Name _____ Date _____ Class _____

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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Name _____ Date _____ Class _____

Supreme Court Case Study 37 *(continued)*

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."

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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Supreme Court Case Study 41

The Legality of Evidence Seized by the Police

Mapp v. *Ohio*, 1961

Background of the Case

In May 1957, three police officers arrived at Dollree Mapp's home after having received a tip that a fugitive had hidden there. Mapp, who had phoned her attorney, refused to admit the police officers. They notified their headquarters, and the officers began their surveillance of the house.

Three hours later four more police officers arrived. They knocked on the door, and when Mapp did not immediately answer, they forced the door and entered. Mapp demanded to see a search warrant. One of the officers held up a piece of paper, claiming it was the warrant. Mapp snatched the paper and stuffed it into her blouse. After a scuffle, the officers recovered the paper and handcuffed Mapp.

While this was transpiring, Mapp's attorney arrived, but the police refused to let him enter the house or have access to his client. The police then began to search the house. They did not find a fugitive in the house; however, in the course of their search which covered the entire residence, they turned up some material they deemed obscene. Mapp was charged and eventually convicted of having lewd and lascivious books and pictures in her possession, a violation of an Ohio statute.

At her trial, the state produced no search warrant, but the failure to produce one went unexplained. Mapp was convicted of having violated the Ohio law. On appeal, the Ohio Supreme Court upheld the conviction even though the evidence against her had been illegally seized. Mapp appealed her case to the United States Supreme Court.

Constitutional Issue

Suppose the police arrive at your house in response to a call reporting an intruder. While looking for the reported intruder, the police undertake, without a warrant, a search of dresser drawers in various bedrooms where they find a supply of illegal drugs. Can this evidence be introduced at your trial on charges of drug possession? This question involves what has been called the "exclusionary rule"—that is, a rule that evidence seized in violation of a person's constitutional rights may not be used against that person in a trial.

In *Wolf* v. *Colorado* (1949), a case similar to the *Mapp* case, the Supreme Court had recognized that the Fourth Amendment embodies the right of an individual to privacy but declined to forbid illegally seized evidence from being used at trial. Since the 1914 decision in *Weeks* v. *United States*, illegally seized evidence could not be used in federal courts. The issue in the *Mapp* case was whether or not the exclusionary rule of *Weeks,* applied to the states through the Fourteenth Amendment, also prohibited illegally seized evidence in state courts.

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Supreme Court Case Study 41 *(continued)*

The Supreme Court's Decision

The Court voted 6 to 3 to reverse the Ohio Supreme Court's decision. Justice Tom C. Clark wrote for the majority:

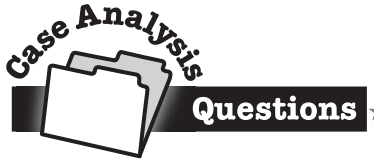
"In extending the substantive protection of due process to all constitutionally unreasonable searches—state or federal—it was logically and constitutionally necessary that the exclusion doctrine—an essential part of the right to privacy—be also insisted upon. . . . In other words, privacy without the exclusionary rule would be a hollow right. . . ." The Court held that this right could not continue to tolerate the admission of unlawfully seized evidence.

The *Mapp* decision was seen by the Court as the end of a double standard by which "a federal prosecutor may make no use of evidence illegally seized, but a State's attorney across the street may. . . ." Justice Clark wrote that this decision also ended an unfortunate situation in which "the State, by admitting evidence unlawfully seized, serves to encourage disobedience to the Federal Constitution which it is bound to uphold."

Clark was aware that the Court's ruling would sometimes result in criminals going free because of an error on the part of the police. To this possibility he responded, "The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence."

Dissenting Opinions

Justice John Marshall Harlan dissented. He doubted the federal exclusionary rule was constitutional and suggested that, under federalism, court remedies for illegally seized evidence should be left to the states.



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

1. According to the Court's decision, why may illegally seized evidence not be used in a trial?
2. Why, according to Justice Clark, is it better for a criminal to go free than to convict the criminal with illegally seized evidence?
3. What was the illegally seized evidence in the *Mapp* case?
4. What was the "double standard" referred to in the Court's decision?
5. Do you agree with the Court's decision in the *Mapp* case? Give reasons for your answer.

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Supreme Court Case Study 43

Constitutionality of Prayer in Public Schools

Engel v. *Vitale*, 1962

Background of the Case

In the early years of the country, prayers in schools had been considered a legitimate, even essential, part of education. Since most of the students were of the same religion, there was no question about the appropriateness of prayer in the schools. However, as the population became more diversified, questions began to be raised as to the legality of this practice. Civil libertarians were prominent in the move to abolish prayer in the schools.

In 1951 the New York State Board of Regents, which supervises the state's public school system, approved a brief prayer at the start of each day. The prayer read: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our Country." School districts were not required to use the prayer, and students were not required to recite it. In 1958 the New Hyde Park school board adopted the prayer and directed that it be recited each day in every class, although students could be excused from reciting it.

Steven Engel, the parent of two children in the New Hyde Park schools, objected to this practice and asked a state court to order the prayer dropped. Engel directed his suit against the head of the school board, William J. Vitale, Jr. The state court and the New York Court of Appeals refused to enjoin—prohibit—recitation of the prayer. Engel then appealed to the United States Supreme Court. The question before the Court was whether the daily prayer, although noncompulsory, violated the First Amendment.

Constitutional Issue

The First Amendment, applied to the states through the due process clause of the Fourteenth Amendment, prohibits laws respecting the establishment of religion. Did the daily prayer of New York State schools, although noncompulsory, violate the establishment clause?

The Supreme Court's Decision

The Court ruled in Engel's favor 6 to 1. (Two justices did not participate in the decision.) Justice Hugo Black wrote the majority opinion.

No one had contested the fact that the prayer was essentially religious. The school board had argued, however, that it was permissible because it was "nondenominational"—that is, that it did not relate to any particular religious group. Furthermore, Vitale had noted that no student was compelled either to say the prayer or to remain in the classroom while it was being recited.

The Court disagreed, calling the practice "wholly inconsistent with the establishment clause." It held that a prayer "composed by government officials as part of a governmental program to further religious beliefs . . . breaches the constitutional wall of separation between Church and State." Neither the nondenominational nature of the prayer nor the fact that it was not compulsory could save it from unconstitutionality under the establishment clause.

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Black pointed out, "It is a matter of history that this very practice of establishing governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America." He went on, "Under that [First] Amendment's prohibition . . . government in this country . . . is without power to prescribe any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity."

Black specified several purposes of the establishment clause. Among them, the clause sought (a) to prevent the "union of government and religion [which] tends to destroy government and to degrade religion"; (b) to express the principle "that religion is too personal, too sacred, too holy, to permit its 'unhallowed perversion' by a civil magistrate"; and (c) to prevent religious persecutions which have historically arisen from governmentally established religions.

The nation, the Constitution, and the Bill of Rights were all established in order to avoid these sorts of problems, Black concluded. Therefore, "the New York laws officially prescribing the Regents' prayer are inconsistent both with the purposes of the establishment clause and with the establishment clause itself."

★★★★★★★★★★★★★★★★★★ Dissenting Opinion ★★★★★★★★★★★★★★★★★★

Justice Potter Stewart challenged the Court's reasoning in the case. He wrote, "The Court does not hold, nor could it, that New York has interfered with the free exercise of anybody's religion. For the state courts have made it clear that those who object to reciting the prayer may be entirely free of any compulsion to do so, including any 'embarrassments and pressures.' . . . But the Court says that in permitting schoolchildren to say this simple prayer, the New York authorities have established 'an official religion.' With all respect, I think the Court has misapplied a great constitutional principle. I cannot see how an official religion is established by letting those who want to say a prayer say it." He went on, "On the contrary, I think that to deny the wish of these schoolchildren to join in reciting this prayer is to deny them the opportunity of sharing in the spiritual heritage of our Nation."

The Court's decision provoked widespread controversy. Civil libertarians hailed it as a victory. Conservatives attacked it vigorously. One member of Congress from Alabama asserted, "They put the Negroes in the schools [in the *Brown* case]. Now they have driven God out."

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

1. On what basis did the majority of court justices find school prayer unconstitutional?
2. Do you agree with Justice Black's opinion or with Justice Stewart's? Give reasons for your answer.
3. What was the New Hyde Park school district required to do after the Court's decision?
4. United States coins and paper money carry the phrase "In God We Trust." Does this inscription violate the principle of separation of Church and State? Explain your answer.
5. Almost all public schools are closed during certain religious holidays, such as Christmas and Easter. Do you think the *Engel* decision should apply to this custom?

Name _____ Date _____ Class _____

Supreme Court Case Study 45

A Poor Defendant's Right to a Lawyer

Gideon v. *Wainwright*, 1963

★★★★★★★★★★★★★★★★ Background of the Case ★★★★★★★★★★★★★★★★

"From time to time in constitutional history an obscure individual becomes the symbol of a great movement in legal doctrine. Character and circumstances illuminate a new understanding of the Constitution. So it was in the case of Clarence Earl Gideon," according to Anthony Lewis, a noted civil libertarian.

In 1961 Clarence Earl Gideon, a petty thief who had served four prison terms, was arrested for breaking into a poolroom in Panama City, Florida, and stealing a pint of wine and some change from a cigarette machine.

At his trial Gideon asked the judge to appoint a lawyer for him since he could not afford to hire one himself. The judge refused because under Florida law a lawyer could be provided only if the defendant was charged with a capital offense—one in which death was a possible penalty.

Gideon then pleaded not guilty; he conducted his own defense, but was found guilty and sentenced to five years in prison. From prison Gideon submitted a handwritten petition to the United States Supreme Court to accept his case as a pauper. In such cases the Court may accept petitions from indigent individuals and then appoint counsel to represent them before the Court. In this case, the Court appointed Abe Fortas, who later was to become a Supreme Court justice, as Gideon's attorney.

Constitutional Issue ★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★

The Court accepted Gideon's case in order to reconsider its decision in the case of *Betts* v. *Brady* (1942). In that case, the Court had ruled that, outside of special circumstances, the due process clause of the Fourteenth Amendment did not require the application of the Sixth Amendment's guarantee of counsel in criminal cases to state trials. In a still earlier case, *Powell* v. *Alabama*, the Court had ensured that state courts would provide counsel in capital cases. The issue in the *Gideon* case deals with whether a defendant in a criminal case who cannot afford a lawyer is deprived of his or her Sixth Amendment right to counsel if he is not supplied with one.

★★★★★★★★★★★★★★ The Supreme Court's Decision ★★★★★★★★★★★★★★

The Court ruled in Gideon's favor, overturning its decision in the *Betts* case. Justice Hugo Black wrote for the opinion for the Court.

Black's opinion stated that the decision in *Betts* represented an abrupt break from precedents such as those found in *Powell*. These precedents, he observed, as well as "reason and reflection," convinced the Court that "in our adversary system of criminal justice, any person haled [brought] into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."

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Name _____ Date _____ Class _____

Supreme Court Case Study 45 *(continued)*

Black went on to stress that poor and rich alike are entitled to counsel. "Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute, and defendants who have money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of counsel of one charged with a crime may not be deemed fundamental and essential for fair trials in some countries, but it is in ours."

Black continued, "From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."

In making the point that Gideon, like most people, did not have the expertise to defend himself, Black quoted the words of the Court in the *Powell* case: "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge to prepare his defense adequately, even though he may have a perfect one. He requires the guiding hand of counsel at every step of the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence."

Gideon was tried again in the court that had convicted him, this time with a court-appointed lawyer. Before the same judge and in the same courtroom, Gideon was acquitted.

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

1. Why did the Court believe that Gideon could not defend himself?

2. Did the Court rule that a defendant could never act as his or her own lawyer? Explain.

3. In overturning its *Betts* ruling, what did the Court in effect say about its judgment in that case?

4. Under the *Gideon* ruling, why is a trial judge required to appoint a lawyer for defendants who claim they are too poor to pay for one?

5. Why is the *Gideon* decision regarded as a historic civil liberties victory?

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Supreme Court Case Study 46

The Right to Counsel

Escobedo v. *Illinois*, 1964

Background of the Case

Danny Escobedo was arrested in Chicago for the murder of his brother-in-law. The arrest took place at 2:30 A.M. on the morning of January 19, 1960, after the fatal shooting. Escobedo made no statement and was released. On January 30, 1960, Escobedo was taken into custody after an informant implicated him in the shooting. He declined to make any statement and asked to see his lawyer. Even though his lawyer was present in the police station, the police denied Escobedo the right to talk with him, and in fact, told Escobedo that his lawyer did not want to see him. Despite repeated attempts, Escobedo's lawyer was not permitted to see his client until the police had completed their interrogation.

Police testimony later revealed that Escobedo had been handcuffed in a standing position during the interrogation and that he was agitated and upset. During the police interrogation, Escobedo made incriminating statements that led to his indictment for the murder of his brother-in-law. He spoke in Spanish to an officer who spoke his language, and during that conversation Escobedo revealed that he was aware of the shooting. Motions made before and during the trial to have these statements suppressed (not used) as evidence were denied. After Escobedo's murder conviction, the United States Supreme Court took the case for review.

Constitutional Issue

By 1964 the Court had generally settled the question that the defendant in a state criminal trial has the Fifth Amendment right not to speak and the Sixth Amendment right to counsel. But it remained unclear exactly when a defendant needed a lawyer to protect his or her right not to speak. For example, it was not uncommon for police officers to deny a suspect the right to counsel in the early stages of an investigation, when the suspect might yield to police pressure and provide incriminating information or even confess to a crime. If the suspect had not had his or her counsel present at that time, did this violate the right-to-counsel principle? The Court had to consider whether the Sixth Amendment's provision of the right to counsel also applied to the interrogation of a suspect of a crime.

The Supreme Court's Decision

The Court voted 5 to 4 to reverse Escobedo's conviction. Justice Arthur Goldberg wrote the Court's opinion.

Goldberg determined that although the questioning of Escobedo had preceded formal indictment, this fact "should make no difference" as to a person's right to counsel. At the point of interrogation, he stated, the investigation was no longer a "general investigation" of an unsolved crime. Escobedo "had become the accused, and the purpose of the investigation was to 'get him' to confess his guilt despite his constitutional right not to do so." It was at this point, Goldberg noted, that many confessions are obtained and this fact "points up its critical

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Supreme Court Case Study 46 *(continued)*

nature as a stage when legal aid and advice are surely needed. . . . Our Constitution, unlike some others, strikes a balance in favor of the right of the accused to be advised by his lawyers of his privilege against self-incrimination . . . . A system of criminal law enforcement which comes to depend on the 'confession,' will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation. . . . If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system."

Goldberg replied to objections that the police would henceforth get fewer confessions because lawyers would automatically advise their clients to say nothing. Goldberg countered that this argument "cuts two ways" since it points out the critical importance to the accused of having an attorney at this stage in the investigation. Goldberg continued, "There is necessarily a direct relationship between the importance of a stage to the police in their quest for a confession and the criticalness of that stage to the accused in his need for legal advice."

In summarizing the Court's opinion, Goldberg noted that "when the process shifts from investigatory to accusatory—when its focus is on the accused and its purpose is to elicit a confession—our adversary system begins to operate, and . . . the accused must be permitted to consult with his lawyer."

★★★★★★★★★★★★★★★★★★ Dissenting Opinion ★★★★★★★★★★★★★★★★★★

Four justices dissented. One, Justice John Marshall Harlan, stated, "I think the rule announced today is most ill-conceived and that it seriously and unjustifiably fetters [restricts] perfectly legitimate methods of criminal law enforcement."

Justice Potter Stewart also dissented, agreeing with Justice Harlan that the ruling gave advantages to the criminal and took away too much authority from law enforcers. He stated that this decision ". . . perverts those precious constitutional guarantees, and frustrates the vital interests of society in preserving the legitimate and proper function of honest and purposeful police investigation."

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

1. At which point, according to the Court's decision, must a lawyer be provided to a suspect of a crime?
2. Which right of the accused does Justice Goldberg refer to as coming under the protection of the Constitution?
3. How do you think a police officer would react to the Court's decision? Give reasons for your answer.
4. What criticism do both Justice Harlan and Justice Stewart make of the Court's decision?
5. Do you agree with the Court's ruling in this case or with those justices who dissented? Explain.

Name _____ Date _____ Class _____

Supreme Court Case Study 50

The Rights of the Accused

Miranda v. *Arizona*, 1966

Background of the Case

Ernesto Miranda had been arrested at his home in Phoenix, Arizona, and accused of kidnapping and rape. Questioned at the police station by two police officers, he was not advised of his right to an attorney nor his right to remain silent. After two hours of interrogation, he signed a written confession to the crimes. At his trial, he was found guilty and sentenced to 20 to 30 years in prison. He took his case to the United States Supreme Court.

Constitutional Issue

The Fifth Amendment of the Constitution guarantees that "no person . . . shall be compelled in any criminal case to be a witness against himself. . . ." This right was made part of the Bill of Rights to prevent a tyrannical government from forcing accused persons to confess to crimes they may or may not have committed. Miranda's case before the Supreme Court was based on this Fifth Amendment protection. The Court accepted the case in order to explore and clarify certain problems arising from earlier decisions related to the rights of individuals taken into police custody. The precise question that the Court explored was under what circumstances an interrogation may take place so that a confession made during the interrogation would be constitutionally admissible in a court of law.

The Supreme Court's Decision

The Supreme Court overturned Miranda's conviction in a 5 to 4 decision. Chief Justice Earl Warren wrote the majority opinion. The Court's ruling centered on what happens when a person is taken into custody. No statement from the suspect, the Court held, may be used when it stems from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom in any significant way.

Warren noted that a suspect under interrogation is subject to great psychological pressures designed "to overbear the will," and that questioning often takes place in an environment "created for no other purpose than to subjugate the individual to the will of his examiner." In overturning Miranda's conviction, the Court intended "to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination. . . ."

A person in police custody "or otherwise deprived of his freedom. . . must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires," Warren stated.

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Name _____ Date _____ Class _____

Supreme Court Case Study 50 *(continued)*

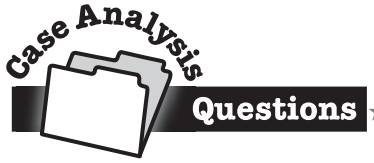
Once these warnings are given, the individual in custody may choose to stop answering questions, or may halt the interrogation until his attorney is present. Otherwise, he may waive his exercise of these rights. In such a case, there would be "a heavy burden . . . on the Government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to . . . counsel."

The *Miranda* ruling applies only to interrogations. The Court emphasized that such safeguards were "not intended to hamper the traditional function of police officers in investigating crime. . . ." The ruling was not meant to bar "general on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process. . . ." In addition, the Chief Justice declared, the Fifth Amendment does not bar voluntary statements from a person who, for example, enters a police station ". . . to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make."

The *Miranda* ruling has led to the practice now followed routinely by arresting police officers and other law enforcement officials during which they read a suspect his or her *Miranda* rights.

★★★★★★★★★★★★★★★★★★ Dissenting Opinion ★★★★★★★★★★★★★★★★★★

Justices John Marshall Harlan, Tom C. Clark, Potter Stewart, and Byron White dissented. They saw no historical precedent for the majority position and feared the decision could weaken law enforcement. Justice White condemned the majority for creating law enforcement directives he viewed as inflexible, while at the same time leaving many unanswered questions.



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

1. How has the Supreme Court interpreted the Fifth Amendment's protection against self-incrimination to apply to all persons questioned in connection with a crime?
2. Suppose you were arrested as a suspect in a crime. The arresting officers rush you to a tiny room where they question you for 12 hours without a stop. Then, too weary to protest, you sign a confession. How would the Court's *Miranda* decision protect you in such a situation?
3. At the scene of a crime, a police officer questions witnesses about the details of a holdup. The officer suspects that some of the witnesses are connected with the crime. How does the *Miranda* decision apply in such an instance?
4. What do you think would happen if a person convicted of a crime proved that she or he was not informed of the *Miranda* rights when questioned by the police?
5. In recent years, the *Miranda* decision has been criticized by some persons as protecting the rights of criminals and neglecting the rights of crime victims. Do you agree or disagree with this point of view? Why?

Name _____ Date _____ Class _____

Supreme Court Case Study 52

Evidence Obtained from a Bugged Telephone

Katz v. *United States*, 1967

Background of the Case

While gathering evidence for the prosecution of Charles Katz, the Federal Bureau of Investigation (FBI) "bugged" a telephone booth by attaching a microphone and tape recorder to the outside of the booth. This action was taken without a warrant. Based on the evidence the FBI secured from the bugged phone booth, Katz was convicted in a federal court in California for using telephone lines to transmit betting information from Los Angeles to Miami and Boston. This action violated federal communication statutes.

Katz sought review of his conviction by the United States Supreme Court on the grounds that a public telephone is a constitutionally protected area. Thus, he argued, evidence obtained by attaching an electronic listening device to a phone booth violates the user's right to privacy.

Constitutional Issue

Katz claimed that his right to privacy, a right that the Court had previously inferred from the Fourth Amendment's protection against unreasonable search and seizure, had been violated. The government, relying on rulings that had held electronic eavesdropping legal when no trespass (physical invasion of a protected area like the home) was involved, claimed that the FBI wiretap was legal because it was on the outside of the phone booth.

The Supreme Court's Decision

The Court decided 7 to 1 against the government. Justice Marshall did not participate in the vote. Justice Potter Stewart wrote the Court's decision. Although the government and Katz had both argued mostly over whether a phone booth was "a constitutionally protected area," the Court's decision followed a slightly different path. Stewart wrote that "the Fourth Amendment protects people, not places." Therefore, the government's argument of not actually penetrating the phone booth was beside the point.

Stewart continued "a person in a telephone booth may rely upon the protection of the Fourth Amendment [and] is surely entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world." Given this reason, he continued, "it becomes clear that the reach of that Amendment cannot turn upon the presence or absence of a physical intrusion into any given enclosure."

Since Katz had "justifiably relied" on his privacy while using the telephone booth, the government's violation of that privacy constituted a search and seizure in violation of the Fourth Amendment. . . . In addition, the Court pointed out that the very "narrowly circumscribed" surveillance involved here could well have been authorized by a warrant. Not to have obtained a warrant ignored the central element of the Fourth Amendment, that is, justification before the fact and not afterward.

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Supreme Court Case Study 52 *(continued)*

In making this point, Stewart wrote, "The government stresses the fact that the telephone booth . . . was constructed partly of glass, so that he [Katz] was as visible after he entered it as he would have been if he had remained outside. But what he sought to exclude when he entered the booth was not the intruding eye—it was the uninvited ear. He did not shed his right to do so simply because he made his calls from a place where he might be seen. No less than an individual in a business office, in a friend's apartment, or in a taxicab, a person in a telephone booth may rely upon the protection of the Fourth Amendment. . . . To read the Constitution more narrowly is to ignore the vital role that the public telephone has come to play in private communication."

In a concurring opinion, Justice John Marshall Harlan developed a test for determining what interests are protected: "First, that a person has exhibited an actual (subjective) expectation of privacy, and second, that the expectation be one that society is prepared to recognize as 'reasonable.' " This test became an accepted standard.

★★★★★★★★★★★★★★★★★★ Dissenting Opinion ★★★★★★★★★★★★★★★★★★

As the only voice of dissent in the case, Justice Hugo L. Black expressed the opinion that eavesdropping using electronic means did not constitute "search and seizure." He thought that the words of the Fourth Amendment quite literally applied only to "tangible things with size, form, and weight." He was referring to the phrasing of the Fourth Amendment that people had the right: "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . . ."

In concluding his dissent, Black wrote, "The Court talks about a constitutional 'right of privacy' as though there is some constitutional provision or provisions forbidding any law ever to be passed that might abridge the 'privacy' of individuals. But there is not."

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

1. Do you agree with Justice Stewart's opinion or with Justice Black's? Explain.
2. How do you think the FBI might have recorded Katz's conversation legally?
3. Suppose an individual has told friends that he knows his phone has been tapped. Yet, when he appeals a conviction based on information obtained from the wiretap, his appeal is denied. In what way did the individual fail to meet Justice Harlan's test?
4. Suppose you use a public telephone to discuss with a friend a plan to rob a bank. A police officer who happens to be standing outside the phone booth hears your conversation. The bank robbery takes place, and you are convicted for having participated in the robbery. The conviction is based in part on the police officer's testimony about your phone conversation. Do you think the Supreme Court's majority opinion would apply in your case? Explain.
5. In his dissent Justice Black wrote that the right of privacy is not provided for anywhere in the Constitution. By so believing, Justice Black has been described as applying a literal interpretation to the Constitution. What do you think this means?

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Supreme Court Case Study 53

Freedom of Expression in Public Schools

Tinker v. *Des Moines*, 1969

Background of the Case

Throughout the 1960s, television broadcasts carried graphic images of the Vietnam War. In December of 1965, John Tinker, his sister Mary Beth, and their friend Christopher Eckhardt decided to protest the war. They planned to wear black armbands to their schools in Des Moines, Iowa. When the school board learned of their plans, it adopted a policy that banned the wearing of armbands. Any students who violated this policy would be suspended.

Several students, including the Tinkers, went ahead with their protest. The students were suspended when they refused to remove the armbands. Through their parents, the students asked the district court to issue an injunction against the policy. The district court refused, stating that the school policy was "reasonable." A divided appellate court upheld this decision. The petitioners then appealed to the United States Supreme Court, which agreed to review the case.

Constitutional Issue

The Court was asked to decide whether wearing armbands is a form of free speech, and thus protected under the First Amendment. The students claimed that wearing armbands was a way to express their ideas and opinions about the Vietnam War. Lawyers for the school board argued that the Tenth Amendment gives the states authority over education. The school board's policy was needed to preserve order and discipline in the schools.

The U.S. Supreme Court had extended the First Amendment to cover the actions of state officials in *Gitlow* v. *New York* (1925). Later, in *West Virginia* v. *Barnette* (1943) the Court struck down a law requiring students to salute the American flag.

The Supreme Court's Decision

In a 7 to 2 decision, the Supreme Court ruled in favor of the Tinkers and the students. The Court determined that the wearing of armbands was protected by the First Amendment's free speech clause.

Justice Abe Fortas wrote the Court's opinion. Justice Fortas wrote that wearing armbands was an action "akin to pure speech." Further, he wrote, "It can hardly be argued that either students or teachers shed their constitutional rights . . . at the schoolhouse gate." He found little evidence that this silent protest disrupted the school environment. Justice Fortas wrote that the school board officials acted out of an "urgent wish to avoid controversy," rather than a fear of disrupting school activities.

Justice Potter Stewart wrote, however, in a concurring opinion, that, "[A] State may permissibly determine that, at least in some precisely delineated areas, a child . . . is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees."

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Supreme Court Case Study 53 *(continued)*

The *Tinker* case remains controversial to this day. In more recent cases, the Court has limited students' First Amendment rights. In *Bethel School District* v. *Fraser* (1986), the Court upheld the disciplining of a student for using offensive speech in a school assembly. In *Hazelwood School District* v. *Kuhlmeier* (1988) the Court ruled in favor of a school district that censored student newspaper articles with mature subject matter.

Dissenting Opinion

Justice Hugo Black dissented. Justice Black pointed out that the wearing of armbands had led to mockery from other students and other disruptive behavior. This diversion from their normal school day was exactly what the school officials had wanted to avoid. Justice Black's dissent also contended that "some students . . . will be ready, able, and willing to defy their teachers on practically all orders."

Justice John Marshall Harlan, in a separate dissent, argued that school officials should have wide latitude in maintaining discipline. He further wrote that the school board's policy appeared to be motivated by genuine concerns.

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

1. Why does wearing armbands fall within the protection of the free speech clause?
2. Do you agree more with Justice Fortas's opinion or Justice Black's dissent? Give reasons for your answer.
3. Why is the *Tinker* decision considered such an important First Amendment case?
4. How does the *Tinker* decision affect your right to wear a T-shirt supporting a cause that you believe in?
5. How has the ruling in *Tinker* been modified by later Supreme Court decisions?

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Supreme Court Case Study 58

A Woman's Right to Abortion

Roe v. *Wade*, 1973

Background of the Case

One of the most widely debated issues in recent times has been over whether a woman may legally have an abortion. Many religious groups have vigorously opposed abortion, while women's rights organizations and civil libertarians, as well as many unaffiliated individuals, have supported that right.

A unmarried pregnant woman, Jane Roe (a pseudonym), brought suit against District Attorney Wade of Dallas County, Texas. She challenged a Texas statute that made it a crime to seek or perform an abortion except when, in a doctor's judgment, abortion would be necessary to save the mother's life. Because Roe's life had not been threatened by her pregnancy, she had not been able to obtain an abortion in Texas.

Constitutional Issue

Roe argued that her decision to obtain an abortion should be protected by the right of privacy, a right that stemmed from the Bill of Rights generally, and from the liberty interests guaranteed by the Fourteenth Amendment's due process clause. The state argued that the protection of life granted by the Fourteenth Amendment could not be applied to a fetus because a fetus was not a person in the eyes of the law.

The Supreme Court's Decision

The Court decided in Roe's favor. Justice Harry A. Blackmun wrote for the Court.

The Court, with one dissent, approached its decision by acknowledging the delicacy and depth of the issue before it. Nevertheless, it was the Court's task "to resolve the issue by constitutional measurement free of emotion and of predilection."

Justice Blackmun reaffirmed that there was a right to privacy that could be inferred from the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. He said that "the right has some extension to activities relating to marriage . . ., procreation . . ., (and) contraception. . . ." Accordingly, "the right of privacy . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." Although specific and direct medical injury might follow a denial of choice, other injuries as well could result from an unwanted pregnancy. These include "a distressful life and future, psychological harm," and also the "distress . . . associated with the unwanted child, and . . . the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it." Yet the Court concluded that the privacy right was not absolute; accordingly, the right could not support an absolute right to choose abortion and "must be [balanced] against important state interests in regulation."

The Court then turned to the question of whether a fetus is a person within the meaning of the Fourteenth Amendment. The Court decided that a fetus was not a person under the

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Supreme Court Case Study 58 *(continued)*

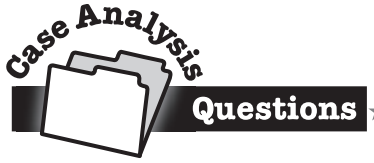
Fourteenth Amendment. In reaching this conclusion, Justice Blackmun wrote, "We need not resolve the difficult question of when life begins. . . . The judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer." Nonetheless, the state has valid interests to protect. One is "preserving and protecting the health of the pregnant woman" and the other is "in protecting the potentiality of human life."

To satisfy both sets of interests, the Court divided the term of pregnancy into two parts, based on medical knowledge. The first part is the first trimester, or three-month period of pregnancy. The Court identified this period as the point up to which fewer women died from abortions than in normal childbirth. In order to preserve and protect women during this period, a state may regulate abortion procedures in such areas as doctors' qualifications and licensing of facilities. Beyond that, however, the state may not go. In the first trimester, the abortion decision belongs to the woman and her doctor.

The point at which the state's compelling interest in preserving potential life begins when that life is viable, or capable of living outside the womb. During this period, approximately the third trimester, the state may constitutionally regulate and even forbid abortion, except when necessary to preserve a woman's life or health. Between the end of the first trimester and the beginning of the point of viability—not specified, but usually around the beginning of the third trimester—the state may "if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health," the Court concluded.

★★★★★★★★★★★★★★★★★★ Dissenting Opinion ★★★★★★★★★★★★★★★★★★

In Justice William H. Rehnquist's dissent, he questioned whether any constitutional right to privacy or liberty could be so broad as to include the complete restriction of state controls on abortion during the first trimester. In his view, "the Court's opinion will accomplish the seemingly impossible feat of leaving this area of the law more confused than it found it."



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

1. In what way did the Court break new ground in its ruling in the *Roe* case?
2. Explain the role of the state in abortion matters under the Court's ruling.
3. How did medical science play a role in the Court's ruling?
4. Where did Justice Rehnquist stand on the right to abortion?
5. Justice Rehnquist said the decision left the abortion area of the law more confused than it found it. What do you think he meant by that statement?