealed on the grounds that he had not been informed of his rights to remain silent or to see an attorney before he gave his confession.

The Legal Issue

Can the police **interrogate** (question) a suspect without informing him of his rights to remain silent and to have a lawyer present?

The Decision/Outcome

The U.S. Supreme Court overturned Miranda's conviction on the grounds that Miranda had not been properly informed of his rights:

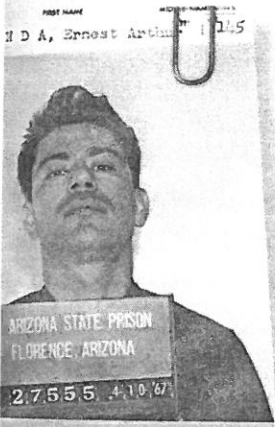
"The person in custody must, prior to interrogation, be clearly informed that he has the right to remain silent, and that anything he says will be used against him in court; he must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation, and that, if he is indigent, a lawyer will be appointed to represent him. . . ."

—*Miranda v. Arizona*, 1966

Significance

The rights established by the Supreme Court in this case are now referred to as "Miranda" rights. Police must state them before interrogating a suspect; otherwise, any self-incriminating statements or confession cannot be used in court.

Miranda himself was retried and convicted a second time without the use of his confession. Miranda was released in 1972, but he was killed in a fight four years later.



Case Summary

Summarize this case and the Court's decision in your own words.

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In re Gault (1967)

States have different procedures and penalties for criminal offenses committed by minors (those under 18 years old) and by adults. *In re*, “in the matter of,” is used in juvenile proceedings to indicate that there are no opposing parties as there are in adult criminal cases.

In the 1960s, juvenile courts had no attorneys or juries. Decisions were made by juvenile court judges. The reasons for these differences were generally to protect children, to keep them from being branded as criminals, and to discourage them from becoming criminals. The existence of a separate juvenile justice system permitted some states, however, to act without fully respecting the rights of minors.

The Facts

Gerald Gault was 15 years old when he was accused of making an obscene telephone call to a neighbor. Gault was arrested and taken to a children’s detention home. Gault’s parents were away at work when he was arrested, and no notice was left for them.

A hearing was scheduled for the next day without notice and without sufficient time to prepare. The hearing was informal: Gault was questioned by a judge from the superior court acting as a juvenile judge. Gault denied making the obscene remarks. No witnesses were present at the hearing.

A second hearing was held the following week. The neighbor again did not appear for the hearing, and no transcript was made of either hearing. Gault never had the benefit of an attorney. Gault was convicted of making the obscene call and sentenced to a juvenile detention home until he was 21 years old—a period of six years. The maximum penalty for an adult making an obscene phone call at that time was only \$50 and two months’ imprisonment. Moreover, under Arizona law, a juvenile court order could not be appealed.

To release their son, the parents petitioned for a *writ of habeas corpus* (a special court procedure for the release of someone unjustly imprisoned). Their petition was denied by the Arizona Supreme Court on the grounds that the procedures applied to Gault’s case had met “due process” requirements.

Legal Issue

What “due process” rights are owed to a **juvenile** (a *minor*) facing a possible loss of liberty?

The Decision/Outcome

The U.S. Supreme Court overturned the decision by an 8 to 1 vote. While there are good reasons for treating juveniles and adults differently, the Court held that juveniles were still entitled to all reasonable “due process” rights when facing possible detention.

These “due process” rights include: (1) timely notice of criminal charges; (2) the right to confront witnesses; (3) the right against self-incrimination; (4) the right to counsel (*an attorney*); (5) the right to a transcript of the proceedings; and (6) the right to appellate review. Gerald Galt had been denied all of these rights.



“Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise

The essential difference between Gerald’s case and a normal criminal case is that safeguards available to adults were discarded in Gerald’s case. The summary procedure as well as the long commitment was possible because Gerald was 15 years of age instead of over 18. If Gerald had been over 18, he would not have been subject to Juvenile Court proceedings. For the particular offense immediately involved, the maximum punishment would have

been a fine of \$5 to \$50, or imprisonment in jail for not more than two months. Instead, he was committed to custody for a maximum of six years.

If he had been over 18 and had committed an offense to which such a sentence might apply, he would have been entitled to substantial rights under the Constitution of the United States as well as under Arizona's laws and constitution. The United States Constitution would guarantee him rights and protections with respect to arrest, search and seizure, and pretrial interrogation. It would assure him of specific notice of the charges and adequate time to decide his course of action and to prepare his defense. He would be entitled to clear advice that he could be represented by counsel, and, at least if a felony were involved, the State would be required to provide counsel if his

parents were unable to afford it. If the court acted on the basis of his confession, careful procedures would be required to assure its voluntariness. If the case went to trial, confrontation and opportunity for cross-examination would be guaranteed.

So wide a gulf between the State's treatment of the adult and of the child requires a bridge sturdier than mere verbiage, and reasons more persuasive than cliché can provide."

—*In re Gault*, 1967

Significance

As a result of Gault's case, state juvenile justice systems must now provide minors with the "due process" rights guaranteed by the Constitution and listed in the Court's decision.

Case Summary

Summarize this case and the Court's decision in your own words.

Racial Segregation and "Equal Protection"

One of the most important issues ever to face American courts has been that of racial segregation. Following the Civil War and Reconstruction, Southern states passed "Jim Crow" laws imposing racial **segregation** on public places, such as trains, buses,

parks and schools. These laws required African Americans to use different facilities than whites did.

Yet the **Fourteenth Amendment** had promised all American citizens the "equal protection of the laws."

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Southerners argued that so long as the facilities offered to African Americans were “separate but equal,” the requirements of the Fourteenth Amendment were satisfied.

In the following two cases, you will see how the Supreme Court’s views on the meaning of “equal protection” under the Fourteenth Amendment have shifted over time. These two court cases were among the most influential in all of American history.

Plessy v. Ferguson (1896)

The Facts

In 1890, Louisiana passed a “Jim Crow” law requiring railroad companies to “provide equal but separate” passenger cars to members of different races.

Opponents of segregation persuaded Homer Plessy, who was one-eighth African American and appeared to be white, to challenge this law. Plessy sat in a railroad passenger car reserved for whites, told the conductor of his mixed ancestry, and was arrested.

He fought his case all the way up to the U.S. Supreme Court.

The Legal Issue

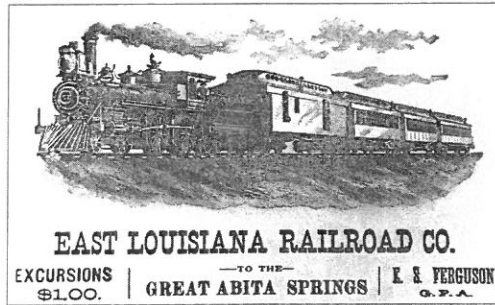
Can a state impose racial segregation by offering “separate-but-equal” facilities, without violating the “Equal Protection Clause” of the Fourteenth Amendment?

The Decision/Outcome

The U.S. Supreme Court saw nothing in the Louisiana law itself that stated that some races were inferior to others. Therefore, the separation of races it required did not violate the “Equal Protection” Clause of the Fourteenth Amendment. If African Americans or others chose to see themselves as inferior, the Court said, this had nothing to do with the law itself. The law merely separated these races without indicating that either one of them was superior or inferior.

“We cannot say that a law which requires the separation of two races is

unreasonable. We consider the [error] of [Plessy’s] argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. . . .



When the government ... has secured to each of its citizens equal rights before the law, and equal opportunities for improvement and progress, it has accomplished the end for which it was organized, and performed all of the functions respecting social advantages with which it is endowed ...

If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the constitution of the United States cannot put them upon the same plane.”

—*Plessy v. Ferguson*, 1896

Significance

In *Plessy v. Ferguson*, the U.S. Supreme Court affirmed the constitutionality of state segregation laws, so long as the facilities offered to each race were of “equal standards.” This became known as the “separate-but-equal” doctrine. In *Plessy*, the Court held that such segregation did not violate the “Equal Protection” Clause of the Fourteenth Amendment. As a result of this decision, states across the South strengthened their segregation laws.

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Case Summary

Summarize this case and the Court’s decision in your own words.

Brown v. Board of Education (1954)

For the next 50 years after *Plessy v. Ferguson*, white and African-American children continued to attend separate public schools across the South.

Starting in the 1930s, African-American lawyers at the National Association for the Advancement of Colored People, or “NAACP,” began challenging the “separate-but-equal” doctrine in public education. They launched an ambitious strategy by filing a series of lawsuits challenging state laws.

The Facts

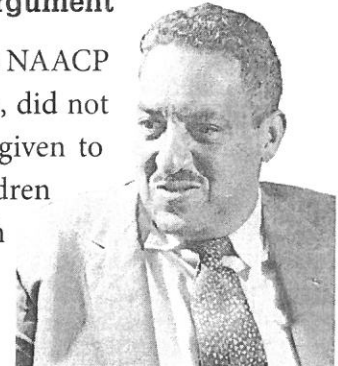
Linda Brown was a schoolgirl in Topeka, Kansas. Her father sued the local school board because Linda was forced to attend an all-black school when an all-white school was closer to their home. Brown lost the case in state court. In 1953, the NAACP appealed Linda Brown’s case along with a number of others to the U.S. Supreme Court.

The Legal Issue

Did racial segregation in public schools violate the “Equal Protection” Clause of the Fourteenth Amendment?

The NAACP’s Legal Argument

Thurgood Marshall, the NAACP lawyer handling the case, did not argue that the facilities given to African-American children were inferior (although this was generally the case). Instead, he argued that the system of segregated education was, by



Thurgood Marshall

its very nature, unequal because it sent a psychological message to African-American children that they were not “good enough” to be taught with whites.

Marshall supported his argument with the findings of an African-American psychologist, Dr. Kenneth Clark. Clark showed white and black dolls to young African-American children and found that these children preferred the white dolls to black ones. Clark concluded that the system of racial segregation had led to this painful sense of inferiority.

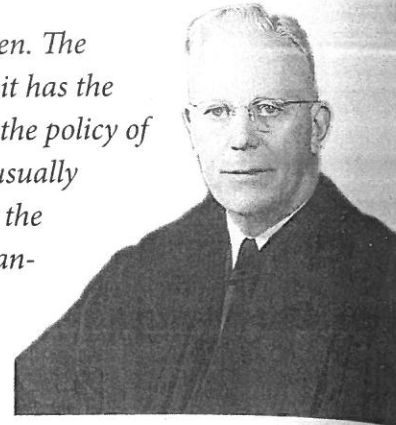
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The Decision/Outcome

Earl Warren, a former governor, had only just been appointed as Chief Justice of the Supreme Court. Warren wanted to avoid a divided decision. With great effort, he obtained the support of all nine Justices. They were persuaded in part by Thurgood Marshall's reasoning. Warren wrote the Court's unanimous opinion, which declared racial segregation in public schools to be a violation of the Fourteenth Amendment:

"Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does . . . 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 [African-American] group. A sense of inferiority affects the motivation of a child to learn. . . .



Earl Warren

We conclude that, in the field of public education, the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

—*Brown v. Board of Education*, 1954

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The Active Citizen

- ▶ Look up the word "inherent" in the dictionary. Why did Chief Justice Earl Warren conclude that segregated schools were "inherently" unequal?
- ▶ How was this conclusion important to the Court's judgment?

Significance

Southern Senators in Congress immediately signed a public protest against the *Brown* decision. Local officials across the South swore they would never enforce it. Violence in the South increased.

Southern resistance required the U.S. Supreme Court to make a separate ruling on how the *Brown* decision was to be carried out a year later. Enforce-

ment of the *Brown* decision was handed over to the lower federal courts, which were to see that local school districts carried out the desegregation order "with all deliberate speed."

The *Brown* decision would take many years to carry out. As a result of the *Brown* decision, the first steps were taken towards ending racial segregation in the South and creating the diverse, multicultural society we enjoy today.

Case Summary

Summarize this case and the Court's decision in your own words.

The Active Citizen

- ▶ Create a Venn diagram or chart comparing the two decisions, *Plessy* and *Brown*. How would you account for the differences in outcome?
- ▶ Imagine you are presenting oral argument to the Supreme Court in the case of *Brown v. Board of Education*. Which points would you emphasize?
- ▶ Prepare an oral presentation, PowerPoint or Prezi presentation, or video on the impact of either of these two decisions on American society.

The Presidency

Sensitive to the separation of powers, the U.S. Supreme Court has only occasionally ruled on questions of Presidential power. In the next two cases, the Court ruled on whether “executive privilege” allowed a President to avoid producing documents

in a criminal investigation, and whether an inconsistent recount of votes could be permitted in the most closely contested Presidential election in U.S. history.

United States v. Nixon (1974)

The Facts

During the Presidential election campaign of 1972, a group of former government agents broke into Democratic Party headquarters in the Watergate Hotel and office complex in downtown Washington D.C.

President Nixon, a Republican, tried to protect these agents from investigation by claiming that they were acting for national security. At Congressional hearings, it was revealed that Nixon had taped all his conversations in the White

House. Nixon refused to hand over the tapes to investigators, claiming that as President of the United States, he was entitled to “executive privilege.”

The Decision/Outcome

President Nixon’s claim of “executive privilege” was overruled by the U.S. Supreme Court, which ordered the President to hand over the tapes.

“A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions, and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for Presidential communications. . . . But this presumptive privilege must be considered in light of our historic commitment to the rule of law . . . To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or by the defense.”

—*United States v. Nixon*, 1974

The Legal issue

Does “executive privilege”—the need of the President of the United States for privacy and confidentiality in making high-level decisions of national importance—excuse the President from turning over documents needed as evidence in a criminal proceeding?

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Significance

The tapes revealed that President Nixon was indeed behind the Watergate “cover-up.” President Nixon

resigned rather than face impeachment. The decision proved that even the President of the United States is not above the “rule of law.”

Case Summary

Summarize this case and the Court’s decision in your own words.

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The Active Citizen

- ▶ In *United States vs. Nixon*, did the U.S. Supreme Court strike the right balance between the needs of the executive and judicial branches? Or did their decision upset the traditional separation of powers? Write a short essay giving your views on whether the Supreme Court was right in ordering President Nixon to turn over his tapes.

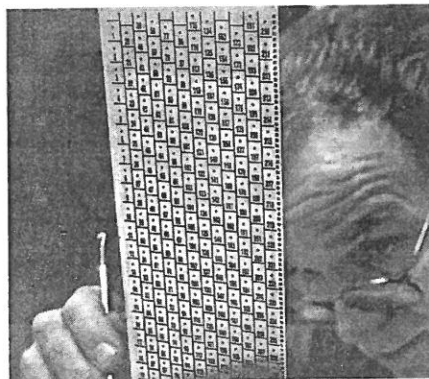
Bush v. Gore (2000)

The Facts

In 2000, Americans experienced the closest Presidential contest in their history. When Americans went to bed that election night, it was still unclear who their next President would be. In the end, the election hinged on which candidate—Vice President Al Gore or Texas Governor George W. Bush—had won Florida’s electoral votes.

The award of Florida’s votes was delayed because of errors that had been made in the voting and

counting of votes, especially on many paper ballots. A recount was started in some districts because of disputed votes. George W. Bush filed to stop the recount. The Florida Supreme Court ruled against Bush, and ordered a count by hand of all the ballots in the state. However, there were no uniform standards for determining when a ballot would be counted and when it should be rejected. Moreover, such a count could not have been completed



before Florida was required to report its vote to the Electoral College. Bush filed a petition with the U.S. Supreme Court to halt the recount.

The Legal Issue

Did the lack of standards for a manual recount of the vote violate the “Equal Protection” Clause and due process rights of the Fourteenth Amendment?

The Decision/Outcome

The Supreme Court was sharply divided. By a 5 to 4 vote, it halted the recount because of the absence of uniform standards and the fact that legally questionable votes might have been included in the recount.

The Court was sensitive to the fact that it was sharply divided and also interfering with the people’s selection of their next President. The majority opinion pointed out that seven of the Justices agreed that a manual recount in Florida would have been full of problems:

“Seven Justices of the Court agree that there are constitutional problems with the recount ordered by the Florida Supreme Court that demand a remedy The only disagreement is as to the remedy None are more conscious of the vital limits on judicial authority than are the members of this Court, and none stand more in admiration

of the Constitution’s design to leave the selection of the President to the people, through their legislatures, and to the political sphere. When contending parties invoke the process of the courts, however, it becomes our unsought responsibility to resolve the federal and constitutional issues the judicial system has been forced to confront.”

—*Bush v. Gore* (2000)

The dissenting Justices felt that the recount could have been properly handled by the Florida courts, and that denying this fact was an attack on the judiciary itself:

“Although we may never know with complete certainty the identity of the winner of this year’s Presidential election, the identity of the loser is perfectly clear. It is the Nation’s confidence in the judge as an impartial guardian of the rule of law.”

—*Justice J.P. Stevens, Dissenting Opinion, Bush v. Gore* (2000)

Significance

In *Bush v. Gore* (2000), the U.S. Supreme Court halted the recount of manual votes in Florida. As a result, George W. Bush won Florida’s electoral votes and became the next President, even though his opponent, Al Gore, had received a larger share of the nation’s popular vote.

Case Summary

Summarize this case and the Court’s decision in your own words.



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In the 2000 Presidential election, it was clear that if the manual recount of votes in Florida were stopped, candidate George W. Bush would become the next President. If the manual count continued, it was less clear who the winner might be. If the U.S. Supreme Court Justices had voted in the election, could they consider themselves as impartial, disinterested parties? What about the Justices of the Florida Supreme Court? Were these courts therefore wrong to intervene in the electoral process? Did they have a choice once both candidates sought court action to resolve the dispute? Hold a class debate on whether the Florida state court system and the U.S. Supreme Court should have become involved in this dispute.

Other Supreme Court Cases

In addition to the issues above, the U.S. Supreme Court has ruled on many other matters. These include:

- ▶ The Rights of Students
- ▶ Health Care
- ▶ Political Campaign Contributions
- ▶ Privacy Rights
- ▶ Individual Rights in Wartime
- ▶ The Powers of the Federal Government
- ▶ States' Rights
- ▶ Legislative Representation
- ▶ Freedom of Religion

The Active Citizen

- ▶ Your teacher should divide your class into groups. Each group should select one of these topics and research two cases in that area. For each case, they should investigate the background facts, the legal issues, the reasoning of the Supreme Court, the Court's decision, and the significance of the case. Then each group should make an oral presentation, a PowerPoint or Prezi presentation, or a video to share what they have learned with the rest of the class.
- ▶ What general trends do you see in the work and direction of the U.S. Supreme Court from the cases you have studied in this chapter?
- ▶ Turn your classroom into the U.S. Supreme Court! Select one of the cases discussed in this chapter. Your teacher should appoint nine students to act as the Justices of the U.S. Supreme Court, and should appoint a group of students to represent the team of attorneys on each side of the case. Attorneys from each team should take turns in representing their case before the Justices, while the Justices should ask penetrating questions during oral argument. Then the Justices should confer among themselves to see if they reach the same decision that the Supreme Court did in the actual case, and briefly present their "majority opinion" to the class. Finally, the rest of the class should complete a questionnaire evaluating how well each of the participants performed his or her part.